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**The Kelso Abbey Cartulary: Context, Production and Forgery**

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**A thesis submitted for the degree of Doctor of Philosophy,**

**University of Glasgow, January 2011**

## Abstract

Very little critical work has been done on collections of charters surviving from medieval Scotland. Using cutting-edge methodologies, this study deconstructs the largest of these collections, namely the Kelso Abbey cartulary, and attempts to answer questions such as when, why and how was it produced, and is its content authentic? Ultimately, it concludes that the manuscript is not a straightforward, objective transcript of the monastery's charters, and evidence to support this is presented in four chapters, a conclusion and two commentary sections. Chapter one demonstrates that the production of the cartulary was tied to a specific period in the abbey's history and was certainly produced as part of a campaign to rebuild after the wars of the early fourteenth century and their ramifications. These ramifications included the destruction of the monks' charters, the destruction of their home and property, and the upheaval of the native landholding establishment by King Edward I and King Robert I. Chapter two reinforces the above suggestions by dating the production of the manuscript between 1321 and 1326 - i.e. the precise years in which King Robert was working to help many of the religious houses in Scotland to reassert themselves after the war. Apart from contextual considerations, chapter two also establishes that the cartulary is not a completely accurate representation of the documentation in the monastery's archive. Among other things, portions of the manuscript appear to be missing, and the scribes who produced it adopted selection criteria which led to the omission of charters or of diplomatic. Thereafter, chapters three and four evaluate the authenticity of the material in the manuscript. Chapter three demonstrates that there are severe problems with the information, diplomatic, witness lists and other features found in a number of its charters, and chapter four demonstrates that these items share

a number of conspicuous features in common, including their locations, conditions and the circumstances which appear to have led to their production. In combination, chapters three and four build a strong case against the authenticity of a number of items in the manuscript, and both of these discussions are complemented by exhaustive commentaries which discuss each of the problematic charters in detail. Finally, this study concludes by demonstrating that certain features of the Kelso Abbey cartulary appear to call into question the veracity of several well-established paradigms, including the notion that cartularies were created for the sole use of the inhabitants of religious communities. It also suggests that the consequences of the Anglo-Scottish wars in the early fourteenth century may be comparable to the consequences of the Norman Conquest of 1066 in terms of inspiring religious houses, like Kelso, to forge charters, and it builds a strong case that this needs to be an area of future inquiry.

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## **Preface and Acknowledgements**

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### **Author's Declarations**

The length of this thesis, including references, one appendix and a bibliography is 85,041 words.

Except where otherwise indicated in the text, the thesis is my own work and does not include the outcome of any work undertaken in collaboration.

The thesis has not been and will not be submitted for a degree at any other university.

## Conventions

Throughout the thesis, ‘villa’ is translated as ‘ville’, ‘decima’ as ‘teind’, ‘carucata’ as ‘ploughgate’, and ‘bovata’ as ‘oxgang’. ‘In feodo et hereditate’ is translated as ‘in feu and heritage’, and the terms ‘mark’ and ‘brieve’ have been preferred over ‘merk’ and ‘writ’.

When Latin has been quoted, ‘u’ has generally been preferred over ‘v’. In both the main body and the commentaries, the original spelling has been retained as accurately as possible, though ‘i’ has been substituted for ‘j’ in the main body. In the main body of the study, Latin has been punctuated in accordance with modern conventions. In the commentaries, scribal punctuation has been emulated, and personal and place-names have only been capitalized when capitalized in the manuscript. In both the main body and the commentaries, place-names have been spelled as they are found in the text, and are often concluded with an inverted comma.

Foreign toponymic surnames are spelled with a ‘de’ (e.g. de Vieuxpont), and domestic toponymic surnames are spelled with an ‘of’ (e.g. of London).

Charters are measured in inches, and distances are measured in miles.

For the sake of convenience, a parenthetical system of cross-referencing has been employed in chapters three and four which corresponds with the items in Commentaries I and II.

Except when necessary, manuscript references have not been used when a charter is cited. Rather, the traditional Bannatyne Club numbers have been utilized.

The maps in chapter one are intended to be illustrations. As such, a legend has been provided which informs the reader what particular symbols mean. A comprehensive legend which corresponds with each number has not been provided. The maps have been created using extant source materials relating to Scottish monasteries, and these sources can be found in the bibliography. The military routes on map 1.9 have been derived from P. G. B. McNeill and H. L. MacQueen (eds.), *An Atlas of Scotland History to 1707* (Edinburgh: The Scottish Medievalists and Department of Geography, University of Edinburgh, 1996), pp. 87-90.

## References and Abbreviations

As far as possible, abbreviations conform to the *List of Abbreviated Titles of the Printed Sources of Scottish History to 1560* published as a supplement to the *Scottish Historical Review*, October 1963. If there is no accepted abbreviation, a form has been devised. In the Bibliography, a number of abbreviations have been inserted at the start of the line on an alphabetical basis, so that works may be located more easily. The following are some of the most common abbreviations found through the thesis.

NAS = National Archives of Scotland

NLS = National Library of Scotland

CDS = *Calendar of Documents Relating to Scotland Preserved in Her Majesty's Public Record Office*, vols. i-iii

ESC = *Early Scottish Charters Prior to 1153*

OPS = *Origines Parochiales Scotiae*, vol. i

RRS = *Regesta Regum Scottorum*, vols. i, ii, v, vi

*Charters of David I = The Charters of King David I: the Written Acts of David I King of Scots, 1124-53, and of His Son Henry Earl of Northumberland, 1139-52*

*Chron. Bower = Scotichronicon by Walter Bower in Latin and English*, vols. iv, vii

*Chron. Melr. = Chronica de Mailros: E Codice Unico In Bibliotheca Cottoniana Servato, Nunc Iterum in Lucem Edita. Notulis Indiceque Aucta*

*Holy. Lib. = Liber Cartarum Sancte Crucis: Munimenta Ecclesie Sancte Crucis de Edwinesburg*

*Kel. Lib.* = *Liber S. Marie de Calchou: Registrum Cartarum Abbacie Tironensis de Kelso, 1113-1567*, vols. i-ii

*Melr. Lib.* = *Liber S. Marie de Melros: Munimenta Vetustiora Monasterii Cisterciensis de Melros*, vols. i-ii

*Tiron Cart.* = *Cartulaire de l'Abbaye de la Sainte-Trinité de Tiron*, vols. i-ii

## Introduction

The Kelso Abbey cartulary, also known as the *Liber S. Marie de Calchou* or the NLS, Adv. MS 34.5.1, is one of the most frequently cited historical sources that survives from medieval Scotland. The reason for this is quite simple: not only does it contain the largest surviving collection of twelfth- and thirteenth-century Scottish charter-texts (along with the earliest surviving Scottish rental), but the charters which it does preserve cover a wide variety of geographical and political regions, thus making it an ideal starting point for various types of investigations. However, in spite of the fact that historians make frequent use of the source, the manuscript has received virtually no critical attention. There has been no attempt to place the production of the cartulary into context, nor has there been any serious attempt to assess the way it was composed. There has also been no real effort to verify whether or not its material is authentic. Some discussion of the authenticity of its content did coincide with the creation of editions of royal, episcopal and private charters in the twentieth and twenty-first centuries. However, most of the scholars responsible for these publications did not do more than suggest that certain features of its charters had been altered.<sup>1</sup> Moreover, the only historian to propose that any of the charters in the cartulary are forgeries was the early-twentieth-century scholar, Sir Archibald Lawrie. In his 1905 edition of Scottish charters produced prior to the ascension of Mael Coluim IV, Lawrie suggested, based on a variety of elements, that the first item in the manuscript was spurious: David I's general confirmation charter.<sup>2</sup> Thereafter, in an article in the *Scottish Historical Review*, Lawrie also suggested that at least part of a

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<sup>1</sup> *Charters of David I*, pp. 11-12; *RRS*, i, pp. 23-24; *RRS*, ii, pp. 75-76; K. J. Stringer, *Earl David of Huntingdon, 1152-1219: A Study in Anglo-Scottish History* (Edinburgh: Edinburgh University Press, 1985), p. 14.

<sup>2</sup> *ESC*, no. CXCIV, p. 411.

charter purportedly produced on behalf of King Mael Coluim IV was forged, which records the fact that the king had a son whose body rested at the church of Innerleithan on the first night after his death.<sup>3</sup> However, years later Archibald Duncan asserted that Lawrie's 'comments on authenticity are of little worth',<sup>4</sup> and Geoffrey Barrow provided alternative explanations for the suspicious features found in the two charters that Lawrie denounced.<sup>5</sup> Hence, the collection has been left in virtually full repute.

The fact that the Kelso Abbey cartulary is one of the most well-referenced sources that survives from medieval Scotland, in combination with the fact that its composition and authenticity have yet to be adequately assessed, is cause for serious concern. As a result, this thesis aims to provide a critical assessment of the manuscript and its content. In the past thirty years, significant advancements have been made in the area of source criticism, particularly in relation to cartularies. The assessment which follows will be structured in a way which reflects the types of investigations that have proven most profitable. Therefore, it is first necessary to survey the nature of these studies.

### *I. The Historiography of Source Criticism in Scotland and Elsewhere*

The lack of critical attention given to the Kelso Abbey cartulary is not necessarily symptomatic of Scottish historians' neglect of this particular source, but rather a lack of attention given to Scottish cartularies in general. In fact, since the production of a series of editions by the Bannatyne Club and other antiquarian organizations in the

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<sup>3</sup> A. C. Lawrie and J. M. Thomson, 'Liber de Calchou, No. 21', *Scottish Historical Review*, 12 (1914/1915), 437-439.

<sup>4</sup> A. A. M. Duncan, *Scotland: The Making of the Kingdom*, ed. by G. Donaldson, The Edinburgh History of Scotland, i (Edinburgh: Mercat Press, 1975), p. 640.

<sup>5</sup> *Charters of David I*, no. 183; *RRS*, i, pp. 23-24, no. 219.

mid-nineteenth century, Scottish medievalists have not dedicated any serious time or energy to answering questions such as when, why or how their cartularies were produced.<sup>6</sup> Moreover, they have also not dedicated much energy to evaluating the authenticity of the material found in these manuscripts, or even the authenticity of surviving ‘originals’. In fact, the authenticity of no more than forty of the 6000-plus surviving charters from the twelfth and thirteenth centuries is currently in question.<sup>7</sup>

Nevertheless, statistics like the aforementioned really tell us more about the state of source criticism in general, than they do about the discipline in Scotland. It is a well documented fact that the critical analysis of charters and cartularies is

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<sup>6</sup> There has only been one serious effort to date Scotland’s cartularies, and it was not carried out by the local historical community which is most familiar with the material (G. R. C. Davis, *Medieval Cartularies of Great Britain and Ireland*, rev. by C. Breay and others (London: British Library, 2010), pp. 229-240). Moreover, though discussions of why and how cartularies were produced have been factored into some analyses, these discussions have been rather tangential and not the focus of the studies where they are found (*Charters of David I*, pp. 1-4; *RRS*, I, p. 57-59; *RRS*, II, pp. 68-69; D. Broun, ‘The Writing of Charters in Scotland and Ireland in the Twelfth Century’ in *Charters and the Use of the Written Word in Medieval Society*, Utrecht Studies in Medieval Literacy 5, ed. by K. Heidecker (Turnhout: Brepols, 2000), pp. 113-32 (p. 119); A. Takamori, ‘Authority of Networks of Major Churches in the Archdeaconry of Glasgow’ (unpublished doctoral thesis, University of Glasgow, 2008), p. 24). For a discussion of the policies adopted by compilers of the Kelso Abbey cartulary with respect to twelfth-century brieves, see D. Broun, ‘The Adoption of Brieves in Scotland’, in *Charters and Charter Scholarship in Britain and Ireland*, ed. by M. T. Flanagan and J. A. Green (Basingstoke: Palgrave Macmillan, 2005), pp. 164-83 (p. 170).

<sup>7</sup> Following Lawrie, the only historians to publish on the subject are Geoffrey Barrow, Archibald Duncan, Joseph Donnelly and Paul Ferguson. Barrow deduced that four of the 216 surviving charters of David I and Earl Henry are ‘indisputably spurious [...] or in certain respects suspect’ (*Charters of David I*, p. 1; nos. 31-32, 55, 216; see also *RRS*, i, pp. 91-95, no. 55). He also deduced that three of the 116 charters of Mael Coluim IV are ‘spurious’ (*RRS*, i, no. 116, 237-38); and that fourteen of the 521 charters of William I are either ‘spurious’ (*RRS*, ii, nos. 119, 157, 193, 253, 279, 287, 505), ‘inflated’ (*Ibid.*, ii, nos. 143, 196, 372, 392, 400, 424), or ‘doubtful’ (*Ibid.*, ii, no. 251; see also p. 68). Archibald Duncan and Joseph Donnelly’s contributions revolved largely around the authenticity of two early charters of King Duncan II and King Edgar (A. A. M. Duncan, ‘The Earliest Scottish Charters’, *Scottish Historical Review*, xxxvii (1958), pp. 103-35; J. Donnelly, ‘The Earliest Scottish Charters?’ *Scottish Historical Review*, lxxvii (1989), pp. 1-22; A. A. M. Duncan, ‘Yes, The Earliest Scottish Charters’ *Scottish Historical Review*, lxxviii (1999), pp. 1-38). However, Duncan has also discussed the authenticity of several charters which purport to have been produced on behalf of Alexander I found in the Scone cartularies (Duncan, *Making of the Kingdom*, pp. 640-41, A. A. M. Duncan, *Kingship of the Scots, 842-1292: Succession and Independence* (Edinburgh: Edinburgh University Press, 2002), pp. 82-97). Paul Ferguson dealt with forgery in his discussion of the documentation produced by the papal curia and papal representatives in Scotland (P. C. Ferguson, *Medieval Papal Representatives in Scotland: Legates, Nuncios, and Judges-Delegate, 1125-1286*, The Stair Society, 45 (Edinburgh: The Stair Society, 1997), pp. 173-76). As mentioned above, if one compensates for overlap between the aforementioned individuals and Archibald Lawrie, who argued that fifteen of the 271 charters in his edition of early Scottish charters were spurious or problematic (*ESC*, nos. iv, x, xv-xvii, xxxvi, xlvi-xlix, xciv, lxxiv, cxvi, ccxv, ccxxiii, ccxlii), then it appears that the authenticity of no more than forty out of well-over 6000 surviving twelfth- and thirteenth-century Scottish charters has been questioned.

something that medievalists throughout Europe have struggled with. In an article on eleventh-century French cartularies, Patrick Geary asserted that ‘charter scholars have not dedicated much attention to the study of cartularies in and of themselves’.<sup>8</sup> Along similar lines, Trevor Foulds noted that ‘cartularies present certain difficulties and one of them is that there are insufficient secondary works on cartularies in general’.<sup>9</sup> Wendy Davies, in an article on the cartulary of Redon, stated that her study was inspired by the fact that items found in the manuscript have been ‘plundered’ and ‘used somewhat indiscriminately’ by Celticists and individuals with a Carolingian interest, ‘largely without attempt at critical assessment’.<sup>10</sup> Moreover, the foremost scholars of medieval charters and cartularies in France stated quite prominently at the beginning of a section in their handbook on French diplomatic that ‘the critical examination of medieval acts is essential, but is rarely ever achieved’.<sup>11</sup> However, in spite of the fact that this ‘essential’ task has been largely neglected by the historical community, a number of advancements have been made by continental and insular scholars, many of whom have just been mentioned. David Bates, who is a strong advocate of source criticism in the British Isles, has noted that:

The traditional and indeed eternally valid objectives of diplomatic, namely to establish authenticity and to discover the rules by which documents of a particular kind were written in a specific epoch, have

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<sup>8</sup> *Les diplomates n’ont accordé que très peu d’attention à l’étude des cartulaires en tant que tels.* (P. Geary, ‘Entre gestion et gesta’; *Les Cartulaires: Actes de la Table ronde organisée par l’Ecole nationale de chartes et le G.D.R. 121 du C.N.R.S (Paris, 5-7 décembre 1991)*, ed. Olivier Guyotjeannin and others, *Mémoires et documents de l’École des chartes* 39 (Paris: École des Chartes, 1993) pp. 13-24 (p. 13)).

<sup>9</sup> T. Foulds, ‘Medieval Cartularies’, *Archives*, 77 (1987), pp. 3-35 (pp. 4-5)

<sup>10</sup> W. Davies, ‘Forgery in the Cartulaire de Redon’ in *Fälschungen im Mittelalter: Internationaler Kongress der Monumenta Germaniae Historica München, 16. - 19. September 1986*, Teil IV: *Diplomatische Fälschungen (II)* (Hannover: Hahnsche Buchhandlung, 1988), pp. 265-274 (p. 267).

<sup>11</sup> *La critique des actes médiévaux est indispensable, mais elle n’est guère aisée.* (O. Guyotjeannin and others, *Diplomatique Médiévale*, dir. par J. Berlioz and O. Guyotjeannin, L’Atelier Du Medieviste, 2 (Belgium: Brepols, 1993), p. 375.)

been absorbed into wider concerns about context, discourse and the construction of text. Charters are now every bit as much the subject of deconstruction as any literary text.<sup>12</sup>

The ‘deconstruction’, which Bates refers to, has taken a variety of forms. However, two movements have gained particular momentum, namely investigations into the production of cartularies and micro-investigations of authenticity.

#### *A. Investigations into the Construction and Production of Cartularies*

In an article on the organization of medieval English cartularies, David Walker noted that ‘[a]t some time everyone who works on medieval charters is drawn to ask questions about the structure of the cartularies from which so many of his documents must be derived’.<sup>13</sup> The reason for this is quite simple: in order to get the most out of a manuscript, one needs to understand the reason why it was created and the policies employed by the individual(s) who created it. Nevertheless, as discussed, considerations of construction, production and selection have only been tangential to research in Scotland, and the same is generally true of England. In fact, apart from Walker’s article, such investigations have gained very little momentum.<sup>14</sup> David Bates has noted that this is one field of research which would benefit from further enquiry in the British Isles, and he bases this assertion on the fact that investigations

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<sup>12</sup> D. Bates, ‘Charters and Historians of Britain and Ireland: Problems and Possibilities’, in *Charters and Charter Scholarship in Britain and Ireland*, ed. by M. T. Flanagan and J. A. Green (Basingstoke: Palgrave Macmillan, 2005), pp. 1-14 (p. 3).

<sup>13</sup> D. Walker, ‘The Organization of Material in Medieval Cartularies’, in *The Study of Medieval Records: Essays in Honour of Kathleen Major*, ed. by D. A. Bullough and R. L. Storey (Oxford: Clarendon Press, 1971), pp. 132-150 (p. 132).

<sup>14</sup> For some notable exceptions, see Foulds, ‘Medieval Cartularies’, pp. 8-9, 22-23, 29.

by insular scholars have yet to match the thoroughness of the examinations conducted by their continental counter-parts.<sup>15</sup>

In the past twenty years, there have been substantial advancements made in answering questions such as why and how medieval cartularies were produced owing to the efforts of scholars in France and the Low Countries. In 1991, a conference was held which featured twenty-six papers on cartularies, and many dealt specially with these issues. Since then, not only was a volume produced recording the proceedings of this event, but several scholars have continued to investigate and publish on the subject.<sup>16</sup> Among other things, Constance Bouchard published an article which solidified the notion that monastic cartularies were produced for the use of these houses, and their use alone.<sup>17</sup> Other articles have reinforced the notion that cartularies are not ‘photocopies’ of archives or charters, but are to some extent distortions of them (something that historians continue to underestimate). Geertrui Van Synghel’s article on cartularies produced in the province of North Brabant (Belgium) provided detailed insight into the selection criteria adopted by medieval scribes and the reason that such criteria were adopted. One of his most noteworthy observations came from his analysis of the *Oorkondenboek van Noord-Brabant tot 1312*, which was one of the more thorough, all-encompassing transcripts that he evaluated. Regarding the policies of the scribes who produced this manuscript, Van Synghel notes that their actions prove that

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<sup>15</sup> Bates, ‘Problems and Possibilities’, p. 11.

<sup>16</sup> *Les Cartulaires: Actes de la Table ronde organisée par l’Ecole nationale de chartes et le G.D.R. 121 du C.N.R.S (Paris, 5-7 décembre 1991)*, ed. O. Guyotjeannin and others (Paris: École des Chartes, 1993). Patrick Geary’s article from this volume has already been cited above.

<sup>17</sup> C. B. Bouchard, ‘Monastic Cartularies: Organizing Eternity’, in *Charters, Cartularies, and Archives: The Preservation and Transmission of Documents in the Medieval West*, ed. by A. J. Kosto and A. Winroth (Toronto: University of Toronto Press, 2002), pp. 22-32 (p. 29).

even if one strove on the grounds of title control for an almost full reproduction of the charters, selection criteria are always maintained that exclude certain groups of charters. This can be based on content as well as on diplomatic grounds.<sup>18</sup>

In a similar vein, Michel Parisse's thorough investigation of French cartularies proved that the content of these transcripts should never be taken at face value because errors are manifest, many of which seriously distort the content of the originals upon which they were based.<sup>19</sup>

Nevertheless, one of the most important advancements that continental scholars have made in relation to cartularies is the establishment of a theoretical framework needed to understand what cartularies can tell us about the nature of charter production itself. In an article on medieval French cartularies, Laurent Morelle began by asking:

Does the view conveyed by the sources simply show a reduction of what was once there, or is it a distortion? Similarly, how should we interpret the ebb and flow in the numbers of documents? What part of this is due to fluctuations in the production of writings and what is due to the vicissitudes of conservation?<sup>20</sup>

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<sup>18</sup> G. V. Synghel, 'Observations on the Entry and Copying in the Cartularies with Charters of the Province of North Brabant', *Secretum Scriptorum Liber Alumnorum Walter Prevenier*, ed. by W. Blockmans and others (Leuven-Apeldoorn: Garant, 1999), pp. 77-92 (pp. 91-92).

<sup>19</sup> M. Parisse, 'Les Cartulaires: Copies ou Sources Originales'; *Les Cartulaires: Actes de la Table ronde organisée par l'École nationale de chartes et le G.D.R. 121 du C.N.R.S (Paris, 5-7 décembre 1991)*, ed. O. Guyotjeannin and others, Mémoires et documents de l'École des chartes 39 (Paris: École des Chartes, 1993) pp. 503-511 (p. 511).

<sup>20</sup> L. Morelle 'The Metamorphosis of Three Monastic Charter Collections in the Eleventh Century (Saint-Amand, Saint-Riquier, Montier-en-Der)' in *Charters and the Use of the Written Word in Medieval Society*, Utrecht Studies in Medieval Literacy 5, ed. K. Heidecker (Turnhout: Brepols, 2000), pp. 171-204 (p. 171).

Thereafter, he went on to conclude that evidence found in three monastic charter collections suggests that there is a direct correlation between the number of documents found in a cartulary from a specific period and the number of originals produced during that period. He asserts that concerns over destruction or inept archival practices are not sufficient to account for such disparities, and concludes by stating that ‘[i]t is not the cartulary that produces an image of abundance’ from a specific period, but it is ‘the accumulation of writings that stimulates cartularization’.<sup>21</sup> Naturally, such a rationale would not apply in all circumstances. The disparity between the number of early and late charters in the Scone cartularies are testament to that point, not only because the earlier cartulary is fragmentary, but because the monastery faced a number of devastating fires and military problems which had an effect on the quantity of charters in their archive.<sup>22</sup> However, findings like that of Morelle do tend to throw many old paradigms about survival out the window, and David Bates has noted that insular scholars would benefit from contemplating this notion.<sup>23</sup>

### *B. Micro- Investigations of Authenticity*

Like evaluations of cartularies, discussions of authenticity have been part of charter scholarship since the advent of the discipline. In Scotland, the first individual to seriously contemplate the authenticity of charters was William F. Skene,<sup>24</sup> and as discussed above, such investigations did not die with him, but have continued to be an area of enquiry. That said, in the past few decades, English and continental historians

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<sup>21</sup> *Ibid.*, p. 203.

<sup>22</sup> *RRS*, v, pp. 25-7, 124-5.

<sup>23</sup> Bates, ‘Problems and Possibilities’, p. 11.

<sup>24</sup> *Celt. Scot.*, 3, p. 59.

have approached this topic from new angles, and one angle is that of the micro-analysis. Prior to the 1980s, many investigations of authenticity are probably best described as macro-analyses. A prime example of what is meant by this are the efforts made by Geoffrey Barrow to identify forgeries in the charters of David I, Mael Coluim IV, and William I. Essentially, Barrow extracted a number of charters from various archives and assessed their merit, largely out of context, based on the information that he could compile. There is nothing particularly wrong with this approach, and indeed, one has little choice when overseeing a project like the *Regesta* series. However, the approach does limit the conclusions which one can come to, not only in terms of assessing which charters are authentic, but in terms of what can be said about the environment which inspired these fabrications, and the motivations of the people who created them. For instance, in England this practice led historians to believe that the Norman Conquest was the circumstance which inspired creative activity because their examinations were exploring the spurious charters largely without consideration of information found in the sources from which they were derived. However, micro-investigations have over-turned many such hypotheses and allowed historians to go further with their investigations than was previously the case. The reason for this is quite simple. Firstly, by exploring a spurious charter in the context of a manuscript or archive, one is better able to gauge whether or not it is in fact a forgery. Secondly, this type of investigation allows one to make connections between items and potentially bring more spurious material to light. Thirdly, these investigations potentially allow one to better identify why a charter or a series of charters were fabricated in the first place, since one has access to a more focused volume of material than he or she would have in other circumstances.

A prime example of a micro-analysis, which also demonstrates that fruits of such an approach, is Susan Elisabeth Kelly's thesis titled 'The Pre-Conquest History and Archive of St. Augustine's Abbey Canterbury'.<sup>25</sup> For a long time prior to Kelly's work, historians had been aware of the fact that a substantial number of forged documents survived in the St. Augustine's archive, and these items had been visited and revisited by scholars. However, Kelly took a different approach from the *status quo*. As the title of the project suggests, she firstly conducted a detailed evaluation of the eleventh-century history of the monastery, which formed the background for discussing the fabrication of these documents. After that, she conducted a full-scale study of the archive from which they were derived and established the textual history of the forged privileges. This approach allowed her to bring forward material that was not available to her predecessors, and among other things, question their conclusions. Moreover, it also allowed her to bring a number of new forgeries to light.

Very few studies have matched the thoroughness of Kelly's analysis. However, similar-style investigations have also yielded results and overturned a number of paradigms. Julia Crick's revisionist analysis of the forgeries in the St. Albans and Westminster archives revealed that they cooperated in their efforts to forge charters and that such cooperation was instigated by one crisis after another.<sup>26</sup> Martin Brett's detailed evaluation of the Rochester archive and its history allowed him to identify the fact that the cathedral forged several royal charters of King Stephen during the lifetime of the king himself.<sup>27</sup> Wendy Davies's investigation of the Redon cartulary unearthed the fact that the monks forged documents in the name of

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<sup>25</sup> S. E. Kelly, 'The Pre-Conquest History and Archive of St Augustine's Abbey, Canterbury' (unpublished doctoral thesis, University of Cambridge, 1986).

<sup>26</sup> J. Crick, 'St Albans, Westminster and Some Twelfth-Century Views of the Anglo-Saxon Past', *Anglo Norman Studies*, 25 (2003), p. 3.

<sup>27</sup> M. Brett, 'Forgery at Rochester' in *Fälschungen im Mittelalter: Internationaler Kongreß der Monumenta Germaniae Historica München, 16. - 19. September 1986*, Teil IV: Diplomatische Fälschungen (II) (Hannover: Hahnsche Buchhandlung, 1988), pp. 397-412 (p. 403).

their benefactors at the very time that they acquired property from them.<sup>28</sup> Moreover, David Bates drew attention to the fact that Canterbury and Westminster did not attempt to tie their legal claims to the time of Edward the Confessor, but to the time of Archbishop Stigand (1052-70), thus calling into question the validity of the Norman Conquest paradigm.<sup>29</sup>

## *II. Criticism in this Study*

As discussed above, this study aims to duplicate the successes that recent scholars have achieved in their investigations into cartularies and authenticity. It will employ many of the methodologies that were just outlined in its evaluation of the Kelso Abbey cartulary, resulting in four chapters, a conclusion and two commentary sections. The content of each of these sections is as follows.

### *A. Chapter One: The History of Kelso Abbey Prior to the Production of the Cartulary*

As demonstrated in relation to Susan Kelly's study, in order to be able to deconstruct any manuscript produced by a religious house, it is necessary to unravel the idiosyncrasies of that institution's history. Chapter one will explore the first two-hundred years of Kelso's existence, since the cartulary is primarily a collection of records which stretch from the foundation of the monastery in the early twelfth century to the troublesome years of the early fourteenth. Geoffrey Barrow has noted that the history of the Tironensian order in Scotland has never been adequately assessed, so it should come as no surprise that several dimensions will be discussed

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<sup>28</sup> Davies, 'Cartulaire de Redon', p. 273.

<sup>29</sup> D. Bates, *Re-ordering the Past and Negotiating the Present in Stenton's First Century* (Reading: University of Reading, 2000), pp. 8-9.

which hitherto have gone uninvestigated.<sup>30</sup> Nevertheless, the reader should note that the primary intention of this evaluation is to pin down the events which led to the production of the manuscript and to introduce the relevant contextual information needed to conduct the analysis in the subsequent chapters. Therefore, many dimensions of the abbey's history will not be dealt with. The main subjects which will be discussed include the community's foundation at Selkirk and subsequent move to Kelso, its accumulation of property and rights in the twelfth, thirteenth and early fourteenth centuries, its relationship with its mother-house of Tiron, and the effects the Anglo-Scottish wars had on the abbey. Moreover, it will be noted that there appears to have been sufficient reason throughout the house's history for the monks to forge charters. In fact, three sub-dimensions of its history will be featured in this chapter since they parallel catalysts which prompted creative activity in other European contexts. These include Kelso's status as a monastery exempt from episcopal jurisdiction, the loss of Kelso's charters in the early stages of Edward I's invasion and occupation, and the changes in lordship brought first by the kings of England, and secondly, by King Robert I of Scotland.

### *B. Chapter Two: The Composition of the Kelso Abbey Cartulary*

Having established the events which led to the production of the cartulary, chapter two will proceed to discuss the nature of the manuscript itself. In a manner similar to the continental investigations discussed above, this chapter will thoroughly deconstruct the Kelso Abbey cartulary. It will begin with an attempt to collate the original codex, suggesting that the current codex does not resemble the 'original

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<sup>30</sup> G. W. S. Barrow, *The Kingdom of the Scots*, 2<sup>nd</sup> edn (Edinburgh: Edinburgh University Press, 2003), p. 184.

cartulary' in all respects. Thereafter, the term 'original cartulary' will be defined, and evidence will be given which suggests that the current manuscript is actually the result of three distinct phases of production. Thirdly, the policies of the scribes who participated in each phase of production will be evaluated, and this discussion will mirror the types of investigations conducted by scholars such as Bouchard, Van Syngel, Parisse and Morelle, who were discussed above. Those points which will be featured in this investigation include scribes' summarization of charters, their omission and truncation of witness lists, their omission and truncation of other diplomatic features, their choice of charters to be incorporated into the manuscript and their emulation of the paleographical features found in the charters which they transcribed. Finally, chapter two will conclude by attempting to establish a firm date of production for the cartulary. Thus far, almost all historians are in consensus that the manuscript was produced in the early fourteenth century. However, there has been no attempt to pin down its date of production with any greater precision.

### *C. Chapter Three: The Authenticity of the Charters in the Kelso Abbey Cartulary*

Having established the nature of the cartulary in chapter two, chapter three will be the first of two chapters to consider the authenticity of the material in the manuscript. There has been a great deal of discussion about how one goes about evaluating the authenticity of a charter. However, most historians are in consensus that a variety of elements can be used to call the genuineness of such an instrument into question. Moreover, most scholars agree that the more points of discrepancy one can identify,

the more likely it is that a charter is fallacious.<sup>31</sup> One of the better guides to this approach was compiled by Olivier Guyotjeannin, Jacques Pycke and Benoit-Michel Tock in their 1993 handbook on French diplomatic. Regarding charters which only survive as transcripts, they suggest that there are several points that historians should look out for, including incorrect dates, anachronistic dating clauses, anachronistic witness lists (since forgers often compiled witness lists based on the information available in their archives) and anachronistic diplomatic. Regarding the latter, the authors also note that scholars should gather an abundance of material for comparison, and they caution historians to distinguish between updates, interpolations, differing chancery practices and outright forgery in their diplomatic analyses.<sup>32</sup> The discussion in chapter three will use many of the aforementioned criteria and methodologies to survey the authenticity of the charters in the Kelso Abbey cartulary. The particular points which will be discussed include the fact that several charters contain contextual anachronisms, contextual contradictions, irregular textual features, and anachronistic witness lists. Moreover, abnormal charter diplomatic will also be discussed, and a decision has been made to compare the diplomatic features in Kelso Abbey's charters with the features found in the charters in the Melrose and Holyrood archives. The reason for this is the fact that both collections contain a relatively large number of charters which survive as single-sheet 'originals'.

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<sup>31</sup> For criticism of this approach, see R. Moritimer, 'The Charters of Henry II: What are the Criteria for Authenticity', *Anglo-Norman Studies*, XII (1989), pp. 119-134 (p. 123).

<sup>32</sup> Guyotjeannin, *Diplomatique Médiévale*, pp. 375-78.

*D. Chapter Four: The Common Characteristics of the Questionable Charters in the Kelso Abbey Cartulary*

Following chapter three's establishment of the fact that a number of items in the manuscript contain features which appear to force one to question their authenticity, chapter four will explore similarities between these items. Firstly, it will discuss similarities in their locations, and it will be noted that a number of the suspicious charters appear at the end of particular topographical sections, following a series of charters arranged in chronological order, or following a thematic break in a topographical section. Thereafter, this chapter will explore similarities in terms of their condition in the manuscript, including the fact that a number of the spurious items are fragmented or incomplete. Finally, this chapter will explore the catalysts which may have prompted the fabrication of these items. The reader should note that it is possible to identify convincing reasons for the fabrication of most of the items discussed in chapter three, and this fulfills the main criteria that Wendy Davies asserted is a 'must have' if one hopes to call the authenticity of the copy of a charter into question.<sup>33</sup> However, many of the catalysts are also quite similar in a number of respects: they either relate to disputes, concerns about the validity of charters produced by women, sanctuary rights, or concerns about the symmetry of the material in the cartulary. Ultimately, this chapter will conclude that the locational, conditional and motivational similarities which can be identified reinforce the notion that these items are spurious. Moreover, the locational similarities also suggest that many of these charters were fabricated at the time of the production of the cartulary.

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<sup>33</sup> Davies has said that '[o]f course, strictly, it is quite impossible to establish that a text that only exists in a copy has been forged: we could only establish forgery if we could establish intention to defraud' (Davies, 'Cartulaire de Redon', p. 274, fn. 33).

### *E. Conclusion and Commentaries*

Following the study's four main chapters, several concluding remarks will be made, including some proposals for future investigations. Thereafter, two commentary sections will be provided for the reader. Commentary I contains copies of all of the charters which were discussed in chapters three and four, and explanations of why the authenticity of each charter should be questioned. The items in Commentary I have been divided into categories depending on the strength of the evidence that calls them into question, and these categories include 'spurious', 'doubtful', 'suspicious' and 'inflated/suspicious'. Thereafter, Commentary II expounds upon a number of charters and features of the cartulary which were not discussed in chapters three and four. As will be illustrated, there is sufficient reason for historians to use these items with caution.

### *III. Sources*

Before preceding to chapter one's discussion of the history of the abbey, it is necessary to say a brief word about the primary sources which have been used in this study, and its use of the medieval manuscripts compared to the Bannatyne Club editions. The main primary source which has been used is naturally the Kelso Abbey cartulary, though as discussed above, the original charters found in the Melrose and Holyrood archives have also been consulted. When possible, there has been a conscious effort to use the manuscripts over the Bannatyne Club editions. In fact, all of the surviving originals for Melrose and Holyrood have been consulted, and consultation of the NLS, MS Adv. 34.5.1 has been very thorough. Ultimately, this

protocol has been the result of necessity. After all, the credibility of the Bannatyne Club editions has been a matter of some dispute. In 2006, Alasdair Ross published an article in the *Scottish Historical Review* which assessed the editorial practices of the club and the individuals who participated in creating the editions. Within this study, he established that the Bannatyne Club was first and foremost compromised by economic problems which forced them to make shortcuts in their work. However, Ross also established that their editorial practices were understandably not on a par with modern-day conventions, and the strength of their efforts has suffered as a result. To prove this point, he used the edition of the Moray Register as a case-study, which was created using a total of six independent cartularies. Ross established the fact that the clerks who worked on the edition arbitrarily 'picked and choosed' the copies that they selected to incorporate, sometimes compositing features found in one copy of a charter with the features found in another copy of the same charter. Ultimately, this practice led the editor of the edition, Cosmo Innes, to assert that it was virtually useless as a historical source.<sup>34</sup> However, it also led Ross to conclude that historians should be wary about using any of these editions as primary sources in their own right, and if they do, should consider questions such as how many sources the clerks used to create them. After all, based on his study of the Moray Register, there appears to be a direct correlation between the accuracy of the editions and this figure.

Fortunately, the editions of the Kelso, Melrose and Holyrood material were not created using a large number of sources. The edition of the Kelso Abbey cartulary was created using only one source, namely the cartulary itself. On the other hand, the Holyrood edition was only created using original charters, and though the Melrose edition was created using two cartularies and a number of surviving originals, the

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<sup>34</sup> A. Ross, 'The Bannatyne Club and the Publication of Scottish Ecclesiastical Cartularies', *Scottish Historical Review*, 85, 2 (2006), pp. 202-33 (pp. 208, 217-224).

policy of the clerks who produced it appears to have been to copy the oldest surviving text of a charter. Thus, if the charter survived as an original it would be used in the edition, and if a charter only survived as a copy, then a version found in the older cartulary would trump a version found in the more recent manuscript. As a result, the sort of editorial free-for-all found in the edition of the Moray Register did not factor into the creation of these editions. Nevertheless, throughout this investigation some discrepancies have been discovered in the edition, and it is worthwhile to acknowledge their deficiencies, beginning with those present in the 1846 edition of the Kelso Abbey cartulary.

#### *A. Deficiencies in the Bannatyne Club Edition of the Kelso Abbey Cartulary*

The 1846 edition of the Kelso Abbey cartulary is generally regarded as one of the most valuable works that the Bannatyne Club produced. The major reasons for this scholarly confidence are the circumstances surrounding the creation of the edition. For one, as discussed above, the publication was transcribed using only one manuscript.<sup>35</sup> Moreover, opposed to many Bannatyne Club publications, most of the alterations made to the manuscript's text were signified by the use of brackets, and the only structural modification made to the 'original cartulary'<sup>36</sup> was the decision to move Earl David's foundation charter from its position of fourth in the manuscript, to first in the edition.<sup>37</sup> However, as mentioned above, a comparison of the edition with

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<sup>35</sup> This said, the surviving original copy of Malcolm IV's general confirmation charter was included in the edition's preface since it was not transcribed into the cartulary (*Kel. Lib.*, i, pp. iii-vii).

<sup>36</sup> For a definition of the 'original cartulary', see chapter two.

<sup>37</sup> Alasdair Ross asserts that clerical alterations were often not signified in Bannatyne Club editions (Ross, 'The Bannatyne Club', pp. 213, 217). Furthermore, editors often re-ordered charters to fit with nineteenth-century editorial conventions (*Ibid.*, 215, 217). As mentioned, the charters within the Kelso Abbey cartulary were not, and this editorial decision was acknowledged by Cosmo Innes in its preface (*Kel. Lib.*, i, p. xviii).

the manuscript has revealed some worrisome errors, the most problematic of which was the creation of item no. 323.

*i. No. 323*

Item no. 323, or Robert of Burneville's 'charter' which renewed a tenement in Broxmouth to Kelso Abbey does not exist as such in the manuscript. In fact, it is an artificial construct which was created by the Bannatyne Club using two unrelated charter fragments and a catchword. Throughout the manuscript, catchwords were often written on the last folio of each quire to aid the monks in collation, and they were always the first word(s) found at the beginning of the subsequent quire. The catchword which was used to create the charter, namely *Neythenstirne*, along with the two charter fragments, are found below:

*Uniuersis sancte matris ecclesie filiis et fidelibus Robertus de Burnevill' filius Matildis filie Geroldi de Thanu eternam in domino salutem. Nouerint omnes presentes et futuri me concessisse et hac presenti carta mea confirmasse Deo et ecclesie sancte Marie de Kelchou et monachis ibidem deo seruientibus pro salute dominorum meorum Regis Willelmi et filii eius Alexandri et pro salute patris mei et mea et coniugis mee et heredum meorum et pro animabus aui mei Geroldi et matris mee filie eius que fuit primogenita eius de Marsiena in liberam et perpetuam elemosinam totum tenementum quantum ad me pertinet in Brockes mud' quod idem monachi habuerunt et tenuerunt in eadem uilla antequa ego uenirem ad hereditatem meam de*

*Brockesmud' Scilicet ex dono aui mei Geroldi totam partem illius terre que olim pertinebat ad Brockesmud' et que iacet ab orientali parte<sup>38</sup> uie que uadit ad Neythenstirne<sup>39</sup>*

*totum ius et totum dominium quod ego ipse in terris prenominatis habui. Quare uolo ut dicti monachi dictas terras ita libere et quiete possideant sicut aliquam aliam elemosinam in Regno Scocie in burgo uel extra burgum tenent et possident. In huius uero rei noticiam et securitatem presens scriptum coram multis sigilli mei munimine roborauit. Hiis Testibus Priore et Conuentu de Melros Edmundo et Petro de haluch M' sponsa mea Henrico herede meo et multis aliis<sup>40</sup>*

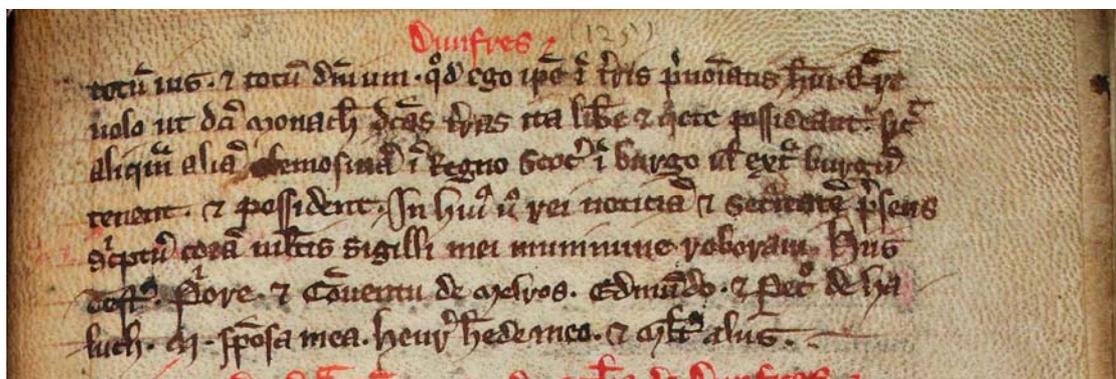
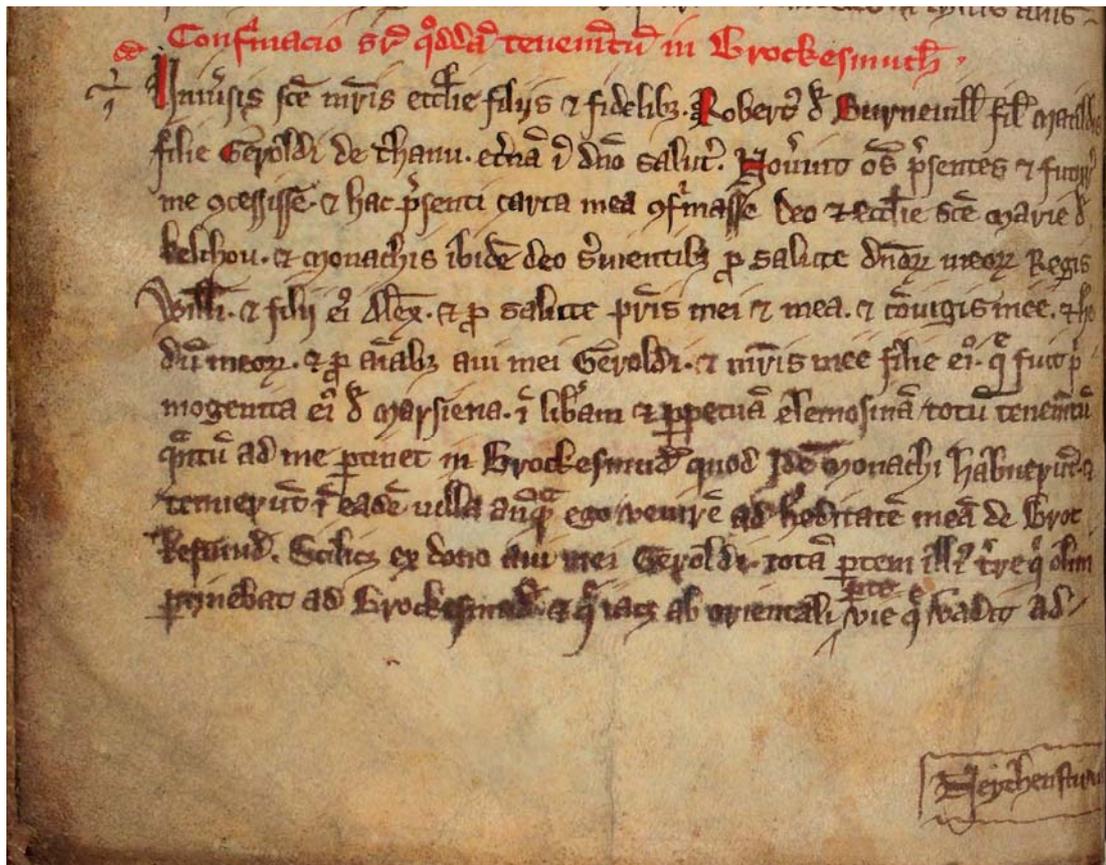
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<sup>38</sup> *Parte* was interpolated above *uie*. A carrot was inserted between *orientali* and *uie* to signify its proposed location within the text

<sup>39</sup> *Neythenstirne* was derived from the quire-signature. It is reasonable to suggest that *Neythenstirne* followed *ad* based on the nature of quire-signatures within the Kelso Abbey cartulary.

<sup>40</sup> *Kel. Lib.*, i, no. 323.

Plate 0.1-0.2: NLS, Adv. MS 34.5.1, ff. 125v-126r



The most conclusive evidence which suggests that the fragment and catchword are independent and should not have been combined into one charter is the fact that certain textual features suggests that a folio once existed between f. 125 and f. 126 where the items are located. As will be discussed in chapter two, the ‘original’ cartulary contains 153 folios, which are found within thirteen quires. All of the cartulary’s quires have an even number of folios with the exception of q. 11. Q. 11,

whose first folio is f. 126 (i.e. the location of the second fragment), has eleven folios, and the odd number of folios is a clear indication that a leaf has been lost which pertained to this gathering.<sup>41</sup> However, this alone is not evidence enough to suggest that the missing folio was located between ff. 125 and 126. Rather, what does suggest that a lost folio was situated in this position is the absence of a quire-signature on f. 126. In addition to the catchwords described above, quire-signatures were also added into the Kelso Abbey cartulary which helped the monks to collate the gatherings. These signatures were alphabetic characters positioned on the *recto* sides of the first folios of every quire, and, as is demonstrable on table 0.2, the only first folio of a quire which lacks a quire-signature is f. 126r. Consequently, this shows that f. 126 was not initially the first folio in q. 11.

Table 0.1: Catchwords

Folio No.	Signature
19v	<i>magna</i>
31v	<i>ecclesie</i>
43v	<i>et dominum</i>
55v	<i>Willelmus dei gracia</i>
67v	<i>sub amabili</i>
79v	<i>et libera mea</i>
91v	<i>redditu suo</i>
101v	<i>ut mansiones</i>
113v	<i>per suam cartam</i>
125v	<i>Neythenstirne</i>
136v	<i>vel presumpserit</i>
148r	<i>stirlingorum</i>

Table 0.2: Quire-Signatures

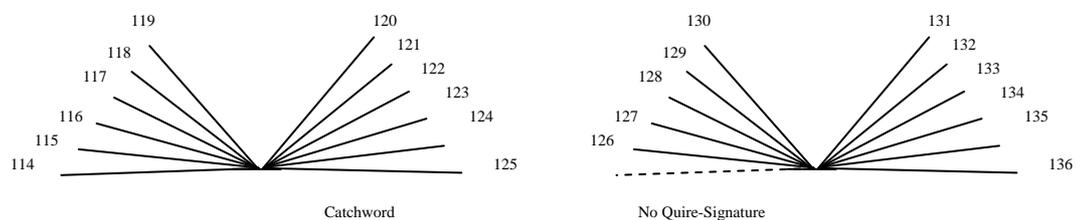
Folio No.	Signature
20r	b
32r	c
44r	d
56r	e
68r	f
80r	g
92r	h
102r	i
114r	k
126r	
137r	m
149r	n

Another piece of evidence which suggests that a folio was located between f. 125 and f. 126 is the fact that the catchword on f. 125v, *Neythenstirne*, does not

<sup>41</sup> Qq. 1-7, 9-10, and 12-13 are comprised of twelve folios each, while q. 8 is composed of ten folios.

reappear at the beginning of f. 126r. As discussed above, catchwords, like quire-signatures, were copied onto the last folio of every quire as collation mechanisms, and these textual devices were the first word(s) found on the first folio of the subsequent quire. The fact that an exemplar for *Neythenstirne* does not survive on f. 126r once again implies that this folio did not originally commence with q. 11. If it was, *Neythenstirne* would be present, since the collator responsible for the catchwords clearly based it on the first word of an extant folio, as he did every other quire-signature. Moreover, it is important to note that all of the catchwords appear to have been copied by one scribe after the completion of the cartulary. Therefore, there is no chance that the scribe responsible for producing the material on ff. 125-26 simply forgot to recopy *Neythenstirne* at the beginning of the fragment on f. 126r.

Figure 0.1: An Illustration of the Textual Features of Quires 10 & 11



Obviously, this evidence is conclusive enough to prove that a folio was once located between ff. 125-26, hence making the fragments/catchword found on these folios incongruent, and the decision to amalgamate them, a poor one. However, other features of these fragments are also incongruent, thus making it all the more surprising that the editorial decision was made to create no. 323. The details which are the most contradictory are the descriptive nouns present within the diplomatic. For instance, in the first fragment, Broxmouth is described as a *uilla*, while the holding

clause in the second fragment states that Kelso was to possess the land *sicut aliquam aliam elemosinam in Regno Scocie in burgo uel extra burgum*. The juxtaposition of two terms like *uilla* and *burgus* in one charter is never replicated in other documents, and this likewise suggests that the subject matter of the two fragments was not related. In fact, it appears that the second fragment pertained to a charter relating to the burgh of Dumfries.<sup>42</sup>

## ii. Other Features

Apart from the creation of no. 323, which is the worst editorial mistake that has thus far been identified in any of the Bannatyne Club editions,<sup>43</sup> the reader should also note that the Bannatyne clerks do not appear to have had any protocol for dealing with interpolations in the Kelso Abbey cartulary, apart from the fact that they nearly always replicated interpolations and almost never replicated text which was deleted, but still legible.<sup>44</sup> Moreover, they also do not appear to have possessed the contextual knowledge needed to make judgments about these features. For instance, on f. 17v, *Adam Udding Daniel* is inserted between *Testibus* at the conclusion of Mael Coluim IV's confirmation charter and a *notitia* summarising two grants of land in Berwick made by Jordan the Fleming and John of *Huntedun*, rector of Durrisdere. In the Bannatyne Club edition, the three names have been inserted as witnesses of Mael Coluim IV's charter.<sup>45</sup> However, these individuals were certainly not witnesses of the royal document. In 1227 (over sixty years after the death of Mael Coluim), Adam son

<sup>42</sup> A. Smith, 'Carta Falsa: An Evaluation of No. 323 in the Bannatyne Edition of the Kelso Abbey Cartulary', *Scottish Archives*, 15 (2009), pp. 21-29 (p. 26).

<sup>43</sup> None of the defects which Alasdair Ross discusses in his critique of the Moray Register are as significant (Ross, 'The Bannatyne Club', pp. 217-223).

<sup>44</sup> See Comm. II, no. 11 for further discussion of this dimension.

<sup>45</sup> *Kel. Lib.*, i, no. 27. Geoffrey Barrow has also questioned the authenticity of this amalgamation (*RRS*, i, no. 106).

of Udding, who was one of the men included in this interpolation, gave land in Berwick to Kelso.<sup>46</sup>

*B. Deficiencies in the Bannatyne Club Editions of Melrose's and Holyrood's Charters*

As mentioned above, the editions of Melrose and Holyrood's charters were created using a large number of originals, so it is unlikely that the clerks responsible for these publications made any mistakes on the magnitude of no. 323. Moreover, they likely did not have many problems with interpolation. Nevertheless, there appear to be some editorial problems with the way that clerks handled damaged charters, and the following is a chart giving the details of how they dealt with these items.

*Table 0.3: Details Concerning the Surviving Originals in the Melrose and Holyrood Archives*

	Melrose	Holyrood
Number of Surviving Originals	234	63
Number of Damaged Originals Which Contain an Illegible Word or Words	72 (GD55/8, 12, 28, 41, 51-53, 58-59, 61-62, 64, 67, 81, 94, 96, 98, 111, 118, 121, 130, 133-35, 141, 143-45, 149-51, 153, 157, 166, 172, 189, 196-97, 199, 211, 217, 223, 225, 233, 235, 245, 251-52, 261, 267-68, 273-75, 277, 279-80, 282, 285, 288, 295, 300-01, 312, 314, 317-18, 324-25, 328, 331, 333, 336, 347)	2 (GD45-13-225, 255)
Number of Items in Edition Where the Editors Speculated as to What the Damaged Originals Said	39 (GD55/28, 41, 58-59, 64, 96, 98, 118, 121, 130, 133, 135, 141, 144-45, 149, 150-51, 153, 189, 199, 217, 225, 252, 261, 267-68, 273-74, 279, 285, 288, 300, 312, 318, 324, 328, 331, 347; see also corresponding items in <i>Mel. Lib.</i> which have the same numbers)	2 (GD45-13-225, 255; <i>Holy. Lib.</i> , nos. 13, 68)
Number of Items in Edition Where the Editors Could have Speculated More About What the Damaged Originals Said	13 (GD55/12, 61, 81, 94, 143, 157, 196, 223, 245, 282, 301, 314, 328; see also corresponding items in <i>Mel. Lib.</i> which have the same numbers)	0

<sup>46</sup> *Ibid.*, i, no. 46.

As demonstrated, there are far more damaged originals in the Melrose Abbey archive, and while the clerks responsible for the Holyrood edition opted to conjecture about what a certain section said, the clerks' responsible for the Melrose edition do not appear to have had any clear-cut protocol for dealing with missing phrases, words or letters. In some instances they simply did not speculate about what particular words or letters may have been, even though it is pretty clear what was found in the original text.<sup>47</sup> On the other hand, certain clerks appear to have had no problem with speculation, and many of their editorial decisions do not appear to be completely trustworthy. Several such decisions are found in no. 59 in the edition. The original charter upon which no. 59 was copied, namely a document which records Robert of Kent's gift of 'two parts' of the land and pasture of Innerwick, is damaged in certain respects, and the clerk who entered it into the edition duly noted that particular sections of the charter were illegible through the use of '...'.<sup>48</sup> However, a comparison of the edition of the charter with the surviving original reveals that far more of the original is currently illegible than what the Bannatyne Club published. Has the original deteriorated since the mid-nineteenth century, thus accounting for the discrepancies between the two texts? Or rather was the clerk/editor simply making an educated guess about what was written in these sections? Whatever the case, it is very difficult to trust the veracity of some of the words in this charter, including many of those found in the following section:

*Et sciendum quod ipsi monachi dederunt mei centum solidis totam  
scilicet recognitionem quinque annorum tempore quo hec donatio mea  
facta est ... possidendum quam monachi de kelcho adhuc eam*

<sup>47</sup> For example, in the edition no. 245 has '...ram' which is clearly 'puram', and no. 223 has '....disse' which is clearly 'dedisse'.

<sup>48</sup> GD55/59; *Mel. Lib.*, i, no. 59.

*tenebant. Unde cum monachi de kelcho post quinquennium id est terminum suum ... monachi de Melr' intrauerunt ad possessionem.*

Very little of this section is currently legible. In fact, only three letters in the verb *intrauerunt* are discernible, and, as will be discussed in chapter four, the tense of this verb has important implications for the authenticity of a series of charters in the Kelso Abbey cartulary. Ultimately, examples like this reinforce Alasdair Ross's suggestion that new editions of these collections need to be created.

## **Chapter 1: The History of Kelso Abbey Prior to the Production of the Cartulary**

As discussed in the introduction, studies like Susan Kelly's examination of St. Augustine Canterbury's archive typically begin by establishing the history of the individuals or institutions responsible for the production of the manuscript(s) under scrutiny. Among other things, this approach has allowed scholars to place certain features of these charters and cartularies into context and better account for their peculiarities. In light of the successes of these evaluations, it seems reasonable to begin the analysis of the NLS, Adv. MS 34.5.1 in a similar manner. Therefore, chapter one will assess certain dimensions of Kelso Abbey's history with the goal of contextualizing the production of its cartulary and providing the information needed to conduct the analyses in the subsequent chapters. Within this examination, particular emphasis will be placed on the social, political and economic facets of the community's history, and these elements will be discussed in one of four sections. The first section will discuss the social and political dimensions of Kelso's history prior to the outbreak of war in 1296, and its rise to a position of great power and influence. Thereafter, the second section will evaluate the economic history of the monastery prior to 1296. Thanks in large part to the generosity of its patrons in the twelfth century, Kelso became one of the wealthiest, if not the wealthiest, religious house in the kingdom, and maps will be provided which compare the locations of its property in southern Scotland with the property accrued by other religious houses in the twelfth and thirteenth centuries. Following these discussions, sections three and four will evaluate various social, political and economic dimensions of the abbey's history following the outbreak of war in 1296. Like all communities with great wealth and power, the monks of Kelso had a great deal to lose during the protracted military

conflict, and evidence will be discussed which suggests that the community came out of the war in a diametrically different state. Section three will discuss the fact that life at the institution in the late thirteenth and early fourteenth centuries was so volatile and dangerous that it was abandoned for a while. The fourth section will evaluate evidence that the abbey's economic interests were severely compromised by the conflict. In fact, their lands appear to have been frequently annexed and destroyed, and the monks also struggled to enforce warrandice from their patrons. Ultimately, this chapter will conclude by asserting that the production of the Kelso Abbey cartulary was a direct result of these economic trials and tribulations, and therefore, should be viewed as a product of its time, not merely a transcript of the charters in the abbey's archive. It will also note that many disinterested dimensions of Kelso's history are highly reminiscent of the dimensions found at other institutions which engaged in large scale forgery campaigns.

### *I. The Social and Political History of Kelso Abbey Before 1296*

The history of the monks who produced the Kelso Abbey cartulary starts at Selkirk in 1113. However, little is known of their political or social circumstances during this early period. In fact, all that is truly known of the community's tenure at Selkirk is the fact that the initial colonists came from Tiron at Earl David's request, and that three years later he travelled to the continent to recruit a further thirteen monks, including a new abbot.<sup>49</sup> In a similar vain, very little reliable information is available concerning the monks after they moved to Kelso. In fact, extant source material even appears to be in conflict about something as rudimentary as the name of the institution. Early

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<sup>49</sup> Barrow, *Kingdom of the Scots*, pp. 179-80.

records in the Kelso Abbey cartulary state that the monastery was known as the church of St Mary (and sometimes St. John the Apostle) of Kelso.<sup>50</sup> However, early records in the Tiron Abbey archive state that it was known as the church of Roxburgh,<sup>51</sup> and every time that the first abbot of Kelso, Herbert (1119-47), appears in extant witness lists he is referred to as the abbot of Roxburgh.<sup>52</sup> There thus appears to be a contradiction, and the implications of this contradiction will be discussed in a later section of this thesis.

Nevertheless, from 1147 onwards, it is clear that the name of Kelso had been adopted by the community, and extant source material becomes far more illuminating about Kelso's position and role in society.<sup>53</sup> Time and time again, the abbots of Kelso can be found as members of the king's entourage,<sup>54</sup> and the monastery itself appears to have wielded a great deal of influence in the kingdom. The abbots of Kelso appear to have been involved in several matters of national and regional importance, and the legal rights held by the abbey were often used as a model for the rights of other religious institutions.<sup>55</sup> Moreover, it is also clear that Kelso Abbey became a key player in the ecclesiastical development of the kingdom. Among other things, two of its early abbots were appointed bishops, including Herbert, who was elected bishop of Glasgow in 1147, and Arnold (1147-60), who was elected bishop of St Andrews in

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<sup>50</sup> *Kel. Lib.*, ii, no. 443.

<sup>51</sup> *Tiron Cart.*, i, no. CLXXXII; ii, nos. CCXCI, CCXCII.

<sup>52</sup> *Charters of David I*, nos. 34, 52, 56, 68-69, 158. The implications of this contradiction will be discussed in the commentaries. However, it is noteworthy that the monks' adoption of the name of the nearby town of Roxburgh parallels Cambuskenneth's initial adoption of the name of Stirling (*Charters of David I*, no. 99, 128, 159, 182, 213-15; *Camb. Reg.*, no. 23), and Holyrood's adoption of the name of Edinburgh (*Charters of David I*, nos. 125, 147).

<sup>53</sup> Unlike his predecessor, Abbot Arnold is invariably referred to as the abbot of Kelso every time that he appears, and was likely the individual responsible for the adoption of the name. In a charter produced on behalf of Earl Henry shortly following his assumption of leadership at the monastery, he is referred to as the *abbate de Chelcho* (*Ibid.*, no. 160).

<sup>54</sup> In combination, Abbot Arnold and Abbot John witnessed more of King Mael Coluim IV's charters than any other abbots or priors of the religious houses in Scotland.

<sup>55</sup> See *Dry. Lib.*, no. 6; *Chron. Melr.*, p. 121.

1159.<sup>56</sup> Thereafter, John, prior of Kelso, was elected bishop of Aberdeen in 1199,<sup>57</sup> Brice, prior of Lesmahagow (Kelso's dependant priory), was appointed bishop of Moray in 1203,<sup>58</sup> and the chronicle of Melrose tells us that Walter, prior of Kelso, was influential in debates which transpired between Ingram, bishop of Glasgow (1164-74), and the bishop of York over issues concerning the authority of the English archbishopric.<sup>59</sup> Furthermore, monks of Kelso also began to colonize new monasteries in the late twelfth century, including Arbroath, Lindores, Kilwinning, and Mercheley hermitage, which was located in Northumberland.<sup>60</sup>

In addition to wielding a great deal of influence in the kingdom in the second half of the twelfth century, it appears that Kelso also began to acquire a great deal of prestige in Scotland and beyond. Among other things, it was the site of burial of Earl Henry, the son of King David. Moreover, John, abbot of Kelso (1160-80) acquired the privilege of wearing the mitre in 1165,<sup>61</sup> and his successors remained the only abbots in the kingdom who held the privilege until the abbots of Dunfermline acquired it in 1245.<sup>62</sup> Kelso was also the only monastery in the kingdom which was exempt from episcopal jurisdiction, a privilege which it achieved by at least 1159,<sup>63</sup> and the institution was the first daughter abbey of its mother-house at Tiron. Furthermore, Kelso even achieved a measure of independence from its mother church, though the precise nature of this relationship has never been properly established. However, as

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<sup>56</sup> He was also appointed papal legate in 1160 (*Chron. Melr.*, p. 77-78).

<sup>57</sup> D. E. R. Watt and A. L. Murray (eds.), *Fasti Ecclesiae Scoticae Medii Aevi Ad Annum 1638: Revised Edition* (Edinburgh: The Scottish Record Society, 2003), p. 1.

<sup>58</sup> *Ibid.*, p. 286.

<sup>59</sup> *Chron. Melr.*, p. 82.

<sup>60</sup> For Mercheley Hermitage, see *Kel. Lib.*, i, nos. 264-66.

<sup>61</sup> *Kel. Lib.*, ii, no. 467.

<sup>62</sup> Innocent IV granted the privilege to Dunfermline on the 24<sup>th</sup> of April 1245 (Cowan, I. B., and D. E. Easson, *Medieval Religious Houses: Scotland*, 2<sup>nd</sup> Edition (London: Longman, 1976), p. 58). Cistercian houses also gained exemption from episcopal visitation in the 1180s (C. H. Berman, *The Cistercian Evolution: The Invention of a Religious Order in Twelfth-Century Europe* (Philadelphia, University of Pennsylvania Press, 2000), pp. 158).

<sup>63</sup> *RRS*, i, no. 131; *Kel. Lib.*, pp. iii-vii. For a discussion of the authenticity of a charter which purports to record Bishop Robert's grant of the privilege as early as 1127, see Comm. II, no. 1.

will be noted in a subsequent discussion of forgery, knowledge of this relationship is important for evaluating the authenticity of at least one charter in the cartulary. Therefore, a brief analysis of this dynamic is warranted.

As discussed above, the community at Selkirk had very close relations with its mother house in the early twelfth century, and this and a number of other aspects of its relationship are fairly well-established in the historical community. Nevertheless, what is known of its relationship is rather sparse and can be summarized in the following six points.

- 1) Tiron sent a colony of monks to found the community in 1113.<sup>64</sup>
- 2) Following the death of the founder of Tiron in 1116, Selkirk's first abbot, Reginald (1113-1116/17), returned to the continent to become abbot of Tiron, and sent a further thirteen monks to Scotland, including a new abbot: William of Poitiers (1118-1119).<sup>65</sup>
- 3) Abbot William of Poitiers returned to France to become the third abbot of Tiron in 1119, and his successor in Selkirk, Herbert (1119-1147) appears to have been a colonist from the mother-house.<sup>66</sup>
- 4) John, bishop of Glasgow, became a monk at Tiron, played a pivotal role in the translation of the community of Selkirk to Kelso and played a role in the foundation of Lesmahagow Priory.<sup>67</sup>

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<sup>64</sup> Barrow, *Kingdom of the Scots*, pp. 177-80.

<sup>65</sup> *Ibid.*, pp. 177-80.

<sup>66</sup> Barrow, *Kingdom of the Scots*, pp. 177-80; R. H. Cline, 'The Congregation of Tiron in the Twelfth Century: Foundation and Expansion' (unpublished doctoral dissertation, Georgetown University, 2000), p.451.

5) King David and Earl Henry granted to Tiron trading privileges in Perth which were commuted to a cash payment by King Mael Coluim IV.<sup>68</sup>

6) In 1176, John, abbot of Kelso (1160-80), and Walter, abbot of Tiron (1173-1178/79), became involved in a dispute over superiority.<sup>69</sup>

Apart from these six points, historians have attempted to speculate further about the nature of the relationship between Kelso and Tiron. However, in the absence of quantifiable evidence, these discussions have not been terribly productive. Concerning the 1176 dispute in particular, Geoffrey Barrow has said that

[t]he outcome of the quarrel [with Tiron] is not known, but coupled with the fact that Abbot John won the privilege of the mitre from Pope Alexander III in 1165, the Melrose annal shows that John, who ruled over Kelso for twenty years, was ambitious for the honour and position of himself and his house within a Tironensian ‘order’ which was still intact.<sup>70</sup>

Apart from that, Mary Harwood Cline in her unpublished PhD dissertation on the congregation of Tiron in the twelfth century stated that at present, no evidence has been found to confirm or disprove Kelso’s attendance of the Tironensian general

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<sup>67</sup> Anderson, *Scottish Annals*, p. 211; Barrow, *Kingdom of the Scots*, p. 162, 181, 210; Duncan, *Making of the Kingdom*, p. 260; D. E. R. Watt, *Medieval Church Councils in Scotland* (Edinburgh: T & T Clark Ltd., 2000), p. 17; *Charters of David I*, no. 130; *Kel. Lib.*, i, nos. 8, 240.

<sup>68</sup> *Ibid.*, nos. 90-91; *RRS*, i, no. 223; *Kel. Lib.*, ii, no. 400; Barrow, *Kingdom of the Scots*, pp. 181, 184.

<sup>69</sup> *Chron. Melr.*, p. 88; Barrow, *Kingdom of the Scots*, p. 185.

<sup>70</sup> Barrow, *Kingdom of the Scots*, p. 185.

chapter meetings, though she argues that the monastery appears to have achieved independence from its mother-house by the mid-thirteenth century.<sup>71</sup> Nevertheless, in spite of the dearth of substantive evidence relating to Kelso's relationship with Tiron, circumstantial evidence may provide new insight into this dynamic, especially when one considers the proposed date for the establishment of the congregation's triennial general chapter meetings and the nature of the Tironensian congregation itself.

The point in which constitutional conventions of the congregation became formalized was during the abbacy of William of Poitiers, abbot of Tiron (1119-1147x60), and as mentioned above, he was also abbot of Selkirk from 1116 to 1119. Whereas Bernard of Tiron had argued in favour of the independence of Benedictine houses, Abbot William opted for a more centralized authority as Tiron added more monasteries to its congregation. In doing so, he chose to adopt the model of Cluny with himself and his successors as the abbots general who ruled over the abbots and priors of the dependant institutions.<sup>72</sup> However, unlike Cluny, Tiron would have dependant abbeys, and this decision which is almost certainly tied to the fact that two Tironensian monasteries had already achieved abbatial status prior to his administration - i.e. Selkirk and Saint Dogmaels in Wales. Moreover, William would rule over the houses with an annual General Chapter at Pentecost, and it is noteworthy that William's decision to rule with this counsel preceded Cîteaux's full adoption of the same mechanism by almost a half century.<sup>73</sup> Moreover, like the Cistercians, Abbot William also made provisions for heads of houses who were not located on the

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<sup>71</sup> Cline, 'Congregation of Tiron', pp. 432, 476.

<sup>72</sup> *Ibid.*, p. 313.

<sup>73</sup> Cline asserted Tiron's adoption of the 'general chapter' was contemporaneous with Cîteaux's submission of the Charter of Charity and the *Exordium Cistercii* in 1119 (*Ibid.*, p. 313). However, Constance Berman's recent study on the 'Cistercian Order' has uncovered that the early documents containing these texts are likely forgeries, and the originals were probably produced between 1163 and 1175 (Berman, *Cistercian Evolution*, pp. 46, 59-68). See also, M. T. Flanagan, 'Irish Royal Charters and the Cistercian Order' in *Charters and Charter Scholarship in Britain and Ireland*, ed. by M. T. Flanagan and J. A. Green (Basingstoke: Palgrave Macmillan, 2005), pp. 120-39.

continent and would have had difficulty attending the general chapter meetings every year. As a compromise, William allowed these institutions to attend the meetings every three years, and the first extant record which records these provisions is an original charter which was given to Saint Dogmaels in 1120.<sup>74</sup>

As noted above, Harwood said that there is no evidence that Kelso Abbey ever attended the triennial general chapter meetings, and the same is true for the congregation's other foreign houses, including St Dogmaels.<sup>75</sup> However, though no concrete evidence has been found to prove or disprove their attendance, there is a substantial amount of circumstantial evidence in both the French and Scottish material which seems to suggest that the abbots of Kelso were making the journey to the continent in the twelfth century. According to Cline, Saint Dogmaels's charter of 1120 seems to mark the conception of the Tironensian triennial general chapter since Abbot William, who was responsible for introducing the concept, had only been in power for less than a year when it was produced.<sup>76</sup> If 1120 was the year in which the concept was established, then theoretically the abbot of Saint Dogmael would be expected to attend the general chapter meeting at Pentecost in the year 1123, and every three years thereafter. Was this also the arrangement for the abbots of Selkirk and Kelso? Evidence suggests that it likely was. The following is a time-line which compares the theoretical dates for the triennial general chapter meetings with dates of major events in the history of Selkirk, Kelso and Tiron. A number of interesting parallels can be noted, the first of which is the fact that on two occasions in the first half of the twelfth century, Abbot William obtained privileges from the reigning

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<sup>74</sup> *Satutum autem et definitum est a domino abbate Willelmo et omni congregatione Tyronesi ut abbates ecclesie Tyronensi subjecti qui in transmarinis partibus sunt et erunt, semper in tercio anno, stabilitate et confirmatione nostre religionis et gratia uisitandi fratres in sollemnitate sancte Pentecostes apud Tyronense cenobium congregentur (Tiron Cart., no. XX).*

<sup>75</sup> Cline, 'Congregation of Tiron', pp. 432, 476.

<sup>76</sup> *Ibid.*, p. 313.

popes confirming the subordinate status of Roxburgh Abbey and Saint Dogmaels Abbey only a month or so prior to the theoretical dates for triennial general chapters (see 1132 and 1147).<sup>77</sup> Were these bulls intended to be show-pieces for the general chapter meetings to ensure the submission of Kelso and Saint Dogmael, along with the other subordinate abbeys of the congregation? Does this prove that Herbert, abbot of Kelso, was attending? It certainly must be considered to be a possibility. No other early bulls survive in the Tiron archive which mention Tiron's subordinates apart from these instruments, and the close proximity of the production of these bulls to the theoretical dates for the triennial general chapter meetings is remarkable.<sup>78</sup>

#### Timeline Comparing Events Relating to Selkirk/Kelso with Probable Dates of the Triennial General Chapter Meetings<sup>79</sup>

1120 - William of Poitier, abbot of Tiron, establishes triennial general chapters

3.6.1123 - Triennial general chapter no. 1

30.5.1126 - Triennial general chapter no. 2

1128 - Tironensian community at Selkirk moves to Kelso on the advice of Bishop John

2.6.1129 - Triennial general chapter no. 3

16.3.1132 - Pope Innocent II issues a bull confirming Roxburgh Abbey to Tiron Abbey

29.5.1132 - Triennial general chapter no. 4

26.5.1135 - Triennial general chapter no. 5

22.5.1138 - Triennial general chapter no. 6

28.9.1138 - Bishop John recalled from Tiron Abbey by papal legate Cardinal Alberic

18.5.1141 - Triennial general chapter no. 7

14.5.1144 - Triennial general chapter no. 8

<sup>77</sup> *Tiron Cart.*, i, no. CLXXXII; ii, nos. CCXCI, CCXCII

<sup>78</sup> Unfortunately, the bulls of Alexander III, which confirmed to Stephen, abbot of Tiron (1147 x 60 - 1173), the abbey of Roxburgh in one case, and the abbey on Kelso in another, cannot be dated more precisely because they lack dating clauses. Otherwise, they may indeed corroborate this hypothesis (*Ibid.*, ii, nos. CCCXX, CCCXXVI)

<sup>79</sup> This timeline lists all of the papal bulls which Tiron acquired between 1120 and 1179.

- 8.1144 x - Lesmahagow Priory founded by King David and Bishop John
- 30.5.1147 - Pope Eugenius III issues a bull confirming Roxburgh Abbey to Tiron Abbey
- 8.6.1147- Triennial general chapter no. 9
- 24.8.1147 - Pope Eugenius III consecrates Herbert, abbot of Kelso, as bishop of Glasgow in Auxerre
- 4.6.1150 - Triennial general chapter no. 10
- 7.6.1153 - Triennial general chapter no. 11
- 3.6.1156 - Triennial general chapter no. 12
- 31.5.1159 - Triennial general chapter no. 13
- 1162 x 20.9.1164 - Mael Coluim IV gives to Tiron Abbey three merks from Perth
- 27.5.1162 - Triennial general chapter no. 14
- 1165/73 - Pope Alexander III issues a bull confirming Roxburgh Abbey to Tiron Abbey
- 22.4.1165/73 - Pope Alexander III issues a bull establishing Tiron Abbey as head of Kelso Abbey
- 23.5.1165 - Triennial general chapter no. 15
- 1165 - Pope Alexander III mitres Abbot John in Rome
- 19.5.1168 - Triennial general chapter no. 16
- 16.5.1171 - Triennial general chapter no. 17
- 12.5.1174 - Triennial general chapter no. 18
- 1176 - Dispute between Walter, abbot of Tiron, and John, abbot of Kelso, over superiority
- 12.6.1177 - Triennial general chapter no. 19
- 1178 - Arbroath Abbey founded by William I
- 23.8.1179 - Pope Alexander III issues a bull which does not confirm Kelso Abbey to Tiron Abbey

Another point which can be derived from the time-line is the proximity of a number of major important events in Scotland's history with the theoretical dates of the triennial general chapter meetings. Naturally, these connections are circumstantial, but it almost seems like too much of a coincidence that virtually everything we know about Selkirk/Kelso in the first three quarters of the twelfth century (and Scotland's dealings with Tiron) happens to coincide neatly with the proposed dates for these meetings. Take for instance the year in which Abbot John was given the mitre. The

Chronicle of Melrose tells us that in 1165 Abbot John went to Rome and ‘returned home mitred’.<sup>80</sup> Why was Abbot John on the continent in 1165? Well, it may have been for the fifteenth triennial general chapter meeting. The same could also account for Abbot Herbert’s decision to seek out papal consecration in France in 1147. Bishop John had already set a precedent in 1118 by seeking papal consecration during a vacancy in the archbishopric of York, and Herbert’s decision to seek out consecration from the pope was almost certainly intended to achieve a similar objective. After all, the York archiepiscopacy was also vacant in 1147.<sup>81</sup> However, the proximity of the proposed date for the ninth triennial general chapter and Herbert’s appearance at Auxerre cannot be discounted, especially since Auxerre was relatively close to Tiron.<sup>82</sup>

Apart from the aforementioned, Bishop John’s actions in the 1130s and 1140s also bear considerable proximity to the proposed dates for the triennial general chapter meetings. For instance, the date in which he was recalled from Tiron to Glasgow by Cardinal Alberic occurred four months after the theoretical date for the sixth triennial general chapter.<sup>83</sup> It has often been said that Bishop John left Scotland in 1136 or 1137 - i.e. following the end of the papal schism in the mid-1130s.<sup>84</sup> However, the notion that he left at such an early date is purely speculation.<sup>85</sup> Could it

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<sup>80</sup> *Chron. Melr.*, p. 80.

<sup>81</sup> Duncan, *Making of the Kingdom*, p. 261

<sup>82</sup> Bishop John’s last appearance before his death is in a charter dated 3 May 1147 (D. E. R. Watt and A. L. Murray (eds.), *Fasti Ecclesiae Scoticae Medii Aevi Ad Annum 1638: Revised Edition* (Edinburgh: The Scottish Record Society, 2003) p. 188, cf. *Charters of David I*, no. 158). If he died a few days later, it is theoretically possible that King David could have told Herbert to seek out Pope Eugenius at Auxerre following his journey to the general chapter meeting. Otherwise, a messenger could have been sent to Herbert while on the continent to confirm his election as bishop.

<sup>83</sup> Watt, *Medieval Church Councils*, pp. 16-17; Ferguson, *Papal Representatives*, pp. 36-7.

<sup>84</sup> John supported the anti-pope, Anacletus II (Duncan, *Making of the Kingdom*, p. 260; Barrow, *Kingdom of the Scots*, p. 159).

<sup>85</sup> Richard of Hexham’s chronicle which records the account simply states that ‘since he learned that John, bishop of Glasgow, had intrusted to none the care of souls which he had received, and he left his bishopric without permission and secretly and compelled by no apparent necessity, had become a monk at Tiron, Alberic, decided concerning him that a royal messenger should be sent for him, with letters

have been that the occasion which prompted John to go to Tiron in the first place was the general chapter meeting? He clearly already had a relationship with the house through the foundation of Selkirk,<sup>86</sup> and had he gone for the general chapter meeting in 1138, John would have been absent from Scotland for at least six months before he was recalled by the papal legate. The general chapter meeting certainly provides a context for why he may have ended up in Tiron in the first place. Moreover, it is noteworthy that there may be a connection between the eighth triennial general chapter and the year that he helped to found Lesmahagow Priory.<sup>87</sup>

All of the above evidence, especially the early papal bulls, suggests that the abbots of Kelso were attending the triennial general chapter meetings. However, even more importantly, their attendance and the bulls suggest that the monks accepted their status as a monastery which was subordinate to its mother house. Nevertheless, as mentioned above, it appears that they no longer accepted their position of inferiority by 1176. Exactly what prompted this change of heart cannot be said for certain; however, Barrow's mitre rationale is lacking in a number of respects. After all, not only did the dispute occur eleven years after John was mitred, but Tiron continued to receive papal bulls which confirmed Kelso's subordinate status after this date, and it appears that the Scottish house did not have any problems with this. Nevertheless, once again a possible reason for the dispute can be proposed by comparing the time of the controversy with the timeline of contemporary events in Scotland.

It goes without saying that the early years of the 1170s were a very eventful period in the history of the Scottish kingdom. In the summer of 1173, William, king of Scotland, decided to invade England, and one year later, he was captured at

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both from himself and from the king; and that if he refused to return sentence should be passed on him. And so it was done' (Anderson, *Scottish Annals*, p. 211).

<sup>86</sup> Barrow, *Kingdom of Scots*, pp. 180-81.

<sup>87</sup> Barrow notes that Lesmahagow was likely founded in the second half of 1144 after the general chapter meeting would have occurred (*Charters of David I*, no. 130)

Alnwick. William's capture had several serious consequences, the most important of which was the formal submission of the kingdom of the Scots to King Henry II of England. The terms of this accord were finally confirmed on the 10<sup>th</sup> of August, 1175 (at which point King William was freed), and it is noteworthy that John, abbot of Kelso, was present for this event.<sup>88</sup> It is also noteworthy that once William had returned home, it took very little time before he convinced John to send a colony of monks to found Arbroath Abbey, and this monastery was dedicated to Thomas Becket, whom the men of Henry II had 'martyred'. It has been proposed that Arbroath was actually founded in 1178 - i.e. the year specified in the charter of foundation.<sup>89</sup> However, such processes were never completed overnight, and it seems reasonable to consider the proximity of date in which William founded Arbroath with the date that the Chronicle of Melrose states that the dispute occurred between Kelso and Tiron.

Prior to the foundation of Arbroath, no other independent Tironensian houses existed in Scotland.<sup>90</sup> If Arbroath was founded as an independent house, then not only would it be subservient to Tiron, but it would be on equal footing to Kelso owing to the Cluny-like constitution of the Tironensian congregation. As demonstrated above, it is very possible that King William threw around the idea of founding the house shortly after his return from captivity in 1175. It also seems likely that John, abbot of Kelso, did not go to the eighteenth general chapter in 1174 owing to the conflict at home. In fact, the first opportunity that John would have had to go to Tiron would

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<sup>88</sup> Lawrie, *Annals*, no. 50.

<sup>89</sup> I. B. Cowan, and D. E. Easson, *Medieval Religious Houses: Scotland*, 2<sup>nd</sup> Edition (London: Longman, 1976), p. 66; K. J. Stringer, 'Arbroath Abbey in Context', in *The Declaration of Arbroath: History, Significance, Setting*, ed. by G. W. S. Barrow (Edinburgh: Society of Antiquaries of Scotland, 2003), pp. 117-42 (pp. 116, 119-20).

<sup>90</sup> The notion that Kilwinning was founded by Hugh de Moreville in the first half of the twelfth century is adhered to in some studies (Barrow, *Kingdom of Scots*, p. 186), while Richard de Moreville is credited as founding the house in other studies (Cowan, *Medieval Religious Houses*, p. 69). The former notion must be disregarded in light of the fact that Kilwinning is not found in the Tiron papal confirmation charters. These charters were clearly being updated to not only include new dependants of the abbey, but also more up-to-date names. After all, Kelso is referred to as Roxburgh Abbey in the first three confirmations, and Kelso Abbey in the final confirmation.

have been in 1176, seeing as King William was now safely back in Scotland. On this trip, he may have approached Walter, abbot of Tiron, about King William's plans, and a dispute may have resulted over 'who was the greater', exactly what it says in the Melrose Chronicle.<sup>91</sup>

If it was not the foundation of Arbroath that caused the dispute, then one is hard pressed to find explanations for John's reaction. As mentioned above, the newly mitred Abbot John was almost certainly aware of the two papal bulls produced on behalf of Alexander III which confirmed Kelso's subordinate status to Tiron, and no disputes cropped up as a result of these charters. However, the foundation of a new independent abbey in Scotland could have changed things in John's mind. Moreover, the reason that 1178 is recorded as the foundation date for Arbroath may be related to the fact that it took King William and Abbot John until this date to convince Pope Alexander to free Arbroath from any sort of subjection to Tiron. Along these lines, it is noteworthy that Alexander III appears to have ultimately sided with Kelso in the Tironensian dispute (as he generally did with the Scottish church during this period). This is suggested by the fact that a bull produced on his behalf in 1179 fails to list the Scottish house, while it lists every other dependant abbey and priory within the congregation, including St Dogmaels.<sup>92</sup> Moreover, after the Alexandrine papacy, Kelso began receiving bulls which stated that it was a special daughter of the Roman church with no intermediary.<sup>93</sup> The mitre bull has the special daughter phrase, but not the *nullo mediante* phrase, and Cline suggested that the Pope was intentionally making a distinction between Kelso and other exempt houses as a result of its

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<sup>91</sup> *Chron. Melr.*, p. 88.

<sup>92</sup> *Tiron Cart.*, no. CCCXXIII.

<sup>93</sup> *Kel. Lib.*, ii, nos. 461, 463-64, 466, 468; *Scotia Pontificia*, no. 112.

subordinate relationship with its mother house.<sup>94</sup> This seems like a reasonable explanation for its absence considering what was just discussed. However, either way, Alexander's 1179 bull to Tiron, which lacks reference not only to Kelso but to Arbroath, in combination with the bulls in the Kelso Abbey cartulary which stated that the monastery had no intermediary, strongly suggest that all ties of subjection were cut.

From that point forward, Arbroath and the other daughter houses which were founded on subsequent occasions are typically referred to as being of the 'order of Kelso'.<sup>95</sup> However, the fact that Kelso and its daughter houses were not subject to Tiron does not mean that all interaction between these institutions ceased. Nor does the fact that Kelso, Arbroath and Lindores are referred to as being part of the order of Saint Benedict in many of their papal bulls, need not imply that they were no longer part of the congregation of Tiron. Following the reforms of the Fourth Lateran Council, which, among other things, prohibited the formation of new orders, successive popes failed to recognize the Tironensians as an independent order, no doubt resulting from their lack of numerical success compared to the Cistercians and the Premonstratensians. In fact, papal bulls produced on behalf of Tiron itself refer to the monastery as being of the order of Saint Benedict, and from that point forward 'the order of Tiron' was probably more aptly thought of by the papacy as an independent congregation within the Benedictine sphere.<sup>96</sup> Moreover, there is evidence that relations likely continued between Kelso and Tiron, as well as between Tiron and Kelso's daughter houses of Arbroath, Lindores, and Kilwinning. In Gervase

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<sup>94</sup> Cline, 'Congregation of Tiron', pp. 383-85. For further discussion of the adoption of *nullo mediante* by Alexander III's papacy, see I. S. Robinson, *The Papacy 1073-1198* (Cambridge: Cambridge University Press, 1990), p. 235.

<sup>95</sup> *Arb. Lib.*, nos. 2-3; *Lind. Chr.* nos. 2-3; *Kel. Lib.*, i, no. 265-67; cf. Stringer, *David, Earl of Huntingdon*, pp. 93-94.

<sup>96</sup> Cline, 'Congregation of Tiron', p. 369.

of Canterbury's *Mappa Mundi* produced in 1207, Kelso is described as being part of a community of gray monks, while its daughter abbeys are referred to as being of the 'order of Tiron'.<sup>97</sup> Furthermore, King Alexander III's charter to Kelso, which established it as a procurator of Tiron's ferme from Perth, was produced around the same date as the Tironensian general chapter would have occurred in 1267,<sup>98</sup> and Walter Bower, who refers to the 1176 dispute in his *Scotichronicon*, states that the matter of Kelso's subjection was 'still at hearing'.<sup>99</sup> Exactly what prompted Bower to make this comment is not clear, but future research will hopefully uncover whether or not there was a push by Tiron in the fifteenth century to reassert its authority over its daughter houses.<sup>100</sup>

## II. *The Economic History of Kelso Abbey Before 1296*

Coinciding with Kelso's dealings with Tiron and its rise to a position of power in the kingdom of the Scots was its accumulation of wealth and resources. It has been noted on at least one occasion that the Kelso Abbey was the richest house in Scotland during the High Middle Ages.<sup>101</sup> Though a systematic valuation of the other monasteries' holdings would need to be undertaken to prove this for certain, it is undoubtedly fair to say that the monastery was one of the wealthiest institutions in the kingdom, and its

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<sup>97</sup> Anderson, *Scottish Annals*, pp. 327-28. Kilwinning is also referred to as a Tironensian house in the Pluscardin Chronicle (Cowan, *Medieval Religious Houses*, p. 69).

<sup>98</sup> King Alexander III's breve, which ordered the provosts of Perth to pay to Kelso three marks as procurators for Tiron, is said to have been produced on 1 June 1267 (*Kel. Lib.*, ii, no. 398). The 49<sup>th</sup> triennial general chapter would have occurred on 5 June 1267.

<sup>99</sup> 'This year there occurred the dispute between Walter abbot of Tiron and John abbot of Kelso concerning obedience and which of them should be seen to be superior, and 'the matter is still at hearing (*[e]t adhuc sub iudice lis est*)' (*Chron. Bower*, iv, p. 325).

<sup>100</sup> It may be noteworthy that within the Tiron cartulary is a note produced in 1516 in which a scribe copied down what he calls an old list of Tiron's subordinate houses. It includes Selkirk Abbey (*Tiron Cart.*, ii, p. 416)

<sup>101</sup> P. G. B. McNeill and H. L. MacQueen (eds.), *An Atlas of Scotland History to 1707* (Edinburgh: The Scottish Medievalists and Department of Geography, University of Edinburgh, 1996), p. 363.

economic dominance appears to have been tied to two key factors. Firstly, Kelso had several distinct advantages over its counterparts in terms of attracting patronage, and secondly, the monastery adopted several economic policies which proved immensely profitable in the twelfth and thirteenth centuries. Nevertheless, as will be discussed at a later point in this chapter, the value and security of Kelso's property holdings were greatly compromised as a result of the events of the late-thirteenth and early-fourteenth centuries. Therefore, it is worth examining the extent of their wealth, along with the ways in which they acquired it, in order to truly grasp the degree of their change in fortune and the reasons for it.

Between 1113 and 1296, Kelso Abbey acquired extensive property rights, and a comparison of the locations of these holdings, with identified property holdings of their monastic counterparts in southern Scotland, can be found on maps 1.1-1.8 below. As demonstrated, Kelso became increasingly wealthy as the twelfth and thirteenth centuries progressed, and one of the main reasons for this is the fact that this institution had some distinct advantages over the rest of the monastic community including the fact the congregation of Tiron did not have any qualms about the acquisition of *spiritualia*. Kelso was able to reap great rewards because of this 'no-holds-barred' approach, and between its foundation in 1113 and 1296, Kelso acquired forty-two churches, five chapels and several isolated gifts of teind rights.

Nevertheless, the economic philosophy of Kelso's congregation was not the only thing which appears to have worked to help the monks attract patronage. Among other things, it had 'two' foundations and thus 'two' foundation endowments. Naturally, this gave them a very large amount of property at a very early period in their development, but it also gave them the distinct advantage of having two clusters of estates in two different dioceses where they could attract further patronage and

consolidate estates. Moreover, at a very early period in their history they were also endowed with the church and ‘parish’ of Lesmahagow where they established a dependant priory. Once again the land which came along with this donation was substantial (at least in terms of its size), and Alexander Grant has estimated that the size of the ‘parish’ of Lesmahagow was 64.9 square miles.<sup>102</sup> However, like their estates around Selkirk and Kelso, it also gave them a third opportunity to attract further patronage, and they appear to have succeeded in attracting it (compare maps 1.2-1.7).

This said, perhaps the single biggest dimension of the monks’ early history which gave them an upper hand in attracting patronage was the burial of Earl Henry at the monastery in 1152. As discussed above, this made Kelso the site of a royal burial, and it appears that non-royal patronage accelerated as a result of Earl Henry’s interment.<sup>103</sup> Prior to the burial of Henry at the house, patronage from the non-royal elite appears to have been minimal. In fact, evidence only survives for three non-royal donations before 1152, including Earl Cospatric’s donation of the church of Greenlaw, Uchtred of Mow’s gift of the church of Mow and Bernard de Balliol’s gift of fishing rights in the River Tweed.<sup>104</sup> However, between 1152 and 1189, Kelso received eighteen churches and numerous parcels of land from the non-royal benefactions, and virtually all of the charters recording these donations mention Earl Henry in their *pro anima* clauses (compare maps 1.2-1.4).

Nevertheless, as mentioned above, Kelso’s economic successes were not solely tied to the generosity of their patrons. In fact, evidence suggests that the ways

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<sup>102</sup> A. Grant, ‘Lordship and Society in Twelfth-Century Clydesdale’ in *Power and Identity in the Middle Ages: Essays in Memory of Rees Davies*, ed. by H. Pryce and R. R. Davies (Oxford: Oxford University Press, 2007), pp. 98-124 (p. 103).

<sup>103</sup> E.C. Hamilton, ‘The Earls of Dunbar and the Church in Lothian and Merse’, *Innes Review*, 58:1 (Spring 2007), pp. 1-34 (p. 20).

<sup>104</sup> *Kel. Lib.*, i, nos. 52, 79, 176.

in which the monastery capitalized on the resources which they were given were as important, if not more important, for the acquisition of moveable wealth, particularly money. In the twelfth century, evidence suggests that the monks capitalized on the profitability of their landed resources by feuing out large portions of it to tenants, many of whom were wealthy landholders in their own right.<sup>105</sup> They did this in return for cash renders, and the leasing of land appears to have still been very much a part of their economic machinery at the turn of the fourteenth century.<sup>106</sup> The monks also rented land themselves, as is testified by several charters relating to their holdings in the Lammermuir Hills.<sup>107</sup> Their decision to lease this land was almost certainly tied to their involvement in the Flemish wool trade, and opposed to what has been noted on at least one occasion, there is clear evidence of their involvement in this thriving enterprise.<sup>108</sup> However, a further way that the monks of Kelso proactively accrued moveable wealth was by convincing the bishops of St. Andrews and Glasgow to give them complete control over their churches in the twelfth century. A general confirmation charter issued by Roger, bishop of St Andrews (1198 x 1202), states that he granted Kelso the special privilege of appointing chaplains to serve in all of their churches in the St Andrews diocese.<sup>109</sup> There is no reason to think that this charter is spurious, and if later precedent is any indication of what this liberty meant, then it evidently allowed them to appropriate both the major and minor teinds in these parochial centres, thus by-passing any sort of vicarage arrangements. Exactly when and why Kelso was allowed to do this will be addressed at a later point in this study.

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<sup>105</sup> *Kel. Lib.*, i, nos. 102-117.

<sup>106</sup> *Ibid.*, ii, pp. 455-470.

<sup>107</sup> *Ibid.*, i, nos. 247-48.

<sup>108</sup> It has been noted that there is no evidence that the monks were involved in the Flemish wool trade (McNeill, *An Atlas of Scotland History*, p. 363). However, this is not the case. Kelso's name survives in Francesco Balducci Pegolotti's late-thirteenth-century accountancy book entitled *La Practica della Mercatura*, along with several other religious houses in Scotland, as a supplier of wool for the continental textile industry (W. Cunningham, *The Growth of English Industry and Commerce during the Early and Middle Ages* (New York: Augustus M. Kelley, 1968), App. D, p. 603).

<sup>109</sup> *Kel. Lib.*, i, no. 83.

However, it is noteworthy that in 1202, the bishops of St Andrew and Glasgow conjointly brought suit against the abbot of Kelso in the presence of John of Salerno, a papal legate, and this resulted in the termination of this practice and Kelso's conformity to the reforms of the Third Lateran Council.<sup>110</sup> However, the monks do appear to have convinced Bishop David of Bernham of St Andrews and Bishop Gamelin of Glasgow to repeal such constraints in some instances during the mid-thirteenth century, and the arrangements made with these bishops appear to have been in place at the beginning of the conflict in 1296.<sup>111</sup>

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<sup>110</sup> *Ibid.*, ii, nos. 427-28.

<sup>111</sup> *Ibid.*, ii, nos. 277-28, 421, 424, 429, 432. Mow, Closeburn, Gordon, Hume, Simprim, and Horndean are said to be held *in proprios usus* in Kelso's late-thirteenth century rental, while the rest of their churches are said to be held *in rectoria* (*Ibid.*, ii, pp. 470-73).

Fig. 1.1: Legend for Maps 1-9

Congregation of Tiron

	Kelso		Jedburgh
	Kilwinning		St Andrews
	Multiple Houses Including Kelso		Scone

Order of St Benedict

	Dunfermline
	Durham/Coldingham

Order of Cîteaux

	Dundrennan
	Glenluce
	Melrose
	Newbattle
	Sweetheart

Order of Cluny

	Crossraguel
	Paisley
	May

Rule of St Augustine

	Cambuskenneth
	Holyrood

Order of Prémontré

	Dryburgh
	Holywood
	Soulseat
	Tongland
	Whithorn

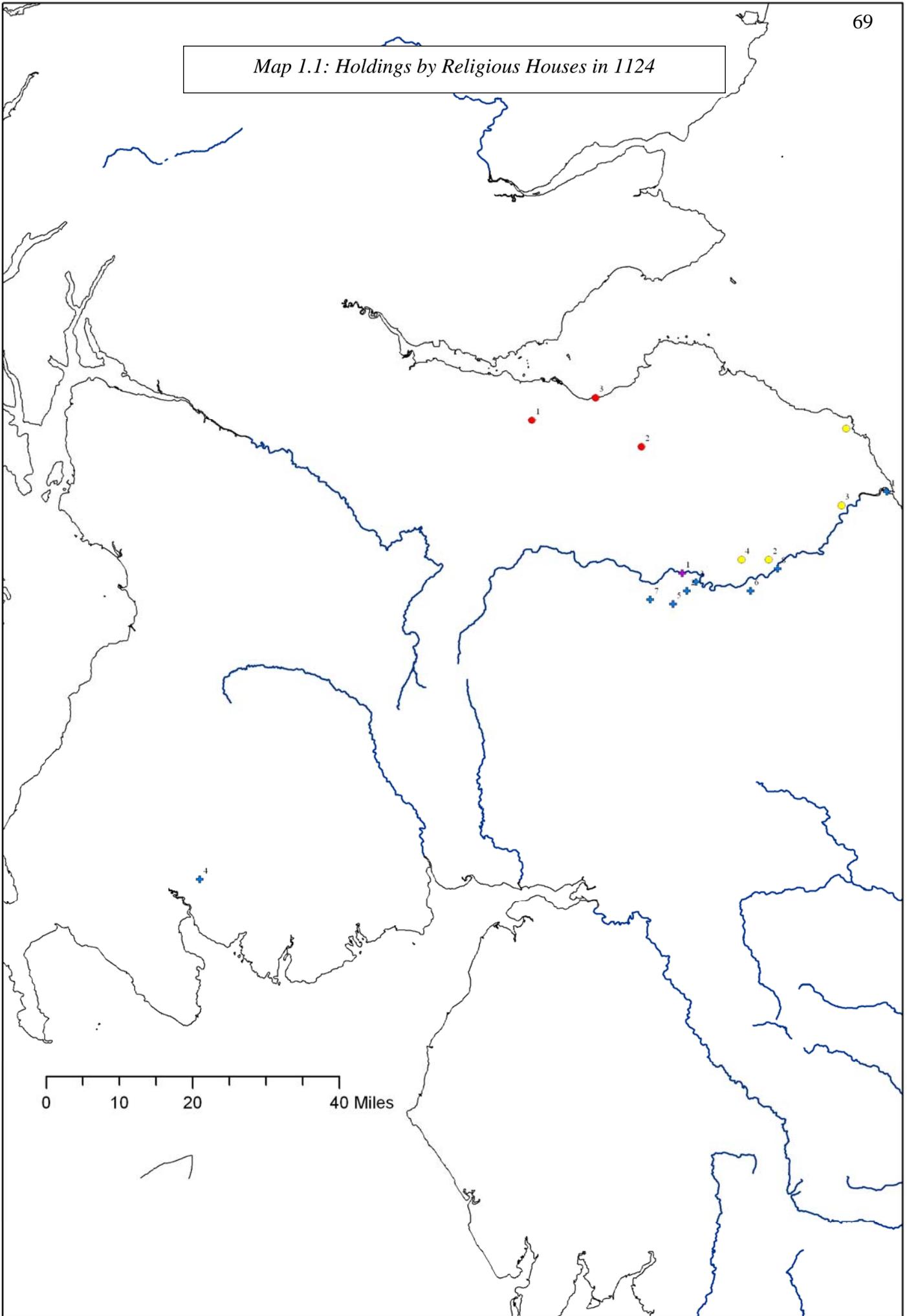
Female Religious Houses

	Coldstream
	North Berwick
	St Bathans
	Miscellaneous nunneries for which we have no records of property holdings outside of Galloway
	Miscellaneous nunneries for which we have no records of property holdings in Galloway

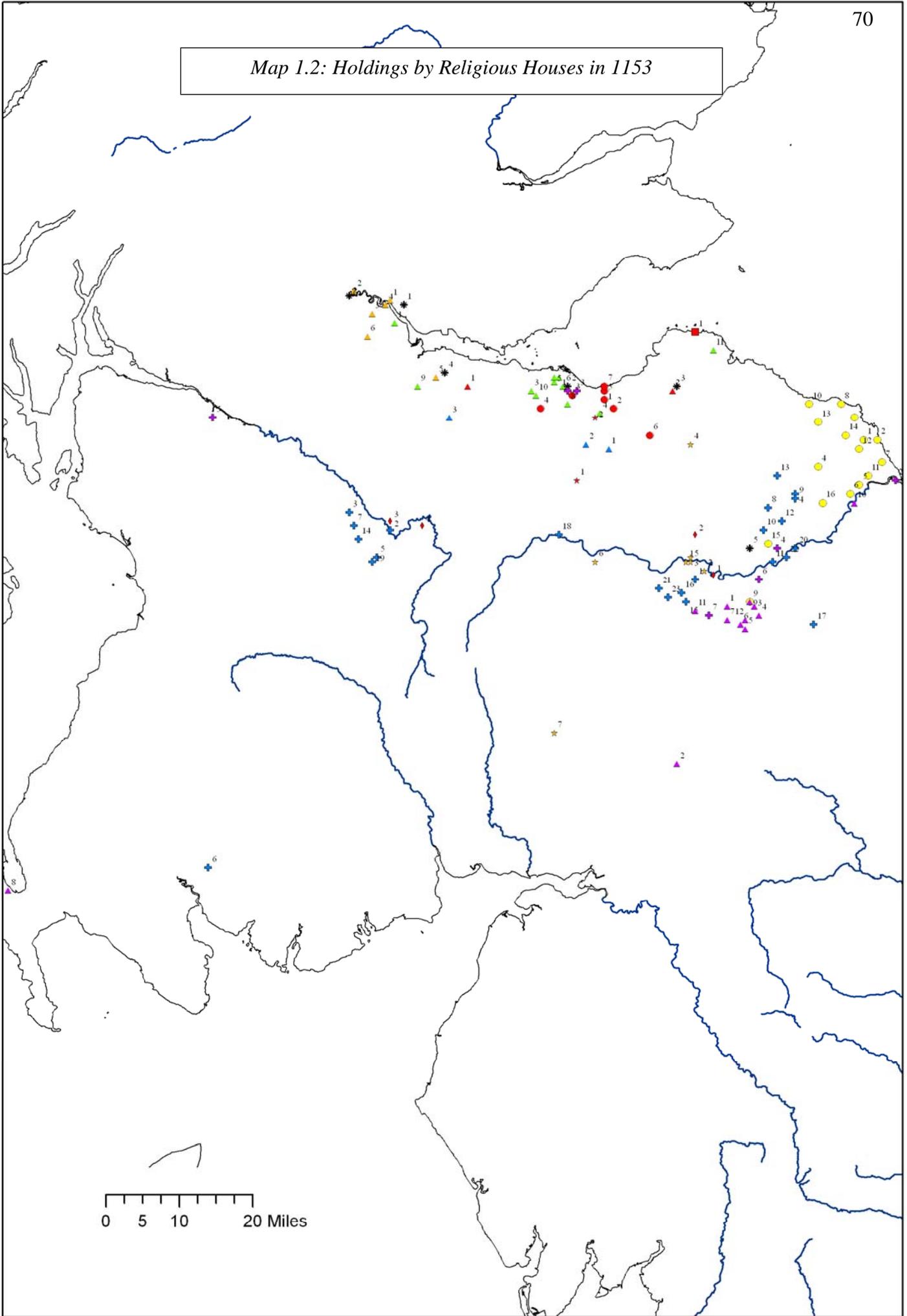
Miscellaneous

*	Multiple Houses Not Including Kelso
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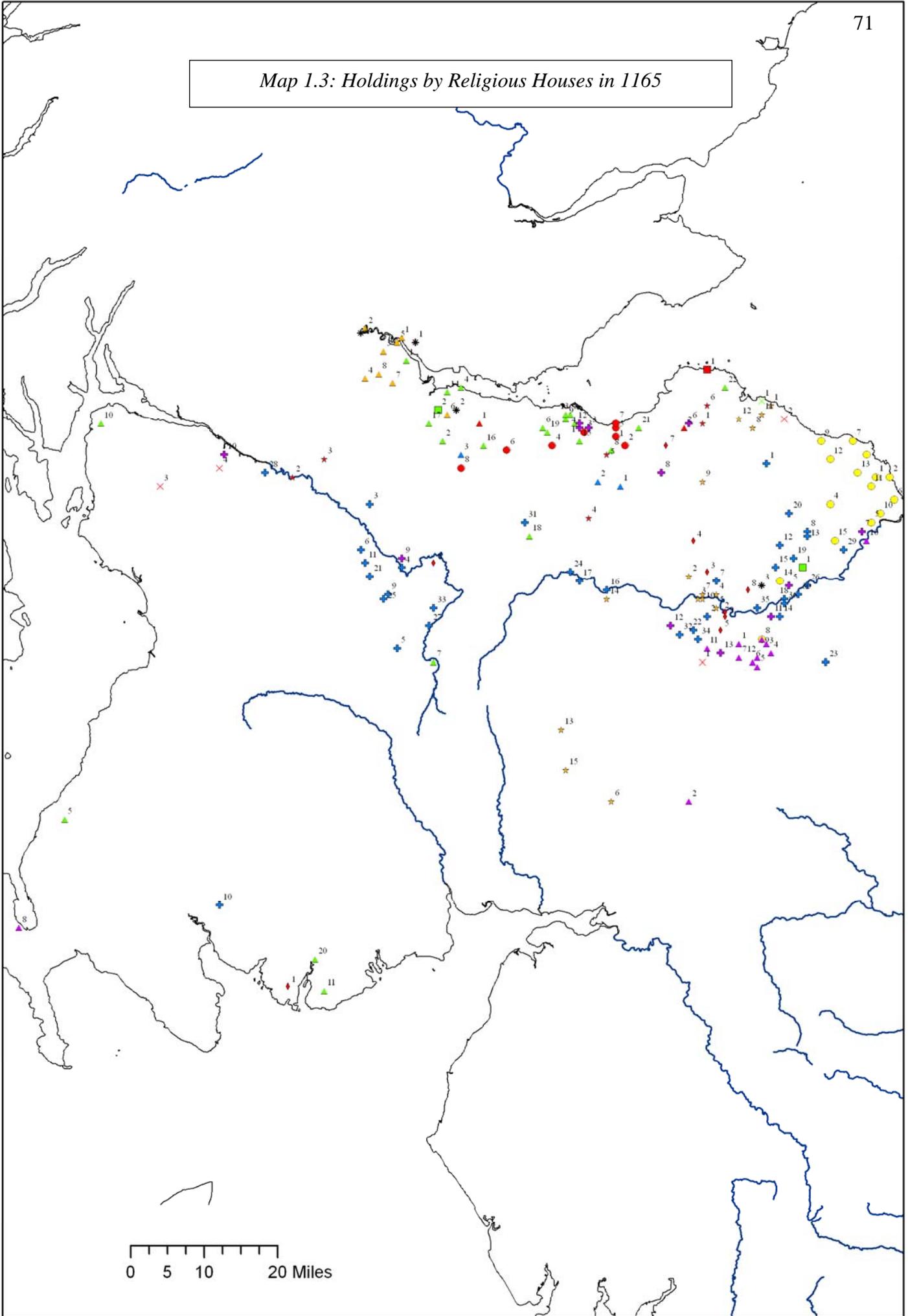
Map 1.1: Holdings by Religious Houses in 1124



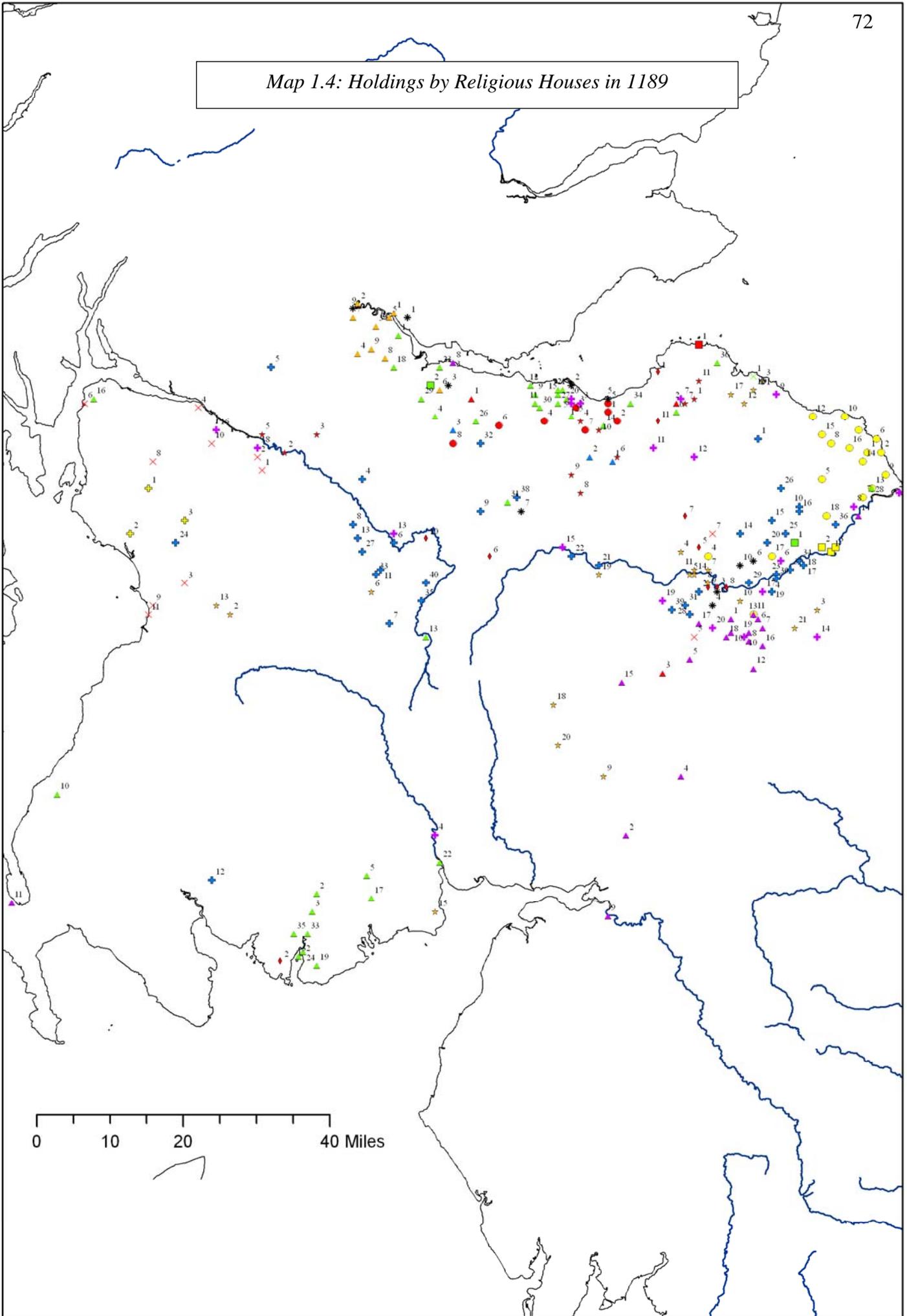
Map 1.2: Holdings by Religious Houses in 1153



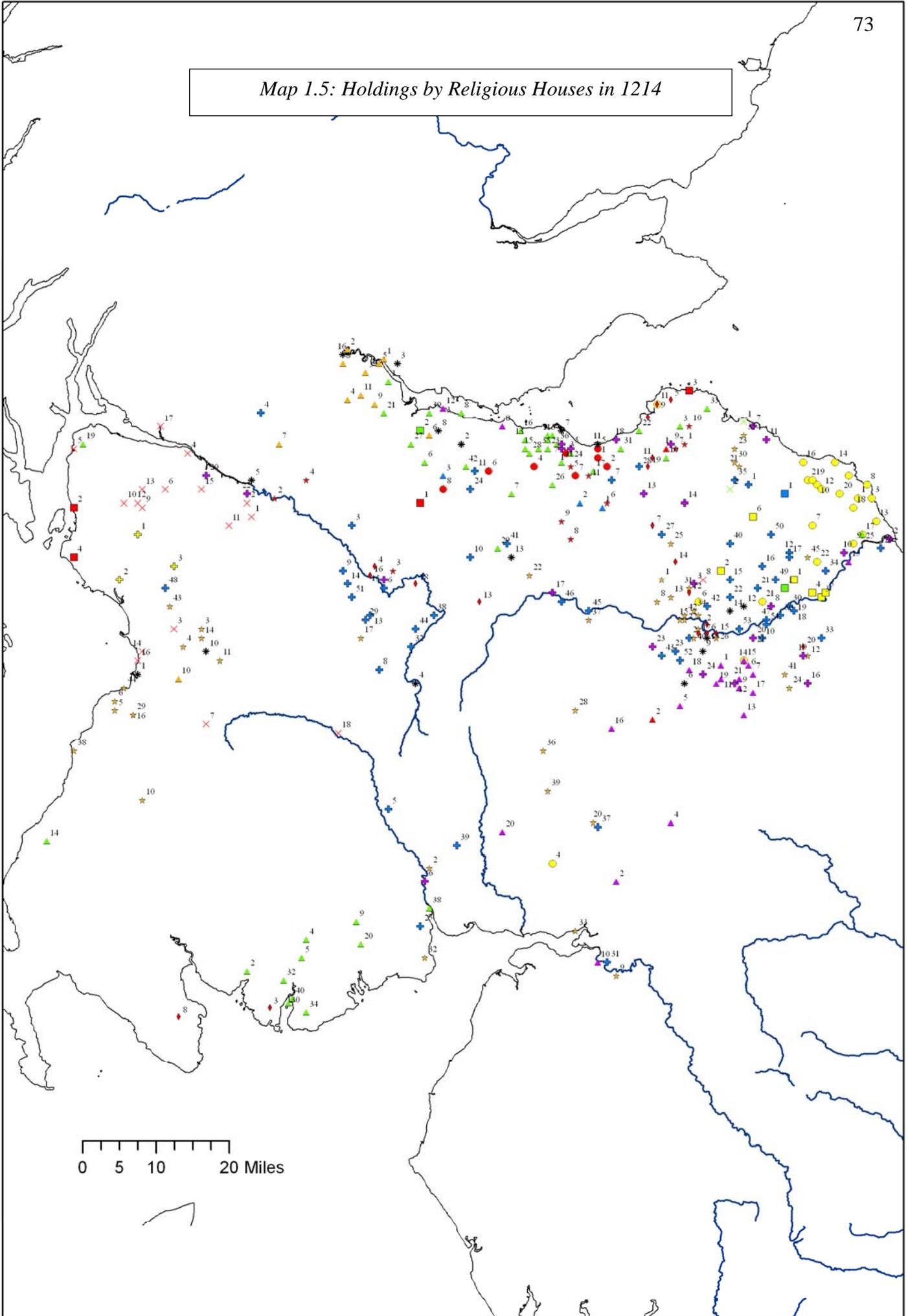
Map 1.3: Holdings by Religious Houses in 1165



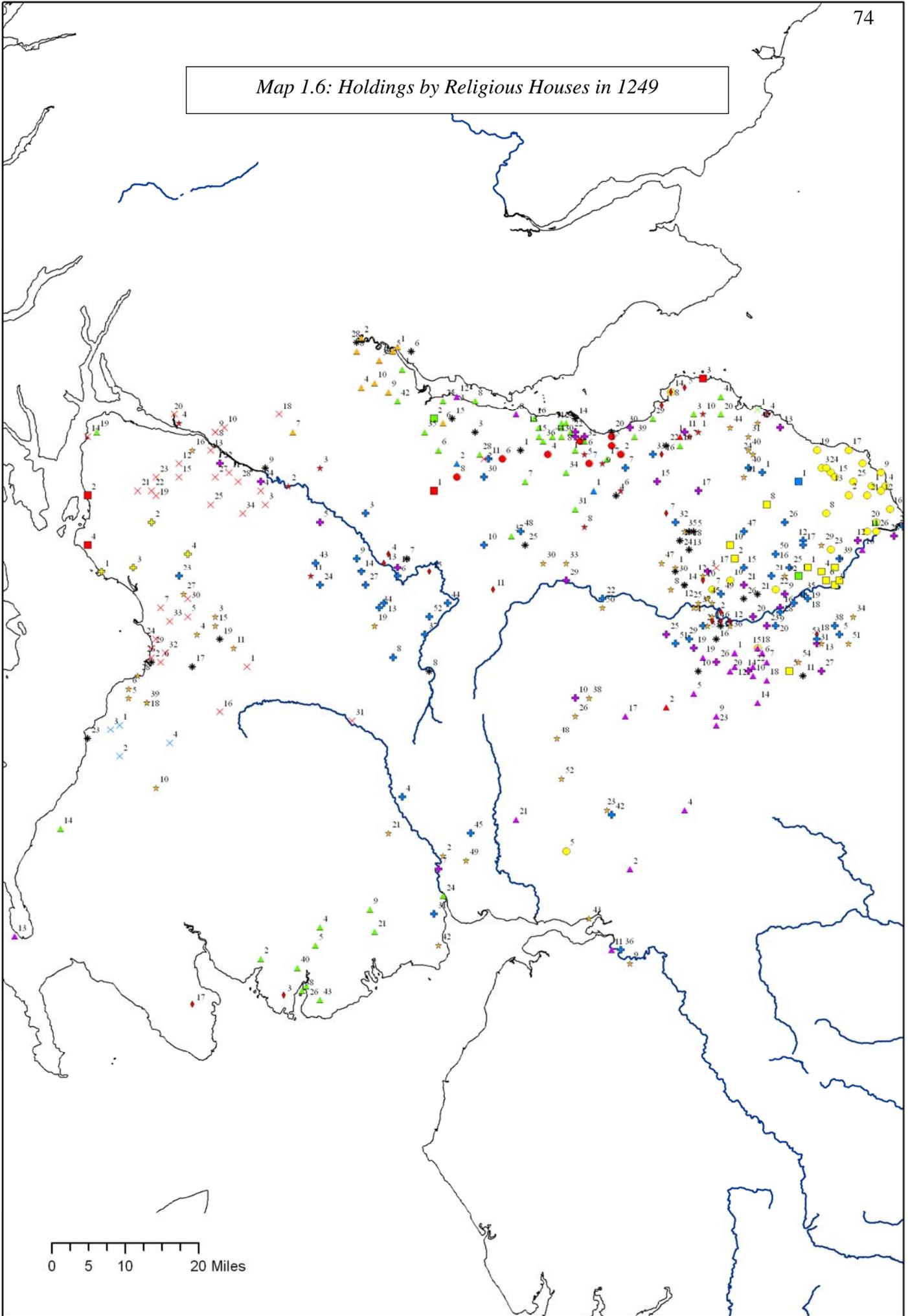
Map 1.4: Holdings by Religious Houses in 1189



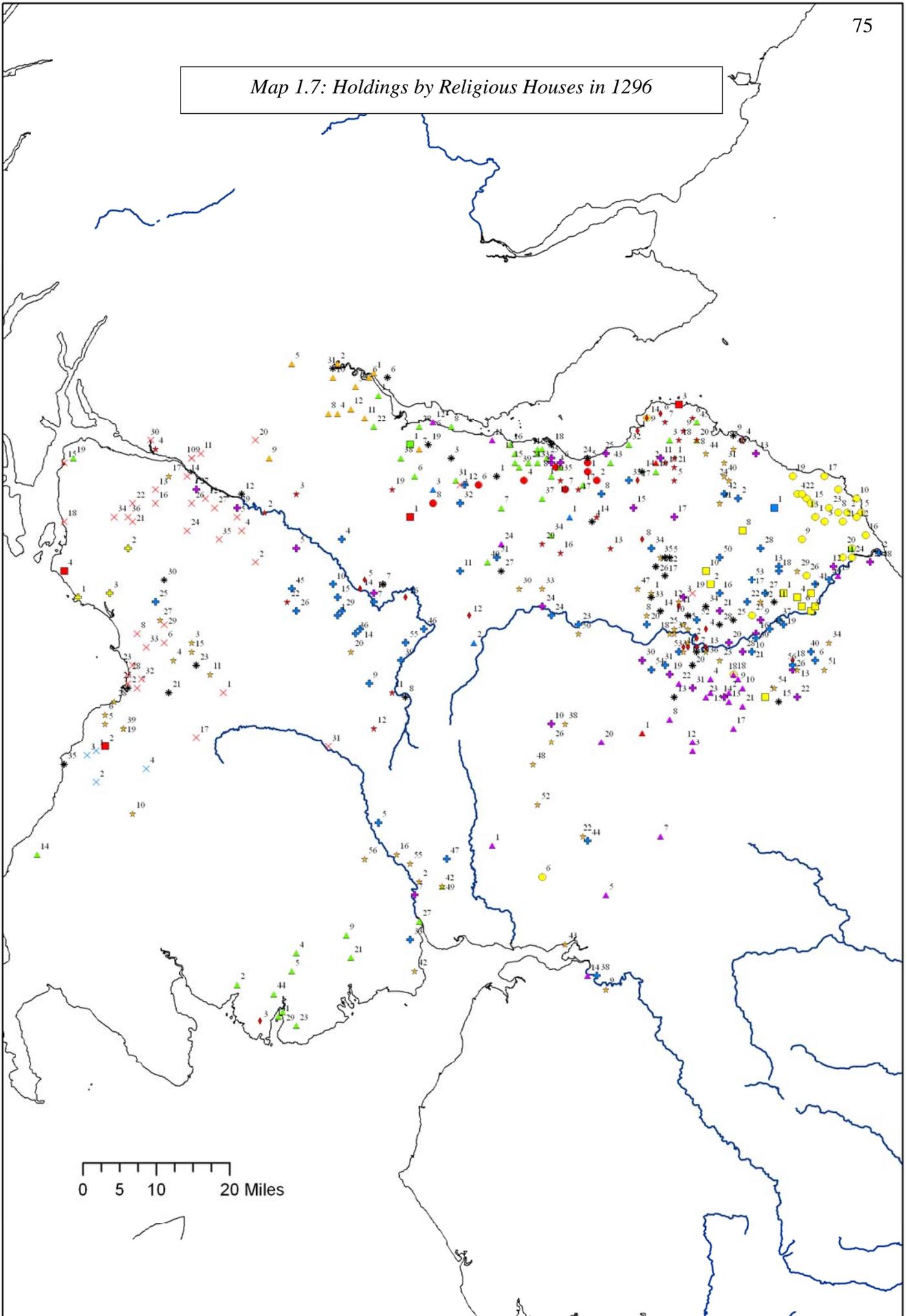
Map 1.5: Holdings by Religious Houses in 1214



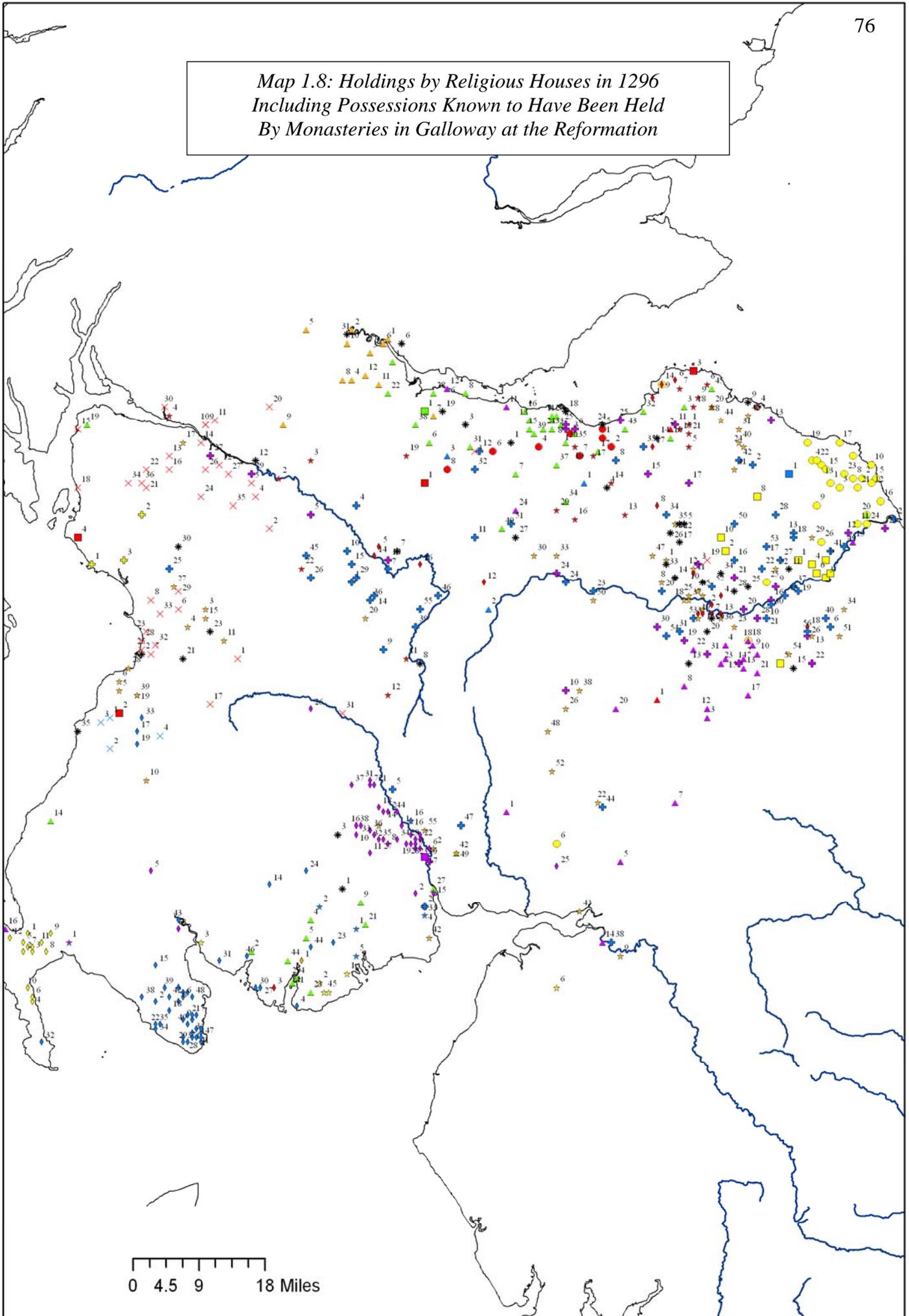
Map 1.6: Holdings by Religious Houses in 1249



Map 1.7: Holdings by Religious Houses in 1296



*Map 1.8: Holdings by Religious Houses in 1296  
Including Possessions Known to Have Been Held  
By Monasteries in Galloway at the Reformation*



### *III. The Social and Political History of Kelso Abbey After 1296*

As illustrated in the previous two sections, Kelso Abbey had risen to a position of great power during the twelfth and thirteenth centuries. Politically and socially, it was responsible for providing leadership for the principal religious offices in the kingdom and it had become, to all intents and purposes, the head of its congregation in Scotland. The monastery also became one of the wealthiest religious houses in the kingdom thanks to its initiative and the initiative of others. However, this did not and could not last through the chain of events which were set in motion in the late thirteenth century. The primary reason for this is the fact that the abbey and most of its holdings were on the front lines of the conflict. This left them open not only to military action but to the dominance and influence of whoever happened to be occupying the region where the community was located.

In terms of political and social considerations, one of the first things that Kelso had to deal with during the conflict was whether it was going to back Edward I. The first individual to encounter this dilemma was Richard, abbot of Kelso (1285-1299), and his eventual stance would have severe consequences for the abbey. After the events of 1296, Richard, like the rest of the abbots in Scotland, swore fealty to Edward I.<sup>112</sup> However, by 1299 he had apparently reneged on his oath, and had joined the Scottish rebellion. We know this through a letter sent to King Edward on behalf of one of Kelso's monks, Thomas of Durham, and in this letter, Thomas states that Abbot Richard was continually and voluntarily absent from the house, which he equated with treachery.<sup>113</sup> In this petition, Thomas asked that the monks be allowed to elect a new abbot who would be faithful to the king and would not leave the house

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<sup>112</sup> *CSD.*, iii, nos. 817, 823.

<sup>113</sup> Thomas referred to Richard as a rebel and an enemy (*Ibid.*, iii, no. 1087)

destitute as Abbot Richard did. This gave Edward the impetus he needed to assert his authority over Kelso, and he capitalized upon it shortly thereafter. Within the same year, Edward sent word to Robert Wishart, bishop of Glasgow (1271-1316), asking him to give his blessing to the election of Thomas as abbot. Ultimately, it is not clear if Bishop Robert ever approved of the election of the monk. In fact, as will be illustrated shortly, he likely did not. However, in spite of Robert's wishes, Thomas does appear to have taken office as the abbot of monastery in the early years of the fourteenth century, and a royal writ survives which states that Robert Hastings, sheriff of Roxburgh, was to receive Thomas into the king's peace.<sup>114</sup> Hence, until at least 1307, a loyalist of Edward I was in charge of a Scottish royal foundation.<sup>115</sup>

Apart from the political affiliations of the monastery, a second pre-1296 dimension which was upturned by the conflict was life at the monastery itself. Our first glimpse of the effects that war had on the community comes in 1301, when English troops occupied the abbey during Edward I's campaign of the same year.<sup>116</sup> Thereafter, we learn that their charters and muniments were burned four years later. Exactly who was responsible for this action is unclear; however, the letter recording it was sent by the abbot of Kelso, who was presumably Thomas, to the English parliament in an attempt to gain remedy because the community was having difficulty obtaining warrandice from its patrons. In response to this petition, the English parliament simply stated that Thomas and his community should appeal to the

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<sup>114</sup> *Ibid.*, iii, no. 1154.

<sup>115</sup> It is not clear when the loyalties of the abbots of Kelso realigned with the Scottish faction. The name of Thomas's successor, Walran (1307-11), is found in incidental records, and no evidence can be found of his political affiliations. However, it appears that by the time of at least Abbot William of Alyochrome (1317-28), the leadership of Kelso had been realigned with the native political establishment. William appears to have been installed directly by Bishop William of Lamberton.

<sup>116</sup> M. Prestwich, *Edward I* (London: Yale University Press, 1997), p. 493. Roxburgh was also occupied by English garrisons for long periods in the early fourteenth century (G. W. S. Barrow, *Scotland and its Neighbours* (London: Hambledon Press, 1992), p. 184).

common law of the region because it was not proper for the king to get involved in such a matter.<sup>117</sup>

Ultimately, not much is known of the life at the monastery for years after this incident. It is very possible that the abbacy was vacant during some of this period, and evidence suggests that the monastic precincts may have been as well, literally. At some point in the first quarter of the fourteenth century, William of Lamberton, bishop of St Andrews, issued a charter which has an unusual and very enlightening prologue. It states:

Since the monastery of Saint Mary at Kelso in our diocese, situated on the border of England and Scotland, is destroyed, on account of the general war and the daily plundering of goods, by pillaging, fire, and slaughter; and – we report this with sorrow – its monks and lay-brothers seek food and clothing, going about the other religious houses of the kingdom of Scotland as beggars; in this very well-known monastery [where] the worship of God used to emanate among a great multitude of people, with countless works of charity; and indeed it supported the burdens and troubles of those coming from both kingdoms, and before the war showed hospitality to all in want.<sup>118</sup>

Though the prologue was clearly meant to make an impression on the reader, there is no reason to suggest that its account of events is not accurate. In fact, other

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<sup>117</sup> *Ad petitionem Abbatis de Calkhou petentis remedium de eo quod cartae et munimenta sua per guerram Scotiae sunt combusta ita quod warr[antiam] habere non possunt de illis qui eos warrantizare tenentur in placitis, pro defectu dictarum cartarum: Responsum: Si munimenta sua amissa sint, juvent se per communem legem partium illarum, quia ad Regem non pertinet de talibus intromittere* (Records of Parliament, no. 307).

<sup>118</sup> *Ibid.*, i, no. 309.

sources also support Lamberton's assertion that the war forced the monks into exile and poverty. A letter produced between 1305 and 1306, states a monk named Peter was exiled at Norwich Priory.<sup>119</sup> Moreover, evidence also suggests that many of the monks may have fled to Lesmahagow during this period, perhaps even as early as Abbot Thomas's administration. This is alluded to firstly by the fact that he held the title of both the abbot of Kelso and the prior of Lesmahagow for a time, and secondly by the fact that he appears to have directly administered the priory's estates, an uncommon practice for the abbots of Kelso after the early years of the thirteenth century. The only charter which records his exploits as prior of Lesmahagow is an item found in the cartulary which records an agreement between Kelso and Alexander Folcard concerning a payment which the monks failed to make owing to the constraints of war. It was produced on behalf of Bishop Robert Wishart in 1315, almost a decade after Thomas had left office, and the charter is noteworthy, not only because it records the fact that Thomas was acting as prior, but because Bishop Robert makes feelings known about the man. He states:

Therefore, let it be known to you all that we think that the said English prior was a dilapidator of the goods of the priory of Lesmahagow when he administered it, as well as of goods of the monastery of Kelso during the time that he, by usurpation, bore the name of abbot there.<sup>120</sup>

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<sup>119</sup> *CDS*, iii, no. 1744

<sup>120</sup> *Kel. Lib.*, i, no. 188. It is noteworthy that retaliation for being 'English' was not uncommon in the Scottish religious community. English canons at Jedburgh fled following James Douglas's sack of Roxburgh castle and were not allowed re-entry (M. Brown, *The Black Douglases: War and Lordship in Late Medieval Scotland, 1300-1445* (East Linton: Tuckwell Press, 1998), pp. 19, 186). Moreover, two canons from Dryburgh were turned out of the abbey 'for being English' (*Ibid.*, p. 186).

Nevertheless, it is not merely William of Lamberton's comments about the monks' exile which are corroborated by other sources, but his comments about the devastation wrought upon the house are substantiated as well. A charter produced on behalf of John of Lindsay, bishop of Glasgow, echoes many of the statements made in Bishop Lambert's charter about the devastation, and it also lays blame on the Scots for the destruction as well as the English.<sup>121</sup> Moreover, many of the circumstances mentioned in Lamberton's charter were duplicated in other contexts. Melrose Abbey's dwellings had been burned and destroyed while under English protection in the 1300s, and in 1322, it suffered even greater devastation from the retreating army of Edward II. In fact, the house was despoiled and looted, and its prior and a number of monks were killed in the attack.<sup>122</sup> A similar set of circumstances also appears to have occurred at Dryburgh in 1322. Walter Bower states that the house of Premonstratensian canons was 'entirely destroyed by fire and reduced to ashes' because they provoked Edward II's troops by ringing their bell.<sup>123</sup>

#### *IV. The Economic History of Kelso Abbey After 1296*

Having established the nature of the way in which the war affected the social and political stability of the monastery in the late thirteenth and early fourteenth centuries, this brings us to the question of how the conflict affected its economic interests. As was just discussed, the monastic precincts at Kelso appear to have been destroyed during the conflict, and as a result, its inhabitants were forced to flee the institution. Based on common sense alone, one would imagine that such circumstances would have had horrible consequences for a monastery which controlled vast economic

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<sup>121</sup> *Ibid.*, ii, no. 477

<sup>122</sup> Brown, *Black Douglases*, p. 185.

<sup>123</sup> *Chron. Bower*, vii, pp. 406-09.

interests, not only in the war-stricken border region, but also in various other places throughout the island. After all, if the community ceased to exist, then it is likely that the administration of its estates was undermined as well. As will be discussed, evidence suggests that this was indeed the case, but war also affected the abbey's economic interests in other ways as well. In fact, even before the conflict officially began in 1296, the abbey's property holdings appear to have been in jeopardy.

One of the first known economic consequences of the war for Kelso was the dispossession of its estates, and this continued to be a threat as the conflict progressed. The first case of dispossession occurred before the war began when we learn that King Edward deprived the monks of their land in England as a result of Abbot Richard's loyalty to King John. After Richard's oath of fealty, these lands were returned, but a short time later they were taken away again, along with their lands in Scotland, due to Richard's renewed rebellion. When Abbot Thomas was appointed by King Edward the lands in both kingdoms were returned;<sup>124</sup> however, it appears that Kelso's English lands were once again annexed following the events of 1314.<sup>125</sup> Therefore, this pattern of dispossession and reacquisition appears to have been a constant burden for the monks until it was finally settled by the Treaty of Edinburgh in 1328.<sup>126</sup>

A second economic consequence of the war was already mentioned in the previous section, namely the destruction of their property. As discussed, both William Lamberton's charter and Bishop John's charter make it clear that the abbey's property suffered greatly as a result of the conflict, and when one examines the apparent *foci* of

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<sup>124</sup> *CDS*, iii, no. 1105. Kelso's *Rotulus Redituum* appears to have been produced around this time, and it may have been created as a direct result of the fact that they regained control of their possessions (*Kel. Lib.*, ii, pp. 455-473).

<sup>125</sup> Michael Brown suggests that the monks may have regained their English lands following their abbots' return to Scottish allegiance, and lost them again in 1314 (Brown, *Black Douglases*, p. 186).

<sup>126</sup> *Ibid.*, iii, no. 736; G. W. S. Barrow, *Robert Bruce and the Community of the Realm of Scotland*, 3<sup>rd</sup> Edition (Edinburgh: Edinburgh University Press, 1988), p. 55, Barrow, *Kingdom of the Scots*, p. 227.

the war it is not difficult to see why. As is demonstrated on map 1.9, the movement of English armies south of the Forth was concentrated in locations where the monastery was a major landholder. Moreover, many records survive recording the devastation wrought upon its property and the property of its neighbours.<sup>127</sup> However, the extent of the devastation to their economic resources is best exemplified by the grants which the monks received from King Robert and his bishops after the fighting came to a halt. All of these individuals did their best to help compensate the monks for what they had lost. John of Lindsay, bishop of Glasgow, granted Kelso the church of Carluke from his *mensa* in the 1320s.<sup>128</sup> Bishop William Lamberton, who elaborated upon the trials and tribulations of the Kelsonian diaspora in his charter, granted the monks the right to appoint a pensionary vicar in the church of Greenlaw so that they could appropriate all of the church's revenues.<sup>129</sup> He also graciously exchanged the church of Nenthorn and the chapel of Little Newton (which were located closer to the monastery) for the church of Cranstoun and the land of Preston. In the charter recording this transaction, Lamberton stipulated that since the parish of Nenthorn was devastated by war, he promised to relinquish to the abbey twenty-five merks per annum for a total of ten years, and he did this to compensate them for any losses they might accrue in the exchange.<sup>130</sup> Likewise, King Robert granted to Kelso twenty marks for the tomb of Saint Machutus and issued two brieves to make sure that they received an annual render which was owed by Glasgow Cathedral.<sup>131</sup>

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<sup>127</sup> Brown, *Black Douglases*, p. 185.

<sup>128</sup> *Kel. Lib.*, ii, no. 477.

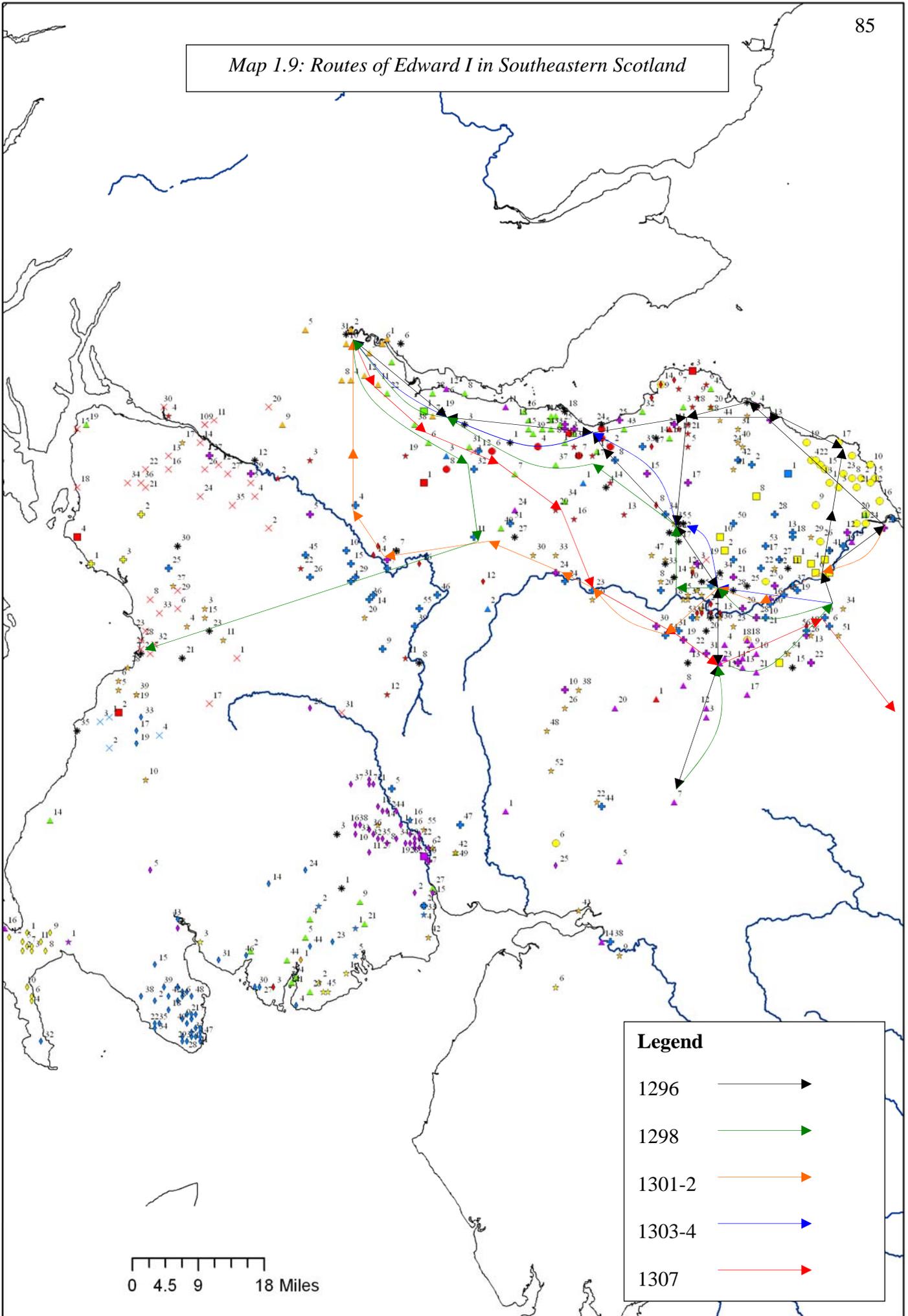
<sup>129</sup> *Ibid.*, i, no. 309. Lamberton's efforts to help Kelso rebuild appear to have been part of a greater reconstruction effort that he was involved in during the last decade of his life (M. Ash, 'William Lamberton, Bishop of St Andrews, 1297-1328' in *The Scottish Tradition: Essays in Honour of Ronald Gordon Cant*, ed. by G. W. S. Barrow (Edinburgh: Scottish Academic Press, 1974), pp. 44-55 (pp. 54-55); M. Ash, 'The Administration of the Diocese of St Andrews, 1202-1328 (unpublished doctoral thesis, University of Newcastle, 1972), pp. 191-92).

<sup>130</sup> *Kel. Lib.*, i, nos. 309-15.

<sup>131</sup> *Kel. Lib.*, i, no. 204; ii, no. 476.

Nevertheless, dispossession and the physical effects of the war were not the only way that the conflict affected the abbey's proprietary interests. In fact, evidence suggests the aftermath of the conflict was even more burdensome for the abbey owing to the fact that it had to convince its patrons to warrant its property. It was already noted above that the abbey had difficulty with this task due to the loss of its charters; however, the fact that the religious house was vacated during certain periods of the early fourteenth century probably did not help matters. Moreover, its attempts to obtain warrandice were probably also hurt by the fact that very few of the individuals who held baronies where its property was located were familial successors of the men who granted this property in the first place.

Map 1.9: Routes of Edward I in Southeastern Scotland



Following each of Edward I's campaigns, he granted land in Scotland to his followers and some of these estates were the baronies where Kelso's possessions were located. There is no evidence that redistribution took place on any grand scale after his initial invasion in 1296. However, at the York parliament which preceded the Falkirk campaign in 1298, Edward stated that he intended to expropriate the lands of his enemies, and he appears to have made good on his promise.<sup>132</sup> Among other things, the barony of Renfrew, where Kelso held interests, was given to the earl of Lincoln. Similarly, the barony of Bothwell and the forest of Selkirk, where the abbey was a property holder, were granted to Aymer de Valence,<sup>133</sup> and in 1300, Henry of Prendergust made suit to King Edward for the barony of Wiston where the monks held the parish church.<sup>134</sup> Moreover, the lands of Robert of Keith, whose ancestors were generous benefactors of the Tironensians, were declared forfeit, and granted to other individuals.<sup>135</sup> Michael Prestwich has said that by 1302 the number of English men holding lands in Scotland, at least in name, was substantial. Nevertheless, it is worth pointing out that Edward's redistribution was never as thorough as it could have been. One of the primary reasons for this is that John Comyn's first stipulation following his surrender in 1304 was to ensure that those Scots who surrendered should have full rights to their heritable lands. As a result, lands which were taken away from rebels as a result of the conflict were returned.<sup>136</sup> Furthermore, it has even been suggested that the reason that Edward's campaign to subdue Scotland achieved

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<sup>132</sup> M. Prestwich, 'Colonial Scotland: The English in Scotland under Edward I', in *Scotland and England, 1286-1815*, ed. by R. A. Mason (Edinburgh: J. Donald, 1987), pp. 6-17 (p. 7).

<sup>133</sup> *OPS*, i, pp. 242, 272.

<sup>134</sup> *Ibid.*, i, p. 147.

<sup>135</sup> *CDS*, iii, no. 245.

<sup>136</sup> Prestwich, 'Colonial Scotland', p. 10.

wavering success was because of his failure to properly supplant the native landholding aristocracy.<sup>137</sup>

This said, once Robert I came to power he did not make the same mistake as his predecessor. Robert's reorganization of the tenurial landscape south of the Forth was far more thoroughgoing. Michael Brown has noted that '[t]he replacement of the old lords of the region by this new Bruce establishment marked a dramatic change in the structures of lordship in the south of Scotland',<sup>138</sup> and nowhere was this more true, than in regions where Kelso was a major landholder. Whereas in the twelfth and thirteenth centuries large portions of land in Roxburghshire had been held in demesne by the king or was feued out to families such as the de Morevilles, King Robert made James Douglas, one of his primary military commanders, the main landholder in this region from the early 1320s onwards. Among other things, the king granted him a network of estates in the Forests of Selkirk, Jedburgh and Ettrick where Kelso had a number of interests.<sup>139</sup> Moreover, James also acquired the baronies of Staplegordon and Calder-Clere where Kelso held rights to churches and lands,<sup>140</sup> and he became the premier landholder in Lanarkshire where the barony and priory of Lesmahagow were located.<sup>141</sup> Similar scenarios can also be found in a number of other baronies where Kelso was a property holder including the barony of Symington which was granted to Thomas son of Richard,<sup>142</sup> the barony of Cadzow which was given to Walter son of Gilbert,<sup>143</sup> the barony of Cambusnethan which was given to Robert Barde,<sup>144</sup> the barony of Maxton which was given to Robert the Steward,<sup>145</sup> and the barony of

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<sup>137</sup> *Ibid.*, p. 9.

<sup>138</sup> Brown, *Black Douglases*, p. 25.

<sup>139</sup> *OPS*, i, p. 242.

<sup>140</sup> *RRS*, v, p. 151, 158; nos. 57, 68, 167, 200, 224, 392.

<sup>141</sup> Brown, *Black Douglases*, p. 184.

<sup>142</sup> *RRS*, v, no. 159; *OPS*, i, p. 158.

<sup>143</sup> *Ibid.*, v, p. 682; no. 10.

<sup>144</sup> *OPS*, i, p. 57.

<sup>145</sup> *RRS*, v, no. 414.

Roberton which was given to John of Monfode.<sup>146</sup> Much of this reorganization had to do with forfeitures or deaths, and many of the heirs of Kelso's biggest patrons in the twelfth and thirteenth centuries were stripped of their land following Robert's rise to power, including Gilbert de Umfraville and Thomas of Pencaitland.<sup>147</sup> The Comyn family, who were also generous patrons to the monastery, naturally disappeared as well, and their estate of West Linton, where Kelso held the parish church, was granted to John of Logan.<sup>148</sup> In terms of reorganization, however, one of the most important changes to the landholding establishment in the border region was the loss of the de Vescy family. The de Vescys had been staunch supporters of the abbey in the twelfth and thirteenth centuries, and many of their possessions were granted to King Robert's son, Robert.<sup>149</sup>

Exactly what effect Edward's and Robert's reorganization of the landholding establishment had on the abbey's proprietary interests is far from clear. Nevertheless, as discussed above, the fact that monks had difficulty enforcing warrandice in 1304 owing to the loss of their charters suggests it did have an impact which is likely hidden from record. Moreover, other monasteries were certainly affected by the redistribution of lordships, including Melrose Abbey which got into a dispute with James Douglas over its land in Wedale.<sup>150</sup>

This said, there is evidence that the heirs of Kelso's benefactors who did not lose their estates following King Robert's assumption of power did give the monastery problems, so continuity of lordship did not necessarily ensure that Kelso's possessions were safe. As mentioned above, there was some continuity of lordship

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<sup>146</sup> *OPS*, i, p. 149.

<sup>147</sup> *RRS*, v, pp. 19-20; J. A. Tuck, 'The Emergence of a Northern Nobility', *Northern History*, 23 (1986), pp. 1-17 (p.6-7).

<sup>148</sup> *Ibid.*, v, p. 23; no. 83; *OPS*, p. 190; A. Young, *Robert the Bruce's Rivals: The Comyns, 1212-1314* (East Linton: Tuckwell Press, 1997), pp. 206-10.

<sup>149</sup> *Ibid.*, v, pp. 23-24, no. 172.

<sup>150</sup> Brown, *Black Douglasses*, p. 190.

during King Edward's time in power, and the same was the case during the reign of Robert I. Individuals who did not forfeit their lands during Robert's reign, and whose ancestors were important benefactors of the abbey, included Patrick, earl of March, who just barely escaped forfeiture,<sup>151</sup> the earl's tenants in Dunbar, Alexander Steward,<sup>152</sup> Robert of Keith,<sup>153</sup> and William de Vieuxpont.<sup>154</sup> As discussed above, evidence suggests that the monks likely lost control of their possessions for periods during the fourteenth century as a result of their forced exile, and evidence relating to some of these individuals suggests that they struggled to reassert themselves after the fact. One charter produced on behalf of Adam of Gordon, a tenant of Earl Patrick in the 1320s, provides particular insight into this phenomenon. It begins by stating that Adam relinquished to Kelso a ploughgate of land which monks formerly (*dudum*) held within the territory of Westergordon. Thereafter, it goes on to record the fact that from that point on all of the monks' goods, both ecclesiastical and secular, and the teinds of the parish, which at that point were not being paid (*in solucionem earumdem cessatum*), were to be seized (*capienda*) and detained (*distringenda*) by the monks, and that the estimated debt owed to the community in unpaid teinds was to be released by Adam (*quantitatem debiti communi estimacione leudana*).<sup>155</sup>

Similar circumstances are also observable elsewhere. For instance, Robert of Keith, Marischal of Scotland and one of the leaders of the Scottish resistance, appears to have settled men in Kelso's land in Keith, which was granted to them by a man who was presumably his great-great-great-great-grandfather, Simon Fraser.<sup>156</sup>

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<sup>151</sup> Brown states that in the border region '[o]nly the Dunbars with their earldom in the eastern borders provided continuity of tenure with the thirteenth century. Even there the change of the Dunbars' title to the earl of March reflects the new reality of political society in the region.' (Brown, *Black Douglases*, p. 25).

<sup>152</sup> *RRS*, v, no. 99.

<sup>153</sup> *Ibid.*, v, no. 261.

<sup>154</sup> *Ibid.*, v, no. 298.

<sup>155</sup> *Kel, Lib.* i, no.125.

<sup>156</sup> *Ibid.*, i, no. 85.

Following a settlement, he confirmed the donations which his predecessors first made to the monastery, and promised not to cause it any more problems, but not before imposing several new restrictions on the abbey.<sup>157</sup> Moreover, it is noteworthy that even the abbey tenants appear to have been giving the monks problems. Alexander Folcard, one of Kelso's men in Lesmahagow and the same individual who had dealings with Thomas of Durham, appears to have seised the land of Poniel during the first quarter of the fourteenth century and claimed it to be his by hereditary right. Eventually for the sake of peace and at the insistence of his friends, he remitted his claim to the land, but not before the abbey granted it to him at ferme.<sup>158</sup>

#### *V. Conclusion*

The events of the early fourteenth century which saw Kelso Abbey change from one of the richest most powerful religious institutions in Scotland into a house which was struggling for its very existence was by no means a unique story in the history of Scottish monasticism. Many examples of religious houses who faced similar situations have already been noted, and many more examples of the problems that such houses faced could be mentioned. Melrose Abbey, for instance, was denied its income in Eskdale by local men who drove off and imprisoned the abbey's servants.<sup>159</sup> Moreover, Crossraguel had to obtain royal charters to help it to collect rents and dues.<sup>160</sup> However, based on the extant evidence, Kelso did react in a rather unique way to these circumstances which was only apparently matched by Scone Abbey: it created a cartulary. One cannot help but see the creation of this manuscript

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<sup>157</sup> *Ibid.*, i, no. 100.

<sup>158</sup> *Ibid.*, i, no. 191.

<sup>159</sup> Brown, *Black Douglases*, p. 185.

<sup>160</sup> *RRS*, v, p. 25; nos. 302, 395.

as being intrinsically linked to the events of the previous decades. All of the English cartularies which contain prologues that provide any insight into the motivations of the scribes who produced them state that they were produced as a result of crises, and there is no reason to think that the Kelso Abbey cartulary is an exception.<sup>161</sup> One also cannot help but see striking parallels between the ordeals that Kelso went through and the ordeals that the other monasteries went through which are known to have fabricated charters. For one, Kelso was a monastery exempt from episcopal jurisdiction. Almost all of the English religious houses which claimed exemption forged charters to support their claims, and the same can be said for many French religious houses including Mont-Saint-Michel and Saint-Evroult.<sup>162</sup> Apart from that, the monastery's charters were apparently destroyed by Edward I's men, a prime catalyst for the fabricating of documents in other contexts.<sup>163</sup> Moreover, the social and political landscape was completely overturned in Scotland during the late-thirteenth and early-fourteenth centuries, and two new ruling establishments came to power which brought with them a new landholding establishment. As discussed in the introduction, there is another notable event in British history which bears remarkable similarities to what was going on in Scotland during the early fourteenth century - i.e. the Norman Conquest. Several scholars have questioned whether or not all of the forgeries which exist from the late eleventh and twelfth centuries are the direct result of these upheavals. Nevertheless, it is clear that the effects of the political turmoil during this period often did result in great forging enterprises for the simple reason

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<sup>161</sup> Foulds, 'Medieval Cartularies', p. 29.

<sup>162</sup> Brooke, 'Approaches', p. 384; M. Chibnall, 'Forgery in Narrative Charters', in *Fälschungen im Mittelalter: Internationaler Kongreß der Monumenta Germaniae Historica München, 16. - 19. September 1986*, Teil IV: Diplomatische Fälschungen (II) (Hannover: Hahnsche Buchhandlung, 1988), pp. 331-346 (p. 332); J. Sayers, "'Original", Cartulary and Chronicle: the Case of the Abbey of Evesham' in *Fälschungen im Mittelalter: Internationaler Kongreß der Monumenta Germaniae Historica München, 16. - 19. September 1986*, Teil IV: Diplomatische Fälschungen (II) (Hannover: Hahnsche Buchhandlung, 1988), pp. 371-396 (p. 371).

<sup>163</sup> Foulds, 'Medieval Cartularies', p. 31.

that the native monasteries had to convince their new lords that the former ruling establishment had endowed them with particular possessions.<sup>164</sup> This is virtually the same as what was happening in Scotland during the time of both King Edward and King Robert, and the extent to which Kelso engaged in forgery as a result of this dilemma will be assessed later on in this thesis. However, before proceeding to this discussion, it is first necessary to evaluate the nature of the cartulary that Kelso produced.

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<sup>164</sup> Clancy, *From Memory to Written Record*, p. 318; Brett, 'Rochester', pp. 397-98, 401; Chibnall, 'Forgery in Narrative Charters', p. 342-43.

## **Chapter 2: The Composition of the Kelso Abbey Cartulary**

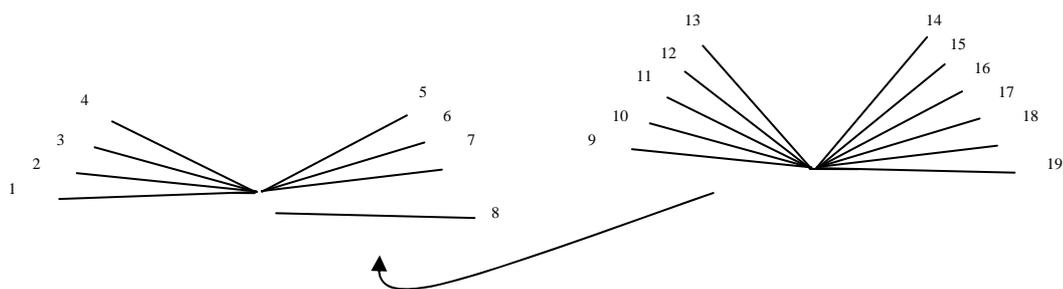
As discussed in chapter one, the trials and tribulations which Kelso faced in the late thirteenth and early fourteenth centuries had devastating effects on the monastery and its property rights. Therefore, it is not surprising that the monks decided to create a cartulary. The following chapter will explore the nature of the cartulary which they produced, and its primary intention is to deconstruct it in a manner similar to the continental investigations discussed above. Among other things, this chapter will explore how the cartulary was produced, and the policies of the scribes who produced it. Moreover, the final section will also attempt to pin down the most likely date of the production of the manuscript, and as will be discussed, it appears to have been created between 1321 and 1326 - i.e. a period when King Robert was helping to rebuild a number of religious houses in Scotland. Nevertheless, in order to accomplish these objectives, one first needs to establish what it was that the monks actually produced in the early fourteenth century, and how that differs from the manuscript that survives today. Therefore, it seems pertinent to begin chapter two's evaluation by examining the surviving codex.

### *1. The Current Codex vs. The Original Codex*

As discussed in the introduction, the codex known as the Kelso Abbey cartulary is housed in the National Library of Scotland under the call number - NLS, Adv. MS 34.5.1. It is not clear when this codex was bound, but it contains 220 folios which are

organized in a total of nineteen quires.<sup>165</sup> An examination of the manuscript has revealed that seventeen of the nineteen quires were originally comprised of six bifolia each, and that the remaining two quires, namely nos. 1 and 10, had four and five bifolia respectively. However, not all of these quires are intact. As discussed in the introduction, the first folio q. 11 has been lost, thus resulting in a composite in one of the Bannatyne Club volumes. Moreover, the final folio of q. 1 is also missing, and it appears that the first folio of q. 2 has been removed from its original location and put in its place (see figure 2.1).

*Figure 2.1: Quires 1 and 2 in the Current Codex*



Apart from the lost folios and the rearrangement of the first folio in q. 2, the surviving codex appears to resemble the original codex in most respects. However, there is one major difference, namely that q. 1, where Kelso's fourteenth-century rental is found, was not originally located at the beginning of the manuscript. This is first and foremost suggested by the fact that the quire-signatures found at the beginning of the subsequent quires make this a logistical impossibility. As demonstrated on table 2.2

<sup>165</sup> This statistic does not include liturgical material found at the beginning and end the manuscript which were used as flyleaves. It should also be noted that the individual responsible for originally numbering the folios entered 91 for ff. 91 and 92. His mistake has been followed in subsequent work including the current editions of royal charters.

below, the first folio of q. 3 (i.e. f. 20) has the signature 'b'. This would make q. 2, the 'a' quire, and naturally exclude the possibility that q. 1 began the collection.

Table 2.1: Catchwords

Folio No.	Signature
19v	<i>magna</i>
31v	<i>ecclesie</i>
43v	<i>et dominum</i>
55v	<i>Willelmus dei gracia</i>
67v	<i>sub amabili</i>
79v	<i>et libera mea</i>
91v	<i>redditu suo</i>
101v	<i>ut mansiones</i>
113v	<i>per suam cartam</i>
125v	<i>Neythenstirne</i>
136v	<i>vel presumpserit</i>
148r	<i>stirlingorum</i>

Table 2.2: Quire-Signatures

Folio No.	Signature
20r	b
32r	c
44r	d
56r	e
68r	f
80r	g
92r	h
102r	i
114r	k
126r	
137r	m
149r	n

This said, if q. 1 was not originally located at the beginning of the cartulary, then the question naturally arises as to where it was located in the original codex, or whether it was part of the original codex at all. Evidence suggests that it was part of the original codex. Among other things, the final folios in the gathering appear to have been left blank by the scribe who copied the rental, and later scribes clearly used them as a register to copy more charters into the manuscript as the later middle ages progressed (see discussion of phase three below). This said, the question of where it was located is less easy to answer, though paleographical evidence may suggest that it was positioned after q. 15. This suggestion appears to have merit because the hand found at the beginning of q. 1 is similar to the hand found at the end of q. 15, where a series of abbatial and papal charters can be found. A comparison of the hand found on the first folios of q. 1 and the hand found on last folios of q. 15, reveals some distinct

similarities. Among other things, the scribe(s) had a very distinctive 'g', 'et' and 'w' which are exemplified in the plates below. Stylistically the scribe(s) also appears to have opted for rounded letters more so than their counterparts, and at times brought the follow through stroke of 's' all the way to the top of the line. The latter feature does not appear elsewhere, and it is noteworthy that the scribe(s) responsible for the material in q. 1 and q. 15 was not involved in transcription prior to, or after, this point.



Taking these points into account, the collation of the original codex may have been as follows:

*Table 2.3: Collation of the Original Codex*

<b>Quires</b>	<b>Folios (*Missing Last Folio)</b>
Quire no. 2	ff. 8-19
Quire no. 3	ff. 20-31
Quire no. 4	ff. 32-43
Quire no. 5	ff. 44-55
Quire no. 6	ff. 56-67
Quire no. 7	ff. 68-79
Quire no. 8	ff. 80-91
Quire no. 9	ff. 92-101
Quire no. 10	ff. 102-113
Quire no. 11	ff. 114-125
Quire no. 12	ff. 126-136*
Quire no. 13	ff. 137-148
Quire no. 14	ff. 149-160
Quire no. 15	ff. 161-172
Quire no. 1	ff. 1-7*
Quire no. 16	ff. 173-184
Quire no. 17	ff. 185-196
Quire no. 18	ff. 197-208
Quire no. 19	ff. 209-220

## *II. Stages of Development*

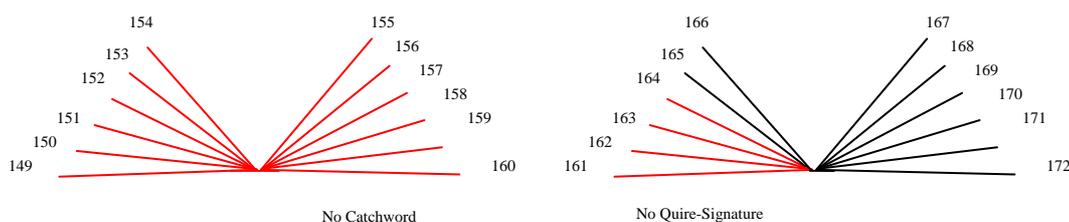
Having established the arrangement of the original codex, this naturally raises the question of how it was produced. Evidence suggests that the production of the *Liber de Calchou* can be roughly broken down into three stages. The first stage was the production of the ‘original cartulary’ which began on f. 8r and ended on f. 164v. Thereafter, the second phase involved the addition of two more sections in q. 15 and the inclusion of Kelso’s rental in q. 1. Finally, the third phase was simply the

transcription of more items into the manuscript as the later middle ages progressed. The following are the points which suggest that these characterizations are appropriate.

#### *A. Phase One: Production of the Original Cartulary*

This phase of production appears to have occurred over a relatively short period of time, a hypothesis which is given credence by the fact that a relatively small number of scribes appear to have worked on the manuscript, and the fact that they alternated their responsibilities. As mentioned above, the end of this phase of production occurred on folio 164v, and the last item which appears to have been copied was a charter ascribed to David of Bernham, bishop of St. Andrews.<sup>166</sup>

*Figure 2.2: The End of the Original Cartulary on Folio 164 (Red are folios with rubric, Black are folios without rubric)*



During this phase, material was typically organized topographically, though two royal sections and one episcopal section were also created. However, the points which make this phase of production unique was inclusion of rubricated titles, rubricated capitals, page headings, quire-signatures and catchwords.

<sup>166</sup> This charter appears to be a forgery (Comm. I, no. 12).

*Table 2.4: The Original Cartulary*

Quires	Folios	Topical and Topographical Subdivisions (* Not Page-Headings)
Quire no. 2	ff. 8-19	Kings*, Berwick
Quire no. 3	ff. 20-31	Berwick, Greenlaw
Quire no. 4	ff. 32-43	Greenlaw, Keith, Abbots, Gordon
Quire no. 5	ff. 44-55	Gordon, Langton
Quire no. 6	ff. 56-67	Langton, Mow
Quire no. 7	ff. 68-79	Mow, Kelso and Melrose, Lesmahagow
Quire no. 8	ff. 80-91	Lesmahagow, Hadden, Sprouston, Redden, Campsey
Quire no. 9	ff. 92-101	Campsey, Makerstoun, Cranston, Innerwick
Quire no. 10	ff. 102-113	Innerwick, Mercheley, Hallyburton, Kilmaurs, Hume
Quire no. 11	ff. 114-125	Hume, Wedderlie, Fogo, Cranston, Nenthorn, Ryesdale
Quire no. 12	ff. 126-136	Ryesdale, Symington, Wiceton, Closeburn
Quire no. 13	ff. 137-148	Closeburn, Shotton, Kings*
Quire no. 14	ff. 149-160	Kings*, Bishops*
Quire no. 15	ff. 161-164v	Bishops*

*B. Phase Two: Additional Sections and the Rental*

As discussed above, after the conclusion of the ‘original cartulary’ a decision was made to add a further three sections to the manuscript. This scribe(s) responsible for this action has already been mentioned in relation to the codex, and as noted, he or they did not contribute to the production of the ‘original cartulary’. The sections which these scribe(s) added include a section of abbatial charters dealing with Kelso’s tenants in Duddingston, a section of papal charters and a section which contained the Kelso rental. The points which distinguish these sections from the sections in the ‘original cartulary’ are the fact that the scribe(s) failed to enter catch-words or quire-signatures onto the first and last folios of the corresponding quires, the fact that he or they created capitals using green ink, and the fact that the scribe(s) simply failed to copy capitals and titles into the manuscript at all in many cases, though spaces were often left for them.

*Table 2.5: Additions to the Original Cartulary*

Quires	Folios	Topical and Topographical Subdivisions (* Not Page-Headings)
Quire no. 15	ff. 164r-172	Abbots*, Popes*
Quire no. 1	ff. 1-6r	Rental*

*C. Phase Three: Continuation of the Cartulary in the Later Middle Ages*

As discussed, the third phase of the cartulary's production was not as systematized as the previous phases. In fact, the scribes who entered items into the manuscript during this phase of production appear to have treated the manuscript more as a register than a cartulary. Unlike what is found above, the items are not organized according to any particular pattern. Rather, scribes appear to have simply entered charters and other materials into the cartulary as they acquired them, or when they were unearthed for one reason or another (as is the case with the few twelfth- and thirteenth-century charters which can be found there). During this phase, no effort was made to create elaborate titles or capitals, nor was much attention paid to calligraphy. In fact, scribes did not even rule the parchment in many cases.

Table 2.6: Later Entries

Quires	Folios	Topical and Topographical Subdivisions (* Not Page-Headings)
Quire no. 15	ff. 164v-172	Mostly Late Medieval Charters*
Quire no. 1	ff. 6v-7	Mostly Late Medieval Charters*
Quire no. 16	ff. 173-184	Mostly Late Medieval Charters*
Quire no. 17	ff. 185-196	Mostly Late Medieval Charters*
Quire no. 18	ff. 197-208	Mostly Late Medieval Charters*
Quire no. 19	ff. 209-220	Mostly Late Medieval Charters*

### III. The Policies of the Compilers of the Manuscript

The scribes who were responsible for entering items into the manuscript during phases one, two and three have already been referred to above. However, what has not been discussed is their protocols. Their policies included the summarization of charters in the form of *notitiae*, the abbreviation, alteration and omission of diplomatic features, the exclusion of entire charters from the manuscript and the emulation of the paleographical features found in the original charters which they copied. Their policies are the subject of the following sections, and, as will be discussed, it appears that their protocols and initiatives changed depending on who was involved in transcription at a particular point in the cartulary's development.<sup>167</sup> Moreover, the policies of individual scribes also evolved the longer they were engaged in the process, and one such example was the decision by the individual who started the cartulary to summarize several charters in the form of *notitiae*.

<sup>167</sup> For further discussion of policy changes, see Walker, 'Organization of Cartularies', p. 144.

### A. *Notitiae*

The policy of summarizing charters in the form of notes or memoranda, known as *notitiae*, has been acknowledged in other studies. However, most such discussions have been tangential to what historians have been attempting to accomplish, and there has been no attempt to account for their existence in other collections. In the conclusion to this thesis, a proposal will be given for their existence in the Kelso Abbey cartulary. However, for now it will suffice to introduce the nature of these features, the scribe who entered them, and their location in the manuscript.

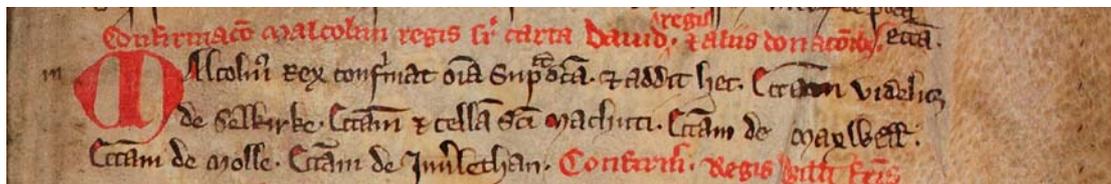
All of the *notitiae* which can be found in the Kelso Abbey cartulary were the work of one scribe, and he happened to be the individual who began work on the manuscript. This scribe produced all of these items during his first stint of transcription (i.e. ff. 8r-38v), and all but one of the twelve of *notitiae* are located in the second quire (i.e. the first quire in the original cartulary). Four of these items are appended to the end of royal charters and simply state that in addition to the gifts recorded in the preceding documents, the kings also granted other property to the abbey.<sup>168</sup> The other seven are independent entries in the manuscript which have their own rubricated titles. All seven of these memoranda summarize at least one royal charter, and many reference episcopal or private charters as well.<sup>169</sup> This said, the one *notitia* which does not appear in q. 2 is located in q. 5, and, as will be discussed in the next chapter, it appears to contain spurious information.

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<sup>168</sup> *Kel. Lib.*, i, nos. 2, 12, 20, 29.

<sup>169</sup> *Ibid.*, i, nos. 3, 4, 11, 23, 24, 26, 28, 99.

Plate 2.3: An Example of a Notitia Found on f. 5 which Summarises the Content of King Mael Coluim IV's General Confirmation Charter which Survives as an Original



In light of what was just mentioned, it must be noted that there is no reason to doubt the authenticity of material found in the eleven *notitiae* found in q. 2. In fact, compared to many of the other charters found in this quire, evidence actually corroborates the fact that the information found in these items is authentic. Not only does one of the items (see plate 2.3 above) appear to summarize the content of a charter which survives as an original, namely King Mael Coluim IV's general confirmation charter,<sup>170</sup> but many of the *notitiae* reference charters that were copied into the Kelso Abbey cartulary on subsequent occasions.<sup>171</sup> Moreover, one *notitia* states that one of the differences between the charter that it summarizes - i.e. William I's general confirmation - and Mael Coluim IV's general confirmation is the fact that its conclusion contains an elaborate diplomatic feature. As demonstrated in the bold section below, this entire feature was copied verbatim into the *notitia*, and when the general confirmation was copied into the manuscript at a later stage, this feature was included as well.<sup>172</sup>

*Uillelmus etiam Rex frater eius ei succedens confirmat omnia predicta  
et addit ecclesiam de Dumfres cum capella sancti Thome in ipso burgo*

<sup>170</sup> cp. *Ibid.*, i, pp. iii-vii, no. 2; *RRS*, i, no. 131.

<sup>171</sup> cp. *Ibid.*, i, no. 11; ii, 411, 413.

<sup>172</sup> *Ibid.*, i, no. 12; *RRS*, ii, no. 63.

*cum omnibus earum pertinentiis infra burgum et extra et addit prenomintas igitur terras et possessiones omnes. Ego ecclesie beate marie de kelkou et monachis ibidem deo seruiantibus iure perpetuo possidendas concedo et hac carta mea in perpetuam elemosinam confirmo ut ita libere et quiete et honorifice teneant et possideant omnes terras suas et possessiones et uniuersa tenementa sua sicut aliqua ecclesia liberius et quocius et honorabilius elemosinam suam tenet et possidet. Ita ut nemo de hac nominata ecclesia de kelch' neque de possessionibus eius neque de ulla que ad illam pertinet aliquid presumat exigere nisi solas oraciones ad salutem animarum.*<sup>173</sup>

#### *B. Omission or Truncation of Witness Lists*

The same scribe who was responsible for the *notitiae* in q. 2 also started omitting witness lists shortly after the commencement of the cartulary, and this policy was emulated for a long time thereafter. In fact, from item no. 12 in q. 2 to item no. 137 in q. 5, only eleven witness lists were actually copied into the manuscript.<sup>174</sup> Eight of the lists are found in the section titled 'Abbots' in q. 5. On the other hand, the other three are preceded by unorthodox attestation clauses, and the irregularities of these clauses likely account for the reproduction of the witnesses. Instead of *hiis testibus* or *testibus*, which is the most common formulation found in Kelso's charters, the clause in two of

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<sup>173</sup> *Ibid.*, i, no. 4.

<sup>174</sup> *Ibid.*, i, nos. 27, 46, 52, 64.

the charters reads: *in cuius perpetue donacionis testimonium testes sunt tales uidelicet*,<sup>175</sup> and the third clause is: *et hoc idem testantibus et*.<sup>176</sup>

The policy of omitting witness lists has also been well discussed in critical studies of cartularies, and typically scholars have tended to view such omissions as evidence that the scribes considered these diplomatic features to be irrelevant and were simply attempting to save space.<sup>177</sup> As with the *notitiae*, an alternate explanation will be given for their omission in the conclusion to the thesis, and it is noteworthy that this policy was completely reversed beginning with no. 138 in q. 5. This said, in spite of the reversal in policy, evidence suggests that the scribes still truncated witness lists in a number of instances, and this can be corroborated by comparing charters which were copied more than once into the cartulary. One such item is a charter produced on behalf of Gilbert, bishop of Aberdeen, which confirmed the church of Peterculter.<sup>178</sup> The first copy of this charter, which is found in q. 9, states that the transaction was witnessed by Lord (*Dominus*) Mael Coluim, the archdeacon, Master Alexander, the dean, Master William, the treasurer, Master Robert of Leicester, Jordan, the chaplain, Edward, the canon, and Simon of Stirling. However, in the second copy in q. 15, Edward, the canon, and Simon of Stirling have been omitted.<sup>179</sup>

### *C. Omission or Truncation of Other Diplomatic Features*

Besides omitting or truncating witness lists, evidence suggests that scribes also omitted or altered other diplomatic features. However, such policies were by no

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<sup>175</sup> *Ibid.*, i, nos. 46, 52.

<sup>176</sup> *Ibid.*, i, no. 64.

<sup>177</sup> C. B. Bouchard, 'Monastic Cartularies: Organizing Eternity', in *Charters, Cartularies, and Archives: The Preservation and Transmission of Documents in the Medieval West*, ed. by A. J. Kosto and A. Winroth (Toronto: University of Toronto Press, 2002), pp. 22-32 (p. 29).

<sup>178</sup> *Kel. Lib.*, i, no. 224; ii, no. 434.

<sup>179</sup> Other truncated witness lists can be found in *Ibid.*, i, pp. iii-vii, nos. 2, 12, 242, ii, no. 457.

means as consistent as what was just discussed, nor are they as easy to assess without surviving originals. In fact, one of the few consistent actions which can be identified in the absence of originals is the fact that the scribe responsible for the papal section in q. 15 omitted the dating clauses from all the bulls which he transcribed into the manuscript.<sup>180</sup> Nevertheless, a comparison of the charters which were copied into the manuscript more than once, like Gilbert, bishop of Aberdeen's charter, also appear to provide some insight into the sorts of actions that may have transpired. As discussed above, the first copy of Gilbert's charter has a longer witness list than the second copy. However, while this is the case, the first copy has fewer diplomatic features than the second copy. In the second copy a consent clause is found in the notification, and a sealing clause is found before the attestation clause. However, both of these items are absent from the first copy.<sup>181</sup>

Apart from this, Geoffrey Barrow has also suggested that scribes may have added features to some of the charters in the cartulary including the *dei gracia* phrase included in the address of one of King William's brieves.<sup>182</sup> If Barrow is right, then the likely inspiration for the interpolation was King Alexander II's reissue of the command which was copied next in the cartulary.<sup>183</sup> However, as will be discussed in the next chapter, the inclusion of *dei gracia* could also be evidence of forgery.

#### *D. Omission of Charters*

In light of the fact that Kelso lost a number of its charters in the war, it may be a moot point to hypothesize about whether or not scribes purposefully omitted charters from

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<sup>180</sup> *Ibid.*, ii, nos. 460-69.

<sup>181</sup> For another example of diplomatic truncation, cp. *Ibid.*, i, nos. 46, 64.

<sup>182</sup> *Ibid.*, i, no. 5; *RRS*, ii, no. 95.

<sup>183</sup> *Ibid.*, i, no. 6. For a discussion of why scribes would have updated charters in cartularies, see Bouchard, 'Monastic Cartularies', pp. 30-1.

the collection. Moreover, the discussions in chapter three and four may make the task even more redundant. Nevertheless, evidence seems to suggest that scribes were being selective in terms of which instruments or copies of instruments they chose to transcribe, especially during phases one and two. This makes the topic worthy of at least some discussion, even if firm conclusions cannot be derived from the available source materials.

One of the biggest pieces of evidence which suggests that scribes were being selective in terms of what charters they copied is a rubricated word found in the margin next to a fragmented charter on f. 71r. The subject matter of this charter, which was scratched out with a large 'X', is Simon Mauleverer and his wife, Cecilia's gift of land in Mow for an indefinite period of time, and the word next to the charter is *vacat* or 'it is empty (or vacant)'. Therefore, based on this note, it appears that at least some scribes were not copying items which they knew were no longer held by the abbey, and thus, were irrelevant.<sup>184</sup>

Evidence also suggests that scribes omitted other categories of documents from the manuscript, though once again, the extent of such policies is by no means clear. Some scribes appear to have opted to omit charters which they deemed to be redundant, a point which is made by the fact that virtually all of the papal bulls which were copied into the manuscript belong to the relatively recent papacy of Innocent IV.<sup>185</sup> Scribes also appear to have transcribed very few charters issued by the abbot of Kelso to laymen. The abbatial charters that do survive only relate to the abbey's holdings in Lesmahagow, Duddingston, Midlem and Hume, even though the *Rotulus Redituum* makes it clear that such arrangements were commonplace in many

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<sup>184</sup> *Ibid.*, i, no. 172.

<sup>185</sup> *Ibid.*, ii, nos. 460-469.

regions.<sup>186</sup> There are very few charters recording agreements that Kelso had with their vicars of the churches. In fact, the only documents that survive are from the disputed churches of Campsie and Peterculter.<sup>187</sup> Charters recording the history of properties prior to Kelso's acquisition of them were also infrequently reproduced, even though the diplomatic suggests that the transference of charters was commonplace.<sup>188</sup> Moreover, charters which did not fit into the topographical subsections that they established also appear to have been omitted. This point seems to be apparent by the fact that a smattering of twelfth- and thirteenth-century charters were copied into the manuscript during the third phase of the cartulary's production, and these charters do not naturally fit into any of the topographical sections found in phase one.<sup>189</sup>

This said, no discernible policies can be identified which prompted scribes to include or exclude the types of charters which were most commonly copied into the manuscript - i.e. those which recorded key donations and confirmations of lands and churches to the abbey. Therefore, one must assume that losses likely dictated what was entered and what was not, and the statistics of these losses can be found in figures 3.1-3.3 below.

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<sup>186</sup> *Ibid.*, i, nos. 102-117, 242, 292-293; ii, 456-458, 460. For further discussion of the tendency to omit abbatial charters, see Morelle, 'Three Monastic Charter Collections', pp. 182-3; Takamori, 'Authority and Networks', pp. 25.

<sup>187</sup> *Ibid.*, i, nos. 231, 228

<sup>188</sup> *Ibid.*, ii, no. 441. The lack of these types of charters lies in stark contrast to what is evident in the Melrose and Coldingham collections. Coldingham issued and retained quantities of all of the aforementioned documents including Bishop Richard's confirmation to Kelso Abbey of the church of St. Laurence of Berwick, which was transferred to the priory when Kelso exchanged the church of St. Laurence for the church of Gordon (*ND*, no. 454).

<sup>189</sup> *Ibid.*, i, nos. 471, 474.

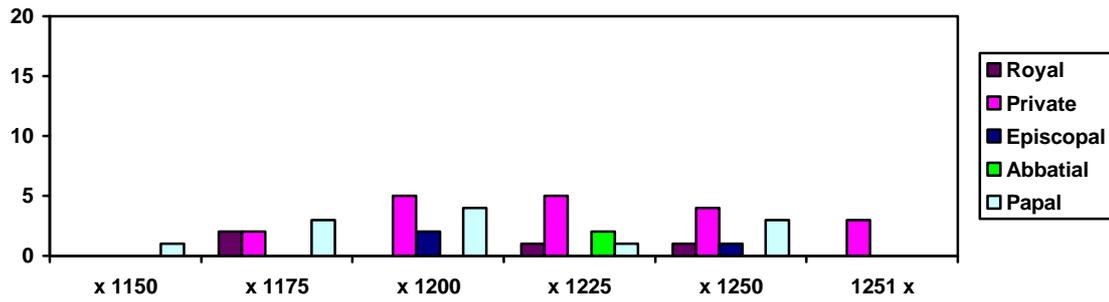
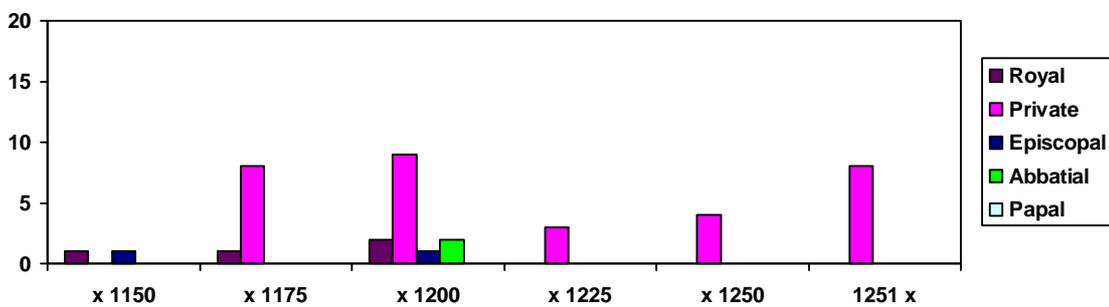
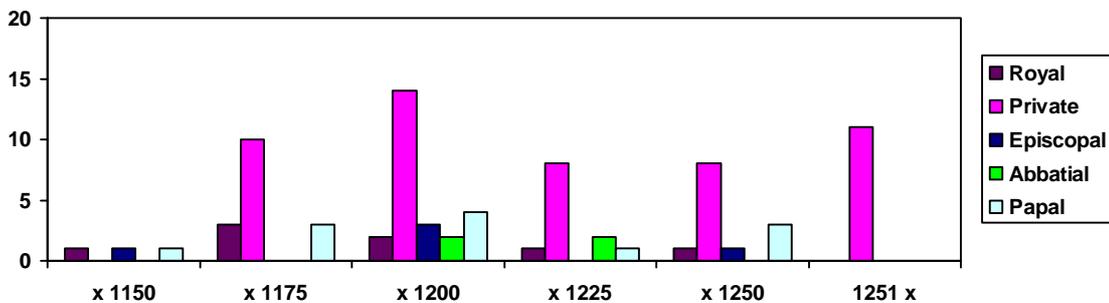
Figure 2.3: Lost Charters<sup>190</sup>Figure 2.4: Acts for Which No Charter References or Charters Survive<sup>191</sup>

Figure 2.5: Totals of Figures 2.3 and 2.4



Nevertheless, losses alone may not be solely accountable for the reason why we lack charters for some transactions, so it would be unwise to place too much confidence in these figures, particularly 2.3 and 2.4. In fact, charters may have not

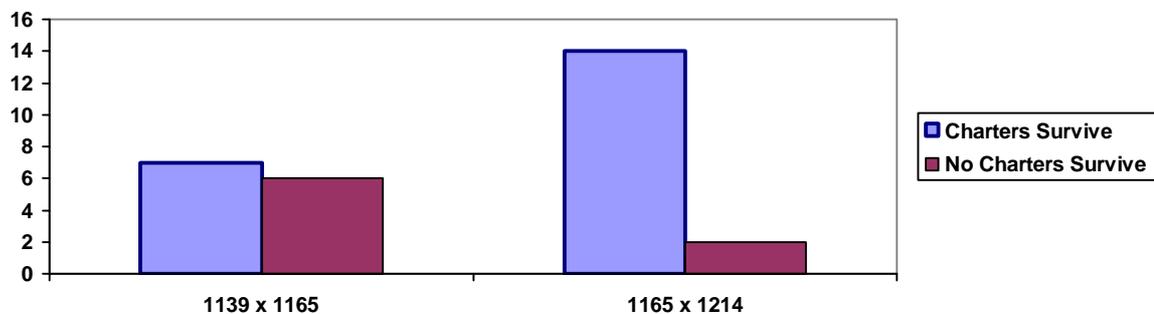
<sup>190</sup> Based on information in the appendix.

<sup>191</sup> Based on information in the appendix.

been produced for all of the gifts that the monks received, and this point is made most clear by evaluating evidence relating to the churches that they acquired.

As mentioned in chapter one, Kelso acquired forty-seven churches and chapels during the twelfth and thirteenth centuries, and charter texts survive for most of the original benefactions. However, private charters do not survive for eight particular transactions. As is demonstrated on figure 2.4, a majority of these transactions occurred prior to the death of Mael Coluim IV, and the first and only location in which four of them is recorded are the general confirmation charters of Mael Coluim IV and William I.<sup>192</sup> Obviously, general confirmation charters are not typically informative about the context in which gifts were made. However, contextual data does exist in charters relating to the other four transactions, and this information seems to suggest that charters were never produced on behalf of these individuals.

Figure 2.6: Survival Rates of Private Charters which Record the Initial Donations of Churches or Chapels<sup>193</sup>



One of the churches for which we lack a charter of donation is the church of Makerstoun, which was given to the abbey by Walter Corbet before 1160. The first record of this transaction is once again Mael Coluim IV's general confirmation

<sup>192</sup> *Kel. Lib.*, i, pp. iii-vii, no. 13; *RRS*, i, no. 130; *RRS*, ii, no. 367.

<sup>193</sup> The general confirmation of Earl Cospatric and the papal judges delegate resolution charters recording Simon Lockhart and Hervey the marshall's relinquishment of their chapels have not been included in this figure (*Ibid.*, i, nos. 71, 95-6; ii, no. 335). Similarly, only one of Gilbert son of Haldane of Hume's three charters relating to the chapel of Wedderlie has been included (*Ibid.*, i, no. 229).

charter.<sup>194</sup> However, at least five years after the production of this instrument, a charter was produced on behalf of Walter himself, and it states that he has given (*dedisse*) the church to Kelso *cum toftis et terra ad eandem Ecclesiam pertinente per easdem diuisas per quas eam tenuerunt in die quo hec carta facta est*.<sup>195</sup> There are several charters in the Kelso cartulary in which *in die quo hec carta facta est* or its equivalent is used, and all of them suggest that there was no documentation extant at the time which was adequate to describe the existing tenurial circumstances.<sup>196</sup> Consequently, this may suggest that a charter was never produced on behalf of Walter. In fact, one may never have been were it not for extenuating circumstances. Contained within Walter's charter is a declaration that he needed to annex a portion of the land belonging to the church, and this annexation appears to have been the catalyst which prompted the production of the charter in the first place. Therefore, if Walter never needed to annex this property, then the conditions of Walter's grant, like its three counterparts mentioned above, may forever have been confined to Malcolm IV's general confirmation.

Keeping in mind the fact that a charter may not have been produced on behalf of Walter, contextual data also survives relating to the circumstances in which the three final churches were conferred on the abbey. The nature of the earliest two transactions survive in charters produced on behalf of Arnold, bishop of St Andrews, and Herbert, bishop of Glasgow, which related to these two benefactions. Bishop Arnold's charter, which 'gave' the church of Horndean to Kelso, states:

*Noscant tam posterii quam presentes nos **dedisse** et episcopali  
auctoritate confirmasse [...] ecclesiam de Horueresdene quam*

<sup>194</sup> *Ibid.*, i, pp. iii-vii; *RRS*, i, no. 130.

<sup>195</sup> *Ibid.*, i, no. 235.

<sup>196</sup> *Ibid.*, i, nos. 112, 146; ii, no. 420.

*Willelmus de ueupunt in presencia nostra eis in elemosinam largitus  
est perpetuam*<sup>197</sup>

Significantly, Bishop Herbert's charter, which confirmed the church of West Linton that was given by Dodin, does not use *dedisse* in its dispositive clause. However, like the aforementioned, it does state that Dodin *donauit* the church to Kelso in the presence of the bishop (*me presente*).<sup>198</sup> Bishops had major jurisdictional interests in the parish churches within their dioceses throughout the middle ages, and they were particularly strong in the mid-twelfth century.<sup>199</sup> King David and Bishop John of Glasgow granted a church simultaneously to Kelso in the 1140s.<sup>200</sup> Moreover, David received John's consent when he granted the church of Lesmahagow to the abbey.<sup>201</sup> Robert bishop of St Andrews's charter, which confirmed King Mael Coluim's grant of the church of Keith-Humbie, states that he gave (*dedi*) the part of the church which still belonged to the bishop.<sup>202</sup> The fact that William of Vieuxpont and Dodin gave away their churches in the episcopal court likely reflects the innate interest of the bishop in ecclesiastical affairs during the mid-twelfth century, as does Arnold's use of the verb *dedisse* in his charter. Furthermore, these circumstances may suggest that charters were never issued on behalf of these benefactors. The practice of giving a church in the presence of the ordinary, and obtaining a charter from him, appears reminiscent of the medieval English legal custom of substitution in which a donor

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<sup>197</sup> *Ibid.*, ii, no. 417.

<sup>198</sup> *Ibid.*, ii, no. 436.

<sup>199</sup> I. B. Cowan, *The Medieval Church in Scotland*, ed. by J. Kirk (Edinburgh: Scottish Academic Press, 1995), pp. 6-7.

<sup>200</sup> *Kel. Lib.*, i, no. 23.

<sup>201</sup> *Kel. Lib.*, i, no. 8; *Charters of David I*, no. 130.

<sup>202</sup> *Ibid.*, i, nos. 8, 94.

surrendered property to his lord who then granted it to a donee.<sup>203</sup> In such cases, charters were not issued by donors to donees, but by intermediaries. Though what is evident in these charters does not appear to be substitution *per se*, the benefactors' actions do appear to reflect the notion that they acknowledged the bishop's authority as an individual who was the true overlord of these churches.

This said, the known circumstances surrounding the final ecclesiastical gift for which we lack a charter of donation, namely Hugh Sansmanche's donation of the church of Morton, also seems to corroborate the hypothesis that the lack of documentation was not the result of the loss of charters, but of the fact that charters had never been produced in the first place. Between 1173 and 1177, a charter which was produced on behalf of King William I states that he confirmed the donation of the church of Morton which Hugh *in presencia mea eis fecit*.<sup>204</sup> Like the gifts of the churches of Horndean and West Linton, the fact that we lack a charter in Hugh's name may be related to the fact that his gift was made in the presence of a superior lord who subsequently issued a charter.<sup>205</sup>

Having established that there is a strong reason to believe that charters were never produced on behalf of four individuals who gave churches to Kelso, the question naturally arises whether the four transactions discussed previously, which were recorded in the royal general confirmation charters, were also not accompanied by charters of donation. A charter survives in Durham Cathedral's archive which likely reinforces the notion that they were not. In the 1170s, as a result of a series of disputes, Kelso exchanged the church of St Laurence of Berwick, which Robert son of

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<sup>203</sup> J. Hudson, *Land, Law and Lordship in Anglo-Norman England* (Oxford: Oxford University Press, 1994), p. 209.

<sup>204</sup> *Kel. Lib.*, ii, no. 404.

<sup>205</sup> *RRS*, ii, no. 183.

William granted to the abbey, for the church of Gordon.<sup>206</sup> As part of the exchange, a charter which was related to the church of Berwick was given by Kelso to Durham. Interestingly, the charter which survives is not a charter issued by Robert son of William, but rather a charter issued by Richard, bishop of St Andrews, recording the fact that he, not William, gave (*dedisse*) the church of Berwick to Kelso.<sup>207</sup> Like Arnold's charter discussed on pages 112 and 113, *dedisse* is used, and these are the only two episcopal charters which relate to Kelso that use the verb (apart from Brice bishop of Moray's charter which records his original gift of the church of Birnie).<sup>208</sup> The fact that a charter produced on behalf of Robert son of William is not preserved in the Durham archive may suggest that Bishop Richard's charter, like Arnold's, was the only one produced. Moreover, it, along with the evidence presented above, really reinforces how difficult it is to pin down exactly why the Kelso Abbey cartulary lacks documentation for certain transactions.

### *E. Emulation of Hands*

Apart from creating *notitiae*, abbreviating or omitting diplomatic features and omitting entire charters, some scribes also emulated the handwriting found in items which they copied into the manuscript. This is the final scribal policy which will be discussed in this chapter; however, it is also one of the most important for the discussions of forgery which will transpire in chapters three and four. After all, if evidence suggests that scribes were copying from any original charter, then one is hard pressed to assert that they were forging items, unless alternate explanations can be given.

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<sup>206</sup> *Kel. Lib.*, ii, no. 420.

<sup>207</sup> *ND*, no. 434.

<sup>208</sup> *Kel. Lib.*, ii, no. 371.

Scribes' tendency to emulate the paleographical features of the charters which they copied into the Kelso Abbey cartulary has received very little exploration by scholars, though it has been acknowledged in other studies, including those produced by Geoffrey Barrow.<sup>209</sup> This said, not all of the scribes who copied material into the Kelso Abbey cartulary emulated the paleographical features found in the items which they copied, and those who did, did not always do it consistently. Sometimes particular features would be emulated, such as the way that a scribe formed a Tironian *et*, and in other instances scribes would attempt to copy the style of the handwriting in general. In a conference paper given in 2010, Alice Taylor noted that a scribe, who copied a charter produced on behalf of John, abbot of Kelso, (1160-80), emulated a number of the paleographical features when he copied it into the 'Abbots' section of the manuscript, including the way that the descenders and ascenders were formulated. However, when another scribe entered the same charter into the manuscript during phase three of its production, he simply copied it using his own hand, and even updated particular words to fit fourteenth-century conventions, including the spelling of the place-name Kelso.<sup>210</sup>

The sort of emulation found in the first copy of John's charter is also found in a number of other sections of the cartulary, though it is perhaps nowhere better illustrated than in the Gordon section of the manuscript. When the scribe entered a number of mid-thirteenth century charters produced on behalf of Thomas son of Thomas of Gordon, he emulated everything about these instruments, including the way that the letter 'd' was formed. This is best exemplified by comparing a portion of one of these items with an original charter which was produced in the mid-thirteenth

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<sup>209</sup> See notes for *Charters of David I*, no. 149

<sup>210</sup> A. Taylor, 'Lords and Men in Scotland: Anglo-Norman Feudalism Revisited' (unpublished conference paper, 2010).

century. As demonstrated on plates 2.3 and 2.4, the paleographical conventions are almost identical.

Plate 2.4: Section of Thomas son of Thomas of Gordon's Mid-Thirteenth-Century Charter (NLS, MS Adv. 34.5.1 f. 32r)

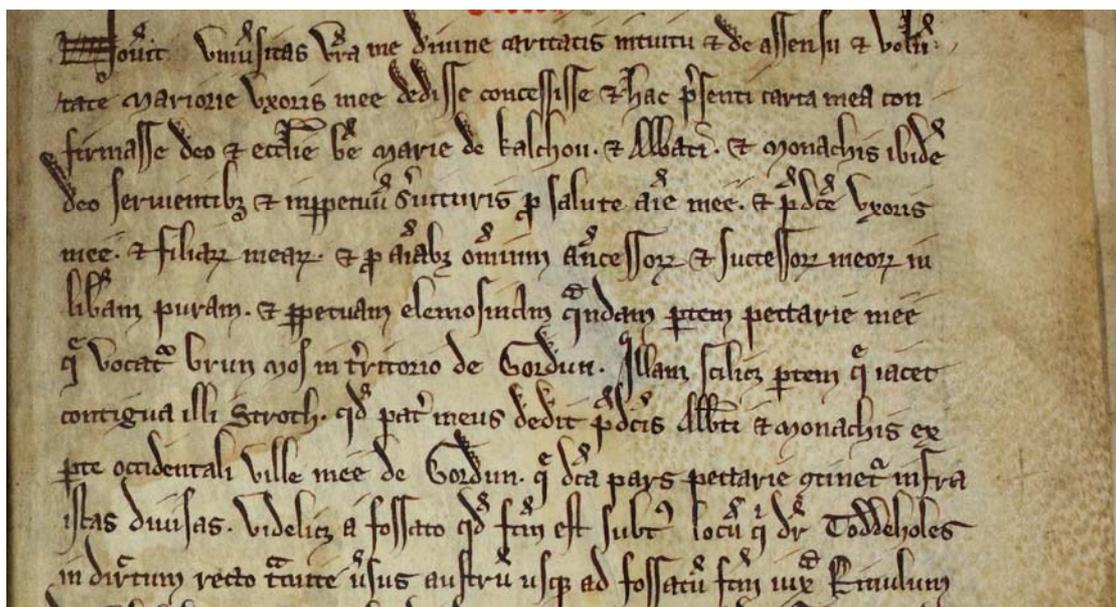
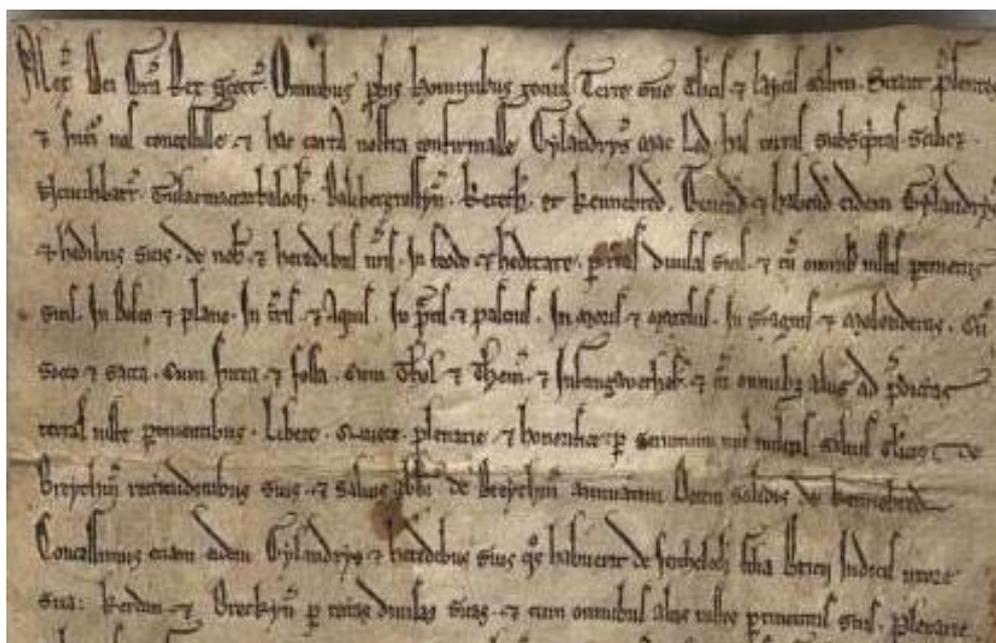


Plate 2.5: Charter by King Alexander II to Gill'Andreas McLeod, 19 April 1232<sup>211</sup>



<sup>211</sup> Angus Council Charter < <http://www.scran.ac.uk/database/record.php?usi=000-000-561-561-c&scachce=2x0.jhaswr&searchdb=scran> > [accessed 25 November 2010]

#### IV. Date of Production

Having established the nature of the cartulary and the policies of the scribes who produced it, this ultimately brings us to the question of when they started work on the manuscript. Several scholars have asserted that it was produced sometime during the early fourteenth century. However, virtually no evidence has been given to back up these suggestions.<sup>212</sup> In the absence of information about the specific individual(s) who commissioned it, one is forced to turn to the characteristics of the manuscript itself to corroborate or refute these statements. Two dimensions of the manuscript appear to be useful in this regard, namely its paleographical features and the nature of the charters which were copied into it.

Ultimately, the paleographical conventions found in the manuscript do corroborate Scottish historians' suggestion that it was produced in the early fourteenth century. The manuscript is written in an engrossing hand adopted for use in books, and stylistically the hand is most akin to *Anglicana* or *Anglicana Formata* which was fashionable in England during the first quarter of the fourteenth century.<sup>213</sup> Moreover, the latter characterization is probably most apt because there does appear to be an emphasis on calligraphy, particularly the formation of forked ascenders and distinct minims, which was absent from manuscripts written in the less-elaborate *Anglicana* style. However, such stylistic considerations do not allow us to do any more than pin down its production to a certain era. On the other hand, the dates of the charters found in the manuscript appear to be slightly more enlightening.

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<sup>212</sup> Archibald Duncan asserts that it was produced c. 1330 (Duncan, *Making of the Kingdom*, p. 642). Dauvit Broun noted that it was produced in the early fourteenth century (D. Broun, 'The Absence of Regnal Years from the Dating Clause of Charters of Kings of Scots, 1195-1222', *Anglo-Norman Studies*, 25 (2003), 47-63, p. 170).

<sup>213</sup> M. B. Parkes, *English Cursive Book Hands, 1250-1500* (London: Scolar Press, 1979), pp. xiv-xvii, 1-6.

As discussed above, the ‘original cartulary’ starts at f. 8 and ends at f. 164v (excluding no. 456). Within this section of the surviving manuscript, the seven charters which have the latest dates include two individual charters produced on behalf of King Robert that date from 1306 x 1329 and 12.4.1321 respectively,<sup>214</sup> two charters produced on behalf of Hugh Riddel that date from 1299 x 1321,<sup>215</sup> and individual charters produced on behalf of Robert of Keith (1306 x 1346),<sup>216</sup> Adam of Gordon (1296 x late 1320s),<sup>217</sup> and Bishop William of Lamberton (1308 x 1321).<sup>218</sup> As demonstrated, only one of these charters can be definitively dated. This happens to be a charter produced on behalf of King Robert which addressed the bishop of Glasgow and told him to ensure that Kelso received its annual pension of ten marks from the church of Campsy. The date given in this charter the 12 April 1321, and theoretically all of the other charters mentioned above, could have been produced before this date.

The fact that none of the other charters can be definitively dated after 12 April 1321 is noteworthy in terms of attempting to date the ‘original cartulary’. After all, during phases two and three of the production of the manuscript, the scribes did copy a number of items which can be dated to the late 1320s. In phase two, there is a charter recording a convention made between the abbot of Kelso and the burgesses of

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<sup>214</sup> *Kel. Lib.*, i, nos. 204, 234.

<sup>215</sup> *Kel. Lib.*, i, nos. 243, 244.

<sup>216</sup> *Kel. Lib.*, i, no. 100. It must be noted that Shead’s dating of a charter in the Kelso Abbey cartulary which records Robert of Keith’s confirmation is not accurate (*Kel. Lib.*, i, no. 100). He states that it was produced between 1324 - i.e. the date that Robert became marischal according to a charter by King Robert (*RRS*, v, no. 261) - and 1346 - i.e. the date of Robert’s death. However, King Robert’s charter which was produced in 1324 does not stipulate the date that Robert of Keith became marischal. Rather, this charter was produced to record the fact that King Robert had re-granted to Robert of Keith his title and lands following his resignation of title and lands in 1324. The object of this charter was to record the fact that the tailzie of the office of marischal, and the hereditary lands which came with the title, had been granted to his grandson and male heirs. Archibald Duncan explains the circumstances which likely led to this resignation in his edition of King Robert’s charters (*RRS*, v, p. 21).

<sup>217</sup> *Kel. Lib.*, i, no. 119.

<sup>218</sup> *Ibid.*, i, no. 309.

Wester Kelso which is said to have been produced on 11 July 1323.<sup>219</sup> Moreover, in phase three there is a charter recording Abbot William of Alynchome's gift of land in Lesmahagow to one of his tenants, which is dated to 18 August 1326.<sup>220</sup> There is also a charter recording John, bishop of Glasgow's gift of the church of Carluke (1324 x 1328),<sup>221</sup> an item which records an inquest into the boundaries of Prestfield in Bowden (1.5.1327),<sup>222</sup> a charter recording John Wallace's quitclaim of revenue from the ville of Auldton (5.12.1328),<sup>223</sup> a charter recording Roger of Auldton's gift of a chantry at the church of Roxburgh (1324 x 1329),<sup>224</sup> a charter recording King Robert's inspection of Roger of Auldton's charter (3.1.1329),<sup>225</sup> a charter recording John, bishop of Glasgow's confirmation of this gift (5.5.1329),<sup>226</sup> and a charter recording Alice, daughter of Hugh of Auldburgh's quitclaim of a tenement in Roxburgh to Roger of Auldton (24.7.1329).<sup>227</sup> Why did the scribes responsible for producing the 'original cartulary' not enter these items? Was it because they had not been produced yet? This seems like a reasonable explanation for their exclusion, especially considering the fact that the scribes who were involved in the production of the 'original cartulary' were keen to include charters relating to properties which they acquired in the fourteenth century. Why for instance did they include charters recording Bishop William of Lamberton's gift of the church of Newton and not Bishop John of Glasgow's gift of the church of Carluke? Moreover, why did they include some of King Robert's charters but not others? If the notion stands that it was because they were not yet created, then one still has to justify the fact that one

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<sup>219</sup> *Ibid.*, ii, no. 459.

<sup>220</sup> *Ibid.*, ii, no. 478.

<sup>221</sup> *Ibid.*, ii, no. 477.

<sup>222</sup> *Ibid.*, ii, no. 471.

<sup>223</sup> *Ibid.*, ii, no. 481.

<sup>224</sup> *Ibid.*, ii, no. 479.

<sup>225</sup> *Ibid.*, ii, no. 484.

<sup>226</sup> *Ibid.*, ii, no. 486.

<sup>227</sup> *Ibid.*, ii, no. 483.

fourteenth-century charter was entered during phase three which pre-dates 1321, namely an item produced on behalf of King Robert which records his gift of ten marks to Lesmahagow Priory (8.3.1316).<sup>228</sup> However, this is the lone exception, and its exclusion from the ‘original cartulary’ may simply be an anomaly.

If the rationale is sound that the post-1321 charters found in phases two and three which were not entered into the cartulary because they had not been created yet, then it seems reasonable to assert that the ‘original cartulary’ was produced sometime between the production of King Robert’s brieve on 12 April 1321, and the production of the instruments which are found in phases two and three of the cartulary. It may have been produced before the phase-two Wester Kelso charter which was said to have been produced on 11 July 1323. However, it was almost certainly produced before 18 August 1326 which is the date found in the phase-three William of Alynchome charter, which records his gift of land to one of Kelso’s tenants in Lesmahagow. In the two Lesmahagow sections in the ‘original cartulary’, there are a number of charters which relate to Kelso’s tenants in the region (including their fourteenth-century tenants), and the fact that this charter is not included in one of these sections is highly suspicious.

If the cartulary was started in the early- to mid-1320s, then this would place its production into a period in which a number of monasteries were taking action to rebuild after the events of the previous decades. Like Kelso, both Scone and Restenneth lost their charters at various points in their history. To deal with the problems at Restenneth, King Robert organized an inquest in 1322 and ordered 35 men from Angus to make a retour of the monastery’s property. On the other hand, to remedy the loss of Scone’s charters, King Robert commissioned his chancellor in

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<sup>228</sup> *Ibid.*, ii, no. 476.

1323 to make an enquiry into its possessions. The Scone enquiry, which took three years to fulfill, was carried out at the abbey's wishes, and its intention was to secure charters of renewal. However, it is noteworthy that since the abbey chose not to have recourse to inquest and retour, the chancellor was unable to establish what rights the abbey had without its charters, and the monastery continued to have difficulty.<sup>229</sup>

Apart from his efforts at Scone and Restenneth, King Robert also issued charters to a number of monasteries which confirmed their property in the early to mid-1320s. In 1323 x 1324, the possessions of Crossraguel Abbey were confirmed by the king, and in 1326, he issued a charter to Melrose confirming donations recorded in charters which were produced by previous earls of Carrick.<sup>230</sup> Moreover, in 1325, King Robert issued a general confirmation to Whithorn Priory confirming its land and rights as recorded in its charters.<sup>231</sup>

## *V. Conclusion*

As demonstrated in this chapter, the manuscript which historians know as the Kelso Abbey cartulary is far more complex than most individuals have yet to acknowledge. Among other things, the current codex demonstrates signs of having been rearranged, and some losses are certainly apparent. The cartulary was also not composed on one occasion, but in three distinct phases, and the scribes who produced it adopted various policies which distort the information found in the charters that they copied. Moreover, their policies also likely distort our impression of the variety of charters in the abbey's archive, though it is impossible to say to what extent this is true. One of

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<sup>229</sup> *RRS*, v, pp. 25-7, 124-5, no. 242, no. 285, no. 291, nos. 305, 307

<sup>230</sup> *RRS*, v, p. 25, nos. 395, 302

<sup>231</sup> *Ibid.*, v, p. 25, no. 275

the main reasons for this is the fact that it appears that charters were not always produced on behalf of particular benefactors. Hence, it is impossible to trust any statistical analyses that can be derived from the available source material, as was done with figures 2.1-2.3. However, it is noteworthy that these discoveries about scribal policies do reinforce some paradigms and potentially disprove others. Some of the paradigms which may be disproved will be discussed in the conclusion to this thesis, including historians' thoughts about witness list omission. This said, one of the points which these discoveries appear to reinforce is Laurent Morelle's suggestion that there is a direct correlation between the number of documents found in a cartulary from a specific period and the number of charters produced during that period. As noted in the introduction to this study, Morelle asserted that concerns over inept archival practices are not sufficient to account for the disparities between the old and new documents that one finds in many manuscripts, and David Bates has asserted that this is one area of research that would benefit from further research in Britain.<sup>232</sup> It appears that the evidence relating to that lack of early private charters in the Kelso Abbey cartulary does reinforce Morelle's suggestion that what we find in the manuscript is probably fairly representative of the types of charters that were actually produced during certain periods.

Nevertheless, perhaps the most important discovery of this chapter is the establishment of the likely date of the production of the 'original cartulary'. Not only was it produced following one of the most tumultuous times in the abbey's history, but it appears to have been produced during a period in which King Robert was attempting to help a number of monasteries to rebuild - i.e. the early to mid-1320s.

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<sup>232</sup> Morelle, 'Three Monastic Charter Collections', p. 171; Bates, 'Problems and Possibilities', p. 11.

This said, the striking thing about Robert's actions is that not all of them appear to have been fully successful. In fact, Scone Abbey seems to have struggled after the outcome of the 1323 commission because the bishops were unable to establish fully what Scone's rights were in the absence of its charters. As discussed, there is no evidence that any similar commission occurred at Kelso. However, seeing as such enterprises were not always successful when charters were lacking, the monks of Kelso may have decided to take matters into their own hands. Ultimately, evidence suggests that this is exactly what they did, and the next chapter will explore one of the ways in which they attempted to reassert themselves: forgery.

### **Chapter 3: The Authenticity of the Charters in the Kelso Abbey Cartulary**

In chapter one, it was noted that the predicament which Kelso faced in the early fourteenth century was highly reminiscent of the predicament which a number of monasteries faced who engaged in forgery. Among other things, their charters were destroyed, and the monks were forced to prove that they had claim to their property in the absence of such documents. Thereafter, in chapter two it was noted that the Kelso Abbey cartulary was produced during a period in which King Robert was attempting to help a number of monastic institutions to rebuild, and as will be discussed in the conclusion, evidence suggests that some of these institutions may have also forged charters during this period. However, just because the circumstances which Kelso encountered in the early fourteenth century were highly reminiscent of the circumstances which other institutions encountered who engaged in forgery does not mean that the monks themselves forged charters, or that the Kelso Abbey cartulary necessarily contains spurious items. After all, the monks may have relied exclusively on copies of their charters to produce the manuscript. Nevertheless, evidence suggests that this was not the case, and the following chapter will explore the points which suggest that spurious charters do exist in the manuscript, many of which appear to have been created at the time of its production.

The discussion of these elements will be divided into five main sections, and the first section will look at details in a number of items which appear to be clearly anachronistic, such as individuals being given credit for something after their death. Thereafter, the second section will look at points in a number of charters which appear to contradict what we know of Kelso's tenure prior to the production of the cartulary, and as such, make them candidates for forgery. The third section of the chapter will

evaluate the scribal deletions and interpolations which appear to give us insight into how particular items were transcribed, and at times, appear to suggest that cartulary copyists were using a formulary of some sort. Thereafter, the fourth section of the chapter will evaluate the diplomatic features found in the cartulary's charters, many of which certainly raise a number of questions about authenticity. As discussed in chapter two, there is only one charter which was copied into the cartulary that also survives as an original.<sup>233</sup> Hence, it is impractical to perform the traditional paleographical assessments which are used to identify forgeries in other collections. However, anachronistic diplomatic is almost as useful for identifying forgeries, since diplomatic conventions, like handwriting, also changed over time. Finally, the fifth section of the chapter will explore other elements which appear to be useful for identifying forgeries in the manuscript. These elements include the fact that a number of authentic charters do not make reference to the questionable charters in comparative clauses, and the fact that the witness lists in a number of the questionable charters are identical to the witness lists found in a number of authentic documents.

This said, before proceeding to discuss some of the points which do call the authenticity of several of the items into question, it is necessary to address some methodological considerations. Firstly, the reader should note that the intention of this discussion is not to provide an all-encompassing evaluation of each element which calls individual charters into question; these details can be found in the commentaries. Rather, the intention of the discussion in chapter three is to introduce some of the major types of evidence which suggests that spurious charters exist, and to justify the use of such evidence.

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<sup>233</sup> *Kel. Lib.*, i, no. 13; *RRS*, ii, no. 367.

Apart from this, the reader should also note that charters from the Melrose and Holyrood Abbey archives have been chosen as controls for this chapter's analysis of charter diplomatic for the specific reason that they contain a large number of 'original' charters which (if they are in a hand contemporary with the transaction), are unlikely to have been manipulated or tampered with. Moreover, the charters in the Melrose and Holyrood archives are also an ideal comparative case-study because when combined they mirror the types of charters found in the Kelso Abbey cartulary. As discussed in chapter two, a large variety of types of charters are found in the Kelso Abbey cartulary as a result of the fact that the monks acquired a large number of landed resources and churches. However, while the Cistercians at Melrose acquired a great deal of land, they acquired very few churches, and while the Augustinians at Holyrood acquired a large number of churches, they acquired comparatively little land, especially from individuals other than the king. Therefore, one is more likely to find private charters which recorded gifts of arable and pasture land in the Melrose Abbey archive, and one is more likely to find private or episcopal charters in the Holyrood Abbey archive that record donations of *spiritualia*. Figures 3.1-3.3 demonstrate the chronological and typological distribution of the charters in each of these collections. As demonstrated, the only weaknesses of using the Melrose and Holyrood collections as a control is the fact that comparatively few abbatial and pre-1175 charters survive in these collections compared to what is found in the Kelso Abbey cartulary. Therefore, other examples, from other archives, will be incorporated into the discussion as needed.<sup>234</sup>

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<sup>234</sup> Concerning the creation of these charts and those which follow, the reader should also take note of a few more methodological considerations. Firstly, in instances in which charters cannot be dated more precisely than a date-range - e.g. 1189 x 1214 - then the latest date in the range has been chosen. Hence, in the example given, since 1214 is the latest date, the charter would be included in the 'x 1225' range. A second methodological consideration which is pertinent relates to what defines the 'other' category. Virtually all of the charters found in the 'other' category are papal bulls and charters

Fig. 3.1: Statistical Overview of the Non-Royal Charters in the Kelso Abbey Cartulary

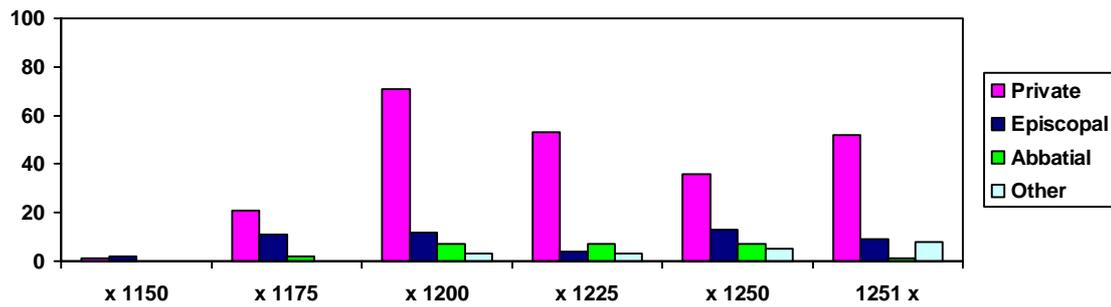


Fig. 3.2: Statistical Overview of the Non-Royal Charters in the Melrose Abbey Archive

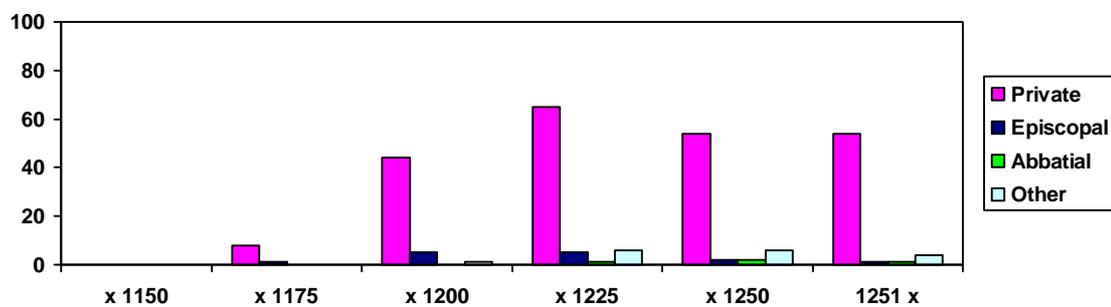
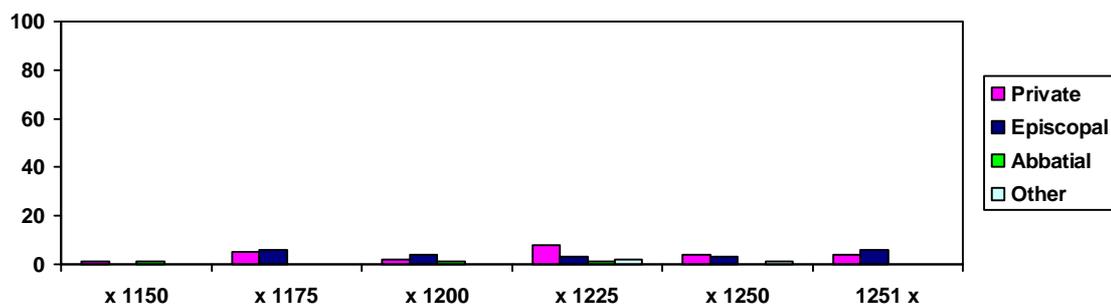


Fig. 3.3: Statistical Overview of the Non-Royal Charters in the Holyrood Abbey Archive



recording agreements which were not mediated by the king or a bishop. A final methodological consideration worth mentioning is why the royal charters were omitted from the charts. The reason that royal charters have been omitted is because all of the extant royal charters from the reigns of David I, Mael Coluim IV and William have been thoroughly assessed and published by Geoffrey Barrow. Therefore, if a control is needed for something said about a royal charter in the Kelso Abbey cartulary, then the material in these editions will be appealed to. Seeing as very few charters survive in the cartulary from the reigns of Alexander II and III, and no suspicion is attached to any of these items, no control is needed for Kelso's royal *acta*.

### *I. Contextual Anachronisms*

As discussed in the introduction, one element which this study has identified that calls the authenticity of a number of charters into question is contextual anachronism. Of all the elements which can be said to compromise the legitimacy of the charters in the cartulary, assertions that individuals carried out actions after their death are by far the most imprecatory points which have been discovered, and seven items appear to contain them. They include a *notitia* and a charter found in the Keith section of the cartulary, two charters found in the Mow section, a charter found in the Innerwick section, and two charters purportedly issued by the earls of Dunbar which are found in the Dunbar and Hume sections of the manuscript.

The discrepancies found in the *notitia* and the two charters in the Mow section are some of the most notable and easily discernible of the anachronisms that have been identified. The *notitiae* gives Mael Coluim IV, William I, and Alexander II credit for confirming an agreement made between Kelso and Hervey, the marischal (Comm. I, no. 1).<sup>235</sup> However, Mael Coluim IV could not have confirmed this convention because other charters in the manuscript make it clear that the agreement was decided upon by papal judges delegate between 1175 and 1178.<sup>236</sup> On the other hand, the two charters in the Mow section state that Simon Mauleverer was involved in his wife's donation of land in the region (Comm. I, nos. 10-11).<sup>237</sup> However, several charters in the Mow section state that the donation of his wife was made 'in her legal power' as a widow, thus excluding the possibility that he could have been involved in it.<sup>238</sup>

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<sup>235</sup> *Kel. Lib.*, i, no. 99.

<sup>236</sup> *Ibid.*, i, nos. 95-97.

<sup>237</sup> *Ibid.*, i, nos. 150-51.

<sup>238</sup> *Ibid.*, i, nos. 148, 157, 164, 171, 174.

This said, not all of the contextual anachronisms are so overtly apparent as these examples, and the discrepancy found in the charter located in the Keith section is a prime example (Comm. I, no. 8). The charter in question states that Simon Fraser gave the church of Keith-Humbie to Kelso along with a specific portion of land, and this land is perambulated according to certain bounds.<sup>239</sup> However, according to a clause found in a charter produced on behalf of King Alexander II, Simon could not have been responsible for this perambulation because the successor of Simon's daughter, namely Hervey son of Philip, was responsible for the action after Simon's death.<sup>240</sup>

The contextual anachronism found in the Innerwick charter is also not readily apparent (Comm. I, no. 7). The charter in question, which purports to have been produced on behalf of Robert of Kent, states that Robert and his father, Ralph of Kent, gave an oath promising not to sell land which Kelso held in the region to anyone except the Tironensians.<sup>241</sup> However, according to a charter in the Melrose Abbey archive, Ralph was dead prior to the earliest time in which he could have given this oath.<sup>242</sup> As will be discussed in the commentaries, the argument could be put forward that the oath occurred in a previous setting before Ralph's death. After all, the action of taking the oath is recorded in the perfect tense. Nevertheless, this is certainly not the impression that the charter gives, and the use of the perfect tense is to be expected seeing as an oath would have occurred before the production of a charter which records it. Moreover, Philip of Pitcox's charter in the Melrose Abbey collection,

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<sup>239</sup> *Ibid.*, i, no. 98.

<sup>240</sup> *concessisse* [...] *donacionem quam Symon fraser eis fecit de ecclesia de Keth cum tota illa terra et toto nemore ab australi parte riulli qui currit iuxta predictam ecclesiam per rectas diuisas contentas in confirmacione Heruei filii philippi marescalli* (*Ibid.*, i, no. 93). The boundaries in Simon's charter are identical to the ones found in Hervey son of Philip's charter which Alexander is referring to (*Ibid.*, i, no. 87).

<sup>241</sup> *Kel. Lib.*, i, no. 258.

<sup>242</sup> He is referred to as the 'late Ralph of Kent' in this charter which was clearly produced before the charter in the Kelso Abbey cartulary (*Melr. Lib.*, i, no. 60).

which records the fact that he and his son, Philip, swore an oath to Melrose in similar circumstances, has the same diplomatic construction as the Innerwick charter, and both individuals were clearly alive.<sup>243</sup>

Nevertheless, perhaps the most subtle contextual anachronisms which have been identified are located in the two charters found in the Dunbar and Hume sections of the manuscript (Comm. I, nos. 5, 9). One charter is a general confirmation purportedly produced on behalf of Earl Waltheof and another is a subject-specific confirmation charter purportedly produced on behalf of Patrick I. Earl Waltheof's general confirmation records the fact that he granted to Kelso the church of Greenlaw with one ploughgate,<sup>244</sup> and this action is called into question by a *pro anima* clause found in a charter produced on behalf of his brother, Patrick son of Cospatric.<sup>245</sup> In a similar fashion, Earl Patrick's charter, which records the fact that he confirmed his daughter's gift of land in Hume, is called into question by the formulae in the *pro anima* clause in his daughter's charter which imply that he was dead at the time that she granted the land in question.<sup>246</sup> This said, the value of the *pro anima* clauses as dating mechanisms has been questioned. Therefore, it is necessary to validate whether or not what we are seeing here are in fact discrepancies.

Traditionally, the reason that *pro anima* clauses have been seen to be valuable means to date charters is because they often distinguish between individuals who were living and dead through the use of contrasting phraseologies. This is best exemplified in a general confirmation charter produced on behalf of William de Vieuxpont where

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<sup>243</sup> *Mel. Lib.*, i, no. 220. In this charter, Philip of Pitcox states that because the ten acres of land in 'Beleside' which he gave, and Philip, his son, confirmed, to the monks of Melrose near their land of 'Edmuniston' were hindering a certain agreement made between him and Roger de Merley at the time of the donation, he was not able to warrant it. He and Philip, his son, by the interposition of faith (*fide interposita*), vowed an oath that if before the end of ten years they were not able to provide the ten acres of land for the monks, they will proceed to warrant it without any doubt. The same formulation, including the *fide interposita* phraseology, is found in the Robert of Kent charter.

<sup>244</sup> *Kel. Lib.*, i, no. 73.

<sup>245</sup> *Ibid.*, i, no. 74.

<sup>246</sup> *Ibid.*, i, no. 129-30.

*pro salute* is used for those individuals who were living and *pro animabus* was used for those individuals were dead:

*pro salute dominorum meorum Regis Willelmi et Regine et eorum filii  
Alexandri et ceterorum liberorum eorum et pro salute mea et coniugis  
mee et heredum meorum et pro animabus Regis David et Malcholom'  
et comitis Henrici et pro animabus patris mei et matris mee et omnium  
antecessorum et successorum meorum*<sup>247</sup>

However, a debate has ensued over the value of such clauses because some historians have questioned whether or not these contrasting phraseologies are trustworthy. Scottish historians seem to fall into one of two camps over the issue. On the one hand, there are those individuals who seem to be perfectly comfortable with using these diplomatic features as means to date the twelfth- and thirteenth-century legal instruments, and many of these historians are the ones responsible for contributions to the ‘Syllabus of Scottish Cartularies’ dating project. On the other hand, there are those who are a bit more suspicious about how accurately these features give an impression of who was alive and dead. However, most of this distrust is informal and no historian has gone through the trouble of publishing a piece of work on the subject. In fact, the only individual to actually tackle the subject in writing was Elsa Hamilton. In her unpublished thesis on the acts of the earls of Dunbar, Hamilton noted that the scribes who produced the earls’ charters tended ‘to use *pro*, *pro salute*, or most commonly, *pro salute anime/animarum* for the living’ and ‘*pro anima/animabus* for the dead’.<sup>248</sup> However, she also states that there are anomalies when scribes ‘made an error, failed

<sup>247</sup> *Ibid.*, i, no. 140

<sup>248</sup> Hamilton, ‘Earls of Dunbar’, p. 87.

to update the wording of earlier charters or took short-cuts', and she provides several examples to make her point. These include Earl Patrick I's confirmation of the church of Lennel and the land of Skaithmuir which was made *pro salute anime mee et predecessorum meorum* and *pro salute animarum omnium antecessorum meorum*, and Patrick I's confirmation of his son's quitclaim of Swinewood which was made *pro anima mea et animabus patris et matris mee et omnium parentum animabus predecessorum meorum*. She asserts that '[t]hese exceptions and others are a reminder that it is unwise to place much reliance upon these phrases in dating charters by assuming the death of someone cited in the *pro anima*.'<sup>249</sup>

Ultimately, Hamilton's distrust of *pro anima* clauses has validity, and these diplomatic features have certainly been inappropriately used. In many instances in the *Syllabus of Scottish Cartularies* project, scholars have used *pro anima* clauses to date charters when no contrasting phraseologies were apparent.<sup>250</sup> However, it must also be noted that Hamilton's study was also restricted in that it only surveys a relatively small number of charters which were derived from various archives (a point which she fully acknowledges throughout her assessment). Therefore, a fuller, more systematic analysis is warranted.

The non-royal charters found in the Melrose Abbey archive and the Kelso Abbey cartulary are adequate to conduct such a study, not only because both collections contain such a large number of charters which have *pro anima* clauses, but also because both collections are quite similar in terms of statistical considerations. Firstly, both collections have roughly the same number of non-royal charters which have the clause: 121 non-royal charters which survive for Melrose have *pro anima* clauses and 116 non-royal charters which survive for Kelso have the diplomatic

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<sup>249</sup> *Ibid.*, p. 88.

<sup>250</sup> e.g. N.F. Shead, 'Syllabus of Scottish Cartularies: Kelso' (Scottish Medievalists, 2002), no. 52.

feature. Moreover, as is demonstrated on Figs. 3.4 and 3.6, the numerical, chronological and typological distribution of charters in the Melrose Abbey archive which have *pro anima* clauses is roughly the same as that which is found in the Kelso Abbey archive - i.e. an overwhelming majority of the charters which have the feature in both collections are private charters, and the number of private charters with *pro anima* clauses which were produced during each quarter-century is roughly the same. Finally, the two case-studies are also statistically similar in terms of the number and distribution of *pro anima* clauses which have the formulae which distinguish between the living and the dead. As demonstrated on Figs. 3.5 and 3.7, a little over half of the *pro anima* clauses which appear in the Melrose Abbey archive incorporate formulae which distinguish between the individuals listed in the feature (i.e. 76 out of 121), and a little under half of the *pro anima* clauses in the Kelso Abbey cartulary use distinguishing phraseologies (i.e. 49 out of 116).<sup>251</sup>

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<sup>251</sup> The private, episcopal and agreement charters found in the Holyrood archive, which contain a total of fourteen *pro anima* clauses, will not factor into this discussion. The reason for this is quite simple: the scribes who produced the charters where these clauses are found either stated that the corresponding transactions were made for the spiritual benefit of particular individuals who were alive, or particular individuals who were dead. They rarely stated that transactions were made for the benefit of specific people who were alive and dead, thus making it unnecessary to distinguish between individuals using disparate phraseologies. Exactly why the Holyrood *scriptorium*, or those responsible for producing Holyrood's charters, failed to duplicate what is found in the Kelso Abbey cartulary and Melrose Abbey archive is worthy of fuller investigation. However, it is beyond the scope of this analysis.

Fig. 3.4: Incorporation of Pro Anima Clauses into Melrose Abbey's Charters

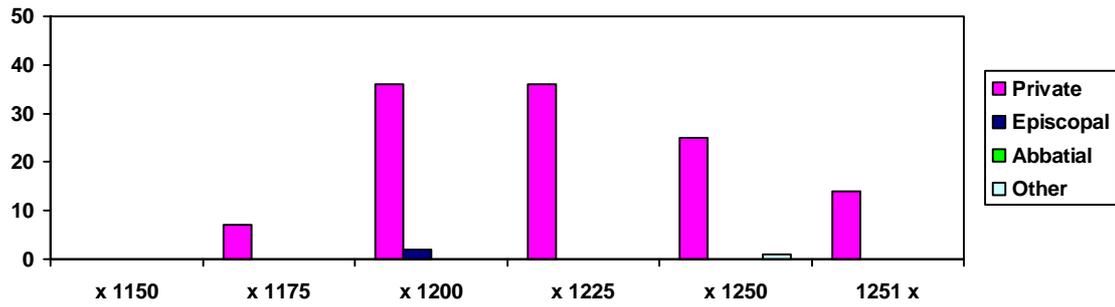


Fig. 3.5: Use of Phraseologies which Distinguish Between the Living and the Dead in the Melrose Abbey Archive

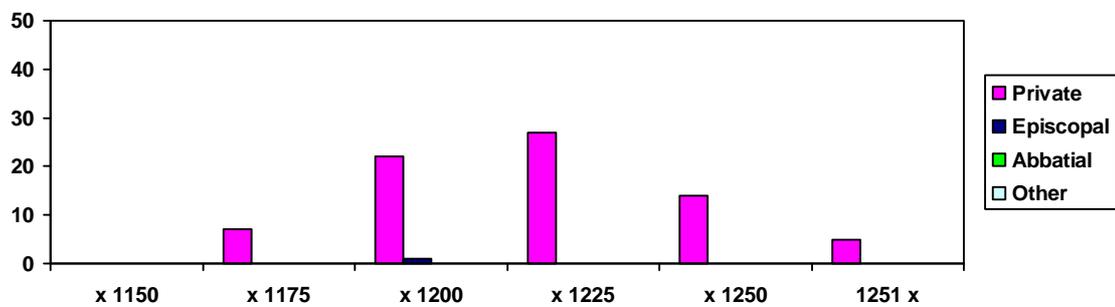


Fig. 3.6: Incorporation of Pro Anima Clauses into Kelso Abbey's Charters

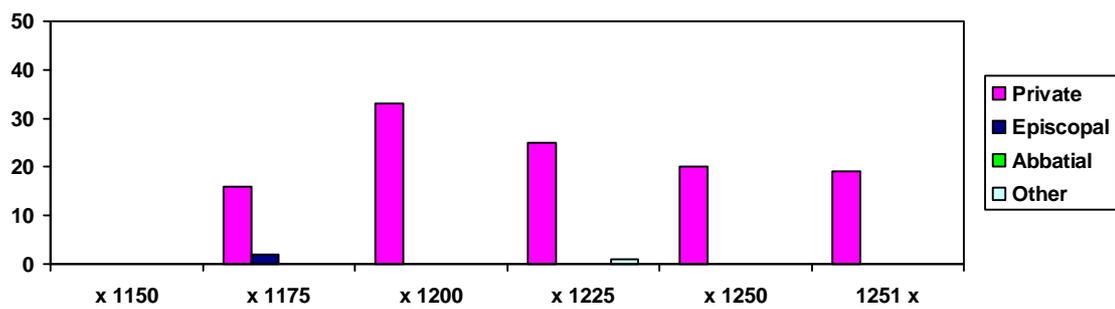
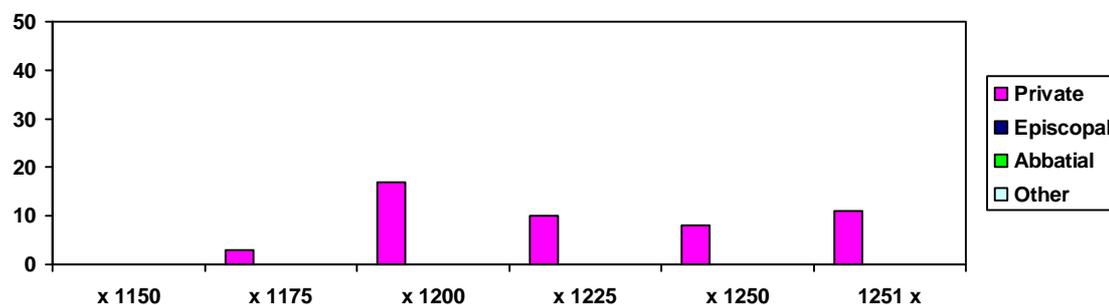


Fig. 3.7: Use of Phraseologies which Distinguish Between the Living and the Dead in the Kelso Abbey Cartulary



Having established the nature of the case-studies, this ultimately brings us to the question of what these examples can tell us about the value of *pro anima* clauses as a means to identify individuals who were alive and dead. First and foremost, it must be noted that the statistics in Figs. 3.4-3.7 do corroborate Hamilton's suggestion that not all *pro anima* clauses are helpful means to date charters. Nearly half of the *pro anima* clauses found in the non-royal charters in Melrose Abbey archive lack distinguishing *formulae*, as do over half of features found in the charters located in the Kelso cartulary. This said, most of the clauses which lack the discriminating sub-features do not specifically list specific individuals who were dead, and an example of this is found in Patrick of Ryedale's charter to Melrose which stipulates that he confirmed twenty acres near Whitton *pro anima mea et animabus omnium antecessorum et successorum meorum*.<sup>252</sup> On the other hand, some clauses do list individuals who were alive and dead without distinguishing between them, and an example of this is found Earl Cospatic's charter to Kelso which stipulates that his donation of the church of Greenlaw was made *pro anima Regis D[avid] et comitis Henrici filii eius et pro anima mea et patris mei et matris mee et antecessorum et*

<sup>252</sup> *Melr. Lib.*, i, no. 153

*successorum meorum.*<sup>253</sup> Earl Cospatric's father was certainly dead by the time in which this charter was produced; however, he was listed following the same formulaic prelude where Cospatric himself is found.

Generally, it appears that most of the charters which have clauses that do not distinguish between the living and the dead were produced in a relatively early epoch in the diplomatic development of these houses. However, the fact that anomalies exist at all ultimately raises the question of how discriminating the scribes actually were. This is not always an easy question to answer since it is not always possible to ascertain for certain whether or not particular individuals were alive or dead at the time of a particular transaction. Fathers, mothers, siblings and spouses are a case in point. However, certain individuals can be definitely identified as either being alive or dead, and by evaluating how these individuals were treated in the lists, it is possible to make some statement about scribal protocol.

When evaluating the placement of those individuals who can be definitively identified as alive or dead, one is hard struck to find any examples which do not conform to the traditional stance that these features are useful for identifying the biological state of people at specific points in history. In fact, as is exemplified in the following examples, scribes appear to have made a conscious effort to contrast between individuals using disparate *formulae*:

*pro animabus Daudid et Malcolmi regum scocie et Comitiss Henrici et  
pro animabus patris mei et matris mee et ade comitisse quondam  
uxoris mee et pro salute domini Willelmi regis et regine et Alexandri*

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<sup>253</sup> *Kel. Lib.*, i, no. 79.

*fili eorum et pro salute mea et cristine comitisse uxoris mee et pro salute patricii filii mei et omnium filiorum meorum et filiarum*<sup>254</sup>

*pro anima Henrici comitis domini mei et pro anima Johannis filii mei quorum corpora apud eos tumulantur et pro salute anime mee et antecessorum et successorum meorum*<sup>255</sup>

*pro anima domini mei Gauterii filii Alani et pro anima filie mee que apud Kelcho sepulta est et pro salute anime mee et omnium antecessorum et successorum meorum*<sup>256</sup>

This said, one anomaly can be noted, namely the fact that *animabus* is located after a reference to Hugh de Bolebech in one of his charters of donation in the Kelso Abbey cartulary. However, this anomaly could easily have been a stylistic fluke, and the dichotomy is still generally maintained in this example:

*pro anima patris mei Walteri de Boleb'c et pro salute anime Sibille de Bol' matris mee et pro anima mea et fratris mei predicti Hug' de bol' et pro animabus omnium antecessorum et successorum meorum*<sup>257</sup>

Having established that the living/dead dichotomy does appear to be generally maintained in the collections, this brings us back to the *pro anima* clauses in Patrick son of Cospatric's and Ada's charters which call the authenticity of the earls' charters

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<sup>254</sup> *Melr. Lib.*, i, no. 48.

<sup>255</sup> *Kel. Lib.*, i, no. 274.

<sup>256</sup> *Ibid.*, i, no. 146.

<sup>257</sup> *Ibid.*, i, no. 266.

into question. Based on what is demonstrated in the other *pro anima* clauses in the collection, there is no reason to doubt that these *pro anima* clauses give us an inaccurate picture of who was alive or dead. The clause in Patrick son of Cospatric's charter is the following: *pro salute anime mee et pro animabus patris mei et matris mee et fratris mei Walleui Comitis et uxoris mee et omnium antecessorum et heredum meorum*,<sup>258</sup> while the clause in the latter charter is: *pro salute anime mee et pro animabus patris mei et matris mee et maritorum meorum et omnium antecessorum meorum in ligia postestate*.<sup>259</sup> As demonstrated, these are archetypical examples of scribal distinction. Moreover, as will be discussed in the commentaries, we know that Patrick son of Cospatric's father and mother were dead prior to the production of his charter, as were both of Ada's husbands. Why would the scribes who produced these charters break with the protocol exemplified in every other extant charter in the Kelso and Melrose collections and lump individuals who were alive with individuals who were dead? The answer seems to be that they did not.<sup>260</sup>

## II. Contradictions

A second element which this study has identified which calls the authenticity of a number of charters into question is the contradiction. As noted in the introduction, a number of charters appear to contain information which contradicts what is known of the state of Kelso's holdings at particular points. Though such elements are by no means as concrete as anachronisms for evaluating authenticity, in combination with irregular diplomatic or textual anomalies, such indications do appear to be useful for

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<sup>258</sup> *Ibid.*, i, no. 74.

<sup>259</sup> *Ibid.*, i, no. 129.

<sup>260</sup> Several other *pro anima* clauses could be noted which list one individual after *pro salute* and several individuals after *pro anima*, or vice-versa. In all of these cases, the individuals listed after *pro anima* appear to be dead (e.g. *Melr. Lib.*, nos. 249, 256; *Kel. Lib.*, i, no. 364).

calling the veracity of particular charters into question. Eight of the charters in the cartulary appear to contain them, and these items include three charters found in the first royal section and individuals charters found in the episcopal, papal, Innerwick, Keith and Langton sections.

The charter found in the episcopal section contains information which is probably the most overtly contradictory of any of the examples discovered above (Comm. I, no. 12). It purports to record David of Bernham's gift of the chapel of Wedderlie *in proprios usus* and contains a statement which is in conflict with the known status of the chapel in the mid-thirteenth century. Among other things, it states that the monks could appoint a chaplain in the chapel instead of a vicar.<sup>261</sup> However, such a gift would be almost nonsensical seeing as Wedderlie was a dependant chapel of the parish church of Hume during Bishop David's episcopacy. As will be discussed in more detail in the next chapter, the most likely way to account for this contradiction is that it was produced using another charter which the same bishop issued to Kelso relating to a parish church.<sup>262</sup>

A similar sort of contradiction is found in one of the charters located in the royal section (Comm. I, no. 4). The charter in question records King Mael Coluim IV's gift of the church of Innerleithan, and it states that the king had a son whose body rested at the church on the first night after his death.<sup>263</sup> However, no other source material corroborates the fact that King Mael Coluim had any offspring, and hence, something appears to be afoot.

This said, not all of the charters mentioned above contain information which is as overtly contradictory as these examples. In fact, all of the other contradictions are far more subtle. For instance, King David's general confirmation charter, which is the

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<sup>261</sup> *Kel. Lib.*, ii, no. 455.

<sup>262</sup> *Ibid.*, i, nos. 277-78; ii, nos. 421, 424.

<sup>263</sup> *Ibid.*, i, no. 21; *RRS*, i, no. 229.

first charter found in the first royal section (and the first charter found in the cartulary), fails to mention the church of Lesmahagow, even though the monks had certainly acquired it before the time that the charter was purportedly produced (Comm. I, no. 3).<sup>264</sup> Another example of a subtle contradiction is also located in another charter found in the first royal section - i.e. the Lesmahagow foundation charter (Comm. I, no. 2). This charter states that King David granted the church of Lesmahagow to Kelso in return for nothing but prayers, and it also states that the prior and monks were to be 'of the order and habit of Kelso'.<sup>265</sup> However, we know from other documentation that the monks were required to render more than just prayers for the land of Lesmahagow.<sup>266</sup> Moreover, as discussed in chapter one, the notion that an 'order of Kelso' would have existed in 1144, which is the date found in this charter, is far-fetched.

Like the aforesaid, subtle contradictions are also found in the other four charters mentioned above. The charter located in the papal section refers to the chapel of Wedderlie as a church, and thus contradicts all other extant evidence relating to the institution (Comm. I, no. 14).<sup>267</sup> The charter in the Langton section states that William de Vieuxpont wanted the monks to hold the church of Langton in accordance with an assize (*assizam*) issued by King David, a point which flies in the face of a statement found in three charters issued by his son which asserts that the assize was issued by a bishop (Comm. I, no. 16). The charter in the Innerwick section, which as discussed contains a contextual anachronism since it gives Ralph of Kent credit for taking an oath after his death, not only records the fact that Robert of Kent disavowed all responsibility for the production of a charter found in the Melrose Abbey archive, but

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<sup>264</sup> *Ibid.*, i, no. 2; *Charters of David I*, no. 183.

<sup>265</sup> *Kel. Lib.*, i, no. 8; *Charters of David I*, no. 130.

<sup>266</sup> *Ibid.*, ii, no. 474.

<sup>267</sup> *Ibid.*, ii, no. 469.

it states that it was procured against his faith by theft or deception (Comm. I, no. 7).<sup>268</sup> It is very difficult to believe that this statement could be genuine unless the Melrose Abbey charter is a forgery. After all, in the same charter Robert asks the Cistercians to allow him to become a monk if he wants to become one, and he also acquires the right to be buried at the monastery.<sup>269</sup> Finally, the charter in the Keith section states that Hervey son of Philip the marischal perambulated the land of the church of Kelso in the same manner as his grandfather or predecessor twice removed (Comm. I, no. 19). This point also seems nonsensical considering the fact that his mother (or immediate predecessor) issued a charter with a more specific perambulation than that of his grandfather (or successor twice removed). One would assume that if the scribe responsible for producing this charter was inclined to reproduce a perambulation it would be hers, not his.

### *III. Deletions and Interpolations*

As discussed in the introduction, a third element which this study has identified that calls the authenticity of a number of charters into question is textual anomalies which can be found in the manuscript, particularly amendments and corrections. Corrections manifest themselves in two ways in the manuscript. Sometimes words, phrases or entire charters were deleted, and the scribes typically deleted items by underlining them. Other times, words, phrases or entire charters were interpolated, and scribes typically interpolated items by inserting them into the margin or between the lines of the text. Many times such deletions or interpolations appear to be the result of careless

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<sup>268</sup> *Ibid.*, i, no. 258.

<sup>269</sup> *Melr. Lib.*, i, no. 59.

copying. However, at other times, deletions or interpolations seem to betray the fact that the scribes were using a formulary or exemplar to create the items.

One example of a series of deletions/interpolations which suggests that a scribe was fabricating a charter using a formulary appears to be present in the Innerwick section of the manuscript (Comm. I, no. 6). This charter purports to have been produced on behalf of Robert of Kent, Robert Hunald and Roland, son-in-law of Nicholas de Cotentîn, and it records their gift of land in Innerwick for thirty-three years.<sup>270</sup> As will be discussed in the commentaries, there are several problematic dimensions of this charter. For one, the witness list appears to have been compiled *post facto*, and when it was finally incorporated into the manuscript two scribes appear to have copied it, presumably deriving the witnesses from Alan, son of Walter's charter which confirmed their donation.<sup>271</sup> However, the corrections found in this charter suggest that Alan's charter was likely used as the exemplar to create the charter in the first place. Structurally, Alan's charter and this charter are virtually identical. They have the same diplomatic features and the same stipulations. The one difference between them is that Alan's charter uses the third-person plural to refer to the actions of his knights and the first-person singular to refer to his personal promises (i.e. warrandice, *sine malo ingenio*, etc.). As is demonstrated on plate 3.1, the scribe who copied the knights' charter into the manuscript was forced to correct two mistakes in the *sine malo ingenio* clause. When transcribing the charter, he accidentally used the first-person singular (i.e. *me* and *meis*), instead of the first-person plural (i.e. *nobis* and *nostris*) in the clause. Typically, one would be tempted to attribute this mistake to carelessness in copying. Perhaps the scribe was copying too quickly, was in the habit of copying *sine malo ingenio* clauses in the first-person singular, or

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<sup>270</sup> *Ibid.*, i, no. 256.

<sup>271</sup> *Ibid.*, i, no. 248.

simply made a mistake. However, as discussed above, there is another explanation which could also account for the mistake. Could it be that the reason he made the error in the first place was because he formulated the charter using Alan's charter as an exemplar? In light of the evidence in the witness list, this seems like a more likely possibility.

Plates 3.1 and 3.2: Robert of Kent, Robert Hunald and Roland, son-in-law of Nicholas de Cotentin, charter (NLS, MS Adv. 34.5.1, ff. 104v-105r)

**Conuencio s<sup>r</sup> q<sup>u</sup>inda t<sup>r</sup>am i t<sup>r</sup>itorio de Inuerbice**  
 Unus sc<sup>r</sup> ayris ecc<sup>l</sup>ie filius et fidelibz Robert<sup>o</sup> de Kent et Rob<sup>o</sup> Hunaud et  
 Roland<sup>o</sup> gen<sup>o</sup> Rich<sup>o</sup> de Constant salt<sup>o</sup>, iouint om<sup>n</sup>es ca<sup>u</sup> post<sup>o</sup> q<sup>u</sup> p<sup>r</sup>esentes in  
 dedisse ad firmam t<sup>r</sup>iginta t<sup>r</sup>ibz annis et h<sup>o</sup> sc<sup>r</sup>to n<sup>r</sup>o confirmasse Albr<sup>o</sup> et ayochis  
 de kelch t<sup>r</sup>am n<sup>r</sup>am et nem<sup>o</sup> et pastam i t<sup>r</sup>itorio de Inu<sup>r</sup>bice q<sup>u</sup> e<sup>st</sup> t<sup>r</sup>am eor<sup>u</sup>  
 dem ayochoz de kelcho, sic uidet<sup>ur</sup> ruul<sup>o</sup> de Calbarde sloch cadit i bochtel  
 iux<sup>t</sup> elreshalech et ita sic bochtel descendit usq<sup>ue</sup> ad bucca de fullhope et p<sup>r</sup> full  
 hope i t<sup>r</sup>isus p<sup>r</sup> diuisas de Inu<sup>r</sup>bice et de Elluar usq<sup>ue</sup> ad mannet et p<sup>r</sup>  
 mannet usq<sup>ue</sup> ad aq<sup>u</sup>lonare p<sup>r</sup>te de Wichtlede et ab aq<sup>u</sup>lonari p<sup>r</sup>te de Wicht  
 slede i t<sup>r</sup>isus usq<sup>ue</sup> i Calbarde sloch et ita sic ruul<sup>o</sup> de Calbarde sloch cadit  
 i bochtel. Tenebunt au<sup>tem</sup> t<sup>r</sup>am et nem<sup>o</sup> et pastam in p<sup>r</sup>da<sup>o</sup> diuisas de nob<sup>o</sup> et  
 hedibz n<sup>r</sup>is t<sup>r</sup>iginta t<sup>r</sup>ibz annis, liba et q<sup>u</sup>er<sup>a</sup> ab o<sup>m</sup>n<sup>n</sup>ibz s<sup>r</sup>uic<sup>o</sup> et de Inu<sup>r</sup>bice et de  
 Velbare et de o<sup>m</sup>n<sup>n</sup>ibz auxilis et ab o<sup>m</sup>n<sup>n</sup>oda consuetudine et exactione reddedo nob<sup>o</sup>  
 in t<sup>r</sup> hedibz n<sup>r</sup>is p<sup>r</sup> fina singulis annis viginti sol ad festu<sup>m</sup> s<sup>c</sup>i Jacobi. Li  
 tebit a<sup>u</sup> p<sup>r</sup>da<sup>o</sup> ayochis uicq<sup>ue</sup> uolunt in p<sup>r</sup>ptas diuisas hitacula et sca  
 lingas s<sup>c</sup>i th<sup>o</sup>ibz suis, t<sup>r</sup>ialibz suis p<sup>r</sup>stare et h<sup>o</sup>are, et alio q<sup>u</sup>libz in comod<sup>o</sup>

sui face. Et licebit t<sup>r</sup>am n<sup>r</sup> p<sup>r</sup> ip<sup>s</sup>os ayochos in p<sup>r</sup>ptas diuisas sc<sup>r</sup>alinga  
 pone<sup>re</sup> et mansiones face<sup>re</sup>, ip<sup>s</sup>i q<sup>u</sup> et ho<sup>m</sup>es eor<sup>u</sup> accipiet de bosco a<sup>u</sup>siama  
 sua ad ardens et edificans q<sup>u</sup>ntu<sup>m</sup> uolunt t<sup>r</sup> ad uilla de Spectum q<sup>u</sup> ad  
 illa t<sup>r</sup>am q<sup>u</sup> de nob<sup>o</sup> tenet, s<sup>ed</sup> no<sup>n</sup> licebit eis q<sup>u</sup>q<sup>ue</sup> de bosco uendere, s<sup>ed</sup>  
 de brueve licebit eis et ho<sup>m</sup>ibz eor<sup>u</sup> uende<sup>re</sup>, pone<sup>re</sup> et p<sup>r</sup>san ayochi i defen  
 sione una p<sup>r</sup>tem nemoris ad a<sup>u</sup>siam sua<sup>m</sup> et pone<sup>re</sup> foresta<sup>m</sup> si uolunt ad  
 ip<sup>s</sup>um nem<sup>o</sup> custodiend<sup>o</sup> ita q<sup>u</sup> n<sup>u</sup>lls inde q<sup>u</sup>q<sup>ue</sup> accipiat n<sup>isi</sup> p<sup>r</sup> licentia<sup>m</sup> ayochoz. Si  
 u<sup>er</sup>o nos u<sup>el</sup> hedes n<sup>r</sup>i aliq<sup>u</sup> temp<sup>o</sup>re ulterius p<sup>r</sup>da<sup>o</sup> t<sup>r</sup>am n<sup>r</sup>am nem<sup>o</sup> et pastura<sup>m</sup> alic<sup>ui</sup>  
 vende<sup>re</sup> u<sup>el</sup> ad firmam pone<sup>re</sup> u<sup>el</sup> i elemosina<sup>m</sup> dare uolunt, n<sup>u</sup>lli ea<sup>m</sup> uendendi pone<sup>re</sup>  
 u<sup>el</sup> ad firmam u<sup>el</sup> i elemosina<sup>m</sup> dabim<sup>us</sup> n<sup>isi</sup> p<sup>r</sup>da<sup>o</sup> ayochis de kelcho si ea<sup>m</sup> eme<sup>re</sup> u<sup>el</sup> ad  
 firmam h<sup>o</sup>re uolunt. Hanc t<sup>r</sup>am et hanc conuencio<sup>m</sup> nos et hedes n<sup>r</sup>i h<sup>o</sup>are  
 b<sup>o</sup>ni<sup>o</sup> eis et defendem<sup>us</sup> p<sup>r</sup>da<sup>o</sup> xxxij. annis. Hanc em<sup>o</sup> conuencio<sup>m</sup> stabili<sup>ter</sup> tene  
 dam p<sup>r</sup> me<sup>o</sup> et hedis meis s<sup>ed</sup> in malo ingenio affidam<sup>us</sup>. Incep<sup>it</sup> au<sup>tem</sup> t<sup>r</sup>am hui<sup>us</sup>  
 conuencio<sup>m</sup> ad festu<sup>m</sup> s<sup>c</sup>i marci p<sup>r</sup>imu<sup>m</sup> p<sup>r</sup>q<sup>u</sup> philipp<sup>o</sup> rex francie et Ricard<sup>o</sup>  
 rex Anglie uenerit ierosolima, q<sup>u</sup> fuit ann<sup>o</sup> millesim<sup>o</sup> centesim<sup>o</sup> nonages<sup>o</sup>,  
 ab incarnatione d<sup>n</sup>i, h<sup>u</sup>ic test<sup>is</sup> d<sup>n</sup>o Arnold<sup>o</sup> alt<sup>er</sup> de Driburch. Will<sup>o</sup> t<sup>r</sup>  
 nomo eius Hugone cap<sup>l</sup>o. D<sup>n</sup>o regis Th<sup>o</sup> filio et suauis auenel. et q<sup>u</sup> a.

Deletion →

Different Hand →

It is noteworthy that corrections of pronouns like those in the knights' charter are not very common in the cartulary. Confusion of the first person singular with the first person plural only occurs a further four times in the manuscript. However, it is even more noteworthy that two of these instances also occur in suspicious circumstances.<sup>272</sup> The corrections in question are found in two charters in the Berwick section of the manuscript (Comm. I, nos. 17-18), and in order to understand why they are suspicious, one must evaluate the content of the other charters in the section which record similar rights.

There are a series of thirteen charters in the Berwick section which relate specifically to fishing rights on the River Tweed, and they follow one of two basic structures. One type of charter records the fact that the specific individuals quitclaimed to Kelso all rights to any of the fisheries which exist between the pool fishery of Ord and the fishery of Blackwell, and the structure of this type of charter is as follows:

*Omnibus sancte matris ecclesie filiis et fidelibus uisuris uel auditoris  
has litteras [Name] salutem. Noueritis me intuitu caritatis remisisse et  
quietum clamasse omne ius quod habui uel habere potui in piscariam  
de Redehouh Deo et Ecclesie sancte Marie de kelchou et monachis  
ibidem deo seruientibus. Ita quod nec ego nec heredes mei nec aliquis  
per me de cetero aliquam calumpniam mouebimus inperpetuum  
aduersus predictos monachos de kelchou de aliqua piscaria que sit uel*

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<sup>272</sup> *Ibid.*, i, nos. 65, 68. Confusion of the first person singular with the first person plural also occurs once in the *pro anima* clause of a charter purportedly produced on behalf of Walter Corbet, which granted the land and pasture of Robert of Shotton in the villa of the same name: *pro salute anime mee et sponse mee et omnium antecessorum et successorum nostrorum (meorum deleted)* (NLS, MS Adv, 34.5.1, f. 139r, *Kel. Lib.*, ii, no. 360). It also appears once in a charter by Marjoria, wife of Walter of Longforgan (NLS, MS Adv, 34.5.1, f. 18r, *Kel. Lib.*, i, no. 31).

*fuerit inter Pool piscariam scilicet de Orde et piscariam de blakewel. Hanc autem remissionem et quietam clamacionem sine malo ingenio tenendam affidaui. Ipsi uero receperunt me et uxorem meam et heredes meos in fraternitatem domus sue et participes fecerunt omnium bonorum que in eorum fient ecclesia de cetero. Hiis Testibus.*<sup>273</sup>

On the other hand, the other style of charter records the fact that the individuals in question quitclaimed to Kelso all right which they had to the fishery of Reedhaugh and promised not to bring any claim against the monks in relation to any of the fisheries between the pool fishery of Ord and the fishery of Blackwell:

*Omnibus sancte matris ecclesie filiis et fidelibus visuris uel auditoris has litteras [Name] salutem. Noueritis me intuitu caritatis remisisse et quietam clamasse deo et ecclesie sancte Marie de kelcho et monachis ibidem deo seruiantibus omnem calumpniam quam habere me dicebam erga eos. Ita quod nec ego nec heredes mei nec aliquis per me de cetero mouebimus aliquam calumpniam inperpetuum aduersus predictos monachos de aliqua piscaria que sit uel fuerit inter pool piscariam scilicet de Orde et piscariam de blakewel. Hanc autem remissionem et quietam clamacionem sine malo ingenio tenendam affidaui. Ipsi uero receperunt me et uxorem meam et heredes meos in fraternitatem domus sue et participes fecerunt omnium bonorum que in eorum fient ecclesia de cetero. Hiis Testibus.*<sup>274</sup>

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<sup>273</sup> *Ibid.*, i, nos. 58-59, 61-62, 66, 68, 70.

<sup>274</sup> *Ibid.*, i, nos. 56-57, 65, 67, 69.

As will be discussed in the next section, all of these charters contain diplomatic features which are slightly ahead of their time, and this may suggest that a formulary was used to create all of them at the time of the production of the cartulary. However, what suggests that at least some of the charters were fabricated using an exemplar are the corrections found in the two charters in question. These two charters, like the Innerwick charter above, once again purport to have been produced on behalf of more than one individual. One charter purports to have been produced on behalf of the four husbands of the daughters of Alice of Tweedmouth, and the other charter purports to have been produced on behalf of the daughters themselves. As demonstrated in plates 3.3-3.5 below, the scribe who produced the first charter, which recorded the husbands' quitclaim of all rights to the fisheries between the pool fishery of Orde and the fishery of Blackwell, incorrectly inserted *me* instead of *nos* in the notification clause. On the other hand, the same scribe incorrectly inserted *ego* for *nos* in the confraternity clause of the second charter, and used the future active indicative plural of *posse* instead of the perfect active indicative plural in the dispositive clause. Like the Innerwick charter, it seems that the most likely explanation for these mistakes is that the scribe was converting the stipulations found in one of the numerous identical charters which used the first person singular. Otherwise, it is difficult to explain the existence of three mistakes in such a specific section of the cartulary.

Obviously, if they were using a formulary to create these charters then it certainly calls into question the remaining charters in the section which have the same structure but are in the first person singular. Are these charters actually authentic, or were the names of the benefactors simply derived from a confraternity list or some other commemorative instrument? This would make sense considering the fact that not only do these charters have fairly advanced diplomatic features for the time in

which they were purportedly produced (see discussion of diplomatic below), but they also have very conspicuous confraternity clauses, which not only mentioned the individuals quitclaiming the property, but their heirs. Moreover, were the charters mass produced in this manner, thus explaining their identical stipulations? Answers cannot be found in the extant evidence, but in light of the fact that the diplomatic appears to be advanced, these possibilities must remain open.

Plates 3.3-3.5: Charter Produced on Behalf of Hugh Mulard, Walter son of Baldwin, William son of Robert, and Ralph of Essex and Charter Produced on Behalf of Their Wives (NLS, MS Adv. 34.5.1, ff. 27v-28v)

fuerit. Ita fut h mea donacio die Iouis xx p festu omnium scoru. Anno  
 s<sup>re</sup> m<sup>o</sup>. cc. xxvij. nullo q<sup>o</sup>dicente et reclamante — **Acta clari.**  
**Hugoni mulard & socor<sup>u</sup> ei si p<sup>o</sup>nt<sup>u</sup> ap<sup>o</sup> Rex Guat.**  
 Om<sup>o</sup> s<sup>re</sup> a<sup>o</sup>ris ecclie filius & fidelib<sup>u</sup> vilur<sup>u</sup> et audier<sup>u</sup> has lras  
 Hugo mulard. Wale fil Baldum. Wille fil Robt. & Wale fil  
 Radulphi de Effere. salt. <sup>nos</sup> Hontis de concessione vxor<sup>u</sup> n<sup>o</sup>str<sup>u</sup>  
 salig a<sup>o</sup>raldis. Seroc. cristine. Gummide. filiaz aliz de Abedemne  
 remisse & q<sup>o</sup>ta clama<sup>o</sup>se deo & ecclie s<sup>re</sup> a<sup>o</sup>rie de kelcho. & monachis  
 ibide deo s<sup>u</sup>mentib<sup>u</sup> omem calupnia<sup>m</sup> q<sup>u</sup>m h<sup>u</sup>ic nos dicebam<sup>u</sup> erga eos. Ita  
 q<sup>o</sup> n<sup>o</sup> nos n<sup>o</sup> hedes n<sup>o</sup>ri. n<sup>o</sup> aliq<sup>u</sup>s p<sup>o</sup> nos. de ceto mouebim<sup>u</sup> aliq<sup>u</sup>m calupniam  
 in p<sup>o</sup>ntu<sup>u</sup> aduisus p<sup>o</sup>dos monachos de aliq<sup>u</sup> piscaria que sit ut fuit  
 me pool. piscaria. s. de orde. & piscaria de Blatebel. Hac ante  
 remissione & q<sup>o</sup>ta clama<sup>o</sup>dem sine malo ingenio tenenda assidam<sup>u</sup>.  
 Ipi n<sup>o</sup> recepim<sup>u</sup> nos. & vxores n<sup>o</sup>str<sup>u</sup>. & hedes n<sup>o</sup>str<sup>u</sup> in firmitate dom<sup>u</sup>  
 sue & p<sup>o</sup>ntes fecim<sup>u</sup> om<sup>u</sup> bonor<sup>u</sup> que t<sup>u</sup> eor<sup>u</sup> fuer<sup>u</sup> ecclia de ceto h<sup>u</sup>ic test<sup>u</sup>

Deletion →

um bonor<sup>u</sup> q<sup>u</sup> in eor<sup>u</sup> ecclia fuer<sup>u</sup> de ceto. h<sup>u</sup>ic test<sup>u</sup> **fo dicit<sup>u</sup> antier<sup>u</sup>.**  
 Om<sup>o</sup> s<sup>re</sup> a<sup>o</sup>ris ecclie filius & fidelib<sup>u</sup> vilur<sup>u</sup> ut. **sup<sup>o</sup> le redhorah.**  
 audier<sup>u</sup> has lras. a<sup>o</sup>raldis. Seroc. cristina. & Gummida filie aliz  
 de Abedemne. salt. Hontis nos de concessione vxor<sup>u</sup> n<sup>o</sup>str<sup>u</sup> s. h<sup>u</sup>ic mu  
 lard. Wale fil Baldum. Wille fil Robt. & Wale fil Radulphi de Effere.  
 & h<sup>u</sup>icum n<sup>o</sup>str<sup>u</sup> remisse & q<sup>o</sup>ta clama<sup>o</sup>se om<sup>u</sup> us q<sup>u</sup> h<sup>u</sup>ic ut h<sup>u</sup>ic potim<sup>u</sup> potim<sup>u</sup>  
 i piscaria de bedehouh deo & ecclie s<sup>re</sup> a<sup>o</sup>rie de kelcho. & monachis idem

Deletion →

deo s<sup>u</sup>mentib<sup>u</sup>. Ita q<sup>o</sup> n<sup>o</sup> nos n<sup>o</sup> hedes n<sup>o</sup>ri n<sup>o</sup> aliq<sup>u</sup>s p<sup>o</sup> nos de ceto aliq<sup>u</sup>m calupnia<sup>m</sup>  
 mouebim<sup>u</sup> in p<sup>o</sup>ntu<sup>u</sup> aduisus p<sup>o</sup>dos monachos de kelcho. de aliq<sup>u</sup> piscaria  
 q<sup>u</sup> sit ut fuit me pool. piscaria. s. de orde. & piscariam de Blatebel.  
 Hanc ante remissione & q<sup>o</sup>ta clama<sup>o</sup>dem sine malo ingenio tenenda  
 assidam<sup>u</sup>. Ipi n<sup>o</sup> recepim<sup>u</sup> nos & hedes n<sup>o</sup>str<sup>u</sup> i firmitate dom<sup>u</sup> sue. & p<sup>o</sup>  
 ntes fecim<sup>u</sup> om<sup>u</sup> bonor<sup>u</sup> q<sup>u</sup> in eor<sup>u</sup> fuer<sup>u</sup> ecclia de ceto. h<sup>u</sup>ic test<sup>u</sup>

Deletion →

#### IV. Diplomatic

As discussed in the introduction, a fourth element which has promise in terms of assessing the authenticity of the charters in the Kelso Abbey cartulary is their diplomatic features. Like paleographical features, diplomatic features evolved over time. Therefore, if a charter in the cartulary has features which are clearly too advanced to have been produced during a certain period, then we know that the charter has either been tampered with or is a forgery. This said, very little work has been done on the evolution of charter diplomatic compared to the evolution of handwriting. Hence, it is currently very difficult to say for certain what features or formulations were contemporary in particular periods. In fact, the work which has been done is primarily found in the introductions to editions of royal and episcopal charters, and in the case of Scotland, in royal charters alone. Work on private charter diplomatic has been particularly neglected, save Michael Gervers's recent article which discusses how diplomatic can be used to date medieval English private charters.<sup>275</sup> However, Gervers's study was limited to evaluating private charter diplomatic found in the large, but singular, cartulary produced by the knights hospitallers at Essex.<sup>276</sup> Therefore, it is necessary to establish exactly how charter diplomatic evolved in order to make any definitive statements about the whether or not the *formulae* in Kelso's charters are anachronistic or advanced.

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<sup>275</sup> M. Gervers, 'The Dating of Medieval English Private Charters of the Twelfth and Thirteenth Centuries' in *A Distinct Voice: Medieval Studies in Honor of Leonard E. Boyle*, ed. by Jacqueline Brown and others (Notre Dame: University of Notre Dame Press, 1997), pp. 450-504. Gervers states that the only individual to seriously contemplate the evolution of private charter diplomatic before him was Stenton in his edition of charters produced by English Gilbertine houses in the twelfth century. However, Stenton's analysis is fairly limited seeing as he did not benefit from the dating information available to modern scholars (*Gilbertine Charters*, pp. xviii- xxxiv).

<sup>276</sup> The cartulary contains nearly twelve-hundred twelfth- and thirteenth-century charters.

To accomplish these objectives, this section will begin by comparing the private and episcopal charter diplomatic found in the archives of Melrose and Holyrood with what is found in the Kelso Abbey cartulary. As will be discussed, diplomatic developments in all of these collections, Kelso included, appear to be generally uniform. Moreover, they also resemble the developments which have been observed in the editions of *English episcopal acta* and in the private charters in the Essex hospitallers' cartulary. However, the diplomatic found in three of the mid-twelfth-century private and episcopal charters in the Kelso Abbey cartulary, namely those purportedly produced on behalf of Wice of Wiston, Hye of Simprim, and John, bishop of Glasgow (Comm. I, nos. 13, 20-21), are far too advanced.

Following this discussion, the section will conclude with a re-evaluation of the diplomatic found in the royal charters in the Kelso Abbey cartulary. Geoffrey Barrow has comprehensively evaluated the diplomatic found in the charters of David I, Earl Henry, Mael Coluim IV and William I, and in doing so, identified a number of diplomatic anomalies in Kelso's royal charters. The question that will be asked is whether these are simply anomalies/evidence of tampering, or whether the strange features are evidence of forgery. Barrow advocates the former; however, evidence can be adduced to suggest that the latter is the case.

#### *A. The Diplomatic Found in Wice of Wiston and Hye of Simprim's Charters*

The diplomatic found in Kelso's private charters from particular periods appears to generally resemble the diplomatic found in the charters in the Melrose and Holyrood archives. However, Wice of Wiston and Hye of Simprim's charters, both of which were purportedly produced during the 1150s, have a variety of diplomatic features

which are highly advanced compared to their counterparts, and their address clauses are a prime case in point. Elsa Hamilton noted in her evaluation of diplomatic found in the charters of the earls of Dunbar that a distinct change in policy regarding charter address clauses occurred at the turn of the century. The policy which she describes is the fact that scribes began making direct reference to the charter itself in the address. One of the earliest examples of this is found in Earl Patrick's charter which dates from the turn of the thirteenth century: *Omnibus has litteras visuris vel audituris*.<sup>277</sup> Moreover, Michael Gervers noted a similar phenomenon in the private charters found in the hospitaller's cartulary. Gervers states that:

Modifications to charter terminology are equally apparent in every part of the document from the address to the sealing clause. Forms of address limited to the twelfth century include '*matris ecclesie filiis presentibus et futuris*', 1150-95, with one occurrence c. 1235; '*notum sit vobis quod ego/nos pro salute mea/nostra*', 1155-96; '*omnibus hominibus suis et amicis [Francis et Anglicis]*', 1165-90; '*sancte Dei ecclesie filiis*', 1165-1200. [...] The thirteenth century, especially the second quarter, establishes new formulae: '*noveritis me*', 1210-1375; '*omnibus Christi fidelibus*', from 1225; '***omnibus hoc scriptum***', **1230-80**; '***universis sancte matris ecclesie filiis ad quos presens scriptum pervenerit***', **1225-85**.<sup>278</sup>

As demonstrated in figures 3.8 and 3.9 below, the same trend is observable in the charters in the Melrose, Holyrood and Kelso collections - i.e. direct reference to the

<sup>277</sup> Hamilton, 'Earls of Dunbar', pp. 74, 368.

<sup>278</sup> Gervers, 'Dating of Medieval English Private Charters', p. 5. (Bold sections are my emphasis.)

charter in the address clause occurs around the turn of the century.<sup>279</sup> However, as demonstrated, there are two private charters which have these features and date before 1175, and these are the charters in question. The address clause in Hye of Simprim's charter was copied into the cartulary as follows: *Omnibus uisuris uel audituris has litteras Hye de Simprinc' salutem*, and Wice of Wiston's charter has the following address: *Omnibus sancte matris ecclesie filiis et fidelibus tam presentibus quam futuris uisuris uel audituris has litteras Wicius de Wiceston' salutem*.

Fig. 3.8: Use of *Scriptum*, *Littera* or *Carta* in the Address Clauses of Melrose and Holyrood's Charters

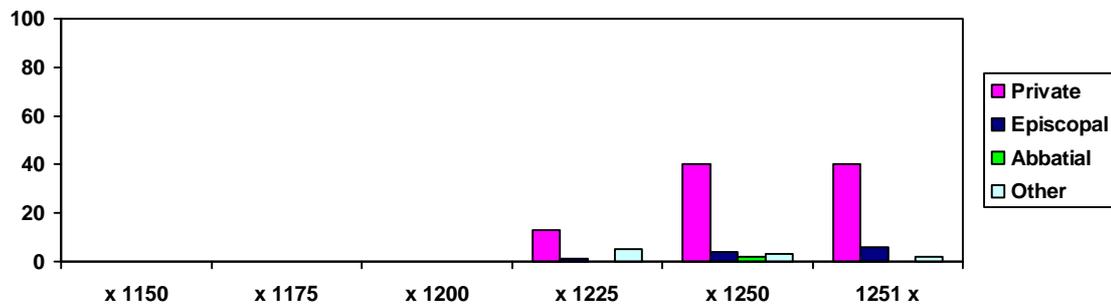
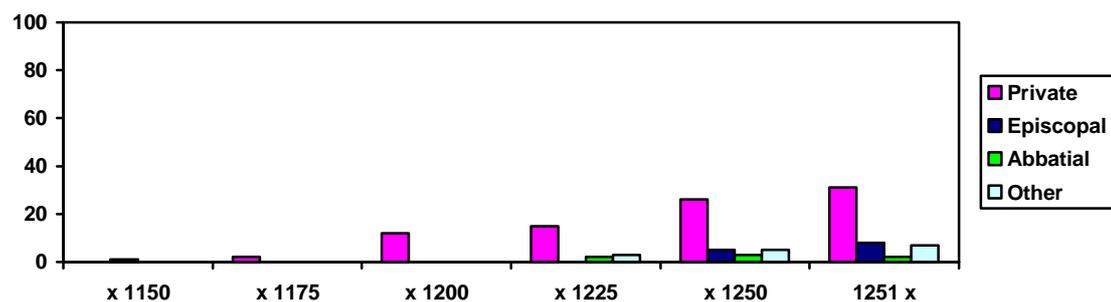


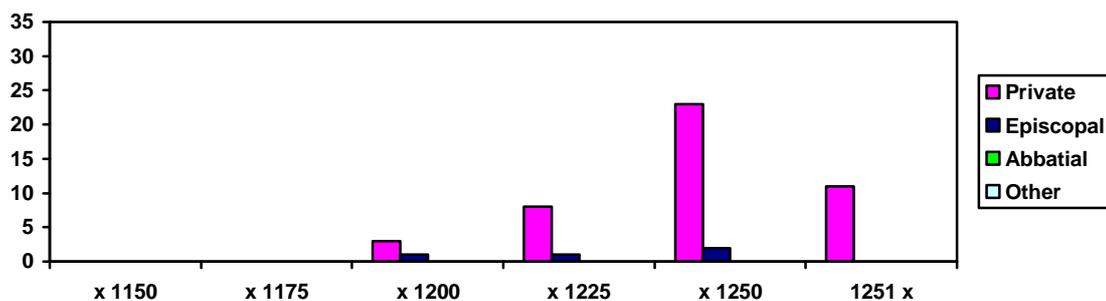
Fig. 3.9: Use of *Scriptum*, *Littera* or *Carta* in the Address Clauses of Kelso's Charters



<sup>279</sup> It should be noted that every one of the charters which dates between 1175 and 1200 pertains to the Tweed fisheries, and these charters fall into the later part of that date-range - i.e. x 1194. However, the dating of these charters hinges on whether or not William of Maule's general confirmation charter, which confirms every one of these charters, is authentic - a questionable point (*Ibid.*, i, nos. 55). See Comm. II, no. 2.

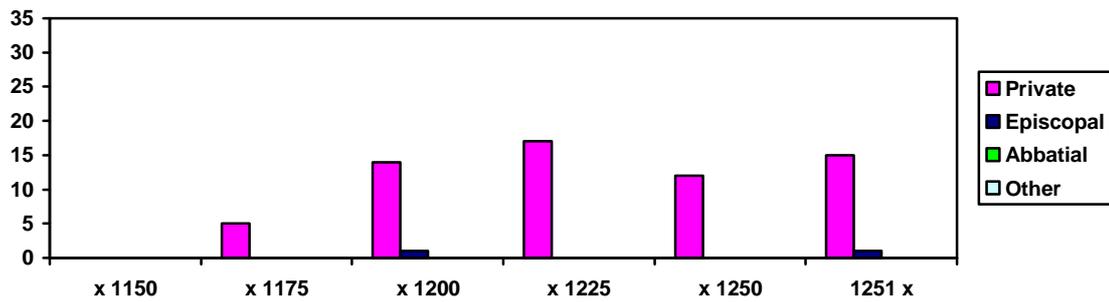
Another feature of Wice and Hye’s charters which does not appear to be contemporary with the period in which they were supposedly produced is the presence of the phrase ‘kingdom of Scotland’ in their comparative clauses. Geoffrey Barrow has asserted that the earliest appearance of the phraseology that he was able to locate was in a charter which dates from 1161.<sup>280</sup> If the phraseologies found in these charters are authentic, then they would predate the charter which Barrow identified, and as such, would contain the earliest ever references to the kingdom of Scotland in this context. However, it seems unlikely that these examples are authentic. As demonstrated on figure 3.10 below, this phraseology does not appear in Melrose and Holyrood’s charters until around the turn of the century, and though it appears slightly earlier in the Kelso Abbey cartulary, the earliest two cases are found in Wice and Hye’s charters (see figure 3.11).

*Fig. 3.10: Use of “Kingdom of Scotland/Scots” in Comparative Clauses in Melrose & Holyrood Archives*



<sup>280</sup> It was produced on behalf of King Mael Coluim IV and survives as an original (G. W. S. Barrow, *The Anglo-Norman Era in Scottish History* (Oxford: Oxford University Press, 1980), p. 153; *RRS*, i, no. 183).

Fig. 3.11: Use of “Kingdom of Scotland/Scots” in Comparative Clauses in Kelso Abbey Cartulary



Other advanced features also appear to be present in these two charters, reaffirming the likelihood that these items have been altered or forged. Among other things, the name of the ville where Wice was lord, which is found in each instrument, is spelled in a way which was not contemporary with the 1150s. The dispositive clause in Wice’s charter refers to his donation as being the *Ecclesiam de Wicestun uilla mea*, and as demonstrated above, he was identified as *Wicius de Wiceston*’ in the charter’s address. Accordingly in the witness list found in the Hye of Simprim’s charter, Wice was identified as *Wicio de Wicestun*. However, as is demonstrated on tables 3.1 and 3.2 below, it does not appear that the place-name of Wiston evolved until the turn of the thirteenth century, and perhaps even later, if the charter produced by Wice’s grandson has been tampered with.<sup>281</sup>

<sup>281</sup> This is actually a real possibility seeing as Wice’s charter was probably either tampered with or forged around the time that a dispute emerged between Kelso and Henry of Wiston over advowson of the parish church (see chapter four).

Table 3.1: Nomenclature for the Church of Wiston<sup>282</sup>

Subject Matter	Name of the church	Date	Ref.
Wice of Wiston's charter of donation	Ecclesiam de Wicestun uilla mea	1153 x 1160	336
King Malcolm IV's general confirmation	ecclesiam uille sue (Withce)	1159 x 1160	iii-vii
King William I's 1st general confirmation	ecclesiam uille sue (Wische)	1165 x 1214	12
Bishop Jocelin's general confirmation	ecclesiam de uilla Wice	1181 x 1195	413
William I's confirmation of Jocelin's conf.	ecclesiam de uilla Wice	x 1195	409
King William I's 2nd general confirmation	ecclesiam de uilla Wice	1189 x 1196	13
Papal judges delegate charter	ecclesia de uilla Wice	1175 x 1198	335
Walter s of William son of Wice's charter	ecclesiam de villa Wice	1.12th/e.13th C	337
Bishop Walter's general confirmation	ecclesiam de villa Wice	1232	279
Pope Innocent IV's general confirmation	ecclesiae ... de villa Wiche ...	1243 x 1254	460
Henry, lord of Wiceton's charter	ecclesie de Wiscytun'	1273 x 1293	339

Table 3.2: Surname of Wiston

Subject Matter	Name of the individual	Date	Ref.
Wice of Wiston's charter of donation	Wicius de Wiceston'	1153 x 1160	336
Hye of Simprin's charter	Wicio de Wicestun	1153 x 1160	273
King William I's 1st general confirmation	Witche	1165 x 1214	12
King William I's 2nd general confirmation	Wische	1189 x 1196	13
Walter s of William s of Wice's charter	Walterus miles [...] de villa Wice	1.12th/e.13th C	337
Walter s of William s of Wice's charter	T clerico de Wicetun'	1.12th/e.13th C	337
Henry, lord of Wiceton's charter	Henricius dominus de Wyscytun'	1273 x 1293	339

### B. The Diplomatic Found in Bishop John's Charter

Like the charters purportedly produced by Wice and Hye, Bishop John's charter contains a number of features which appear to be too advanced to have been incorporated into a charter that was produced in 1144. One of these features was already pointed out on figure 3.9 above. As illustrated, there is one episcopal charter in the 'x 1150' range which has an address clause that refers to the charter itself. This

<sup>282</sup> A bull produced on behalf of Hadrian IV, which does not survive in the cartulary, but as an original, gives the church the following name: *ecclesiam de Villa Wisce* (*Scotia Pontificia*, no. 35)

is Bishop John's charter, and the fact that it has this feature at such an early date is certainly suspicious. As demonstrated in figure 3.9, the type of address is not found in any of the episcopal charters in the Melrose or Holyrood archives until around the turn of the century, and it is noteworthy that it also does not appear in any of the episcopal charters incorporated by Lawrie in his edition of Scottish charters produced before 1153. This said, it must be noted that several episcopal charters included in the *English Episcopal Acta* series do have address clauses which reference charters.<sup>283</sup> However, the formulation found in John's charter does not seem to appear in any of these items, though it is found in a number of charters found in the Kelso, Melrose and Holyrood collections which date from the thirteenth century: *Omnibus has litteras uisuris uel audituris Johannes dei gracia Ecclesie Glasg' minister humilis salutem in domino perpetuam.*<sup>284</sup>

Apart from this, the charter also has another feature which appears to be advanced - i.e. its notification clause. The notification clause in this charter reads: *Sciatis me caritatis intuitu ad petitionem domini mei Dauid Regis Scottorum illustris consilio et ammonicione virorum timencium Deum tam clericorum quam laicorum ex assensu etiam et voluntate totius Capituli mei.* As demonstrated on figures 3.12 and 3.13, the use of *caritatis intuitu* in charters found in the Kelso, Melrose and Holyrood archives did not emerge until around the turn of the thirteenth century, and it certainly does not appear in any of the charters found in Lawrie's edition.

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<sup>283</sup> *EEA*, xi, no. 33; xx, no. 31; xxx, no. 8.

<sup>284</sup> *Kel. Lib.*, i, no. 180.

Fig. 3.12: Use of *Caritatis Intuitu* in the Kelso Abbey Cartulary<sup>285</sup>

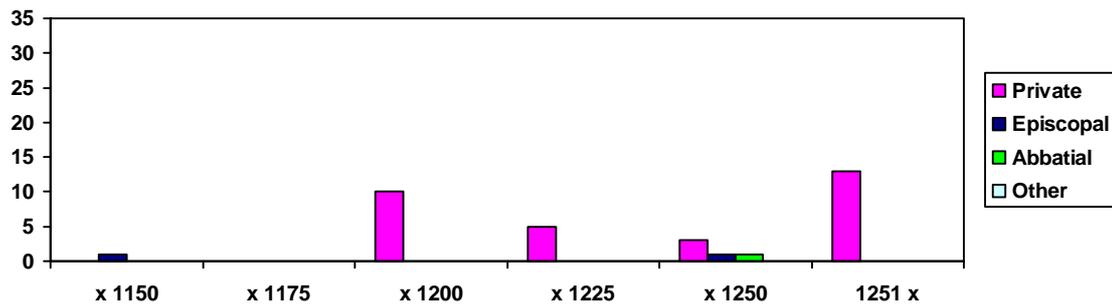
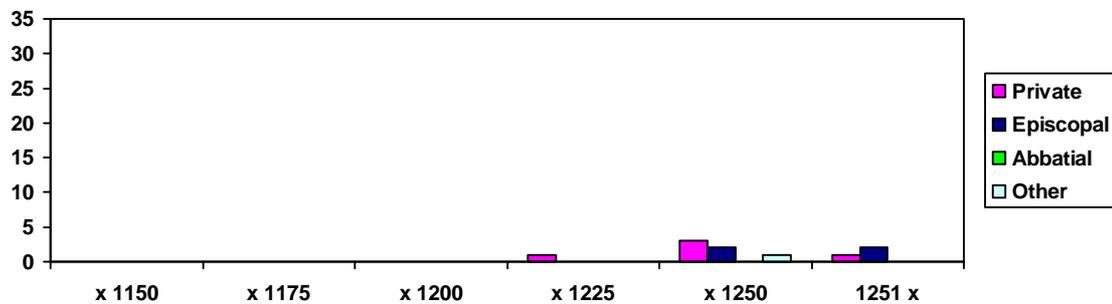


Fig. 3.13: Use of *Caritatis Intuitu* in the charters of Melrose and Holyrood



### C. Royal Diplomatic Anomalies: Evidence of Forgery?

As discussed in the introduction to this section, Geoffrey Barrow conducted a comprehensive evaluation of Scottish royal charter diplomatic in his editions. Therefore, there is little need to compare what is found in Kelso's royal charters with the diplomatic found in the royal charters located in other collections. This said, Barrow did identify three charters in the Kelso Abbey cartulary which have anomalous diplomatic features, including King David's general confirmation which has a unique royal style in its address clause - i.e. *David dei gratia rex illustris*

<sup>285</sup> Once again, note that every one of the charters which dates between 1175 and 1200 pertains to the Tweed fisheries. No other charters which have *caritatis intuitu* can be definitively dated to a period before 1200.

*Scott'*,<sup>286</sup> King David's Lesmahagow foundation charter which has dating clause that includes the king's regnal year,<sup>287</sup> and King William's brieve of protection which has a unique royal style seeing as it was produced before 1174 - i.e. *Willelmus Dei gracia Rex Scott'* (Comm. I, nos. 2, 3, 15).<sup>288</sup> Regarding the style and dating clauses in David's charters, Barrow was of the opinion that these anomalies represent nothing more than variations in scribal protocol, and concerning the *dei gracia* phraseology in King William's charter, he asserted that this must be representative of the fact that a cartulary scribe altered the original text.<sup>289</sup> However, Barrow does not suggest that these anomalies may be evidence of forgery. In fact, regarding the Lesmahagow charter he asserts that it is 'clearly authentic', in spite of the fact that he universally denounces every other contemporary charter which has a regnal year.<sup>290</sup> However, in light of the points which have been made thus far in this section, the question naturally arises as to whether these answers remain satisfactory to account for these anomalies.

The answer to this question must be no. In fact, there are alternative explanations which could easily account for these anomalies, and these explanations all point towards fabrication. For instance, forgery could certainly account for the *dei gracia* phrase in King William's brieve. The brieve is the fifth item which is found in the cartulary, and it is nearly identical to the item which immediately follows it, namely a brieve produced on behalf of Alexander II. As demonstrated below, the only substantial differences between these charters are that King William's charter was written in the first person singular, while King Alexander's charter was written in the first person plural, and that it has a comparative clause which references a charter

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<sup>286</sup> *Charters of David I*, no. 183.

<sup>287</sup> *Ibid.*, no. 130.

<sup>288</sup> *RRS*, ii, no. 95.

<sup>289</sup> *Charters of David I*, pp. 11-12; *RRS*, ii, no. 95.

<sup>290</sup> *Ibid.*, p. 22-23, no. 31-32, 55.

produced by his father. Could it be that this charter was created using Alexander II's charter? Is this the reason that the *dei gracia* phraseology is found in the charter, and not the fact that the scribe simply interpolated it? Could the comparative clause in Alexander's charter be interpolated (see below)? These suggestions must be at least given equal credence with Barrow's suggestion. The witness list in William's charter, which is strikingly much shorter than the witness list in Alexander's charter, could have easily been produced using the materials at the monastery's disposal. Nicholas the chancellor is not an uncommon figure in the monastery's charters, nor is Richard de Moreville, and Hugh Ridel was one of the abbey's patrons who granted it a church early in King William's reign. Moreover, it could also be noted that this charter is the only surviving example of a brieve of protection from William's reign which forbade anyone to take poinds from the holder of a court.<sup>291</sup>

*Willelmus Dei gracia Rex Scott' Justic' uicecomitibus et omnibus  
 probis hominibus tocius terre sue salutem. Mando et firmiter precipio  
 ne quis unquam namum capiat super Abbatem de Kelch' neque infra  
 neque extra terras eiusdem ecclesie priusquam ipse abbas uel ministri  
 sui requirantur de rectitudine facienda et ipsi a rectitudine facienda  
 defecerint. Si quis autem balliuorum uel aliorum hominum meorum  
 huic precepto meo contraire presumpserit in plenam misericordiam  
 meam uel successorum meorum se nouerit incidisse. Testibus hiis*

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<sup>291</sup> Geoffrey Barrow states that there are two types of brieves of protection which survive from the reign of William I (*RRS*, ii, p. 72). On the one hand, three brieves survive which forbade anyone to take poinds except the person who owed the debt or committed the offence (*Ibid.*, ii, nos. 155, 176, 303). On the other hand, one brieve survives which forbade anyone to take poinds against the holder of court unless he failed to do justice, namely the charter in question (*Ibid.*, ii, no. 95). Nevertheless, the latter privilege also survives in a general confirmation charter produced on behalf of Holyrood Abbey (*Ibid.*, ii, no. 39), and the former survives in three other general confirmation charters (*Ibid.*, ii, nos. 28, 30, 513).

*Nicholao cancellario Ricardo de Moruill' constabulario Hugone Ridel apud Edinburg'.*

*Alexander **Dei gracia** Rex Scott' Justic' vicecomitibus et omnibus probis hominibus tocius terre sue salutem. Mandamus et firmiter precipimus ne quis namum capiat super Abbatem de Kelch' neque infra neque extra terras ecclesie de kelch priusquam ipse abbas uel eius ministri requirantur de rectitudine facienda et ipsi de rectitudine facienda defecerint. Si quis autem balliuorum uel aliorum hominum meorum huic precepto nostro contraire presumpserit in plenam misericordiam nostram et successorum nostrorum se nouerit incidisse sicut carta Domini Regis Willelmi patris nostri testatur. Testibus Radulfo capellano nostro Thoma de Stiruelin clerico Roberto de Ros Willelmo de Brus Johanne de Vallibus Willelmo de Lyndes' apud Selekirk'. Decimo die ffebrum. Anno regni domini Regis Decimo.*

Alternate explanations could also be proposed for why King David's general confirmation and the Lesmahagow foundation charter have the features that they do. Like the regnal years in the other charters purportedly produced on behalf of King David, the regnal year in the Lesmahagow charter could also be evidence that it was forged, and there are several other features in this charter which are highly suspicious and unorthodox, some of which have already be discussed above. Similarly, the abnormal combination of *dei gracia* and *illustrious* in King David's general confirmation may also be evidence that it is a forgery. There is a great deal of information to support this hypothesis as well.

## *V. Other Elements Which Suggest that Charters are Forgeries*

Apart from anachronisms, contradictions, corrections and diplomatic features, several other elements have also been used to call into question the authenticity of Kelso Abbey's charters. However, it is worth surveying two further points before concluding this chapter, namely the fact that many of the spurious or doubtful charters are not mentioned or referenced in other documentation and the fact that many of the potentially spurious charters have identical witness lists to other charters, in spite of the fact that they were produced on different occasions.

### *A. Lack of references in other charters*

It is a well-known fact that confirmation charters, and charters of renewal typically reference previous transactions or documentation in some way or form. However, a systematic analysis of this phenomenon has never occurred in Scotland, and it does not appear to have occurred elsewhere. This said, an evaluation of the clauses in the Melrose and Holyrood collections, which reference previous transactions/documentation has revealed that it was not simply common practice: it was protocol. Every charter of confirmation or renewal in the Holyrood collection references in some way or form the relevant documents/transactions which preceded it, and virtually all of the 71 charters of confirmation or renewal in the Melrose Abbey collection reference all relevant transactions/documentation, save perhaps two exceptions. The exceptions are two charters which record Walter and Patrick of Ryedale's confirmation of Isabella of Ryedale's gift of an oxgang in Whitton. These charters mention Isabella's charter, but they fail to mention the confirmation charter

of her husband, William, which also relates to the transaction and may have been produced beforehand.<sup>292</sup> However, 'may' is the key word because the charters produced on behalf of Walter and Patrick could have easily been produced before the charter in question. If this was the case, this would mean that, like what is found in the Holyrood collection, 100% of the charters of renewal/confirmation in the Melrose collection reference preceding documentation/transactions.

Ultimately, this is a striking fact when one turns to the charters of renewal/confirmation in the Kelso Abbey cartulary because many fail to reference previous transactions/documentation. Moreover, what is particularly striking about the cases in which such information is not referenced is that they typically correspond with charters whose authenticity is in doubt. For example, in the first section of this chapter, it was noted that two charters in the Mow section of the cartulary give Simon Mauleverer credit for consenting to and confirming a transaction made by his wife, Cecilia, even though two other charters claim that Cecilia made the gift after his death (Comm. I, nos. 10-11). Apart from these items, none of the charters of confirmation or renewal mention Simon's involvement in this transaction, and there are five total charters which mention her donation.

A similar phenomenon is found in the Dunbar and Hume sections. As mentioned, there are two charters purportedly produced by Waltheof and Patrick I, which are called into question by *pro anima* clauses (Comm. I, nos. 5, 9). These charters confirm various properties held in the earldom. Among other things, Waltheof's general confirmation confirmed Bothwell shielings, and Patrick's charter confirms land given by his daughter. The former is one of only three twelfth-century charters which mentions Bothwell shielings, and this is noteworthy because when Earl

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<sup>292</sup> *Melr. Lib.*, i, nos. 163-66.

Patrick IV issued a general confirmation charter in the late thirteenth century, he mentioned the other two charters, but not Waltheof's charter.<sup>293</sup> In a similar manner, when William of Hume renewed the land which was confirmed in Earl Patrick's charter, he mentioned the individual who donated the land, namely Ada, but failed to mention Patrick's role in the transaction.<sup>294</sup> This latter point is particularly surprising because William's charter was produced as a result of a dispute over this land. One would imagine that if a charter existed from the earl of Dunbar which confirmed the property, then Kelso would have been keen to make sure that it was referenced in the charter recording the dispute resolution.

Ultimately, all of these points really reinforce the notion that these charters are likely forgeries. Not only are they not referenced in the other charters relating to these transactions, but referencing previous charters/transactions appears to have been a golden rule.

### *B. Duplicated Witness Lists*

Apart from the fact that a number of the questionable charters are not referenced in other documentation, the two charters which record Simon Mauleverer's involvement in his Cecilia's donation also contain identical witness lists to one of her widowhood charters (Comm. I, nos. 10-11). The details of these similarities can be found on table 3.4 below, and to explain why this is significant, it is once again necessary to make a comment about the Melrose and Holyrood collections: none of the charters in these collections which were produced on different occasions have identical witness lists. This said, it is a well established fact that scribes often copied

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<sup>293</sup> *Kel. Lib.*, i, 71-73, 77.

<sup>294</sup> *Ibid.*, i, no. 132, 290-91.

witnesses from charters when new ‘authentic’ charters were produced. Therefore, this in and of itself is not definitive evidence that these charters are forgeries.<sup>295</sup> However, in combination with the other evidence which has been presented, it certainly compounds the likelihood that they are spurious.

*Table 3.3: A Comparison of the Witness Lists in Two of Cecilia of Mow’s Charters and Simon Mauleverer’s Charter*

<b>150 - Cecilia w/ consent of Simon Mauleverer</b>	<b>157 - Cecilia in widowhood</b>	<b>151 - Simon Mauleverer</b>
William chaplain of Mow	William chaplain of Mow	William chaplain of Mow
Richard of Lincoln	Richard of Lincoln	Richard of Lincoln
Adam son of Nicholas	Adam son of Nicholas	Adam son of Nicholas
Henry of Blackdean	Henry of Blackdean	Henry of Blackdean
Henry son of Robert	Henry son of Robert	Henry son of Robert
John grandson of lord William, bishop of Glasgow, chancellor of the lord king	John grandson of the chancellor	John grandson of lord William, bishop of Glasgow, chancellor of the lord king
Richard of Bowden	Richard of Bowden	Richard of Bowden
Alan of Hartside servant of the Abbot of Kelso	Alan of Hartside servant of the Abbot of Kelso	Alan of Hartside servant of the Abbot of Kelso

## *VI. Conclusion*

As discussed in this chapter, a number of elements have been discovered which call the authenticity of the charters in the Kelso Abbey cartulary into question. Some of this evidence, such as the anachronism, is stronger than other evidence. However, as will be demonstrated in the commentaries, when contradictions, textual anomalies, advanced diplomatic and other conspicuous points are combined, they do add up to

<sup>295</sup> D. Broun, ‘‘Absent’ and Dead Charter-Witnesses’, *PoMS: Feature of the Month: No. 10 March 2010* <<http://www.poms.ac.uk/content/feature/march10.html>> [accessed 31 October 2010], 3<sup>rd</sup> paragraph; Chibnall, ‘Forgery in Narrative Charters’, pp. 331-346; G. W. S. Barrow, ‘Witnesses and the Attestation of Formal Documents in Scotland in the Twelfth and Thirteenth Centuries’, *Journal of Legal History*, 16 (1995), pp. 1-20 (pp. 3-4); *The Cartulary of Shrewsbury Abbey*, 2 vols, ed. by U. Rees (Aberystwyth: National Library of Wales, 1976), p. xvii; *The Cartulary of the Knights of St. John of Jerusalem in England*, 2 vols, ed. by M. Gervers, *Records of Social and Economic History*, 6 and 23 (London: Oxford University, 1982 and 1996), ii, nos. 84 and 96.

produce a strong case against all the instruments discussed. Nevertheless, one essential feature of some of these charters has not yet been addressed, namely the fact that some of the copies have paleographical features which suggest that they were transcribed using original charters from the twelfth and thirteenth centuries. As discussed in chapter two, one of the policies adopted on and off by the scribes who participated in the creation of the manuscript was the emulation of the paleographical features found in the charters which they copied, and five of the charters discussed in this chapter demonstrate evidence of having been produced using an older exemplar of some sort. These include Earl Waltheof's general confirmation charter, Robert of Kent and company's charter which recorded their grant of land and pasture in Innerwick, and the two charters found in the Mow section which purport to record Simon Mauleverer's involvement in his wife's donation (Comm. I, nos. 5-7, 10-11). However, just because these charters demonstrate signs of having been copied from an original charter does not mean that original charters actually survived for these items. The paleographical features which we find in the manuscript could very easily be the result of the fact that they were created at the time of the production of the cartulary using an authentic exemplar, and exemplars can be found in the cartulary for all of these items which share the same paleographical features that these charters have.<sup>296</sup> Moreover, the fact these likely exemplars share some of the same paleographical features actually raises the likelihood that these charters are forgeries, much like what was discussed above. This said, another dimension of the charters discussed in this chapter which reinforces the notion that they are spurious is the fact that they share a number of things in common, and this is the subject of the next chapter.

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<sup>296</sup> *Ibid.*, i, nos. 72, 148, 248.

## **Chapter 4: The Common Characteristics of the Questionable Charters in the Kelso Abbey Cartulary**

In chapter three, several elements were discussed which call the authenticity of a number of charters in the Kelso Abbey cartulary into question. At least twenty-one charters contain contextual anachronisms, contradictions, conspicuous corrections or advanced diplomatic features. Moreover, many of the charters that have these features are not referenced elsewhere, even though they should be, and in some instances they even have identical witness lists to charters which were produced on different occasions. In the commentaries, a number of other elements will be discussed as well, and it should be emphasized that the exact features which call particular charters into question differ from case to case. However, the twenty-one charters also share a lot in common, and this chapter will explore these similarities. It will begin by exploring similarities in their location in the manuscript. As will be discussed, an overwhelming majority of the questionable charters are found at the end of particular topographical sections, following a set of charters organized in chronological order, or following a break in a particular topographical section. Thereafter, the chapter will explore similarities in their condition in the manuscript. As discussed in chapter three, a number of the spurious charters demonstrate signs of being corrected. However, a number of the questionable items are also fragmented or incomplete. Finally, the chapter will explore the circumstances in which they may have been produced in the first place. Here too, stark similarities can be identified. Among other things, very few of these charters appear to have been intended to create a claim for a particular piece of property, but rather were intended to augment the monks' claim. Moreover, three primary catalysts appear to have prompted the production of these items: disputes,

concerns about the validity of charters produced on behalf of women, and concerns about the symmetry of the material in the cartulary. Ultimately, this chapter will suggest that such similarities, like the aforementioned, reinforce the likelihood that these charters are forgeries.

### *I. Location in the Manuscript*

As discussed above, one dimension which most of the questionable items share in common is the fact that they are found in conspicuous locations in the manuscript. Virtually all of the items conform to one of five patterns: 1) they are found at the end of particular topographical sections; 2) they are found following a set of charters organized in chronological order; 3) they are found following a break in a topographical section; 4) they are associated with inspections; or 5) they are located in a section of the manuscript where witness lists were transcribed, and yet, they lack these features. The following sections will explore these textual peculiarities, beginning with those charters which appear at the end of particular topographical sections or following a set of charters organized in chronological order.

#### *A. Charters Found at the End of Sections OR Following Charters Organized in Chronological Order*

Nine of the twenty-one items discussed in chapter three are found in one of these two locations. A prime example of a spurious charter which is located at the end of a section is the fragmented papal bull which relates to the 'churches' of Horndean and Wedderlie (Comm. I, no. 14). As demonstrated in table 4.1 below, it is the very last

charter which is found in the papal section of the manuscript, and as such, is the last charter which was copied during phase two of the production of the cartulary.

*Table 4.1: The Papal Section with Special Reference to the Fragmented Charter Attributed to Innocent III or IV*

Benefactor	Transaction	Ref.
Pope Innocent IV	General confirmation	460
Pope Innocent III or IV	Declaration that the monastery does not have to answer pleas abroad	461
Pope Innocent IV	Confirmation of agreement between Kelso and bishops	462
Pope Innocent III or IV	Declaration that no one is to sell property held in feu from the abbey	463
Pope Innocent III or IV	Declaration that all rights granted to Kelso are valid	464
Pope Innocent IV	Letter to abbots of Jedburgh and Dryburgh and prior of Coldingham	465
Pope Lucius III	Statement that excommunication against Kelso is null and void	466
Pope Alexander III	Grant of privilege of wearing the mitre	467
Pope Alexander IV	Confirmation of saltpan in New Abbey	468
<b>Suspicious</b> → Pope Innocent III or IV	<b>Declaration concerning church of Horndean and chapel of Wedderlie</b>	<b>469</b>

On the other hand, a prime example of an item which appears out of chronological order is found in the Dunbar section of the manuscript. As demonstrated in table 4.2 below, Earl Waltheof's charter, which is almost certainly spurious, is located after two charters produced on behalf of his father and son (Comm. I, no. 5).

*Table 4.2: The First Three Charters in the Greenlaw Section with Special Reference to Earl Waltheof's General Confirmation Charter*

	Benefactor	Transaction	Ref.
<b>Chrono-Logical Order</b> →	Earl Cospatric	General donation charter	71
	Earl Patrick I	General confirmation charter	72
<b>Doubtful</b> →	<b>Earl Waltheof</b>	<b>General confirmation charter</b>	<b>73</b>

The locations of the other seven charters also fit one of these two categories. The charters which purport to record Simon Mauleverer's involvement in Cecilia of Mow's gift are found after an authentic charter of Cecilia in the Mow section (Comm. I, nos. 10-11). William de Vieuxpont's Langton charter is the last of a series of other charters relating to the church of Langton (Comm. I, no. 16). David of Bernham's charter which relates to the chapel of Wedderlie is the very last charter in the lengthy episcopal section, and hence, the last charter in the 'original cartulary (Comm. I, no. 12)'. Moreover, the three questionable items in the Keith section of the manuscript also fall into one of these two categories. As discussed in chapter three, there is strong reason to suspect that three of the items in the Keith section are problematic - i.e. one of Hervey son of Philip's charters, one of Simon Fraser's charters, and the Keith *notitia* (Comm. I, nos. 1, 8, 19). As demonstrated on table 4.3 below, Hervey's charter is found following a series of charters which have been neatly arranged in chronological order, and Simon's charter and the *notitia* are found at the end of the Keith section, just before a charter produced on behalf of Robert of Keith who was causing the monastery problems around the time that the cartulary was produced.

Table 4.3: The Keith Section with Special Reference to Hervey son of Philip's Second Charter

	Benefactor	Transaction	Ref.	
<b>Chrono-Logical Order</b>	Simon Fraser	Gift of church of Keith-Humbie - perambulation no. 1	85	
	Hugh Lorens / Ada Fraser	Confirmation of church of Keith-Humbie - perambulation no. 2	86	
	Hervey son of Philip	Confirmation of church of Keith-Humbie - perambulation no. 3	87	
	John, the marshall	Agreement relating to church of Keith-Humbie	88	
<b>Probably Spurious</b>	Hervey son of Philip	Confirmation of church of Keith Humbie - perambulation no. 1	89	
	King Malcolm IV	Original gift of the church of Keith-Humbie	90	
	King William I	Confirmation of Simon's gift of church of Keith-Humbie	91	
	Gilbert of Umframville	Confirmation of original gift of church of Keith-Humbie	92	
<b>Probably Spurious</b>	King Alexander II	Confirmation of church of Keith-Humbie - perambulation no. 3	93	
	Robert, Bishop of SA	Confirmation of first donation of church of Keith-Humbie	94	
	Hervey, the marshall	Agreement concerning chapel of Keith-Hervey	95	
	Papal Judges Delegate	Agreement concerning chapel of Keith-Hervey	96	
	Richard, Bishop of SA	Confirmation of agreement concerning chapel of Keith-Hervey	97	
	Simon Fraser	Gift of church of Keith-Humbie - perambulation no. 3	98	
	Notitia	Confirmation of agreement concerning chapel of Keith-Hervey	99	
	Robert of Keith	Agreement concerning multure of Keith-Humbie	100	
	<b>Spurious</b>			

As discussed above, the fact that a large number of spurious charters consistently appear late in sections or after a series of charters in chronological order is striking and reinforces the suspicions about these items. However, it also raises the likelihood that these items were fabricated at the time that the cartulary was produced. Not only is it difficult to rationalize the similarities in their locations if this was not the case, but the fact that they appear in these locations suggests that they were conceived after entering a series of authentic charters.

#### *B. Spurious Charters which Follow a Break in a Section*

Another location that a number of the questionable charters share is the fact that they appear after a thematic break in a topographical section. What is meant by a 'thematic

break' is the following: in some topographical sections a charter has been entered which has nothing to do with the charters that precede it or follow it. A prime example of this phenomenon is found in the Innerwick section of the manuscript. As demonstrated on table 4.4 below, seven charters were entered into the manuscript which relate to Kelso's possessions in Innerwick. However, after that, a break in the continuity of the section occurred with the incorporation of a charter produced on behalf of Roland of Galloway. Thereafter, a total of nine more charters was entered which relate to Kelso's property in Innerwick, or property which it held close-by. As demonstrated on table 4.4, two charters which are likely spurious can be found following the break in the section, namely a charter purportedly produced on behalf of the three knights and the charter which purports to record an oath taken by Robert of Kent and Ralph, his father (Comm. I, nos. 6-7).<sup>297</sup>

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<sup>297</sup> There is reason to question the authenticity of Robert of Kent's and Robert Avenel's charters which can also be found following the break in the section (Comm. II, no. 4).

Table 4.4: The Innerwick Section

Benefactor	Transaction	Ref.
Walter s of Alan II	Gives land in Innerwick in alms perpetually	247
Alan s of Walter	Confirms group's gift of land in Innerwick for 33 years	248
Robert Hunald	Gives land in Innerwick at ferme perpetually	249
Roland of Innerwick & Wife	Give land in Innerwick at ferme perpetually	250
William of Halk. & 5 others	Gives land in Innerwick at ferme perpetually	251
Vincent s Robert Avenel	Gives land in Innerwick at ferme perpetually	252
Walter s of Alan II	Confirms group's gift of land in Innerwick at ferme per.	253
<b>Break</b> → <b>Roland of Galloway</b>	<b>Gives a saltpan in New Abbey in Galloway</b>	<b>254</b>
Robert of Kent	Gives land in Innerwick at ferme perpetually	255
<b>Doubtful</b> → <b>Robert of Kent &amp; 2 others</b>	<b>Give land in Innerwick at ferme for 33 years</b>	<b>256</b>
Robert Avenel	Gives land in Innerwick at ferme perpetually	257
<b>Doubtful</b> → <b>Robert &amp; Ralph of Kent</b>	<b>Promise not to sell land in Innerwick except to Kelso</b>	<b>258</b>
Papal Judges Delegate	Settlement between Kelso & Alan Mont. over Innerwick	259
Alan s of Walter	Confirms group's gift of land in Innerwick for 33 years	260
King William I	Confirms group's gift of land in Innerwick for 33 years	261
Patrick IV, earl of Dunbar	Promises entry into land in Bothwell	262
Edulf s of Gamel	Quitclaim of mill-pond in Spartleton	263

Another example in which charters of doubtful authenticity appear after a sectional break occurs in the Berwick section of the manuscript. The Berwick section, which is the first (and longest) topographical section in the manuscript, is sub-divided into several sub-sections. The final sub-section deals with the fishing rights which Kelso held in the River Tweed, and as demonstrated on table 4.5 below, the section begins with charters relating to the fishery of Woodhorn and ends with a series of charters relating to the fishery of Reedhaugh and those fisheries found between the pool fishery of Ord and the fishery of Blackwell. However, there is a thematic break two-thirds of the way through the section in which a charter recording Adam son of Udding's gift of land in Berwick was transcribed. As discussed in chapter three, there is strong reason to believe that the first charter which follows it is a forgery, and the

fourth charter which follows it appears to be a forgery as well (Comm. I, nos. 17-18).<sup>298</sup>

Table 4.5: The Tweed Fisheries Sub-section in the Berwick Section

Benefactor	Transaction	Ref.
Hugh de Balliol	Confirms fishery of Woodhorn	51
Bernard de Balliol	Gifts fishery of Woodhorn	52
Hugh de Balliol	Confirms fishery of Woodhorn	53
Richard Marsh, bishop Durham	Confirms fisheries of Woodhorn & Reedhaugh + land	54
William Maule	Confirms group's quitclaim of fishery of Reedhaugh	55
William Maule	Quitclaim of fisheries between Ord and Blackwell	56
David of Houbourne	Quitclaim of fisheries between Ord and Blackwell	57
Robert de Pesale	Quitclaim of fisheries of Reedhaugh + btw Ord & Black	58
Alexander of the River	Quitclaim of fisheries of Reedhaugh + btw Ord & Black	59
Matilda of the River	Quitclaim of fisheries of Reedhaugh + btw Ord & Black	60
David of Houbourne	Quitclaim of fisheries of Reedhaugh + btw Ord & Black	61
William Maule	Quitclaim of fisheries of Reedhaugh + btw Ord & Black	62
William Maule	Confirms group's quitclaim of fishery of Reedhaugh	63
<b>Break</b> → Adam s of Udding of Berwick	<b>Gives land in Berwick</b>	<b>64</b>
<b>Suspicious</b> → Hugh Mulard & 3 other men	<b>Quitclaim of fisheries between Ord and Blackwell</b>	<b>65</b>
Hugh Mulard & 3 other men	Quitclaim of fisheries of Reedhaugh + btw Ord & Black	66
Matilda & 3 other women	Quitclaim of fisheries between Ord and Blackwell	67
<b>Suspicious</b> → Matilda & 3 other women	<b>Quitclaim of fisheries of Reedhaugh + btw Ord &amp; Black</b>	<b>68</b>
Robert de Pesale	Quitclaim of fisheries between Ord and Blackwell	69
Mabilla m of Susan w Robert	Quitclaim of fisheries of Reedhaugh + btw Ord & Black	70

Ultimately, the fact that a number of spurious charters appear after a break in a topographical section is almost certainly indicative of the fact that these items were produced at the time of the production of the cartulary. The thematic breaks appear to be reminiscent of a change in the thought process of the scribe, and the forgeries which appear thereafter may be indicative of the scribe's subsequent realization that he needed to supplement the charters he had just copied. This too is highly

<sup>298</sup> There may be reason to question the authenticity of a number of other charters in this section (Comm. II, no. 2).

reminiscent of what was demonstrated in the previous section - i.e. after entering particular charters in chronological order or otherwise, the scribes realized that they needed to supplement these instruments, thus accounting for the discontinuity.

*C. Charters Associated With Inspections OR Charters Found in Locations in Which Witness Lists Were Transcribed Which Have No Witness Lists*

Only a few of the questionable charters discussed in chapter three do not fall into one of the categories discussed above. However, many of those that do not also have peculiar locational characteristics which distinguish them from their counter-parts. For instance, two of the remaining charters appear to be affiliated with inspections, and were probably manipulated or forged prior to or during the inspection process (Comm. I, nos. 20-21). On the other hand, the other questionable items seem to be distinguished from their neighbours by the fact that they lack witness lists or have highly abbreviated ones. For instance, Bishop John's charter is found in a section of the cartulary in which witnesses were transcribed, and yet only lists one individual: King David (Comm. I, no. 13). Furthermore, three of the questionable charters are located in the early folios of the manuscript where witness lists were transcribed, and they too lack witness lists or have highly abbreviated ones. In table 4.6 below, the details are given about which of the first twelve items have witness lists, and which do not. As is demonstrated, those charters which appear to be authentic have the features, and those which do not lack witness lists, such as the Lesmahagow 'Foundation Charter' (Comm. I, no. 2). As discussed in chapter three, William I's *brieve*, which protected Kelso from certain procurations, also has a much shorter witness list than

the briefe which follows it, and David's general confirmation has the shortest list of the lot - i.e. it only lists Earl Henry (Comm. I, nos. 3, 15).

Table 4.6: *The Beginning of the Cartulary Until the Witnesses Are No Longer Copied*

	Benefactor	Transaction	Ref.	
<b>Doubtful</b> →	David I	General confirmation charter for Kelso Abbey	2	← Earl Henry Only
	<i>Notitia</i>	Note of Mael Coluim IV's general confirmation	3	←
	<i>Notitia</i>	Note of William I's general confirmation	4	← N/A
	David I	Foundation charter for Selkirk Abbey	1	←
<b>Suspicious</b> →	William I	Prohibits taking of poinds against the abbot of Kelso	5	← Witnesses
	Alexander II	Prohibits taking of poinds against the abbot of Kelso	6	←
	Alexander II	General confirmation of liberties and customs	7	←
<b>Doubtful</b> →	David I	Foundation charter for Lesmahagow Priory	8	← No Witnesses
	William I	Confirms William Comyn's gift of land in Lesmahagow	9	←
	Alexander II	Gives to Lesmahagow Priory lands of Les. in free forest	10	← Witnesses
	<i>Notitia</i>	Note of gifts and confirmations by King, etc. in Dumfries	11	← N/A
	William I	General confirmation charter for Kelso Abbey	12	← From this point on witness lists are not typically copied until no. 138

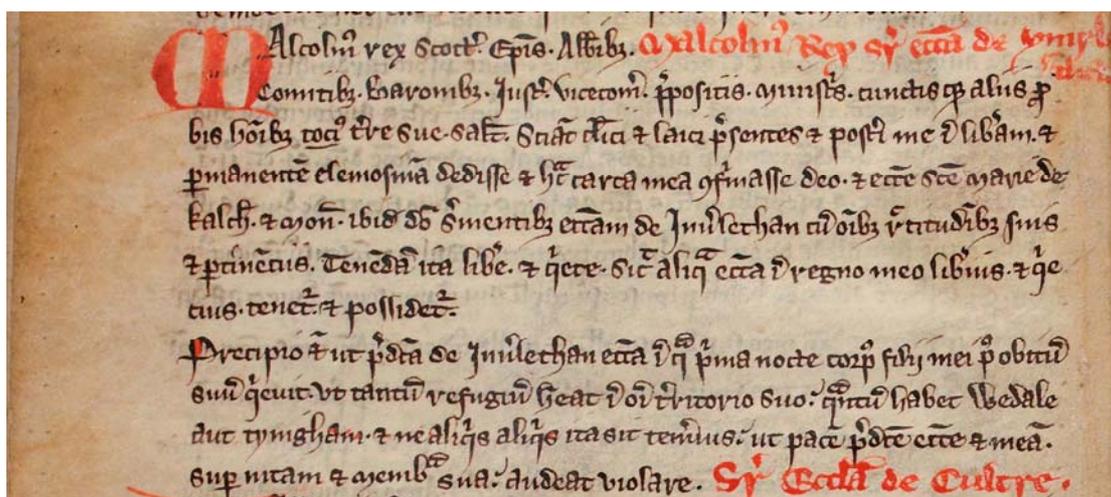
## II. Condition in the Manuscript

Apart from their location, a number of the questionable charters also share similarities in terms of their condition. It was already noted in chapter three that several of the charters have conspicuous corrections which suggest that the individuals responsible for them were using a formulary of some sort. However, apart from this, a number of the spurious charters also share the fact that they have been left in an incomplete condition by the scribes. There are a total of four items in the manuscript which are in a fragmented condition. As discussed in chapter two, one of the fragmented items is a charter produced on behalf of Simon Mauleverer and Cecilia of Mow.<sup>299</sup> Moreover, it should be recalled that the word *vacat* is written in the margin of the folio where this

<sup>299</sup> *Kel. Lib.*, i, no. 172.

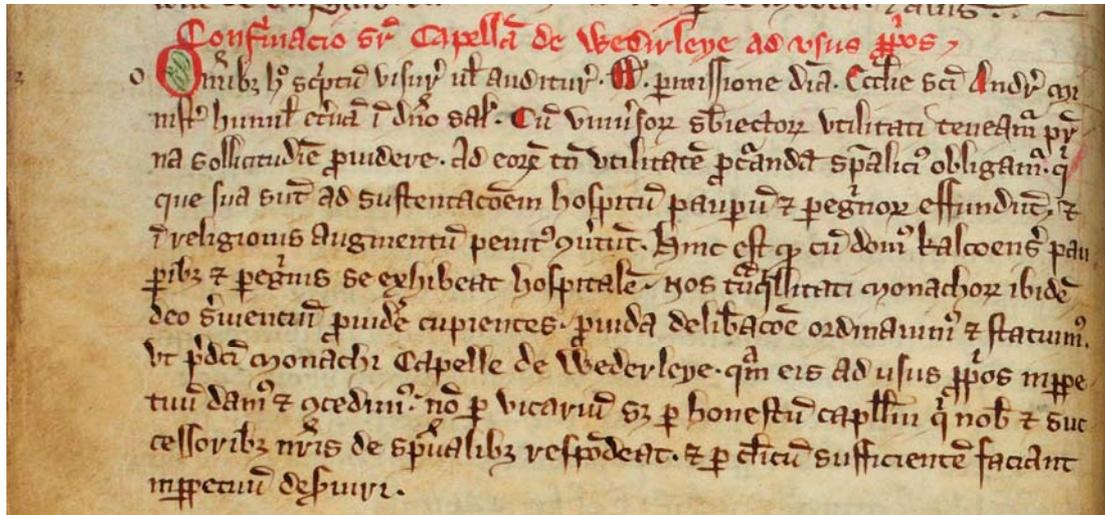
item is located, suggesting that transcription ceased because the scribe realized that the land was no longer held by the monks. However, *vacat* is not written in the margins of the folios where the other three fragmented charters are located, and there is reason to doubt the authenticity of all these items. One is the charter which records the fact that King Mael Coluim IV's son rested at the church of Innerleithan on the night after his death (Comm. I, no. 4). As demonstrated on plate 4.1, the charter is divided into two distinct halves.

Plate 4.1: Charter Recording King Mael Coluim IV's Gift of the Church of Innerleithan (NLS, MS. Adv. 34.5.1, f. 16v)



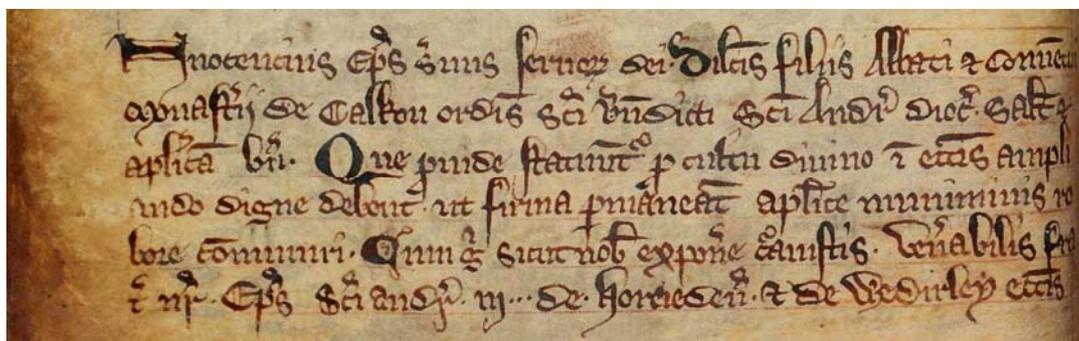
The other two fragmented charters both relate to the chapel of Wedderlie. One states that Bishop David of Bernham granted Kelso the right to appoint an honest chaplain in the chapel instead of a vicar (Comm. I, no. 12). However, it ends abruptly thereafter, not including any of the information found in the other charters which granted the monks the identical right in two of their churches (see plate 4.2).

Plate 4.2: Charter Recording David de Bernham's Gift of the Chapel of Wedderlie In Proprios Usus (NLS, MS. Adv. 34.5.1, f. 165v)



On the other hand, the other fragmented item is a charter from Pope Innocent III or IV which relates to the 'churches' of Horndean and Wedderlie (Comm. I, no. 14). As demonstrated, it was started, but transcription was abruptly ceased after the address (see plate 4.3).

Plate 4.3: Charter Recording Pope Innocent's Declaration Concerning the 'Churches' of Horndean and Wedderlie (NLS, MS. Adv. 34.5.1, f. 171v)



### *III. Catalysts which Spurred Production*

As discussed in the introduction, many of the spurious charters also appear to share one further feature in common: the reason why they were produced. Attempting to identify the catalysts which spurred the production of these items is not as straightforward as identifying similarities in their location or condition in the manuscript. Nevertheless, evidence suggests that the scribes who produced them had a relatively small number of objectives in mind. The following sections will explore the likely catalysts which prompted the production of these instruments. These catalysts included concerns about the validity of charters produced by women, and concerns about the symmetry of the material in the cartulary. However, controversy and dispute appears to be the primary catalyst which prompted the monks to forge charters. In fact, of the twenty-one charters discussed in chapter three, evidence suggests that twelve were likely fabricated in response to quarrels which emerged around the time that the cartulary was produced, or in some previous circumstance.

#### *A. Controversies*

In chapter one, the trials and tribulations which Kelso faced in the early fourteenth century were discussed, and it should be recalled that the monastery was encountering a number of difficulties with its lords and neighbours. In Keith, Robert the marischal had apparently seized the monastery's land in the region and allowed his men to take possession of it.<sup>300</sup> Similarly, in Lesmahagow a local lord named Alexander Folcard had seized possession of an estate within the barony of the same name and claimed to

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<sup>300</sup> *Ibid.*, i, no. 100.

hold it as his hereditary right.<sup>301</sup> It is striking that the questionable Keith and Lesmahagow items focus specifically on what Kelso owned within these baronies (Comm. I, nos. 1-2, 8, 13, 19). Moreover, as will be discussed in more detail in the commentaries, the Lesmahagow's questionable foundation charter even has a stipulation prohibiting any men to occupy (*occupare*) the land which is exactly what Alexander Folcard was doing. Therefore, one cannot help but see the production of these charters as being somehow linked to the problems that Kelso was having with these individuals.

Nevertheless, chapter one did not discuss all of the problems which the monks were facing in the early fourteenth century, and indirect evidence suggests that many more of the forgeries or doubtful charters were likely created as a result of disputes. The two spurious charters in the Innerwick section are a case in point.

*i. The Innerwick Dispute*

As discussed in chapter three, there is strong reason to believe that at least two charters in the Innerwick section are spurious (Comm. I, nos. 6-7). These items include a charter purportedly produced on behalf of three knights, which records a grant of land for thirty-three years, and a charter which purports to record an oath taken by Robert of Kent and his father relating to the same property. If the rationales put forward in chapter three are correct, then the reason that the monks felt compelled to fabricate these charters was almost certainly related to the fact that an original charter survives in the Melrose Abbey archive which gave to the Cistercians some claim to this property. Moreover, evidence suggests that Melrose may have been

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<sup>301</sup> *Ibid.*, i, no. 191.

attempting to use its charter to reassert control over the territory. However, in order to explain why this seems like a logical possibility, it is necessary to expound upon the content of all of the charters that relate to this property, and explore the context in which they were produced

A total of seventeen charters in the Kelso Abbey cartulary and Melrose Abbey archive deal specifically with the property found in the questionable charters, and the property which is the subject matter of these charters is a large portion of arable, forest and pasture land which lay just north of the Lammermuir Hills in the feu of Innerwick. Its precise location is specified as no. 3 on figure 1 below, and it was bordered by the Bothwell Water (*Bothkil*) to the east, Philips Burn (*Fulhope*) to the south, the Monynut Water (*Maninet*) to the west, and a series of land marks to the north.<sup>302</sup> The property lay within a region where both Kelso and Melrose were major landholders apart from the property in question, and competition was certainly fierce. In the mid-twelfth century, Kelso had been given a large portion of pasture land called Bothwell Sheilings by Cospatric, earl of Dunbar (Fig. 1, no. 1),<sup>303</sup> and they also held rights in neighbouring territory of Spartleton (Fig. 1, no. 5).<sup>304</sup> Similarly, by the late twelfth century, Melrose Abbey was given rights to the common pasture which lay just north of Bothwell Sheilings by Earl Waltheof (Fig. 1, no. 2),<sup>305</sup> and in the early thirteenth century, the Cistercian monks had also acquired rights to the common pasture which lay directly north of property which is the focus of this discussion (Fig. 1, no. 4).<sup>306</sup>

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<sup>302</sup> By 1236, the northern-most border was officially plotted with a series of trenches and furrows (*Ibid.*, i, no. 247).

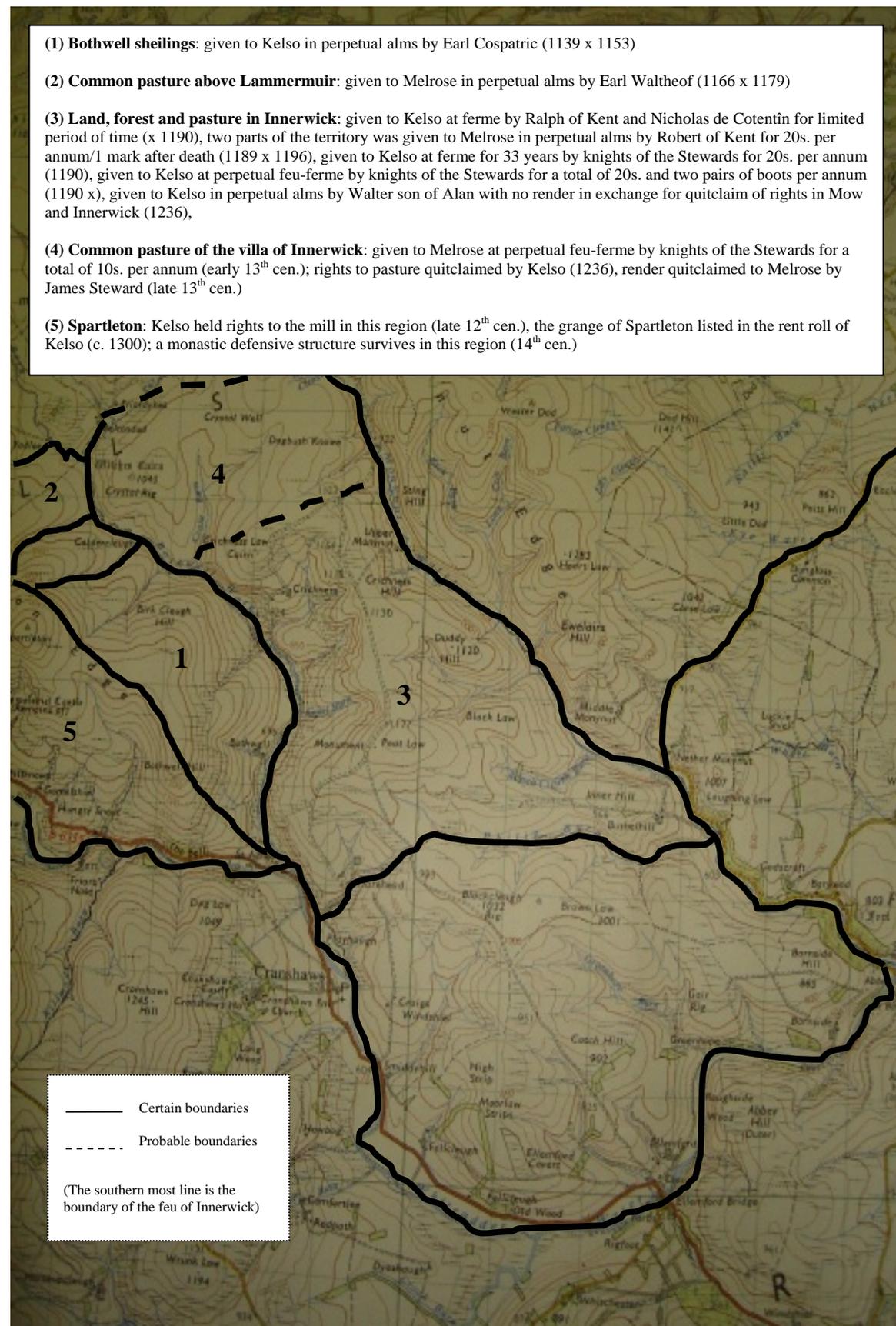
<sup>303</sup> *Ibid.*, i, nos. 71, 73.

<sup>304</sup> *Ibid.*, i, no. 263.

<sup>305</sup> *Melr. Lib.*, i, no. 76.

<sup>306</sup> *Ibid.*, i, nos. 60-62.

Map 4.1: Holdings by Kelso and Melrose in the Innerwick Region



The king's steward was the overlord of the feu of Innerwick where this property was located, and after his acquisition of it in the mid-twelfth century, it appears he quickly sub-infeudated his knights with large portions of this territory, including members of the Kents, Cotentîns, St. Martins, and Avenels. It is individuals from these families who were responsible for giving Kelso and Melrose their land in the feu, and their rights appear to have overlapped, particularly in the pasture-land. Therefore, they typically gave rights to the monasteries conjointly, at times specifying how much of a claim they had to a particular region. It was in this manner that they gave to Kelso and Melrose the land and pasture which is the subject-matter of the questionable charters.

As mentioned above, based on charters in both the Kelso Abbey cartulary and the Melrose Abbey archive, it appears that both monasteries held claim to the land which is the focus of this discussion. What is unclear, however, is the precise chronology of their tenures. An intricate charter found in the Melrose Abbey archive, which was purportedly produced on behalf of Robert of Kent between 1189 and 1196, states that Kelso Abbey held rights to the property for a period of at least five years in the late 1180s or early 1190s.<sup>307</sup> It asserts that it was given to Kelso by Ralph of Kent and Nicholas de Cotentîn in return for an annual ferme, and that after Ralph's death, overlordship and Kelso's render were transferred to Robert of Kent, Alexander of St. Martin and Roland, the son-in-law of Nicholas de Cotentîn. However, the charter in question also states that Robert gave two parts of the land (or two-thirds) to Melrose Abbey for an annual render of the 20 shillings per annum.<sup>308</sup> Moreover, to secure their future possession of the land, the monks apparently had to pay to Robert 100 shillings

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<sup>307</sup> *Melr. Lib.*, i, no. 59.

<sup>308</sup> This ferme was to be lowered to one mark after his death.

as a down-payment for the property, thus exempting them from any render for five years.

As discussed in the introduction, because the charter recording this information is damaged, it is difficult to know whether or not we can trust the details found in the Bannatyne Club edition, and these state that Melrose took possession of the land prior to the production of the charter in question. Moreover, based on the other charters in the Melrose Abbey archive, it is not clear if the abbey ever took possession of this property, and evidence suggests that if it did, then it had relinquished claim by 1236. A charter found in the Melrose collection states that in this year Kelso Abbey quitclaimed to Walter son of Alan all the territory in Mow which belonged to the steward, and any claim which the Tironensians had to the ‘commons in the moor of Innerwick’, in return for the property in question.<sup>309</sup>

Ultimately, the charters found in the Kelso Abbey cartulary appear to give a slightly different account about what occurred between the time that Melrose Abbey acquired its charter and the time that Kelso firmly acquired the property in 1236. However, the tale told by Kelso’s charters does not appear to contradict the account given by the charters in the Melrose Abbey archive. The first and earliest of the credible charters was produced on behalf Alan son of Walter which records the fact that three of his knights, namely, Robert of Kent, Robert Hunald, nephew of Nicholas de Cotentîn, and Roland, son-in-law of the same Nicholas, gave the land to Kelso for a term of thirty-three years.<sup>310</sup> According to this charter, the agreement was supposed to commence on November 11<sup>th</sup> (Martinmas) in the year 1190, and this arrangement

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<sup>309</sup> *Melr. Lib.*, i, nos. 297-98. It is noteworthy that the commons were in all likelihood the common pasture which Melrose Abbey had already been given in the early thirteenth century (see Fig. 1, no. 4). Therefore, this quitclaim did benefit the Cistercians, as did Kelso’s quitclaim of the land in Mow seeing as Walter son of Alan gave ‘all his land in Mow’ to Melrose shortly following the transaction (*Melr. Lib.*, i, nos. 142).

<sup>310</sup> *Kel. Lib.*, i, no. 248.

was subsequently confirmed by King William.<sup>311</sup> Therefore, if one was to take these charters and the charter in the Melrose Abbey archive at face-value, it would appear that if Robert of Kent's gift to Melrose was successful, then Cistercians took possession of the land for no more than a year before the land and pasture was re-granted to Kelso. After all, the charter found in the Melrose Abbey archive was produced between 1189 and 1196.

This said, according to a further five charters in the cartulary, some of which are possibly dubious, but certainly not all of them, Kelso Abbey appears to have succeeded in not only getting Melrose's claim revoked, but in convincing their landlords to convert the thirty-three-year arrangement into a perpetual one. Four individual charters, which purport to have been produced on behalf of four specific individuals - i.e. Robert of Kent, Robert Hunald, Roland, son-in-law of Nicholas de Cotentîn, and Robert Avenel - record the fact that each benefactor gave the land to Kelso in perpetual feu-ferme.<sup>312</sup> Each of these charters records slightly different specifications regarding the payment that Kelso owed, and payment depended on each individual's claim to the land in question. For instance, Robert of Kent who held claim to two parts of the territory (i.e. the same specifications found in the Melrose Abbey charter) was to receive one mark annually, namely the same amount of money that Melrose was to pay to Robert's heirs after his death. On the other hand, Robert Hunald, who held rights to one-sixth of the property, was to receive from Kelso 40 pennies and one pair of boots.

However, this too is not the end of the story. In fact, Kelso even appears to have succeeded in getting the terms of the perpetual feu-ferme arrangement amended. One charter in the cartulary, which was produced on behalf of Walter son of Alan, has

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<sup>311</sup> *Ibid.*, i, no. 261.

<sup>312</sup> *Ibid.*, i, nos. 249-50, 255, 257.

the same date that the charters in the Melrose Abbey archive have - i.e. 1236.<sup>313</sup> In this charter, Walter states that he has given the land to Kelso in perpetual alms and has quitclaimed the render of 20 shillings and two pairs of boots owed to him and his heirs.

Walter son of Alan's charter is the latest charter in the cartulary which relates to this property. Therefore, having established the content of the items in both collections, this brings us back to the question of why the two questionable charters were produced. As discussed in chapter three, one of the charters is called into question by a series of textual anomalies. On the other hand, the *conventio* is called into question by the fact it gives a dead man, Ralph of Kent, credit for taking an oath, and the fact that Robert renounces all responsibility for producing the charter in the Melrose Abbey archive. It is the latter charter which appears to provide clues concerning Kelso's motivations. As mentioned, it states that Melrose's charter was procured against his faith by theft or deception (*subrepcionem*), and it also asserts that the charter was owed to have no authority whatsoever. These are pretty strong words coming from an individual who in the same charter asked the Cistercians to accept him into the monastery if he wanted to become a monk. However, these statements also likely hold the key to uncovering why the charter was produced in the first place. As discussed in the section above, there is good reason to suggest that this charter was produced at the time of the production of the cartulary. If it was produced in the early-fourteenth century, then these statements likely reflect contemporary concerns. What are the concerns which emanate from this charter? They are that Melrose has or will attempt to use their charter to reassert possession over this land.

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<sup>313</sup> *Ibid.*, i, no. 247.

If Melrose was attempting to reassert control through the use of its charter, this would also explain the fact that Kelso only references it and none of the other charters which were likely issued by Robert's neighbours at the same time. As discussed above, Robert of Kent's charter only gives Melrose right to two parts (*duas partes*) of the land which lay within the stated bounds. If the Kelso Abbey charters give an accurate representation of what 'two parts' meant, then it was two-thirds, thus leaving a further third of the land which was not covered by the terms of Robert's grant. If Melrose ever gained full possession of the property in question, then it almost certainly acquired charters granting it the remaining one-third of the property. Moreover, Roland, son-in-law of Nicholas de Cotentîn, and Alexander of St Martin are the most likely suspects to have granted it to Melrose, seeing as they were the individuals who inherited Kelso's ferme. The fact that Kelso does not display any concern over these charters suggests that all that survived at the time of the production of the Kelso Abbey cartulary was Robert of Kent's charter. Otherwise the monks would have attempted to discredit the authenticity of the other charters as well. Nevertheless, the possibility must be kept open that Melrose never acquired the remaining one-third of the property, and this could likewise account for the fact that the Tironensians were not concerned about any other documentation.

### *ii. The Wedderlie Dispute*

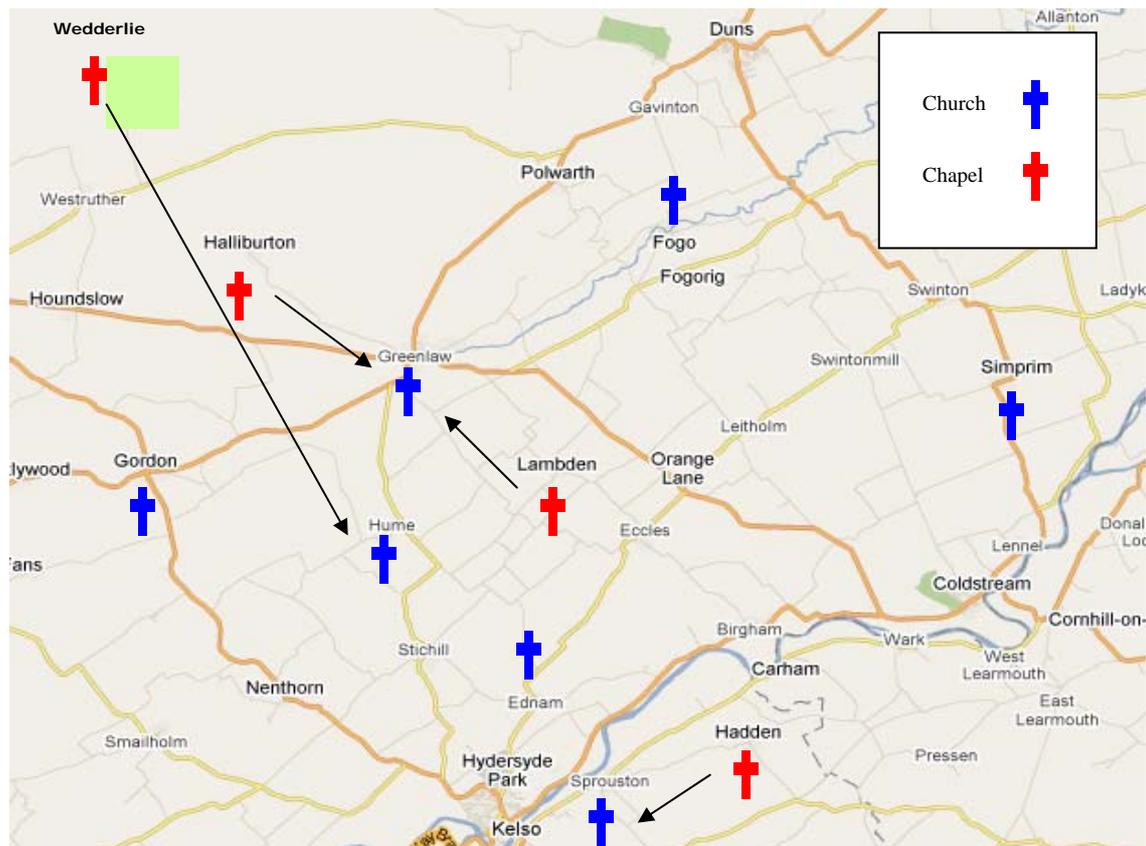
Like the impetus for creating the Innerwick charters, the impetus for fabricating the two charters in the cartulary which relate to the chapel of Wedderlie appears to be related to a problem which emerged around the time the cartulary was produced. As discussed in chapter three, one of these charters purports to record Bishop David of

Bernham's gift of the chapel *in proprios usus*, and it is called into question by the fact that it gives Kelso the right to appoint a chaplain instead of a vicar in the dependant chapel (Comm. I, no. 12). On the other hand, the other charter, which purports to have been produced on behalf of a Pope Innocent is called into question by the fact that it refers to the chapel as a church (Comm. I, no. 14). The catalyst which spurred the production of these items is almost certainly related to a situation which emerged in the early fourteenth century regarding the parochial status of the chapel. Very little is known of what actually occurred, but what is clear is that prior to the war the mother church of Wedderlie was the church of Hume, and after the conflict ended, the mother church was the church of Gordon.<sup>314</sup> As demonstrated on maps 4.1 and 4.2 below, Wedderlie is actually located much closer to Gordon than it is to Hume. Hence, though the Hume arrangement may have sufficed during years of relative stability, it appears to have fallen through during the conflict.

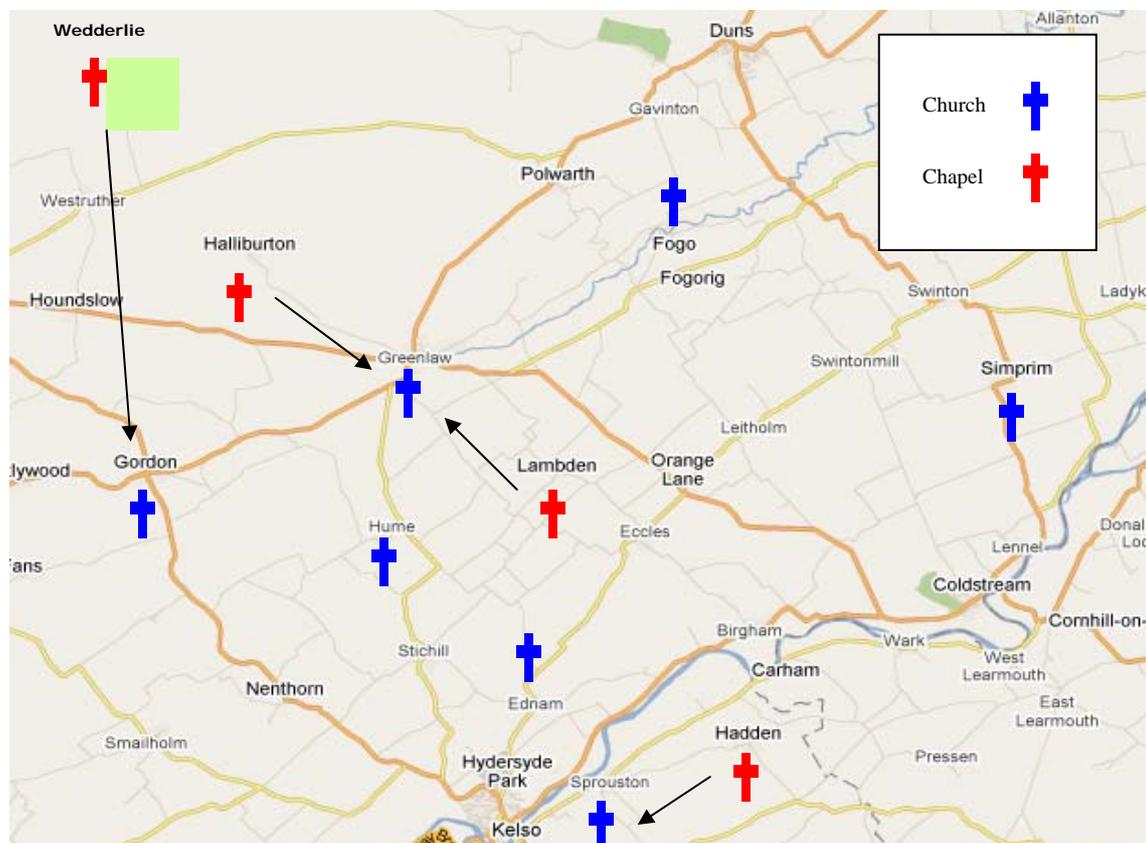
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<sup>314</sup>Cowan, *Parishes*, p. 297.

Map 4.2: Known Relationships Between Churches and Chapels before the War



Map 4.3: Known Relationships Between Churches and Chapels after the War



*iv. The Wiston Dispute and Inspections*

Not all of the disputes which inspired the monks to forge or alter the documentation appear to have occurred around the time that the cartulary was produced. This is clearly evident by the fact that two of the private charters discussed in chapter three, namely Wice of Wiston and Hye of Simprim's charters, appear to be associated with inspections (Comm. I, nos. 20-21). As discussed in chapter one, certain sections of the cartulary appear to veer from the typical topographical arrangement that is adhered to in most of the cartulary. One of these sections is located after the Hallyburton section, and it contains a series of charters relating to four individual parish churches. The charters found in this section include Hye of Simprim's charter, and the most likely explanation for the deviation from topography is the fact that these charters were all transcribed from a common source. In this case, the common source appears to have been an *inspeximus* produced on behalf of the prelates of Jedburgh, Dryburgh, and Coldingham, since the prologue of this inspection was actually copied into the cartulary following the four charters of donation (see table 3.11 below).<sup>315</sup>

*Table 4.7: The First Inspection Section*

Benefactor	Transaction	Ref.
Ralph s of Ralph of Clere	Donation of the church of Cambusnethan	272
Hye of Simprim	Donation of the church of Simprim	273
Richard Cumin	Donation of the church of West Linton	274
Anneis of Brus	Donation of the church of Thankerton	275
Abb. of Jed., Abb. Of Dry. & Pr. of Cold.	Statement of Inspection	276

<sup>315</sup> *Kel. Lib.*, i, no. 276.

Though we lack direct evidence that Wice of Wiston's charter was transcribed from an *inspeximus*, there is evidence that it was inspected in the late thirteenth century, so this remains a possibility. In the 1270s or 1280s, a charter was produced on behalf of Henry of Wiston resolving a dispute between him and Kelso concerning rights of patronage in the church of his ville. In this charter, Henry states that he inspected the charters of his predecessors relating to the church of Wiston with the help of certain distinguished men (*viros discretos*).<sup>316</sup>

The fact that these two charters were inspected in the mid-thirteenth century, raises a number of questions, especially since they appear to be advanced diplomatically. Were they tampered with prior to these inspections in an effort to augment Kelso's claim to these churches? Were they tampered with during the inspections themselves, especially in the case of Hye of Simprim's charter? Moreover, was inspection used as a means of validating a charter which the abbey just recently updated or even fabricated from scratch? After all, following an inspection the monks could utilise an *inspeximus* as a valid deed, and would not necessarily have to make recourse to an original.<sup>317</sup>

There seems to be good reason to ask all of these questions, and like Wice of Wiston's charter, the Simprim charter may have been forged or tampered with as a result of a dispute. In the mid-thirteenth century, Pope Innocent IV wrote to the abbot of Jedburgh, the abbot of Dryburgh and the prior of Coldingham and asked them to aid Kelso Abbey in the protection of its property rights.<sup>318</sup> The *inspeximus* which

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<sup>316</sup> *Ibid.*, ii, no. 339.

<sup>317</sup> Richard Mortimer has asked similar questions before (Mortimer, 'Charters of Henry II', p. 127), and other studies have uncovered evidence which suggests that they are worth asking. Among other things, Martin Brett noted that there are a 'very large number of forgeries incorporated into *inspeximus* charters' in the Rochester archive (Brett, 'Forgery at Rochester', p. 411). See also *Select Documents of the English Lands of the Abbey of Bec*, ed. by M. Chibnall, Royal Historical Society, Camden Third Series, 73 (London: Offices of the Royal Historical Society, 1951), p. x.

<sup>318</sup> *Kel. Lib.*, ii, no. 465.

contains Hye of Simprim's charter seems to have been produced as a result of this request, and it is possible that the individuals participating in the inspection marked their stamp of approval on a charter which they knew was updated or fabricated. After all, the pope explicitly commanded them to aid Kelso.

### *B. Widowhood Donations*

Apart from disputes, a second catalyst which appears to have prompted the monks to forge charters was concern over the validity of charters produced on behalf of widows. Only two charters survive in the cartulary that record the fact that widows made fresh frankalmoigne donations to the abbey, and these women are Ada of Courtney, daughter of Earl Patrick I, and Cecilia of Mow, the late wife of Simon Mauleverer.<sup>319</sup> As discussed in chapter three, forgeries appear to have been produced which relate to their donations, and the fact that forgeries correspond with the only two charters of donation produced by widows is unlikely to be a coincidence (Comm. I, nos. 9-11). However, exactly why the monks felt compelled to fabricate these charters is not clear. There is no evidence that these donations were disputed, though they could have been. Moreover, there is no evidence that the legal situation had changed in early-fourteenth-century Scotland which necessitated the production of these instruments. However, this too should not be dismissed as a possibility. Cynthia Neville, in her study of women's charters and *acta* in Scotland from 1150-1350, uncovered no evidence to suggest that the validity of female transactions changed as time progressed.<sup>320</sup> However, a recent study on gifts made by women in England has established the fact that the legal situation regarding female transactions did change in

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<sup>319</sup> *Ibid.*, i, nos. 129, 148. See also, *Ibid.*, i, no. 257.

<sup>320</sup> C. J. Neville, 'Women, Charters and Land Ownership in Scotland, 1150-1350', *Journal of Legal History*, 26 (2005), pp. 25-54 (pp. 43-44).

the late-thirteenth/early-fourteenth century, and that gifts by women were made more insecure as a result of new legislation.<sup>321</sup>

### *C. Other Concerns*

No disputes or conspicuous coincidences have yet to be identified in relation to the remaining six charters which appear to be forgeries. These items include Mael Coluim IV's Innerleithan charter, King David's general confirmation, William de Vieuxpont's Langton charter, Earl Waltheof's general confirmation and the fishery charters (Comm. I, nos. 3-5, 16-18). The possibility must be kept alive that controversies or fears did inspire the production of these instruments, but no evidence corroborates this assertion. One point which can be made, however, is that Mael Coluim's Innerleithan charter has a stipulation which states that the land of the church should be a sanctuary (*refugium*), and so too does King David's Lesmahagow charter, whose authenticity is equally questionable. According to Gervase Rosser, English monasteries frequently forged charters in an attempt to gain sanctuary rights, and the occasion for the fabrication of most of these instruments was during the reign of the Angevin kings, when royal legislation became stricter and the king's subjects were increasingly afforded less authority. Battle Abbey forged a charter giving it full rights of sanctuary, not only at the monastery itself, but wherever the abbot happened to be located at a particular time. Westminster Abbey similarly forged charters during this period claiming pre-conquest rights of sanctuary.<sup>322</sup> This said, Rosser also notes that the late middle ages was the heyday of attempts to acquire sanctuary rights, and this

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<sup>321</sup> J. M. Kaye, *Medieval English Conveyances* (Cambridge: Cambridge University Press, 2009), pp. 185-88.

<sup>322</sup> G. Rosser, 'Sanctuary and Social Negotiation in Medieval England', in *The Cloister and the World*, ed. by J. Blair and B. Golding (Oxford: Clarendon Press, 1996), pp. 57-79 (p. 74).

was largely as a result of the severity of royal law.<sup>323</sup> Royal law was certainly developing with increasing rapidity during the reign of Robert I, and Kelso's attempts to acquire sanctuary rights for the lands of the churches of Innerleithan and Lesmahagow, if in fact these are new rights, may be tied to these developments.<sup>324</sup> Moreover, it is certainly noteworthy that these two charters are the only surviving instruments from twelfth-century Scotland that granted sanctuary rights to an institution or individual.<sup>325</sup>

However, if the Innerleithan charter was produced for some specific purpose, evidence suggests that the rest of the charters were created with less specific objectives in mind, perhaps even symmetrical considerations. A strong candidate for this is Waltheof's general confirmation charter. As discussed in chapter three, two comprehensive general confirmations appear to have survived at the time of the production of the cartulary for Waltheof's father and son. However, what was not noted is that an apparently authentic general confirmation also survives for Earl Waltheof.<sup>326</sup> Unlike the charters produced by his father and son, however, this charter is very minimal in its specifications. It only states that Waltheof confirmed all the donations which Kelso had acquired in his earldom and does not list specific possessions. Could it have been that Kelso created a verbose general confirmation for the earl simply because it wanted a charter which looked more like those of his predecessor and successor? This seems like a valid explanation for its production in light of the available evidence.

The same rationale could also account for the production of William de Vieuxpont's charter and the fishery charters. Moreover, a similar rationale may also

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<sup>323</sup> *Ibid.*, p. 75.

<sup>324</sup> H. L. MacQueen, *Common Law and Feudal Society in Medieval Scotland* (Edinburgh: Edinburgh University Press, 1993), pp. 33-73.

<sup>325</sup> *RRS*, ii, p. 72.

<sup>326</sup> *Kel. Lib.*, i, no. 302.

account for the fact that the monks fabricated David I's general confirmation. However, the key to the reason that the monks felt compelled to create the latter is likely found in the rubric which precedes it in the manuscript: *de prima fundacione*. It appears that they wanted to create a foundation charter for Kelso Abbey.

The question of why the abbey felt the need to create a foundation charter for itself is not easy to answer. One possibility is that it and all copies of it were burned during the war. A second possibility is Kelso never received a 'foundation charter' which recorded its transfer from Selkirk to Kelso. The fact that it had two 'foundations' was quite an unusual phenomenon, and at the time of its transfer in the mid-twelfth century, neither it, nor King David, may have foreseen any need to create another charter for the monastery. After all, it had a 'foundation charter' which established the advent of the monastery at Selkirk.<sup>327</sup> This said, a third and final possibility is that a 'foundation charter' was produced for Kelso Abbey, but that this charter has subsequently been misunderstood by historians, namely Mael Coluim IV's general confirmation.<sup>328</sup> Historians have tended to categorise Mael Coluim's charter as a general confirmation because it confirmed everything that Kelso received up until the point at which was created. However, the charter itself exemplifies characteristics which suggest that it was no ordinary general confirmation. Firstly, it contains a 'foundation/relocation' narrative which records in intricate detail the monks' initial establishment at Selkirk and the circumstances which forced them to move further down the River Tweed to Kelso. It also describes in narrative form how Bishop Robert blessed the abbey with freedom from episcopal subjection, a freedom which

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<sup>327</sup> There are numerous examples of foundation charters being forged for religious houses in England who, like Kelso, had abnormal foundations, or were founded very early (Kaye, *Medieval English Conveyances*, p. 1-2).

<sup>328</sup> *Kel. Lib.*, i, pp. iii-vii; *RRS*, i, no. 131.

was by no means secure during the reign of King David.<sup>329</sup> None of the other general confirmations attributed to King Mael Coluim incorporate any such narratives.<sup>330</sup>

Another dimension of Mael Coluim IV's charter suggests that it was likely more than a simple general confirmation, is its artwork. It has elaborate portraits of both King Mael Coluim and his grandfather, the original founder of the house (see plate 4.4 below).<sup>331</sup> This happens to be the only surviving charter which is decorated in such a manner that survives from twelfth-century Britain, much less Scotland.<sup>332</sup> Therefore, if it was just a run-of-the-mill general confirmation, then the artists responsible for these portraits certainly went through a great deal of trouble. R. L. G. Ritchie suggested that its creation commemorated 'a red-letter day' for the abbey.<sup>333</sup> Was this 'red-letter day' actually the day on which an official charter of relocation was produced? Is the reason that scribes decorated it so elaborately and incorporated the foundation/relocation narrative because they intended it to serve a purpose greater than that of a simple general confirmation? This seems like a reasonable possibility.<sup>334</sup>

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<sup>329</sup> see Comm. II, no. 1.

<sup>330</sup> *RRS*, i, nos. 118, 172, 174, 241, 243.

<sup>331</sup> The significance of the double portrait has been a matter of intense speculation (G. W. S. Barrow, *Scotland and its Neighbours* (London: Hambledon Press, 1992), pp. 42, 49-50; G. W. S. Barrow, *Kingship and Unity* (Edinburgh: Edinburgh University Press, 1989), pp. 41-42).

<sup>332</sup> R. Maxwell, 'Sealing Signs and the Art of Transcribing in the Vierzon Cartulary', *Art Bulletin*, 81 (1999), pp. 576-97 (pp. 591, 597, fn. 98).

<sup>333</sup> R. L. G. Ritchie, *The Normans in Scotland* (Edinburgh: Edinburgh University Press, 1954), p. 366.

<sup>334</sup> To the author's knowledge, no recent historian has ever examined the charter's endorsement. Geoffrey Barrow appears to have been unable to examine the charter free of its framing (*RRS*, i, p. 194), and I was similarly denied access to the document without its casing. The endorsement may answer a number of questions about the perceived purpose of this instrument.

Plate 4.4: Illuminated 'M' in Mael Coluim IV's 'General Confirmation' Charter (NLS, Dep. 255)



#### IV. Conclusion

As discussed above, the twenty-one charters discussed in chapter three share a number of features in common. Many are found in similar locations in the manuscript. Others share the fact that they are fragmented. Moreover, evidence suggests that many of them were created to resolve disputes, and augment Kelso's claim in situations in which widows granted property to the monastery. These similarities reinforce the notion that these items are in fact spurious. However, it also suggests that most of the items were produced at the time of the production of the cartulary, with the exception of the charters associated with the inspections. The events of the early-fourteenth century, which included so much devastation and change, therefore, appear to have

actually inspired an influx of creative activity, much like the Norman Conquest inspired an influx of creative activity in England. The question naturally arises as to whether the upheavals inspired forgery elsewhere, and this and many other questions will be addressed in the conclusion, as will some proposals for future research.

## Conclusion

The ultimate aim of this study has been to deconstruct the Kelso Abbey cartulary, one of the most often cited sources that survives from medieval Scotland, and determine whether or not historians can continue to use it as they have been doing. The answer to this question must be no, in so far as scholars cannot continue to use the manuscript as if it is a straightforward, objective transcript of Kelso Abbey's charters. First of all, as demonstrated in chapter one, the cartulary is tied to a specific period in the abbey's history, and it was certainly produced as part of a campaign to rebuild after the war and its ramifications. These ramifications included the destruction of its charters, the destruction of its home and property and the upheaval of the native landholding establishment. Moreover, as discussed in chapter two, internal evidence suggests that the cartulary was likely produced between 1321 and 1326 - i.e. the precise years in which King Robert was working to help many of the religious houses in Scotland to reassert themselves.

Apart from contextual considerations, chapter two also established another point worthy of consideration: the cartulary is not a completely accurate representation of the documentation in the monastery's archive. Among other things, the scribes who produced it adopted selection criteria which led to the omission of charters from the manuscript. The scribes also abbreviated or omitted sections of the charters which they did transcribe, and these policies changed depending on which scribe was involved in transcription. Moreover, as was noted, the omission or abbreviation of diplomatic only becomes evident when there is a duplicate copy of a charter in the cartulary. Therefore, tampering may be far more pronounced than the available material allows us to surmise.

However, as demonstrated in chapters three and four, the most important thing that future historians should be aware of is the possibility of forgery. In chapter three, it was demonstrated that there are severe problems with the information, diplomatic, witness lists and other features in a number of the items in the manuscript. Thereafter, in chapter four, it was demonstrated that these items share a number of conspicuous features in common including their locations and conditions in the manuscript. Moreover, it was also demonstrated that one can make connections between the circumstances which likely led to the creation of these items. This point increases the likelihood that these charters are in fact forgeries, and further points will be made in Commentary I which compound the likelihood that they are in fact spurious.

Nevertheless, the fact that numerous items have been identified in the manuscript whose authenticity is in doubt naturally raises further questions. These include whether or not there is evidence to suggest that more forgeries may exist in the cartulary and what the implications of this study are for past research and future research. Moreover, there are also several other dimensions of the cartulary which have not been adequately addressed prior to this point and need to be assessed. These dimensions include the strange appearance and disappearance of the *notitiae* at the beginning of the manuscript, the disappearance and reappearance of the manuscript's witness lists, and the implications of the fact that scribes were apparently forging charters at the time of the production of the manuscript. Therefore, before concluding this study, it is worth visiting these questions, especially in light of the discoveries which have been made in the preceding chapters. We will begin with the appearance and disappearance of the *notitiae*.

### *I. Notitiae*

As discussed in chapter two, one peculiar feature of the cartulary is the fact that *notitiae* are regularly found in q. 2 (i.e. the first quire in the original cartulary), but they disappear thereafter, with the exception of one further example in q. 5. However, even more peculiar is the fact that the *notitia* in q. 5 contains false information. The latter point obviously raises questions about why one would create a note which asserts that something erroneous happened which clearly did not, and this will be dealt with later. However, the very existence of the *notitiae* in the manuscript, along with their subsequent disappearance, also raises questions about why they disappeared, what function they served and why they were used to summarize some charters and not others.

None of these questions is ultimately very easy to answer. However, the questions of what function they served is likely linked to concerns over the conservation of parchment. Parchment was expensive and summarizing certain charters would allow the monks to save a great deal of space. After all, the first two *notitiae* in the manuscript summarize the content of Mael Coluim IV and William I's general confirmation charters which basically say the same thing as the charter which precedes them - i.e. David I's general confirmation. Therefore, the answer to the question of why they ceased to summarize charters after q. 2 could have been tied to the fact that economy was no longer a priority.

This said, though economic concerns likely account for what we find in q. 2, it still does not explain why the scribe who was responsible for this quire made the decisions that he did. In many cases, there seems to be no real logic why some charters were copied in full and others were not. Nevertheless, one explanation which

seems to have some potential may be derived by examining the locations of the *notitiae* in the q. 2 and how their location corresponds with the location of the questionable charters which were discussed in chapters three and four.

As demonstrated on table 5.1 below, there is a very peculiar juxtapositioning of the *notitiae* and the charters of questionable authenticity in this section of the manuscript. For example, as mentioned above David I's general confirmation is followed by the *notitiae* which summarize Mael Coluim and William's general confirmations, and the latter are known to be authentic. Several other charters of questionable authenticity are also interspersed between the *notitiae*, and all of them appear to summarize authentic charters.<sup>335</sup> Are we therefore seeing evidence that the scribes were only taking the trouble to copy down charters in full when they were fabricated? The fact that this section of the cartulary contains such a large number of questionable charters certainly seems to suggest that there is some validity in this hypothesis. Naturally, there are several charters which are likely to be authentic including most of the charters from no.12 to no. 20. However, the notion that this was a policy in some parts of the first section is not far-fetched, and it may suggest that even more of what we find in q. 2 is spurious.

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<sup>335</sup> As discussed in chapter two, most of them are found in later sections of the manuscript.

Table 5.1: The Beginning of the 'Original Cartulary' Until the Notitiae Are No Longer Utilised (Yellow - Problematic Charters, Red - Notitia, Blue - Crossed Out By Scribe)

	Benefactor	Transaction	Ref.		
Doubtful →	David I	General confirmation charter for Kelso Abbey	2		
	<del>Notitia</del>	<del>Note of Mael Coluim IV's general confirmation</del>	<del>3</del>	← Original	
	<del>Notitia</del>	<del>Note of William I's general confirmation</del>	<del>4</del>	← Found Later in Cartulary	
Suspicious →	David I	Foundation charter for Selkirk Abbey	1		
	William I	Prohibits taking of poinds against the abbot of Kelso	5		
	Alexander II	Prohibits taking of poinds against the abbot of Kelso	6		
Doubtful →	Alexander II	General confirmation of liberties and customs	7		
	David I	Foundation charter for Lesmahagow Priory	8		
	William I	Confirms William Comyn's grant of land in Lesmahagow	9		
	Alexander II	Gives to Lesmahagow Priory lands of Les. in free forest	10		
	<del>Notitia</del>	<del>Note of gifts and confirmations by King etc. in Dumfries</del>	<del>11</del>	← Found Later in Cartulary	
	William I	General confirmation charter for Kelso Abbey	12		
	William I	General confirmation charter for Kelso Abbey	13		
	William I	Gives three ploughgates in Ednam	14		
	<del>Alexander II</del>	<del>General confirmation of liberties and customs</del>	<del>15</del>	← Deleted in Manuscript	
	Alexander II	Prohibits taking of poinds against the abbot of Kelso	16		
	Alexander II	Confirms 100s from ferme of Roxburgh	17		
	Alexander II	Brieve to provosts commanding 100s from Roxburgh	18		
	William I	Dispute resolution between Melrose and Kelso	19		
	Mael Coluim IV	Gives toft in Rutherglen	20		
	Doubtful →	Mael Coluim IV	Gives church of Innerleithan and sanctuary rights	21	
		William I	Gives church of Peterculter	22	
<del>Notitia</del>		<del>Note of gifts and confirmations by King etc. in Sprouston</del>	<del>23</del>	← Found Later in Cartulary	
<del>Notitia</del>	<del>Note of confirmation by William I of land in Mow</del>	<del>24</del>			
Comm. II →	David I	Confirms Bernard de Balliol's gift of fishery of Woodhorn	25		
	<del>Notitia</del>	<del>Note of gifts of David I in Berwick</del>	<del>26</del>	← Not Found Elsewhere	
Comm. II →	Mael Coluim IV	Confirms land in Berwick	27		
	<del>Notitia</del>	<del>Note of gifts of land in Berwick by local lords</del>	<del>28</del>	← Not Found Elsewhere	

## II. *Witness List Omission*

Having established that there may be a direct correlation between the *notitiae* and the forgeries in q. 2, this brings us to the question of why the decision was made to omit witness lists from item no. 8 - i.e. the questionable Lesmahagow foundation charter - to item no. 138. Were it not for the fact that there was an attempt to copy witness lists into the manuscript from item no. 1 to item no. 7, one might be tempted to dismiss the fact that witness list omission began with the incorporation of a forgery. However, in light of the forgery analysis, this is unlikely to be a coincidence. Therefore, the decision to start omitting witness lists from the manuscript may not only be the result of the creation of a forgery, but the fact that the scribe was intending to produce more forgeries and did not want to have to bother with fabricating witness lists for all of these items (remembering that he did a very meagre job in relation to David I's general confirmation charter).<sup>336</sup> Moreover, depending on the function of the cartulary, it may be that scribes did not want to alert any potential readers of the manuscript to the forgeries by having some charters with witness lists and others without. Therefore, the decision to omit witness lists between no. 8 and no. 138 may be tied to some sort of practical consideration relating to the manuscript's audience.

Either way, however, the reason for the scribe's decision to omit witness lists from the Kelso Abbey cartulary may not fit neatly into the traditional paradigm which historians have established to account for their omission in other contexts. Constance Bouchard noted that the reason that we fail to find witness lists in many cartularies is because, firstly, these manuscripts were meant for an internal audience (i.e. the religious community), and secondly, the content of the witness lists ceased to be

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<sup>336</sup> The general confirmation charter of David I only lists one witness: Earl Henry.

relevant once the people found within them were dead.<sup>337</sup> However, there appear to be bigger issues at work here.

### *III. Function of the Cartulary*

Constance Bouchard's assertion that cartularies were meant for an internal audience ultimately brings us to a third question about the Kelso Abbey cartulary: what was the function of this manuscript? The question of the function of cartularies has been discussed in some circles, and most historians are of the opinion that cartularies were meant for internal use and 'should be seen as more commemorative than combative, less a legal brief than another form of a *liber memorialis*'.<sup>338</sup> However, Trevor Foulds has uncovered some evidence to the contrary. In an article on medieval English cartularies, Foulds notes that the prologue to a fourteenth-century private cartulary, which was produced on behalf of Tomas of Hotot, states that it was compiled 'to provide evidence without the sight of the original charters for all lawsuits that arise, or for all unjust demands for forinsec service or rent, and for the giving of relieves according to the provisions of the charters'.<sup>339</sup> Foulds used this as evidence to suggest that cartularies may have actually had some legal function in the middle ages, though he concludes this discussion by saying:

After much searching and enquiry I have failed to discover an example of a cartulary being produced and accepted as evidence to title in the absence of originals in the pre-dissolution medieval period. I would be

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<sup>337</sup> Bouchard, 'Monastic Cartularies', p. 29.

<sup>338</sup> *Ibid.*, p. 31.

<sup>339</sup> Foulds, 'Medieval Cartularies', p. 31.

grateful to be informed, with full reference and details, of any such case.<sup>340</sup>

The fact that there is some doubt about the notion that all cartularies were meant to serve a purely 'internal' function certainly raises some questions about the function of the Kelso Abbey cartulary. After all, both the circumstances surrounding the production of the manuscript and some of the features of the manuscript itself are highly irregular. Firstly, as discussed in chapter two, it was produced during the same period as the Restenneth inquest and the Scone commission in which there was an attempt to restore the properties of these institutions. During both the inquest and the commission, both houses had to provide their charters. Was the Kelso Abbey cartulary, at least the 'original cartulary', used as evidence in a similar sort of commission? Ultimately, this cannot be established for certain, but the proximity of its production to these two events is striking.

Another point which may be in favour of this hypothesis, in addition to the discussion about witness list omission, is the fact that forgeries appear to have been produced at the same time as the production of the cartulary, and accordingly, copied into the manuscript. Constance Bouchard said in her study of monastic cartularies that:

Here it should also be noted that while the cartulary scribes might be trying to regularize the record of their monasteries' possessions, they do not seem to have tried to improve this record. That is, although most cartularies ended up with at least a few forgeries in them, a close

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<sup>340</sup> *Ibid.*, p. 33, fn. 79.

examination of these forgeries suggests that they were done well before the creation of the cartulary itself. The only exceptions would be those cases where one is not speaking so much of a cartulary as of a small dossier of documents, put together specifically to argue a certain case.<sup>341</sup>

Obviously, the Kelso Abbey cartulary is not a ‘small dossier’ of documents, but the fact that forgeries appear to have been produced at the time of the production of the manuscript, in combination with the fact that it was produced during the same period as the inquest and commission, may suggest that it was, as Bouchard says, ‘put together specifically to argue a case’.

If this is not the case, then the only other reasonable way to account for the forgeries in the manuscript is that the cartulary was produced as part of a larger process, which included the creation of ‘originals’ to correspond with the forgeries in the manuscript. If so, then the cartulary must be seen as being a ‘rough draft’ of sorts which was used to organize what material needed to be forged. It is noteworthy that there may be some evidence to back up this notion. For one, as mentioned, a number of the questionable charters are in a fragmented condition, and thus appear to be failed attempts at forgery. Secondly, the fact that the Keith *notitia* contains spurious information may suggest that it was a reminder for the scribes to produce a corresponding ‘original’. Moreover, there may be some evidence that single-sheet originals were being created as part of a larger process. The only charter of questionable authenticity which appears in both the Kelso Abbey cartulary and in another manuscript is the Lesmahagow foundation charter (Comm. I, no. 2). As will

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<sup>341</sup> Bouchard, ‘Monastic Cartularies’, p. 28

be discussed in the commentaries, it survives in a royal register of either Robert I or David II, and what is noteworthy is the fact that it has some notable differences from the copy in the Kelso Abbey cartulary. For one, several of the words have been changed and the grammar found in the cartulary copy appears to have been cleaned up to some extent. Apart from that, it also has a witness list, and as noted above, this is the first charter in the cartulary which lacks this feature. It would seem, therefore, that the exemplar for the copy in the royal register was not the copy in the Kelso Abbey cartulary, so a single sheet original was almost certainly produced to correspond with it. Whether it was produced at the same time as the production of the cartulary, however, is a different question. Therefore, the notion that the cartulary alone was used as evidence may still stand.

#### *IV. Thoughts for the Future*

The fact that the manuscript may be more than just a simple cartulary, in combination with everything that has been addressed in this study, naturally raises a number of questions for future researchers. First and foremost is how do we know that the forgeries and questionable charters which have been identified in this study are the extent of Kelso's creative activities? The simple answer to this question is that we cannot be certain. As discussed throughout this thesis, the primary problem with assessing the authenticity of charters which survive in transcripts is the fact that we lack the material evidence needed to actually say for certain that they are forgeries. We are thus forced to rely on the presence of contextual anachronisms, contradictions, irregular diplomatic and other non-textual features to call them into question, and when these features are lacking, we hit a dead-end in our investigations. As will be

demonstrated in Commentary II, there may be reason to question the authenticity of several other items in the cartulary, but at present, the most that can be said is that historians should use these charters with caution, since there is not a multiplicity of points that are sufficient to build a strong case against them. Nevertheless, a worthwhile stance in relation to the Kelso Abbey cartulary may be to adopt Michael Clanchy's opinion concerning the validity of using material found in the archives of the Anglo-Saxon monasteries and cathedrals in England. Regarding the material found in these archives, Clanchy notes that 'no document coming from such centres of proved fabrication as Westminster, Evesham, Winchester cathedral, Chertsey and Malmesbury should be accepted at its face value without closer examination'.<sup>342</sup> In the future, historians might be well-served to take a similar approach with respect to the Kelso Abbey cartulary.

Along the same lines, historians who use Scottish charters would also be well-served to consider the sorts of issues that this study has highlighted in relation to Scotland's other archives and cartularies, including the possibility of forgery. C. N. L. Brooke has said that charters are 'one of the areas, as I would suppose, one of the few areas - where the crust of designing fiction over the literary sources is so thick that historians must always consider the possibility [of forgery]'.<sup>343</sup> Moreover, a good place to start in this regard may be the manuscripts and archives where forgeries have already been identified. At least one charter of questionable authenticity has been identified in most of the major collections of Scottish charters, and as noted by Georges Declercq, the creation of false *acta* was not usually an isolated affair.<sup>344</sup> In

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<sup>342</sup> Clanchy, *Memory to Written Record*, p. 318.

<sup>343</sup> Brooke, 'Approaches to Medieval Forgery', p. 377.

<sup>344</sup> G. Declercq, 'Centres de Faussaires et Falsification de Chartes en Flandre au Moyen Age', in *Falsos y Falsificaciones de Documentos Diplomaticos en la Edad Media* (Zaragoza, 1991), pp. 65-74 (pp. 73-74).

fact, more often than not, forgers would create multiple charters to reinforce their claims.

Another issue that historians may want to consider is the occasion which appears to have prompted Kelso to forge most of its charters in the early fourteenth century, namely the Anglo-Scottish wars. As demonstrated in chapter one, the events of the early fourteenth century were virtually identical to the events of the Norman conquest in that a new landholding aristocracy was established. As noted by Trevor Foulds, ‘under peaceful circumstances monasteries could expect to obtain the cooperation of their benefactors or their heirs’.<sup>345</sup> However, in times of political crisis, especially when such individuals were no longer available, monasteries turned to the only sure way to ensure their claims, namely forgery. We may discover that the events of the early fourteenth century in Scotland were actually on a par with the Norman conquest in terms of inspiring religious houses to forge charters. Moreover, there may already be some reason to suspect that this was the case, far removed from what has been discussed in this study. Take for instance an ‘original’ charter found in the Melrose Abbey archive that purports to have been produced on behalf of King William and records his confirmation of Melrose’s interests in Wedale. Geoffrey Barrow identified this charter as a forgery based on its witness list.<sup>346</sup> However, he left his discussion of this instrument at that, and did not make any attempt to account for the reason why the monastery may have forged the charter. This said, it is noteworthy that in the early fourteenth century, Melrose got into a major dispute over this property with James Douglas, who as mentioned in chapter one, was installed as the overlord of the region by Robert I.<sup>347</sup> Was this charter fabricated as a result of this dispute? Further investigations would need to be conducted to prove or disprove this

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<sup>345</sup> Foulds, ‘Medieval Cartularies’, p. 31.

<sup>346</sup> *RRS*, ii, no. 253.

<sup>347</sup> Brown, *Black Douglas*, p. 190.

hypothesis. However, if it was, then we could assume that Melrose may have reacted to the events of the early fourteenth century in a way which was quite similar to Kelso's reaction.

Three more charters in the Melrose Abbey archive which deserve further attention relate to the monastery's holdings in Mauchline.<sup>348</sup> As demonstrated on table 5.2 below, one of these charters has a witness list in which two individuals are listed twice. There may be a logical explanation for this anomaly. Then again, this may be evidence of forgery. Either way, however, it is noteworthy that in 1326, Robert I issued a letter patent to Melrose of freedom from all prises and other burdens in their lands in the earldom of Carrick and of Mauchline, and terms of these charters were mentioned.<sup>349</sup> Were these items also created as a result of problems Melrose was having in the early fourteenth century? Hopefully, future research will tell.

*Table 5.2: A Comparison of the Witness Lists of the three Mauchline Charters*

<b>66 – Walter son of Alan</b>	<b>67 – Alan son of Walter</b>	<b>68 – King William</b>
Alan, my son	Reginald of Hastings	Ingram bishop of Glas.
Liulf son of Machus	William of Lindsey	Osbert abbot of Jed.
Robert de Côtentin	Liulf son of Machus	Richard Comyn
Robert of Montgomery	Robert son of Maise	Odinel de Umframville
Robert son of Fulbert	Ralph of Kent	Hugh Giffard
Robert son of Maise	<b>Walter de Côtentin</b>	Alexander de St Martin
Ralph of Kent	<b>Richard the clerk</b>	Richard de St Michael
<b>Walter de Côtentin</b>	Richard Wallace	Gilbert son of Geoffrey
<b>Richard the clerk</b>	Adam of Newton	Hugh clerk of king
Richard Wallace	Arkil of Newton	Dolfin chaplain
Adam of Newton	William son of Walter, nepos of the steward	<b>Richard clerk of king</b>
	Stephen Carpenter	Roger of Morebattle
	<b>Walter de Côtentin</b>	William of Huntingdon
	Adam son of Arkil	
	<b>Richard the clerk</b>	
	Elias son of Uhtred	

<sup>348</sup> *Melr. Lib.*, i, nos. 66-68.

<sup>349</sup> *RRS*, v, no. 287.

This said, the notion that the Kelso Abbey cartulary, Melrose Abbey archive and other collections of Scottish charters may be far more complex than historians have yet to realise should not be seen as an occasion for dismay. Yes, as Archibald Lawrie said, such revelations may force historians to revise some of the previous assertions.<sup>350</sup> However, the discovery of forgeries also provides historians with a unique glimpse into the medieval mind, which charters, in and of themselves, can not offer. Wendy Davies has asserted that ‘forged texts are potentially of equal historical significance to the substance of any original charters seeing as ‘the worth of a text does not lie in its face value’. Rather, ‘the nature of alterations, emendations and additions tell us something useful about the aims, intentions and desires of the person who made these alterations’.<sup>351</sup> Within this study, revelations have hopefully been made about the wants and needs of the monks of Kelso during the early fourteenth century and other investigations would hopefully do the same. The key is to not, as Cosmo Innes said in his edition of the Dunfermline Register, to be adverse to researching such matters.<sup>352</sup>

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<sup>350</sup> *ESC*, p. vi.

<sup>351</sup> Davies, ‘Cartulaire de Redon’, p. 274.

<sup>352</sup> *Dunf. Reg.*, p. xx, fn. 2.

## COMMENTARY I

QUESTIONABLE *NOTITIAE* AND CHARTERS DISCUSSED IN CHAPTERS  
THREE AND FOUR*SPURIOUS/DOUBTFUL:*

1. A notitia stating that Mael Coluim IV, William I, and Alexander II individually confirmed an agreement that Kelso Abbey made with Hervey the marischal concerning the chapel of Keith-Hervey (in East Lothian).

[Undated]

*Rubric:* De institutione Rectoris in dicta ecclesia

*Source:* NLS, MS. Adv. 34.5.1, f. 37r

*Printed:* *Kel. Lib.*, i, no. 99

*RRS*, i, no. 273

- Istam cartam confirmant tres reges . scilicet . Malcolmus . et Willelmus frater eiusdem Malcolmi et rex Alexander de verbo ad verbum . Ita conuenit inter nos et Herveum de Keth super ecclesia ville sue videlicet quod adducetur ad nos ille qui persona erit . et iurabit quod absque malo ingenio et fideliter reddet nobis singulis annis . xx<sup>ti</sup> solidis ad pentecosten et sancti Martini . et nichil amplius exigemus in ea . sed non licebit
- 5 dicto Herveo nec heredibus suis dictam elemosinam alicui loco religioso dare nisi nobis . Et uterque . scilicet . nos et ipse debemus eundem qui instituendam est episcopo presentare .

*Comments:* The legitimacy of the information found in this *notitia* is compromised by the fact that it gives King Mael Coluim IV credit for confirming the agreement made between Kelso and Hervey the marischal [1]. The terms of this agreement were decided upon by Jocelin, bishop of Glasgow, and Osbert, prior of Paisley (as papal judges delegate), and they were confirmed by Richard, bishop of St Andrews.<sup>12</sup> Jocelin was not elected bishop of Glasgow until 1174, and was not consecrated until 1175.<sup>3</sup> Similarly, the earliest known reference to Osbert as prior of Paisley dates from 1173,<sup>4</sup> and Richard was bishop of St Andrews from 1163 to 1178.<sup>5</sup> Based on the date of Jocelin's consecration and the date of Richard's death, the convention in question can be said to have occurred sometime between 1175 and 1178. Therefore, the agreement transpired at least ten years after the death of Mael Coluim IV.

*\* For further discussion of the item, including its peculiar location in the manuscript, see pp. 129, 171-72, 180-81.*

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<sup>1</sup> *Kel. Lib.*, i, no. 96.

<sup>2</sup> *Ibid.*, i, no. 97.

<sup>3</sup> Watt, *Fasti Ecclesiae Scoticanae*, p. 188.

<sup>4</sup> Watt, *Heads of Religious Houses*, p. 167.

<sup>5</sup> *Fasti Ecclesiae Scoticanae*, p. 378.

**2. David, king of Scotland, gives to Kelso Abbey, by the consent of John, bishop of Glasgow, the church and land of Lesmahagow (in Lanarkshire) to establish a priory.**

[23.4.1144 x 25.3.1145]

*Rubric:* Carta Domini Regis Daud de baronia de Lesm'

Fundacio abacie sue monasterii de Lesmahagu

*Sources:* A: NLS, MS. Adv. 34.5.1, ff. 10v-11r

B: NLS, MS. Adv. 34.3.11, p. 155

(Latin text derived from Source 'B')

*Printed:* *Kel. Lib.*, i, no. 8

*ESC*, no. CLXXII

*Charters of David I*, no. 130

David dei gracia Rex Scott' . Universis sancte ecclesie dei filiis et fidelibus suis salutem . Sciatis me intuitu dei et pro salute anime mee . et omnium antecessorum et successorum meorum . consilio etiam et ammonicione Johannis Glasguensis episcopi, dedisse et hac carta mea confirmasse abbatie de Kelch' quam fundau' . et abbati et monachis ibidem deo seruiantibus . in liberam et perpetuam elemosinam . ecclesiam de Lesmahag' . et totam Lesmahagu . per suas rectas diuisas . et cum omnimodis pertinenciis suis in bosco et plano . in moris . et mariscis . in pascuis et aquis . in molendinis . et in ceteris edificiiis . et mansionibus construendis in terra sua prout eis libuerit . Ita quod nulli omnino hominum liceat terras uel possessiones monachorum aliquo modo occupare nisi per ipsos . Et uolo ut easdem terras et possessiones ita quiete et libere perpetualiter optineant . sicut ego ipse eas unquam liberius et quocius obtinui et possedi . solas oraciones ad salutem animarum exsoluendo . Dictam uero ecclesiam prenomatus Johannes episcopus ex assensu totius cleri sui ad petitionem meam ab omni exaccione et subieccione episcopali iure perpetuo predictis abbati et monachis quietam clamauit et liberam . sicut carta ipsius testatur et confirmat . Ita quod abbas et monachi Kalchoenses de ecclesia Lesmahagu sicut de cella sua ordinabunt . priorem et monachos ordinis et habitus Kalchoensis in ipsa successive instituendo . prout locus potuit honeste sustentare . una cum recepcione pauperum per eos transeuncium. Quicumque autem propter uite uel membri periculum euadendum

ad dictam cellam confugerint . uel infra quattuor cruces circumstantes peruenerint ob reuerenciam dei et

Sancti Machuti firmam pacem meam eis concedo . Hec autem carta confirmata est . Anno ab incarnatione domini M . C . xl . iiij . Regni mei . xx primo . coram hiis testibus .

*Comments:* The legitimacy of this charter is called into serious doubt by a variety of factors including its diplomatic features. In terms of its diplomatic, there are two features which almost certainly betray the fact that it was not produced in the mid-twelfth century. Firstly, it has a regnal year in its dating clause, and as such, is the only surviving charter of King David I that has such a feature and has not been dismissed as a forgery [18].<sup>6</sup> Secondly, it states that the prior and monks who resided in the cell should be of the ‘order and habit of Kelso’ [13-14]. However, as discussed in chapter one, Abbot Herbert (1119-47), who was supposedly the recipient of this charter, appears to have submitted to the authority of the abbot of Tiron during his abbacy. In fact, it was not until 1176 that a schism occurred in the order, after which point Arbroath, Lindores and Mercheley were said to be ‘of the order of Kelso’.<sup>7</sup> Therefore, it is difficult to see how using this nomenclature in reference to the order of the monks of Lesmahagow would have been acceptable in 1144, even if it was not meant to give the impression that an ‘order of Kelso’ existed.

Apart from its diplomatic features, many of the stipulations found in this charter also contradict what is known of the original conditions of Kelso’s tenure in Lesmahagow, and appear to reflect concerns which were relevant in the early fourteenth century. For instance, the comparative clause stipulates that David wanted the monks to only be responsible for discharging ‘prayers for the salvation of souls’ [9-10]. However,

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<sup>6</sup> *Charters of David I*, p. 22.

<sup>7</sup> *Arb. Lib.*, i, nos. 2-3; *Lind. Chrs.*, no. 2; *Kel. Lib.*, i, 264-66.

we know that this was not the only requisite that the king required of the monks at Lesmahagow. In fact, a charter copied into the manuscript during phase three of the production of the Kelso Abbey cartulary makes it abundantly clear that the monks were responsible for providing common burdens to the king. The charter in question stipulates that in 1271 Abbot Henry of Lambden (1260-75) gave to Sir Hugh of Crawford and his wife the land of Draffan in return for two marks, homage and fealty, suit at the abbot's court and **one and a half men of forinsec service**.<sup>8</sup>

As discussed in chapter four, the charter also has a clause which prohibits men from occupying the land of the priory [7-8],<sup>9</sup> and this is exactly what was happening in the early fourteenth century.<sup>10</sup> Moreover, the rubric which precedes the charter in the cartulary suggests that the scribe who entered it was primarily concerned with securing their rights in the barony, not the priory itself: *Carta Domini Regis David de baronia de Lesm'*.

However, perhaps the most persuasive piece of evidence which suggests that the charter is spurious is the fact that it is found in the royal register of either Robert I or David II.<sup>11</sup> There are virtually no other charters in these royal registers which are not contemporary with the reign of these kings. In fact, apart from the charter in question,

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<sup>8</sup> *Kel. Lib.*, ii, no. 474.

<sup>9</sup> An evaluation of the charters in the Kelso, Melrose and Holyrood collections has revealed that no other clauses use a form of the verb *occupare*.

<sup>10</sup> As noted, Alexander Folcard, one of Kelso's men in Lesmahagow, appears to have seised the land of Poniel during the first quarter of the fourteenth century and claimed it to be his by hereditary right. (*Kel. Lib.*, i, no. 191).

<sup>11</sup> Even though Roll no. XV, where this charter is found, has typically been associated with Robert I, Archibald Duncan states that it 'must be considered an 'Ancient Charter' roll of the reign of David II'. He bases this firstly on the fact that the last beneficiary listed in Roll no. XIV (which is attributed to David II), is the same beneficiary in Roll no. XV, and secondly, on the fact that the last entry is a charter datable to the end of the reign of David II (*RRS*, v, p. 247)

only three charters survive that do not date from the fourteenth century.<sup>12</sup> Therefore, the fact that the Lesmahagow foundation charter was incorporated into a late medieval royal register suggests that a dispute of some sort had arisen over its authenticity. Along these lines, Archie Duncan has suggested that ‘the register might have been kept as a judicial resort, to prove the authenticity of charters, or to supply their absence when destroyed.’<sup>13</sup>

*\* For further discussion of this item, including the fact that it is the first charter in the cartulary which lacks a witness list, the fact that there are significant differences between the cartulary copy and the registered copy, and the fact that sanctuary rights were a common topic of forgeries in England, see pp. 141, 159-62, 176, 180-81, 194-95.*

**3. David, king of Scotland, confirms all of the churches and lands which Kelso holds in his territory.**

**[1147 x 12.6.1152]**

*Rubric:* Carta Regis Daudid de prima fundacione

*Source:* NLS, MS Adv. 34.5.1, ff. 8r-9r

*Printed:* *Kel. Lib.*, i, no. 2

*ESC*, no. CXCIV

*Charters of David I*, no. 183

<sup>12</sup> These include charters issued to William de Baddeby (1271 x 1286), John de Baddeby (x 1286) and Jordan son of William son of Nigel (1189 x 1196) (*RRS*, v, App. Roll XIV, nos. 593-94; Roll XV, no. 602).

<sup>13</sup> *RRS*, v, p. 254.

*(Note - In the edition below, red sections are portions of the charter which appear to be copied from the Selkirk foundation charter, blue sections appear to be copied from Mael Coluim IV's general confirmation charter and black sections cannot be found in either document. Footnotes correspond with the black sections.)*

David dei gratia rex illustris Scott'. Omnibus sancte matris ecclesie filiis et fidelibus salutem<sup>14</sup>. **Notum sit omnibus presentibus et futuris me fundasse dum fui comes quoddam monasterium in Selechirche ad abbathiam in honore sancte marie virginis . et sancti Johannis Ewangeliste . pro salute anime mee . et omnium antecessorum et sucessorum meorum .** Sed postquam diuina clemencia post obitum fratris mei

5 Regis Alexandri successi in regnum . consilio et ammonicione venerabilis memorie Johannis episcopi Glasg' . aliorumque procerum meorum predictum monasterium quia locus non erat conueniens abbathie apud Roxburgum transtuli in ecclesia beate Marie virginis que sita est super ripam fluminis Twede . in loco qui dicitur Calkou . quam ecclesiam Robertus Sancti Andree episcopus in cuius erat episcopatu pro dei amore et meo concessit mihi et eiusdem loci ecclesie abbati . et monachis . solutam et quietam et omni subieccione et

10 exaccione liberam . ita . scilicet . ut abbas et monachi supradicte ecclesie a quocumque episcopo uoluerint in Scocia vel in Cumbria crisma suum et oleum et ordinationem ipsius abbatis et monachorum et cetera ecclesie sacramenta accipiant . Ego vero huic ecclesie in elemosinam perpetuam donauit villam de Kelch' cum suis rectis diuisis in terris et in aquis . solutam et quietam et ab omni exaccione liberam . Et quocienscunque in eadem ecclesia in solempnitatibus vel in aliis diebus seruium dei audiero ; omnes offerendas meas et

15 omnium qui mecum erunt perpetue dedi in elemosinam . Et in Edinham de molendino . xij . celdr' de brasio quolibet anno . Et de mora de Edynham ad fodiendum cespites ad faciendum ignem . a quodam fossato quod descendit de quadam alia mora transiendo recto tramite illam moram usque ad tres magnos lapides ex altera parte existentes . Et in burgo de Roxburg' . xl solidos de censu unoquoque anno . et omnes ecclesias et scolas eiusdem burgi cum omnibus earum pertinenciis<sup>15</sup> . et unum toft iuxta ecclesiam Sancti Jacobi . et alterum in

20 novo burgo . et terram que fuit Gauteri cymentarii . et in molendinis xx . celdras inter farinam et frumentum . et septimam partem piscature . Et in Sprouistona unam carucatam terre . et . x acras et maisuras carucate pertinentes . et tres acras de prato et ecclesiam eiusdem ville . et terram ecclesie pertinentem . Domino Johanne episcopo Glasg' simul dante et episcopali auctoritate confirmante<sup>16</sup> . **Et villam Rauendene sicut unquam in meo dominio eam melius habui .** in terris et in aquis . in pasturis de Sprouiston' . et moram ad

25 fodiendum turvas communes hominibus de Reuedene, sicut hominibus de Sprouist' . Et in Berewyc' unam carucatam terre et unam maisuram carucate pertinentem . iuxta ecclesiam Sancti Laurentii . et alteram maisuram in burgo . et . xl solidos . de censu eiusdem burgi unoquoque anno . et dimidam partem unius piscature que vocatur Berewyckstrem . et septimam partem molendinorum . Et villam de myddilham . et

<sup>14</sup> This is the only time that the phraseology *omnibus sancte matris ecclesie filiis et fidelibus* appears in a charter of King David. However, an address clause in one of Earl Henry's charters reads: *H' filius Regis Scocie omnibus fidelibus et filiis sancte ecclesie, salutem* (*Charters of David I*, no. 62)

<sup>15</sup> Details found in *Kel. Lib.*, ii, no. 415.

<sup>16</sup> Details found in *Charters of David I*, no. 91; *Kel. Lib.*, ii, no. 382.

30 Bouldene . sicut unquam melius habui . in terris . et in bosco . in aquis . et in plano . Et xxx<sup>ta</sup> acras terre in  
 territorio Lyllesclef<sup>r</sup> inter Alnam et rivulum qui dividit terram de myddilham . et de Lyllescleue . et decimam  
 molendini eiusdem ville . scilicet . de Lyllescleue . Et Wythelawe . cum suis rectis divisio sicut eam melius  
 habui in meo domino . Et terram de Selkyrke . sicut rivulus descendens a montibus currit in gierwa usque ad  
 rivulum illum qui descendens a Crossanesmer currit in Twede . et ultra eundem rivulum qui cadit in gieruam  
 . quendam particulam terre inter viam que venit de castello et super veterem abbatiam cadit in eodem riuulo .  
 35 et gierwam et veterem villam sicut unquam melius habui in terris . et in bosco . in aquis et in plano . Et  
 aquas meas circa Selekirke communes ad piscandum suis propriis piscatoribus ut meis . et pasturas meas  
 communes suis hominibus ut meis . et boscos meos domibus suis faciendis et ad arandum ut mihi . Et  
 Traulen cum suis rectis divisio . sicut Viueth eam melius et plenius tenuit et habuit . Et Craggam eiusdem  
 ville sicut dominus abbas Alfwynus Sancte Crucis et Arnoldus abbas de Kalchou se adinvicem concordaverunt  
 40 de quadam calumpnia que fuit inter eos de ipsa Cragga . coram hiis testibus . R[adulfo] abbate de Neubotil .  
 et aliis . Hanc autem Traulen dedi predicte ecclesie de Kelchou in escambium . x . librarum terre quam  
 habuerunt in Hardingesthorn iuxta Norhamton<sup>r</sup> quam mihi acomodaverunt ad meum magnum negocium<sup>17</sup> . et  
 in Renfrii unum toft . et unam navim et piscaturam unius retis solutam et quietam . ab omni exactione  
 liberam . Et decimam animalium et porcorum et caseorum de can . de iiiij<sup>or</sup> . cadrez . de illa Galweia quam,  
 45 vivente Rege Alexandro habui per unumquemque annum . et decimam caseorum de Tueddal similiter , per  
 unumquemque annum . Et medietatem coquine mee et de omnibus occisionibus meis omniumque  
 successorum meorum . ita ut ubicunque unum corium habuero ; habeant monachi et alium . et similiter de  
 unctis . et sepiis sicut de coreis . Et omnes pelles arietum et agnorum . et decimam coriorum cervorum et  
 cervarum quas veltrarii mei capient . Hos autem redditus coquine mee et occisionum mearum dedi eis per  
 50 illam terram tantum quam vivente Rege Alexandro habui . Et in Karsah unam salinam . Et hec omnia  
 supradicti monasterii abbati et monachis ita libere et pacifice iure perpetuo possidenda confirmaui . ut mihi  
 succedencium nullus nichil omnino nisi solas oraciones ad anime salutem de supradicta ecclesia exgere  
 presumat . Hiis testibus . Henrico filio Regis . et aliis . Et preterea ecclesiam de Salkirke liberam et quietam  
 sicut elemosina debet dari . et concedi . ita . scilicet . quod predicti abbates sint capellani mei et filii mei et  
 55 successorum meorum de predicta ecclesia<sup>18</sup> .

*Comments:* The legitimacy of David I's general confirmation is called into question by a variety of factors including its diplomatic features, its contextual features and its textual characteristics. Nevertheless, its legitimacy has already been called in question by Archibald Lawrie, and Lawrie's arguments was subsequently refuted by Geoffrey Barrow. Therefore, before proceeding to evaluate the factors which call the authenticity of this charter in question, it is first necessary to address the nature of this debate.

<sup>17</sup> Details found in *Charters of David I*, no. 241; *Kel. Lib.*, i, no. 241.

<sup>18</sup> Details found in *Kel. Lib.*, i, no. 180; *Charters of David I*, no. 373.

In his edition of Scottish charters produced prior to the death of King David I, Lawrie stated that his belief that David I's general confirmation was spurious and was rooted in six observations.<sup>19</sup>

1) There are intrinsic similarities between David I's general confirmation and the surviving general confirmation for Mael Coluim IV.<sup>20</sup> In fact, the only major differences are the fact that David's general confirmation lacks some of the donations found in Mael Coluim's charter.

2) The scribe who produced David's charter omitted Lesmahagow Priory from the list of possessions confirmed in the text, a possession which is found in Mael Coluim IV's general confirmation. If David's general confirmation is authentic, then Lawrie reasoned that this benefaction would have been included. After all, the charter refers to John, bishop of Glasgow, who participated in the donation of Lesmahagow, as being deceased (*venerabilis memorie Johannis episcopi Glasg'*) [5-6].

3) The scribe who produced David's charter failed to copy more than one witness into the text, and the one witness that he did copy happens to be Earl Henry [53]. Lawrie states that this is demonstrative of the fact that the scribe's 'heart failed him'.<sup>21</sup>

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<sup>19</sup> For arguments, see *ESC*, p. 411.

<sup>20</sup> *Kel. Lib.*, i, pp. iii-vii; *RRS*, i, no. 131.

<sup>21</sup> All of the charters which follow this instrument in the manuscript have complete witness lists. In fact, its most immediate neighbour, the Selkirk foundation charter, has a witness list which appears to be comprehensive (i.e. it does not demonstrate any signs of abbreviation) (*Kel. Lib.*, i, no. 1; *Charters of David I*, no. 14).

4) The scribe who produced David's charter copied a peculiar addendum in the form of a *notitia* which follows the primary text [53-55]. It states that in addition to the rights recorded in the general confirmation, King David also granted the church of Selkirk, a possession found in Mael Coluim's charter. Lawrie believes that the inclusion of this *notitia* is indicative of the fact that the scribe in question realised *post facto* that he omitted too much from the fabrication and attempted to rectify his mistake.<sup>22</sup>

5) The scribe who produced David's charter omitted several names which probably would have appeared in an authentic charter of King David. For instance, he abbreviated a witness list found within the body of the text from '*coram hiis testibus Radulpho abbate de neobotle Willelmo abbate de strevelin osberto priore de Jeddewrd' Ricardo clerico machbet*' to '*coram hiis testibus R. abbate de Neubotil et aliis*' [40-41].

6) The scribe who produced David's charter updated the spelling of several place-names in the text which were not updated in any of the other charters of David, Mael Coluim or William. These include *Botheldene* (Bowden), which was changed in *Bouldene* in this charter [29]. This is an early-fourteenth-century spelling, and Lawrie asserts that this demonstrates that it was composed at the time of the production of the cartulary.

As mentioned above, Barrow rejected Lawrie's hypothesis, and in his edition of the charters of King David I, he gave the following rebuttal:

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<sup>22</sup> A subject-specific charter survives in the cartulary which records David's grant of the church of Selkirk (*Kel. Lib.*, ii, no. 373; *Charters of David I*, no. 180).

There seems to be no reason to accept Lawrie's opinion [...] that this charter is spurious. The copying is not more careless than that of many documents accepted by Lawrie as genuine. The awkward postscript regarding the church of Selkirk may be the work of a copyist, but parallels could be found in authentic charters [...] The up-dating of spelling forms (e.g. the use of 'y' and the spelling of Bouldene) is quite normal in 13<sup>th</sup>- and 14<sup>th</sup>- century copies.<sup>23</sup>

Many of Barrow's counter-arguments are undoubtedly sound, but they also seem to be a bit overly dismissive of some of Lawrie's reasonings. For instance, though Barrow may be right concerning the *notitia*, it is certainly strange that the church is not found in the main text. Moreover, though the manner in which place-names are spelled cannot be used as authoritative evidence that the charter is spurious, the updating of *Botheldene* to *Bouldene* is noteworthy. For one, this is the only context in which *Botheldene* is updated in any of the early charters of abbey, including those which the same scribe was responsible for entering.<sup>24</sup> Furthermore, it is noteworthy that the particular context in which the word is found in this charter may have factored into King David II's decision to give Bowden regality status shortly after the cartulary was completed.<sup>25</sup> Alexander Grant's recent study on regalities in Scotland shows that Arbroath Abbey, Kelso's daughter-house, was able to convince King Robert to erect the estate of Tarves into a

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<sup>23</sup> *Charters of David I*, p. 144.

<sup>24</sup> Apart from the charter in question, every twelfth-century charter, and many of the charters produced in the early-thirteenth century, spell the place-name as follows: *Botheldene* (*Kel. Lib.*, i, nos. iii-vii, 3, 13, 316; ii, nos. 319, 332, 338). On the other hand, all of the charters which spell the place-name in the same manner found in the general confirmation - i.e. *Bouldene* - date from either the thirteenth or fourteenth centuries (*Ibid.*, i, nos. 146, 229, 283, 318, 359, 361-62, 411, 444, 460, 461, 463, 470).

<sup>25</sup> *OPS*, i, p. 288.

regality based on the fact that King William's foundation charter of 1178 states that Arbroath's lands are to be held 'just as I [King William] possess my own lands'.<sup>26</sup> The charter in the Kelso Abbey cartulary uses virtually the same formula in relation to Bowden [28-29], and though this particular phrase, minus the updated form of Bowden, is also found in the Selkirk Abbey foundation charter, one cannot help but wonder whether the scribe's decision to update the word in the Kelso Abbey 'foundation charter' was somehow tied to the abbey's desire to duplicate the success of its daughter house. Updating the form of the word would certainly help to abate any potential confusion about where Bowden was.

In addition to the updated spelling forms, it is also noteworthy that the charter also contains other diplomatic oddities. For instance, the charter's address is not found in any of the other surviving charters of King David: *Omnibus sancte matris ecclesie filiis et fidelibus, salutem*, nor is it found in any of the charters which survive in the Kelso Abbey cartulary from David's reign [1]. Moreover, the royal style used in the charter's address is also anomalous: *David dei gracia Rex illustris Scott'* [1]. Like the place-names, this style is almost certainly the work of fourteenth-century scribe. The use of *illustris*, in combination with *dei gracia*, seems to demonstrate that the scribe responsible for producing it had a retrospective vision of David's reign, and as noted by Barrow, this is the only time that this particular style is found in a charter of King David.<sup>27</sup> However, it too could be merely a manifestation of scribal tampering, and like many of the other

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<sup>26</sup> A. Grant, 'Franchises North of the Border: Baronies and Regalities in Medieval Scotland' in *Liberties and Identities in the Medieval British Isles*, ed. by M. Prestwich (Woodbridge: Boydell Press, 2008), pp. 155-199 (p. 171).

<sup>27</sup> *Charters of David I*, pp. 11-12. *Illustris* is also not found at all in the address clauses of any of the surviving charters of Mael Coluim IV (*RRS*, i, pp. 69-73), William I (*Ibid*, ii, pp. 75-76), Robert I (*Ibid*, v, pp. 5-6) or David II (*Ibid*, vi, pp. 18-19).

peculiarities identified by Lawrie, could justifiably be rejected by Barrow as evidence of forgery.

Nevertheless, having given some credence to points which Barrow does refute, it is striking that he fails to address some of the more qualitative arguments that Lawrie makes, especially his assertion that extreme abbreviation of the charter's witness list is abnormal. As mentioned, it only lists Earl Henry, and though this too cannot be used as definitive evidence that the charter is spurious, it is certainly suspicious when one considers the fact that all of the charters which follow it have complete witness lists. Moreover, as discussed above, the first charter which does not have a witness list is extremely questionable in its own right - i.e. the Lesmahagow foundation charter (Comm. 1, no. 2).

Barrow also fails to address Lawrie's valid concern that Lesmahagow Priory is absent from the charter, a point which he seems to attribute to 'careless copying'. However, of all the possessions a scribe might carelessly omit, one would assume that Lesmahagow would not be one. After all, it was the most valuable benefaction that the abbey ever received apart from its foundation endowment, and its absence is very peculiar. As discussed above, Lawrie suggests that the absence of Lemahagow Priory is indicative of the fact that the scribe responsible for fabricating this charter simply failed to do his research. However, one further possibility is that Lesmahagow was purposefully omitted in an attempt to link King David's charter with a particular time in the history of the abbey. If so, then the scribe's only mistake was not removing the *venerabilis memorie Johannis episcopi Glasg'* statement, which he apparently transcribed from Mael Coluim IV's charter.

If this theory is correct, then it is actually given some credence when one examines the rubricated title which corresponds with the charter in question: *Carta Regis Daudid de Prima Fundacione*. As discussed in chapter four, the scribe who produced it appears to have considered this item to be not just a general confirmation charter, but Kelso Abbey's foundation charter. If he was aware of the relative date of the abbey's move from Selkirk to Kelso, and one would suspect that he would be, then he would have realised that the transfer occurred prior to 1144. Since the foundation of Lesmahagow Priory occurred in 1144, then the decision to omit the donation of it from the 'foundation charter' may have been related to the fact that the scribe wanted it to appear to be a relict of the period immediately following the monastery's move from Selkirk to Kelso.

Nevertheless, if the charter was forged, then this naturally raises the question of how it was created. Lawrie asserts that it was based on Mael Coluim IV's general confirmation, and though he is right that the general confirmation may have been one of the primary sources used to produce the instrument, other items can also be identified which may have been used in its production. Among other things, large portions of the charter are identical to the Selkirk foundation charter. Moreover, other early charters which can be found in the cartulary may also have been used in its production. In the edition above, red sections are portions which appear to be copied from the Selkirk foundation charter, blue portions appear to be copied from Mael Coluim IV's charter and black portions are information which cannot be found in either document. This said, all of the information found in the black sections could have been derived from other charters, and some of it appears to be copied verbatim from these items (see footnotes). Therefore,

David I's general confirmation charter appears to have been produced as part of a cut-and-paste process.

\* *For further discussion of this item, see pp. 140-41, 159-62, 176-77, 194, 196-98.*

**4. Mael Coluim IV gives the church of Innerleithan (in Peeblesshire) to Kelso Abbey and asserts that it is to be a sanctuary since it was the location where his son's body rested on the first night after his death.**

[24.5.1153 x 9.12.1165]

*Rubric:* Malcolmus Rex super ecclesia de Ynirlethan

*Source:* NLS, MS Adv. 34.5.1, f. 16v.

*Printed:* *Kel. Lib.*, i, no. 21.

*RRS*, i, no. 219.

Malcolmus rex Scott' . Episcopis . Abbatibus .  
 comitibus . baronibus . Just' . vicecomitibus . prepositis . ministris . cunctisque aliis pro  
 bis hominibus tocius terre sue . salutem . Sciant clerici et laici presentes et posteri me in liberam et  
 permanentem elemosinam dedisse et hac carta mea confirmasse deo . et ecclesie Sancte Marie de  
 5 Kalch' et . monachis . ibidem Deo seruiantibus ecclesiam de Inuerlethan cum omnibus rectitudinibus suis  
 et pertinenciis . Tenendam ita libere . et quiete . sicut aliqua ecclesia in regno meo liberius . et quie  
 cius . tenetur . et possidetur.  
 Precipio etiam ut predicta de Inuerlethan ecclesia in qua prima nocte corpus filii mei post obitum  
 suum quieuit . vt tantum refugium habeat in omni territorio suo ; quantum habet Wedale  
 10 aut tynningham . et ne aliquis ita sit temerius ; ut pacem predicte ecclesie et meam .  
 super vitam et membra sua ; audeat violare .



monks had *iuxta ecclesiam de Ennirlethan unam acram terre que solebat reddere per annum xii denaria*.<sup>29</sup> Apart from that, he also dismisses the possibility that Mael Coluim IV had a son [8], and states:

[f]or these reasons I doubt the genuineness of this addition to the charter. If, however, the grant of sanctuary to the church of Innerleithan be genuine, the transcriber in the cartulary may have written *filium* instead of *patrem* or *auum*. It is probable that Earl Henry died at Peebles, and he may have rested at Innerleithan before his burial at Kelso. King David died at Carlisle and was buried at Dunfermline, and his body may have rested at Innerleithan on the first night after his death.<sup>30</sup>

In his edition of Mael Coluim IV's charters, Geoffrey Barrow reacted to Lawrie's scepticism, and he generally agreed with him, repeating many of his arguments.<sup>31</sup> However, it is noteworthy that he also added the following:

Lawrie thought that the final clause of the charter, from *precipio* to *uiolare*, might not be genuine. In support of this, he might have pointed out that the cartulary scribe has kept this clause curiously separate from the rest of the charter, treating it, with possibly suspicious emphasis, as the postscript which it undoubtedly is, and giving no indication of any clause

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<sup>29</sup> *Kel. Lib.*, ii, p. 460.

<sup>30</sup> Lawrie, 'Liber de Calchou', p. 438.

<sup>31</sup> *RRS*, i, pp. 23-25.

of attestation. This is in marked contrast with his normal practice, which is to add at least *hiis testibus* or *T'*.<sup>32</sup>

Ultimately, the arguments put forward by both scholars appear to be sound with two exceptions. Firstly, Lawrie's statement that the rental shows that there was no land attached to the church, and thus no place for a sanctuary, is a misunderstanding of the source. The rental was primarily intended to record returns from Kelso's lands and churches, not the extent of the lands themselves, and several examples from the rental could be given which demonstrate that it does not give an accurate assessment of the extent of the abbey's property.<sup>33</sup>

Secondly, Barrow's suggestion that the charter is fragmented because the scribe actually doubted its authenticity, along with both scholars' belief that a scribe could mistake *filium* for *patrem* or *auum*, is also questionable. In light of the fact that virtually every fragmented item in the manuscript is probably spurious, it seems more likely that what we are actually seeing here is an attempt to forge a charter which was abandoned. This would explain why *fili* was used and why the scribe did not include an attestation clause.

\* *For further discussion of this item, including the fact that sanctuary was a common topic of forgeries in England, see pp. 140, 178, 194-95.*

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<sup>32</sup> *Ibid.*, i, p. 23-24

<sup>33</sup> For instance, in the entry for temporalities in Langton, they state that 'they have one toft to collect their teinds' (*Kel. Lib.*, ii, p. 466). No other property is listed. However, we know that they were well-endowed with land in the region (*Ibid.*, i, no. 139-41).

**5. Waltheof, earl of Dunbar, confirms all of the churches and lands which Kelso acquired in his earldom.**

**[1166 (x 8.12) x 1182]**

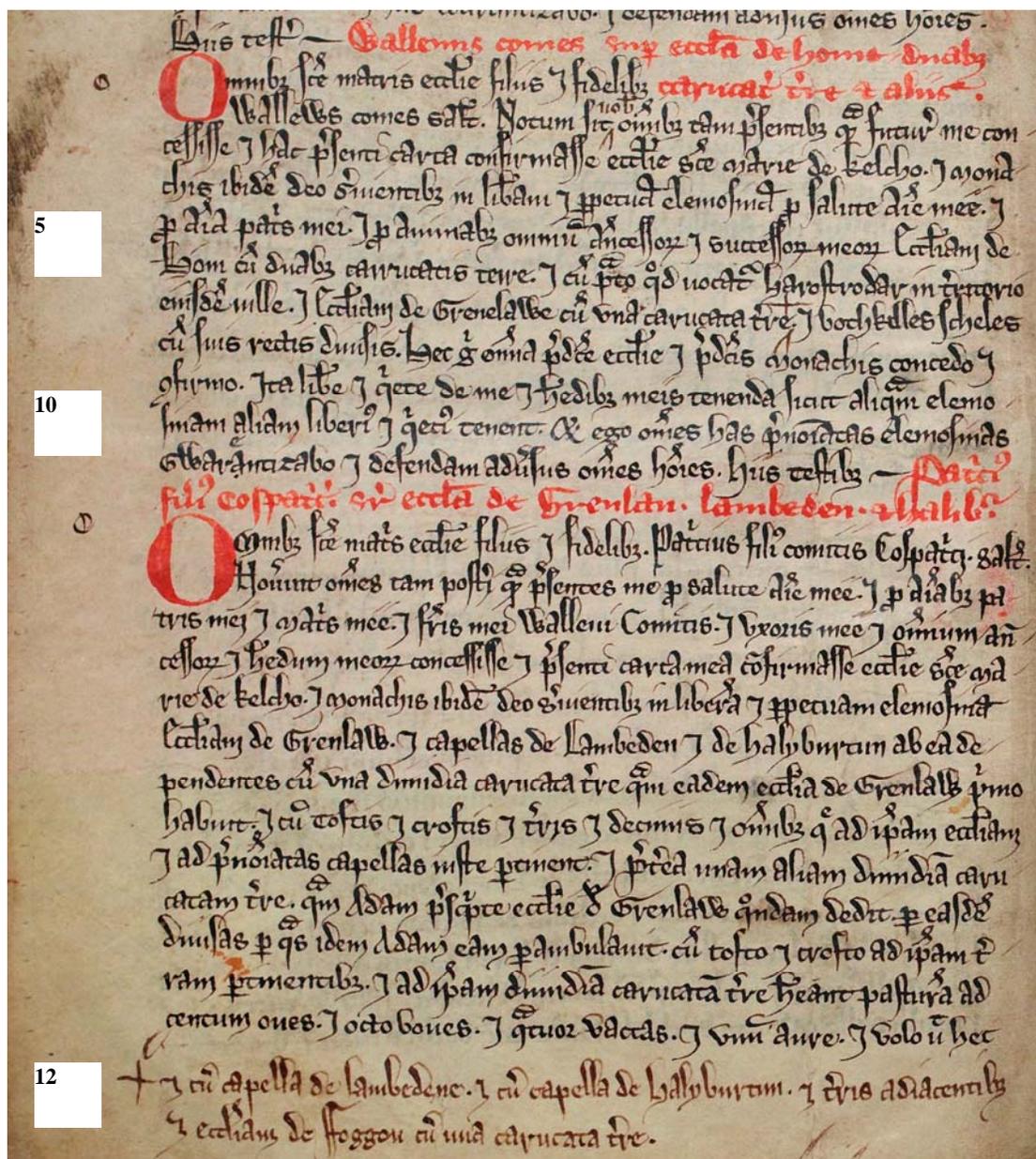
*Rubric:* Walleus Comes super ecclesia de home duabus carucatis terre et aliis

*Source:* NLS, MS Adv. 34.5.1, f. 29v

*Printed:* *Kel. Lib.*, ii, no. 73

Omnibus sancte matris ecclesie filiis et fidelibus  
 Walleus comes salutem . Notum sit uobis omnibus tam presentibus quam futuris me concessisse et hac presenti carta confirmasse ecclesie sancte Marie de Kelcho . et monachis ibidem deo seruientibus in liberam et perpetuam elemosinam pro salute anime mee . et  
**5** pro anima patris mei . et pro animabus omnium antecessorum et successorum meorum ecclesiam de Hom cum duabus carrucatis terre . et cum prato quod uocatur Harostrodar in territorio eiusdem uille . et ecclesiam de Grenelawe cum una carucata terre + et bothkilles scheles cum suis rectis diuisis . Hec igitur omnia predictae ecclesie et predictis monachis concedo et  
**10** confirmo . Ita libere et quiete de me et heredibus meis tenenda sicut aliquam elemosinam aliam liberior et quietius tenent . Et ego omnes has prenominate elemosinas gwarantizabo et defendam aduersus omnes homines . Hiis Testibus .  
**12** + et cum capella de Lambedene . et cum capella de Halyburtun . et terris adiacentibus et ecclesiam de ffoggou cum una carucata terre

Plate 6.2: NLS, MS. Adv. 34.5.1, f. 29v



*Comment:* The legitimacy of this charter is called into question by its assertion that Earl Waltheof confirmed the church of Greenlaw with one ploughgate [7]. As discussed in chapter three, a *pro anima* clause found in a charter produced on behalf of Waltheof's

brother, Patrick son of Cospatric, states that the earl was dead before the abbey acquired one full ploughate at the church.<sup>34</sup> Hence, this scenario appears to be impossible.

Nevertheless, the question of the general confirmation's authenticity does not solely hinge on this point. As discussed in chapter three, a second piece of evidence which weighs against the likelihood that the charter is authentic is found in another general confirmation charter produced on behalf of Waltheof's distant successor, Patrick son of Earl Patrick III.<sup>35</sup> In the same section of the cartulary where Waltheof's charter is found, there are three other general confirmations, and they purport to have been produced on behalf of Waltheof's father and son, and great-great-grandson. All of the instruments, along with Waltheof's charter, confirm the land of Bothwell Shielings [7-8], and these are the *only* four surviving private charters which mention the estate.<sup>36</sup> This fact is particularly noteworthy when one examines the way in which Patrick, son of Earl Patrick III, confirmed the estate in his charter. He confirms Bothwell shielings just as they were conveyed in the charters of Earl Cospatric and Earl Patrick I (*prout in cartis Cospatricii et Patricii antedictorum comitum de Dumbar*). Patrick makes no mention of Waltheof's charter in spite of the fact that the general confirmation attributed to him, like the charters attributed to his father and son, also explicitly confirmed the shielings. This seems to suggest that the scribe was unaware of the existence of Waltheof's charter, and the most reasonable way to account for his unawareness is the fact that the charter had not been created yet.

If this charter is a forgery, then one need not look very far to discover how it was created. The charter which immediately precedes the item, namely Patrick I's general

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<sup>34</sup> *Kel. Lib.*, i, no. 74.

<sup>35</sup> *Ibid.*, i, no. 77.

<sup>36</sup> *Ibid.*, i, nos. 71-3, 77.

confirmation charter, is virtually identical to this instrument.<sup>37</sup> In fact, the two charters only differ in one major respect: Waltheof's charter does not include a perambulation of Bothwell shielings. This said, it must be noted that there are few minor orthographical differences between the two items. For instance, Waltheof's charter spells 'Fogo' with a double 'f' [13], while Patrick's charter spells it with one 'f'. An ampersand is also used to commence the warrandice clause in Waltheof's charter [10], while 'Et' is found at the beginning of Patrick's warrandice clause. However, this need not imply that the scribe was basing his transcription of Waltheof's charter on an authentic document. After all, these disparities are within the range of scribal variation. Moreover, the scribe's failure to properly copy a portion of the charter [12-13], need not suggest that the scribe was basing the transcription on an authentic charter of Waltheof. The mistake could have easily occurred whether he was basing the transcription on a charter of Waltheof or a charter of Patrick I.

*\* For further discussion of this item, including its location and the question of why it was created, see pp. 13-39, 164-65, 167, 170, 194-95.*

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<sup>37</sup> *Ibid.*, i, no. 72.

**6. Robert of Kent, Robert Hunald, and Roland, son-in-law of Nicholas de Cotentîn, give to Kelso Abbey land in Innerwick (in East Lothian) at ferme for a total of thirty-three years.**

[c. 1190]

*Rubric:* Conuencio super quamdam terram in territorio de Inuerwic'

*Source:* NLS, MS. Adv. 34.5.1, ff. 104v-105r

*Printed:* *Kel. Lib.*, i, no. 256

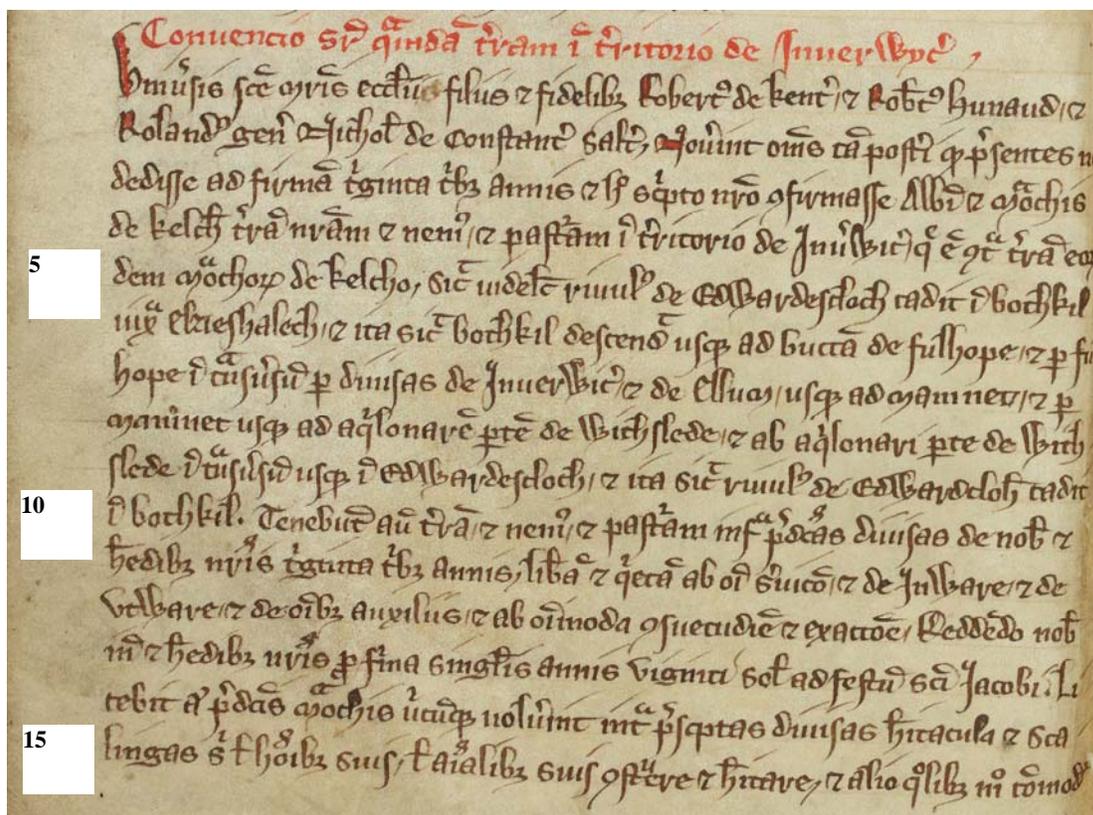
Vniuersis sancte matris ecclesie<sup>38</sup> filiis et fidelibus / Robertus de Kent' / et Robertus Hunaud / et Rolandus gener Nicholii de Constant' salutem / Nouerint omnes tam posterii quam presentes nos dedisse ad firmam triginta tribus annis et hoc scripto nostro confirmasse Abbati et monachis de Kelch' terram nostram et nemus / et pasturam in territorio de Inuerwic' que est contra terram eorum  
5 dem monachorum de Kelcho / sicut uidelicet riuulus de Edwardescloch cadit in bothkil iuxta Elzieshalech / et ita sicut bothkil descendit usque ad buccam de fulhope et per fulhope in transuersum per diuisas de Inuerwic' / et de Ellum usque ad maninet / et per maninet usque ad aquilonarem partem de Withslede / et ab aquilonari parte de Withslede in transuersum usque in Edwardescloch / et ita sicut riuulus de Edwardcloh' cadit  
10 in bothkil . Tenebunt autem terram / et nemus / et pasturam infra predictas diuisas de nobis et heredibus nostris triginta tribus annis / liberam et quietam ab omni seruicio / et de Inware et de utware et de omnibus auxiliis / et ab omnimoda consuetudine et exaccione / Reddendo nobis inde et heredibus nostris pro firma singulis annis viginti solidis ad festum sancti Jacobi . Licet  
15 cebit autem predictis monachis ubicumque uoluerint intra prescriptas diuisas habitacula et scalingas sibi vel hominibus suis vel animalibus suis construere et habitare et alio quolibet modo comodum suum facere . Nec licebit cuiquam nisi per ipsos monachos intra prescriptas diuisas scalingas ponere vel mansiones facere / Ipsi quoque et homines eorum accipient de bosco aisiamenta sua ad ardam et edificandam quantum uoluerint tam ad uillam de Sparteldun / quam ad illa terram quam de nobis tenent / sed non licebit eis quicquam de bosco uendere / sed  
20 de bruere licebit eis et hominibus eorum uendere / Ponent etiam prefati monachi in defensione unam partem nemoris ad aisiam suam / et ponent forestarium si uoluerint ad ipsum nemus custodiendam / ita quod nullus inde quicquam accipiat nisi per licenciam monachorum . Si

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<sup>38</sup> *ecclesiis* in original

uero nos uel heredes nostri aliquod tempore ulterius predictam terram<sup>39</sup> nemus et pasturam alicui  
 vendere uel ad firmam ponere uel in elemosinam dare uouerimus ; nulli eam uendemus ponemus  
 25 uel ad firmam . uel in elemosinam dabimus nisi predictis monachis de Kelcho si eam emere uel ad  
 firmam habere uoluerint / Hanc terram et hanc conuencionem nos et heredes nostri warentiza  
 bimus eis et defendemus predictis xxx<sup>ta</sup>iii annis . Hanc enim conuencionem stabiliter tenen  
 dam pro nobis<sup>40</sup> et heredibus nostris<sup>41</sup> sine malo ingenio affidauimus / Incepit autem terminus huius con  
 30 uencionis ad festum sancti Martini proximum postquam Philippus Rex francie et Ricardus  
 Rex Anglie iuerunt ierosolimam / Qui fuit annus / millesimus / centesimus nonagesimus  
 ab incarnatione domini / Hiis Test' domino Ricardo abbate de Driburch . Willelmo ca  
 nonico eius / Hugone capellano [ ] clerico Regis . Thoma filio eius . geruasio Auenel . et multis aliis .

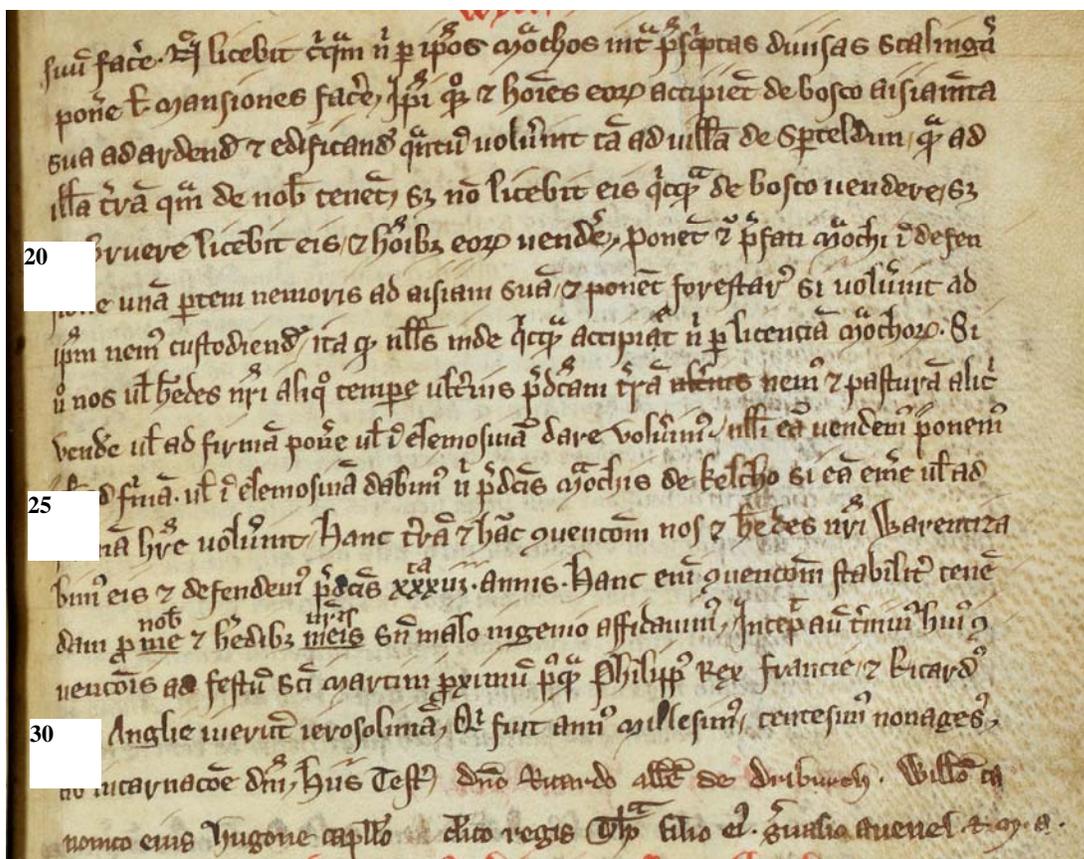
Plates 6.3 and 6.4: NLS, MS. Adv. 34.5.1, ff. 104v-105r



<sup>39</sup> ulterius deleted

<sup>40</sup> me deleted

<sup>41</sup> meis deleted



*Comment:* The legitimacy of this charter is called into question by the deletion of *me* and *meis* in the *sine malo ingenio* clause [28], the change of hand following *Hiis Testibus* [31], and the extension of the witness list into the margins of the folio [31]. As discussed in chapter three, the most reasonable way to account for these anomalies is that the scribes who copied this charter were relying on Alan son of Walter's confirmation charter to fabricate it.<sup>42</sup> Alan's charter is virtually identical to this instrument except for the fact that Alan's actions were recorded in the first-person singular. If they were copying from Alan's charter, then this would explain why the scribe slipped up in the *sine malo ingenio* clause, and it would also explain why the witness list is the way it is.

<sup>42</sup> *Kel. Lib.*, i, no. 248.

This said, as discussed in chapter three, the fact that the paleographical features of this item appear to suggest that the scribe was copying it from an original charter need not imply that it was based on an authentic charter produced on behalf of Robert Kent *et al.* The exemplar for the features could very well have been Alan son of Walter's confirmation charter which has the same anachronistic paleographical features.

As for why it was produced, it was almost certainly created as part of a bid to fight Melrose Abbey's counter-claim to the same property. As noted in chapter four, Melrose had a charter in its possession which gave it claim to this land.<sup>43</sup>

*\* For further discussion of this item, including the fact that it is found in a peculiar location in the manuscript, see pp. 143-45, 167, 173-74, 181-88.*

**7. Robert of Kent wants all to know that he and Ralph, his father, have declared an oath to Kelso Abbey, by the interposition of faith, that if they wish to give the pasture of Innerwick (in East Lothian) at ferme to anyone at any time, they may give it no one, except to them. If Melrose Abbey or someone else should produce a charter which states that he gave the land to them at ferme, he wants all people to know that the charter was procured against his faith by deception, and therefore, is owed to have absolutely no strength or efficacy. He states that he was neither able to justly give a charter of this kind against Kelso, nor was Melrose able to bring claim by it, except unjustly. He also firmly wishes and affirms by his present charter that the monks of Kelso may firmly hold the said pasture from him**

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<sup>43</sup> *Melr. Lib.*, i, no. 59.

**and his heirs just as the chirograph testifies concerning that which is made between him and them, and just as he and his father have declared on oath.**

**[mid/late 12<sup>th</sup> C]**

*Rubric:* Carta super pasturam de Inuerwyck

*Source:* NLS, MS. Adv. 34.5.1, f. 105v

*Printed:* *Kel. Lib.*, i, no. 258

Vniuersis sancte matris ecclesie filiis et fidelibus . Robertus . de Kent salutem . Sciant omnes tam presentes quam<sup>44</sup> posterii / quod ego Robertus de Kent / et Radulfus pater meus fidei interposicione firmauimus monachos de Kelcho / quod si pasturam de Inuerwic' alicui ad firmam dare uellemus ; ulli nisi eis eam daremus . Si igitur Mailros' uel quilibet alii aliquam cartam ostenderint ad probandam quod ipsis predictam pasturam ad firmam concesserim ; Sciant omnes fideles illam cartam contra fidem meam per subrepcionem fuisse inpetratam / et iccirco nullam vim vel efficaciam prorsus habere debet . Neque enim ego huiusmodi cartam contra Kalchoenses iuste dare poteram neque Mailrosenses eam nisi iniuste poterant impetrare . Volo igitur firmiter et presenti carta mea confirmo ut monachi de Kelch' predictam pasturam de me et heredibus meis inconcusse teneant inperpetuum /

5 sicut cyrografum testatur quod inter me et illos factum est / et sicut ego et pater meus affidaui .

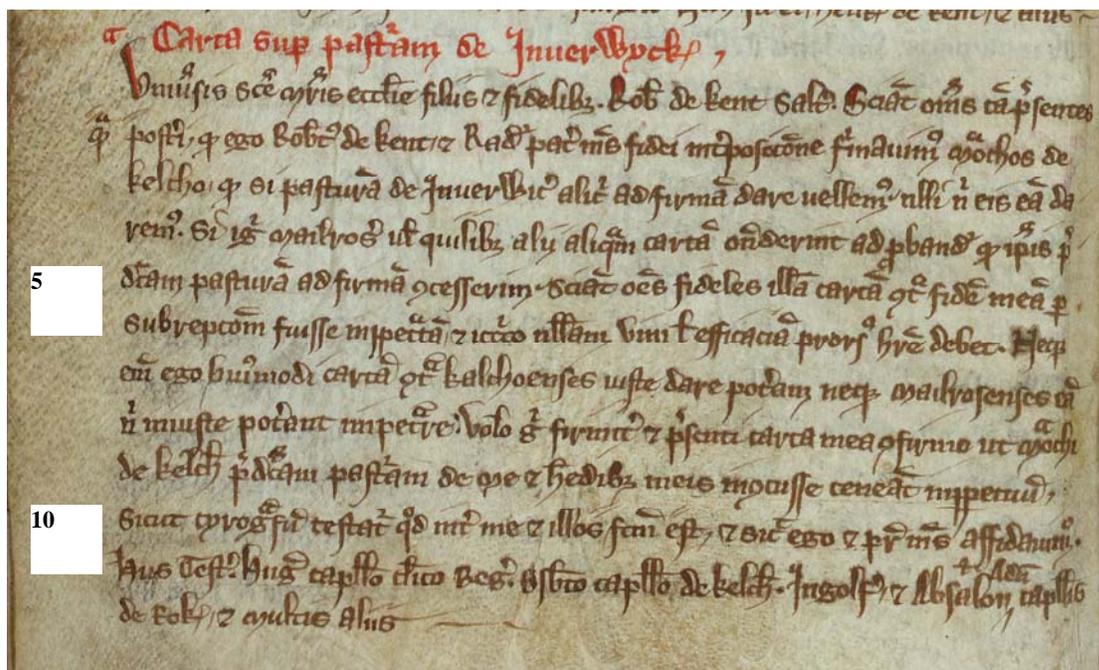
10 Hiis Test' Hugone capellano clerico Regis . Osberto capellano de Kelch' . Ingolf / et Absalon et Ada<sup>45</sup> capellanis de Rok' / et multis aliis .

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<sup>44</sup> In margin

<sup>45</sup> Scribe added *et Ada*.

Plate 6.5: NLS, MS. Adv. 34.5.1, f. 105v



Comments: Like no. 7, this charter appears to have been fabricated as part of an effort to fight Melrose Abbey's counter-claim to the property in question, and its legitimacy is primarily called into question by the fact that it contains a contextual anachronism. The anachronism is its claim to record a vow by Ralph of Kent. As discussed in chapter three, this vow is unlikely to have occurred since a charter in the Melrose Abbey archive states that Ralph was dead prior to the earliest time in which this action could have occurred.<sup>46</sup> As discussed in chapter four, the charter in question states that Ralph of Kent and Nicholas de Cotentín granted the land to Kelso for a term of at least five years. However, it goes on to record the fact that prior to the termination of this arrangement, overlordship and Kelso's render were transferred to Robert of Kent, Alexander of St. Martin and

<sup>46</sup> *Melr. Lib.*, i, no. 59.

Robert, son-in-law of Nicholas de Cotentîn. Moreover, within this section of the charter, Robert refers to his father as being the ‘late Ralph of Kent’.

As discussed in chapter four, another dimension of this charter which is worrisome is the way it refers to the Melrose Abbey charter which was just described. Robert appears to disavow all responsibility for issuing the charter, stating that it ‘was procured against his confidence by *subrepcionem*’ [5-6]. *Subrepcionem* has a variety of meanings ranging from theft to deception, but it always implies ill will on the part of the party that is accused of it. Unless it is a forgery, it is difficult to see how Robert could disavow all claim to have been involved in the transaction. After all, he granted the land to Melrose in free, pure and perpetual alms, and he had accepted a down-payment of 100 shillings from the abbey for the land. Moreover, he also promised to provide for the monks in case of failure of warrandice, and he granted the land to the abbey in return for the privilege of being buried at the monastery, and even taking up the habit of the monks if he so desired. Of course, the possibility must remain that Melrose did forge this charter. However, based on the fact that several other charters in the Innerwick section have questionable characteristics (along with fact that there are some peculiar textual features in the section of the manuscript which contains this charter<sup>47</sup>), it seems more likely that Kelso Abbey’s charter is spurious, not vice-versa.

\* *For further discussion of this item, including its location in the manuscript, see pp. 130-31, 141-42, 167, 173-74, 181-88.*

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<sup>47</sup> Beginning immediately after the peculiar witness list in no. 256, there is a change in the register of the script - i.e. it becomes much smaller. In fact, it almost appears as if the scribe was attempting to squeeze no. 257 and no. 258 onto the f. 105. Why would he do this? Well, one reasonable explanation is that he initially left the rest of f.105 blank and skipped to f. 106 so that he could copy no. 259 (which begins at the top of f. 106r). Exactly why he did this is unclear, but it will be discussed in more detail in Comm. II, no. 4.

**8. Simon Fraser gives to Kelso Abbey the church of Keith-Humbie (in East Lothian) and its land, by stated bounds.**

[early 13th century]

*Rubric:* Carta Symon' fraser super ecclesia de keth terre et Nemore

*Source:* NLS, MS Adv. 34.5.1, f. 36v.

*Printed:* *Kel. Lib.*, i, no. 98.

Uniuersis sancte matris ecclesie filiis et fidelibus Symon fraser salutem . Nouerint tam posteri quam presentes me dedisse et concessisse et hac presenti carta mea confirmasse ecclesie sancte Marie de kelchou et monachis ibidem seruiantibus ecclesiam de keth cum tota illa terra et tota nemore ab australi parte riuuli qui currit iuxta ecclesiam . scilicet . per predictum riuulum qui currit iuxta aquam . scilicet . Kirkeburne . et a kirkeburne ascendendo usque ad uiam de Hadington que est iuxta domum Roberti coth ab aquilonari parte . et per eandem uiam de Hadington sicut sulcus trahitur et cruces posite sunt usque in Crosseford . et sic per sicam de Crosseford ascendendo sicut sulcus trahitur usque ad duos magnos lapides . et ab illis duobus lapidibus in transuersum cuiusdam vascelli usque ad orientale latus unius magne chestre et ab illa sicut sulcus trahitur usque in aliam chestram . et inde in transuersum usque ad stanilawes et a stanilawe sicut sulcus trahitur usque ad paruulum pontem lapideum . et sic per sicam descendendo ab illo ponte usque in chirstrestreh' . et per magnam sicam de chirstrestreh' uersus aquilonem descendentem usque in Raueden . et per Raueden usque ad predictum riuulum qui currit iuxta ecclesiam prenominatam . Et illam terram ex orientali parte vie iuxta ecclesiam usque ad supercilium montis . et per supercilium montis usque ad quercum que est super riuulum . Hanc autem et totum nemus quod infra diuisas istas est dedi predictae ecclesie de Kelchou in liberam et perpetuam elemosinam ut faciant tam de nemore quam de tota terra predicta sicut de suo proprio quodcumque voluerint . Concedo etiam predictis monachis et hominibus suis in predicta terra de Keth manentibus omnia communia aysiamenta terre mee de Keth et in focali et in pastura cum rationabili instauratione . et aysiamenta bosci mei cum hominibus meis . et ut ipsi monachis quieti sint et liberi de multura tam de tota decima ipsius parochie quam de propria sua segete quam in ipsa terra coluerint et habuerint . et ipsi et homines eorum liberi omnino erunt de opere molendini et stagni . Volo itaque ut prefati monachi de Kelch' hanc predictam elemosinam ita libere et quiete et integre et honorifice teneant et in perpetuam elemosinam possideant sicut aliquam aliam elemosinam liberius plenius et melius habent et possident . et sicut hec carta testatur . Hiis Testibus .

*Comments:* Two charters survive in the Kelso Abbey cartulary which purport to record Simon Fraser's gift of the church of Keith-Humbie. Both charters have the same basic content; however, they differ in one crucial respect: their perambulations. One charter has a simplistic perambulation (i.e. no. 1 below), while the other charter, namely the one in question, has a more intricate set of boundaries [3-14]. It is this set of boundaries which forces one to question its authenticity, and the reason for this is the fact that King Alexander II's confirmation charter states that Simon was not responsible for it:

*concessisse [...] donacionem quam Symon fraser eis fecit de ecclesia de  
Keth cum tota illa terra et toto nemore ab australi parte riuuli qui currit  
iuxta predictam ecclesiam per rectas diuisas contentas in confirmacione  
Heruei filii philippi marescalli.*<sup>48</sup>

As demonstrated, though King Alexander acknowledges the fact that Simon Fraser was responsible for initially giving the land of the church to Kelso, he clearly attributes a particular perambulation to Hervey son of Philip. The perambulation in question is no. 3 below, and as demonstrated, it is identical to the perambulation in the charter in question.

Could it be possible that Simon issued this charter after the production of King Alexander's confirmation? The answer must be no, seeing as Simon probably died at the turn of the thirteenth century, and Hervey did not inherit the barony of Keith until the late

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<sup>48</sup> *Ibid.*, i, no. 93.

1210s.<sup>49</sup> Moreover, Simon's daughter, Ada, and her husband, Hugh Lorens, appear to have succeeded Simon as lord of Keith in the early thirteenth century, and they also issued a charter with a perambulation which differed from that of Simon's (i.e. no. 2). As demonstrated below, it is slightly more complex than Simon's perambulation, but not as complicated as Hervey's set of bounds. Therefore, Hervey's charter appears to have been updating the specifications found in the charter produced on behalf of his immediate predecessors, not that of his predecessor-twice-removed.

*Table 6.1: Comparison of Perambulations Found in Simon Fraser, Ada Fraser and Hervey son of Philip's Charters (Black = Features Shared by Nos. 1-3, Red = Features Shared by Nos. 1, 3, Blue = Features Shared by Nos. 2-3, Green = Unique Features of Each Perambulation)*<sup>50</sup>

No.1	Ecclesia de Keth cum tota illa terra et toto nemore ab australi parte riului qui currit iuxta predictam ecclesiam scilicet per predictum riulum qui currit iuxta ecclesiam usque ad Kyrckeburne et inde usque ad viam que vadit ad Hadyngton <b>et inde usque ad Kyrnesteroder sicut ego eam perambulauit inter Petrum clericum et Cospatricum de Drem et de Kyrnestroder</b> usque in Reauedene et de Reauedene <b>usque ad prefatum riulum qui currit iuxta ecclesiam</b> et illam terram ex orientali parte vie iuxta ecclesiam usque ad supercilium montis usque ad quercum que est super riulum
No.2	Ecclesia de Keth cum tota illa terra et toto nemore ab australi parte riului qui currit iuxta predictam ecclesiam scilicet per predictum riulum qui currit iuxta ecclesiam usque in Kyrckburne <b>et a Kyrcheburne ascendendo</b> usque ad viam de Hadyngton <b>et per viam de Hadington usque Crosforde et sic per sicam de Crosforde ascendendo usque ad duos magnos lapides et sic in transversum cuiusdam Wascelli usque ad orientale latus unius chestere et ab illa usque ad aliam chesteram uersus austrum et inde in transversum usque ad quamdam hogam lapideam et ab illa usque ad paruulum pontem lapideum qui est ab occidentali parte petarii et sic per sicam descendentem usque ad matricem sicam in chirnestrother et a matrici sica usque in Reuedene et per Reuedene usque in chirkeburne</b> et illam terram ex orientali parte vie iuxta ecclesiam usque ad

<sup>49</sup> Simon's last appearance is in a witness list which dates from the turn of the thirteenth century (*RRS*, ii, no. 459). On the other hand, Hervey does not start appearing in documentation until the 1210s, at which point he appears to have been a key member of King Alexander II's court, including his steward (*Yester Writs*, no. 11).

<sup>50</sup> The reader should note that minor variations such as the use of *predicta* have not been noted in the comparison.

	supercilium montis et per supercilium montis usque ad quercum que est super riulum
No.3	Ecclesia de Keth cum tota illa terra et toto nemore ab australi parte riului qui currit iuxta predictam ecclesiam scilicet per predictum riulum qui currit iuxta ecclesiam usque in Kyrcheburne et a Kyrchburne ascendendo usque ad viam de Hadington que est iuxta domum Roberti Coth ab aquilonari parte et per eandem viam de Hadington sicut sulcus trahitur et cruces posite sunt usque in Crosforde et sic per sicam de Crosforde ascendendo sicut sulcus trahitur usque ad duos magnos lapides et ab illis duobus lapidibus in transversum cuiusdam vacelli usque ad orientale latus unius magne chestere et ab illa sicut sulcus trahitur usque ad aliam chesteram et in transversum usque stanilawes et a stanilawes sicut sulcus trahitur usque ad paruulum pontem lapideum et sic per sicam descendentem ab illo ponte usque in chirnestrother et per magnam sicam de Chirnestrother uersus aquilonem descendentem usque in Reuedene et per Reuedene usque ad predictum riulum qui currit iuxta ecclesiam prenominatam et illam terram ex orientali parte vie iuxta ecclesiam usque ad supercilium montis et per supercilium montis usque ad quercum que est super riulum

\* For further discussion of this item, including its location, see pp. 130, 171-72, 180-81.

**9. Patrick I, earl of Dunbar, confirms a gift of land in Hume (in Berwickshire) made by Ada of Courtney, his daughter.**

[1218 x 31.12.1232]

*Rubric:* Confirmacio Patric' filii Waldeui Comitis de Dunbare super dicta terra in territorio de Home

*Source:* NLS, MS Adv. 34.5.1, f. 50r.

*Printed:* *Kel. Lib.*, i, no. 130.

Omnibus has litteras visuris vel auditoris Patricius filius Waldeui Comitis de Dumbar salutem in domino . eternam . Universitati vestri notum facio me intuitu dei et pro salute anime mee et omnium antecessorum et successorum meorum concessisse et hac presenti carta mea confirmasse deo et ecclesie sancte Marie de

5 Kalch' et monachis ibidem deo seruiantibus donacionem quam Ada de Curtenay filia mea eis fecit . et carta sua confirmauit . Uidelicet quandam terram que iacet super ripam de Edene per easdem diuisas que continentur in carta dicte filie mee quam inde confectam habent . Quare volo ut dicti monachi dictam terram cum pertinenciis suis ita libere et quiete inperpetuum teneant et possideant sicut aliquam aliam elemosinam in Regno Scocie liberius et Quiecius tenent et possident . Et ut hec mea donacio futuris temporibus firma permaneat et inconcussa presenti scripto sigillum meum coram multis apposui / Hiis testibus .

*Comments:* Like no. 5 above, the legitimacy of this charter is called into question by a stipulation found in a *pro anima* clause. The *pro anima* clause in question is found in Ada of Courtney's charter of donation (namely the charter that Earl Patrick is purportedly confirming), and it states that her gift was made *pro salute anime mee et pro animabus patris mei et matris mee et maritorum meorum et omnium antecessorum meorum*.<sup>51</sup> As discussed in chapter three, the fact that the scribe differentiated between Ada and the other individuals, including her father, strongly suggests that they were dead. Moreover, the likelihood that he was dead is compounded by the fact that her *mariti* were almost certainly deceased at the time that the charter was produced. In fact, not only does her first husband, William of Courtney, appear to have died by 1217, and her second husband, Theobald de Lascelles, before 13 October 1255,<sup>52</sup> but her charter states that she gave the property to Kelso in her 'legal power'. As will be discussed in Comm. I, nos. 10-11, this phraseology appears to be a tell-tale sign that she was a widow.

This said, apart from the *pro anima* clause, the diplomatic found in Patrick's charter also causes one to doubt its authenticity. Among other things, the earl's style is highly anachronistic: *Patricius filius Waldeui Comitis de Dumbar*. Patrick I was earl for fifty years, and forty-three to forty-five charters survive from his administration, almost three times the number of charters that survive for any other twelfth- or thirteenth-century

<sup>51</sup> *Kel. Lib.*, i, no. 129.

<sup>52</sup> Hamilton, 'Earls of Dunbar', p. 325.

earl of Dunbar.<sup>53</sup> Based on this large number of surviving *acta*, Elsa Hamilton was able to conduct a fairly detailed analysis of the diplomatic found in Patrick I's charters, including the lordly styles that were employed by the scribes responsible for the production of these instruments. She noted that if one compares the styles found in some of his early charters with the styles found in his later charters, then there is a noticeable change in protocol.<sup>54</sup> During the early years of his administration, scribes sporadically associated him with his father, and an example of such an association is actually found in Patrick I's general confirmation charter: *Patricius comes filius Walleui comitis*.<sup>55</sup> However, associating Patrick with his father appears to have been a short-lived phenomenon, and it is only found in two of the early charters attributed to the earl. After the early years of his administration, scribes generally styled him 'Earl Patrick' and made no reference to his predecessor. Moreover, they generally also included the phrase 'of Dunbar', giving his title a geographical reference.<sup>56</sup> However, Hamilton did note that there is one, and only one, exception in what she calls 'a much later charter'. This charter has an 'unusual and anachronistic word order' in which Patrick was not given the title *comes* and was affiliated with his father, and it happens to be the charter which is currently under discussion.

Apart from the *pro anima* clause and the style, it must also be noted that no subsequent confirmations of Ada's donation mention Patrick's charter. As discussed in chapter three, this is very unorthodox. However, in this particular case, it is also surprising, seeing as Kelso had severe problems with Ada's son, William, over the terms

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<sup>53</sup> *Ibid.*, p. 33.

<sup>54</sup> *Ibid.*, p. 67.

<sup>55</sup> *Kel. Lib.*, i, no. 72.

<sup>56</sup> Hamilton, 'Earls of Dunbar', p. 67.

of her donation.<sup>57</sup> One would think that if they had possession of a charter from an earl of Dunbar, then it would be mentioned in these dispute resolution documents. However, one only finds reference to Ada's charter in these items.

\* *For further discussion of this item, see pp. 131-39, 164-65, 193-94.*

**10. Cecilia, daughter of Eschina, gives land and property rights in Mow to Kelso Abbey by the consent of her husband, Simon Mauleverer.**

[11.9.1233 x 1249]

*Rubric:* Carta super toftum et croftum Willelmi de Molhope

*Source:* NLS, MS Adv. 34.5.1, ff. 59r-60r

*Printed:* *Kel. Lib.*, i, no. 150.

Uniuersis sancte matris ecclesie filiis et fidelibus has litteras visuris uel auditoris Cecilia de Molle filia  
 Eschine de Molle eternam in domino salutem . Nouerit vniuersitas uestra me de assensu et consensu Symonis  
 Mauleuerer Domini mei / et diuine caritatis intuitu / et pro salute anime mee / et pro animabus patris mei et  
 matris mee et omnium antecessorum et successorum meorum dedisse / concessisse / et hac carta mea  
 5 confirmasse deo et ecclesie sancte Marie de Kelchou / et monachis ibidem deo seruientibus et inperpetuum  
 seruituris / In liberam / puram / et perpetuam elemosinam / toftum et croftum qui fuerunt Willelmi de  
 Mollehope iunioris iuxta exitum versus Witelawe / et viginti acras terre arabilis / et sex in dominio meo de  
 Molle / uidelicet / in hauacres a terra Gilberti auenel uersus orientem nouem acras terre cum dimidiam acra  
 terre que iacet propinquior riuolo qui uocatur Aldetuneburne / que acre iacent ibidem per perticulas / et duas  
 10 acras terre in persouhside / et unam acram terre propinquiorem exitui qui tendit versus persouh / et unam  
 acram terre que iacet a parte orientali de Benelawe / et nouem acras terre / et unam perticatam in Dedrige que  
 iacent inter Aldetuneburne uersus austrum in ascendendo usque ad duas cruces per particulas / Et subtus  
 paruulam hogam tres acras terre propinquiores terre dictorum monachorum et unam perticatam terre et totam

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<sup>57</sup> *Kel. Lib.*, i, no. 132, 290-91.

15 partem meam de Hoga / et dimidiam acram terre in Kydelawecroft / et in Haustrother octo acras prati / scilicet  
 / quattuor acras que iacent inter terram arabilem de Hauacre / et sulcum aratis qui diuidit inter predictum  
 pratum / et pratum Gilberti auenel / et quattuor acras prati subtus persouthswire / que iacent inter sulcos aratis  
 / Dedi etiam eisdem monachis in liberam / puram / et perpetuam elemosinam tresdecim acras terre arabilis in  
 20 dominicis meis / videlicet totam partem meam de Mollestele / in qua continentur quattuor acre terre et  
 dimidiam / et partem meam illius terre que iacet propinquier riuulo qui descendit de Brademedwe usque in  
 Bolbent / et dimidiam acram terre que vocatur Crokecroft / propinquiorem vie que tendit versus Persouth / et  
 duas acras terre et dimidiam subtus bercariam meam propinquiorem exitui uersus Persouth in ascendendo / et  
 tres acras terre in illa cultura que iacet propinquier Persouth / excepta cultura Gilberti auenel / et totam  
 partem meam prati de Brademedwe / et pasturam sufficientem trecentis ouibus et decem animalibus / et  
 25 quattuor equis ubique in pasturis meis dominicis / et bercariam meam iuxta Aldetuneburne / et liberos  
 introitus et exitus a terris suis ubique ad pasturas / Et accipient de Persouth ea que sunt necessaria ad carucas  
 suas / et ad walluras faciendas inperpetuum / Tenebunt autem dicti monachi omnia ista prenominata de me et  
 heredibus meis in liberam / puram / et perpetuam elemosinam / quietam et solutam ab omni seruitute et seruitute /  
 et exactione / et ab omnimoda consuetudine et ab omni honore et grauamine / et erunt quieti a multura /  
 Tenebunt etiam idem monachi predictas terras et prata et pasturas ita libere quiete / et plenarie sicut aliqua  
 30 elemosina in regno Scocie ab aliquibus viris religiosis / liberius / quiccius / plenius / et honorificencius  
 tenetur et possidetur / Ego uero et heredes mei omnia ista prenominata predictis monachis contra omnes  
 homines warrantizabimus et defendemus inperpetuum / In cuius rei testimonium presens scriptum sigilli mei  
 appositione roborauimus . Hiis test' Willelmo capellano de Molle . Ricardo de Nichole / Ada filia Nicholao /  
 Henrico de Blakedene / Henrico filio Roberti / Johanne nepote domini Willelmi Glasg' episcopi et Domini  
 35 Regis Cancellarii / Ricardo de Boulden / Alano de Hertisheuede seruiantibus Abbatis de Kelch' et aliis .

*Comments:* Discussion of this charter has been combined with the discussion of no. 11 below.

**11. Simon Mauleverer confirms his wife's donation of land and property rights in Mow to Kelso Abbey.**

[11.9.1233 x 1249]

*Rubric:* *Carta super quamdam donacionem Cecilie de Molle*

*Source:* NLS, MS Adv. 34.5.1, f. 60r

*Printed:* Kel. Lib., i, no. 151.

Omnibus Christi fidelibus presens scriptum visuris uel auditoris Symon Mauleuerer / salutem / in domino .  
 Nouerit uniuersitas uestra me concessisse et hac carta mea confirmasse deo et ecclesie sancte Marie de  
 Kelchou et monachis ibidem deo seruientibus et inperpetuum seruituris in liberam puram et perpetuam  
 elemosinam totam donacionem quam Cecilia de Molle filia Eschine de Molle sponsa mea eisdem monachis  
 5 in territorio de Molle caritatiue contulit in liberam / puram et perpetuam elemosinam . In terris / in pratis / in  
 pascuis / in boscis / in planis et in omnibus aliis aisiamentis ; sicut in carta dicte Cecilie sponse mee predictis  
 monachis inde confecta plenius et liquidius continetur / Quare uolo ut dicti monachis dictam donacionem  
 cum omnibus ad eam pertinentibus adeo libere / quiete / plenarie et honorifice inperpetuum teneant et  
 possideant ; sicut aliqua elemosina in regno Scocie liberius / quiecius / plenius / et honorificencius tenetur et  
 10 possidentur . In cuius rei testimonium presenti scripto ; sigillum meum apposui / Hiis test' Willelmo  
 capellano de Molle / Ricardo de Nichole / Ada filio Nicholai / Henrico de Blackedene / Henrico filio Roberti  
 / Johanne nepote Cancellarii / Ricardo de Boulden / Alano de Hertisheued seruientibus Abbatis de Kelch' / et  
 aliis .

*Comments:* The authenticity of the two charters which purport to record Simon Mauleverer's involvement in Cecilia of Mow's donation is called into question by a variety of factors including the fact that apart from these charters, all evidence suggests that Cecilia made her donation as a widow. The two charters are part of a series of seven items in the cartulary which relate to her gift, and it is in these charters that doubt is cast on Simon Mauleverer's involvement. Therefore, a brief introduction to their content is warranted.

Of the seven charters relating to Cecilia's donation, three purport to have been produced on behalf of Cecilia of Mow herself, namely nos. 148, 157, and 150 (i.e. the questionable item). Structurally, these instruments are nearly identical. In fact, apart from their witness lists, only their notification and sealing clauses differ. For instance, no. 150 has a notification clause which states that Cecilia's gift was made by the consent of Simon Mauleverer, and a sealing clause which states that the charter was sealed only by

Cecilia [2-3]. On the other hand, nos. 148 and 157 have notification clauses which focus on Cecilia's power to make the donation as a widow, and sealing clauses which record the corroboration of multiple individuals, including high ranking secular and ecclesiastical officials.

The other four items in the cartulary which relate to Cecilia's donation are generally far shorter than the charters attributed to the donor herself, and they include the questionable confirmation charter produced on behalf of Simon Mauleverer,<sup>58</sup> a mid-thirteenth-century *inspeximus* produced on behalf of Gilbert Avenel (Cecilia's designated heir),<sup>59</sup> a confirmation charter attributed to William de Vesci (Gilbert's lord),<sup>60</sup> and a confirmation charter attributed to Henry of Hallyburton which is precisely dated to the year 1270. With the exception of the *inspeximus* produced on behalf of Gilbert Avenel, none of these charters goes into any depth about the nature of Cecilia's donation.<sup>61</sup> In fact, Simon Mauleverer's charter simply confirms the terms of Cecilia's gift as specified in her charter (*sicut in carta dicte Cecilia sponse mee*) [6], and both William de Vesci and Henry of Hallyburton's charters confirm the terms of Cecilia's charter and Gilbert Avenel's *inspeximus*.

*Table 6.2: The Mow Section with Special Reference to the Charters which Relate to Cecilia of Mow's Donation*

Benefactor	Transaction	Ref.
Eschina of London	Confirms church of Mow, gives land	146

<sup>58</sup> *Kel. Lib.*, i, no. 151.

<sup>59</sup> *Ibid.*, i, no. 164. Gilbert Avenel, a local lord in the region, does not appear to have had any familial ties with Cecilia. However, there was clearly some sort of a relationship since Cecilia granted portions of his land to Kelso in her charters. Moreover, after her death, he appears to have been designated as her heir (*Ibid.*, i, nos. 148, 157).

<sup>60</sup> *Ibid.*, i, no. 171.

<sup>61</sup> No. 148 is copied out in full within Gilbert's inspection charter (*Ibid.*, i, no. 164).

Eschina of London	Confirms church of Mow, gives pasture, quitclaims mill	147
<b>Cecilia d of Eschina</b>	<b>Gives toft &amp; croft (in widowhood)</b>	<b>148</b>
Richard s of R of Lincoln	Confirms nos. 152-53 with addition stipulations	149
<b>Cecilia d of Eschina</b>	<b>Gives toft &amp; croft (consent by husband)</b>	<b>150</b>
<b>Simon Mauleverer</b>	<b>Confirms toft &amp; croft</b>	<b>151</b>
Anselm of Mow	Gives pasture; Kelso quitclaims mill teinds	152
Anselm of Mow	Gives pasture; Kelso quitclaims mill teinds	153
Anselm of Mow	Gives land near Melrose Abbey's land	154
Anselm of Mow	Agreement: Gives pasture; Kelso quitclaims mill teinds	155
Alex / Isolda d of Anselm	Gives one oxgang which they held of Richard of Lincoln	156
<b>Cecilia d of Eschina</b>	<b>Gives toft &amp; croft (in widowhood)</b>	<b>157</b>
Richard / Matilda d of Anselm	Confirms nos. 152-53 with addition stipulations	158
Richard s of R of Lincoln	Gives land at Templeacre	159
Richard s of R of Lincoln	Gives 20 acres at ferme	160
Richard of Lincoln	Confirms no. 163	161
Isolda d of Anselm	Gives one oxgang which she held of Richard of Lincoln	162
Richard Scot	Gives field at <i>Ladhladde</i>	163
<b>Gilbert Avenel</b>	<b>Inspects and confirms no. 148</b>	<b>164</b>
Richard of Lincoln	Gives one acre at <i>Theules</i>	165
Henry / Eschina of London	Agreement over pasture	166
Aliz w of Richard Scot	Gives field at <i>Ladhladde</i>	167
Adam / Johanna Wishart	Gives four acres in <i>Stapelawe</i>	168
Ailmer / Christina d of Isolda	Confirms no. 156	169
Walter s of Alan	Gives land in Roxburgh, Mow and Renfrew	170
<b>William of Vesci</b>	<b>Confirms nos. 148, 164</b>	<b>171</b>
Simon M / Cecilia d of Eschina	Give land to the abbey at ferme (fragment)	172A
Papal Judges Delegate	Agreement: Kelso and Melrose	172B
Matilda w of Richard	Agreement over land and her son	173
<b>Henry of Hallyburton</b>	<b>Confirms nos. 148, 164</b>	<b>174</b>
Eschina of London	Perambulation of <i>Hethou</i>	175
Uctred s of Lyolf	Gives church of Mow with adjacent land	176
Richard / Matilda d of Anselm	Confirms no. 154	177
Henry of Mow	Confirms church of Mow	178
Papal Judges Delegate	Agreement: Kelso and Melrose	179

The locations of all of these items can be found on Table 6.2 above, and having established the subject matter and content of the seven charters relating to Cecilia's donation, this brings us to the first of a number of points which suggests that the two items recording Simon Mauleverer's involvement are spurious - i.e. none of the other five charters mentions Simon's involvement. In fact, all of the sources either deliberately focus on the fact that Cecilia made her donation as a widow, or they focus on the fact that Cecilia's gift as a widow was followed by an act of inspection, which was executed by her heir, Gilbert Avenel. As discussed in chapter three, such a blatant disregard for a set of charters like those of Simon is not duplicated in the Melrose or Holyrood archives, nor is it found in the Kelso Abbey cartulary, except in suspicious circumstances. It is also noteworthy that there are several charters of renewal that were produced on behalf of widows in these collections, and all these instruments make explicit reference to their husband's involvement.<sup>62</sup> Moreover, the same can be said of charters produced on behalf of heirs or lords of women.<sup>63</sup>

Another point which suggests that Simon Mauleverer was not involved in his wife's gift is a diplomatic phrase found in Cecilia's widowhood charters: *in ligia potestate*. A survey of the charters in the Kelso and Melrose has shown that when *in ligia potestate* or some variant was used, it invariably meant that women had in fact given the property as widows. An example is found in a charter produced on behalf of 'Mariota, the late spouse of Nicholas, the pharmacist' which records the fact that she gave all the land

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<sup>62</sup> e.g. *Ibid.*, i, no. 45.

<sup>63</sup> e.g. *Ibid.*, i, no. 36.

lying in ‘Narrowgate’ in Berwick to Melrose ‘in her legitimate power’.<sup>64</sup> Moreover, a further example was also given in Comm. I, no. 8.

Another dimension of the charters in question which is difficult to justify is the similarity between their witness lists and the witness list found in one of Cecilia’s widowhood charters. All three of these charters list the same individuals. Even more striking, however, is the fact that the number of individuals listed in these charters is identical, and the individuals are arranged in the same order. Therefore, it appears that the scribe who produced the two charters recording Simon’s involvement simply copied the information found in an authentic charter to produce them.

*Table 6.3: A Comparison of the Witness Lists in Two of Cecilia of Mow’s Charters and Simon Mauleverer’s Charter*

<b>150 - Cecilia w/ consent of Simon Mauleverer</b>	<b>157 - Cecilia in widowhood</b>	<b>151 - Simon Mauleverer</b>
William chaplain of Mow	William chaplain of Mow	William chaplain of Mow
Richard of Lincoln	Richard of Lincoln	Richard of Lincoln
Adam son of Nicholas	Adam son of Nicholas	Adam son of Nicholas
Henry of Blackdean	Henry of Blackdean	Henry of Blackdean
Henry son of Robert	Henry son of Robert	Henry son of Robert
John grandson of lord William, bishop of Glasgow, chancellor of the lord king	John grandson of the chancellor	John grandson of lord William, bishop of Glasgow, chancellor of the lord king
Richard of Bowden	Richard of Bowden	Richard of Bowden
Alan of Hartside servant of the Abbot of Kelso	Alan of Hartside servant of the Abbot of Kelso	Alan of Hartside servant of the Abbot of Kelso

This said, evidence suggests that it was not only witness list data which the monks borrowed to create these items, and this brings us to a final element which calls the authenticity of these two charters into question - i.e. the peculiar diplomatic characteristics of Simon Mauleverer’s confirmation charter. A survey of the charters

<sup>64</sup> *Melr. Lib.*, ii, App. no. 27.

located in the Melrose, Holyrood and Kelso archives reveals that charters which were witnessed by the same individuals invariably had diplomatic similarities, though they may differ in some respects if they were produced with different agendas. However, Simon Mauleverer's confirmation charter does not remotely resemble the charter which records his consent and has an identical witness list. For instance, the address of Cecilia's charter is the following:

*Uniuersis sancte matris ecclesie filiis et fidelibus has litteras visuris uel  
audituris Cecilia de Molle filia Eschine de Molle eternam in domino  
salutem [1-2]*

while the address in Simon Mauleverer's confirmation charter is:

*Omnibus Christi fidelibus presens scriptum uisuris uel audituris Symon  
Mauleuerer salutem in domino [1]*

The proprietary phrases found in these charters are also dramatically different. The proprietary phrase in Cecilia's charter lists the *terras et prata et pasturas* [29], while Simon's charter states that Kelso was to hold her donation *in terris in pratis in pascuis in boscis in planis et in omnibus aliis aisiamentis* [5-6]. Other significant differences could also be noted, and in the absence of the evidence discussed above, one might be tempted to simply dismiss these variations as anomalies. However, a comparison of these differences with the diplomatic found in the other five charters relating to Cecilia's gift

suggests that they are not anomalies, but evidence that it was produced as part of a composite process using the materials at the abbey's disposal. For instance, Simon's charter has the same address clause as Gilbert Avenel's *inspeximus: Omnibus Christi fidelibus presens scriptum uisuris uel audituris [...] salutem in domino*. Moreover, Simon Mauleverer's confirmation charter shares distinct similarities with Henry of Hallyburton's confirmation, which was the last of these instruments to have been produced, and dates from at least twenty years after Simon's death (i.e. 1270). In fact, these two charters have characteristics that are so similar and so distinctive that one was almost certainly based on the other. For one, they have identical proprietary phrases. Even the proprietary phrases in the charters produced on behalf of Gilbert Avenel and William de Vesci are identical to those found in Cecilia's charters. Moreover, they also have identical adjectives in their comparative clauses, and one of these adjectives is so unique that, out of over 400 hundred charters in the cartulary, it only exists in these two items, namely *liquidius* [7].<sup>65</sup>

\* *For further discussion of these items, including the reasons in which they were likely produced, see pp. 129, 164-67, 171, 193-94.*

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<sup>65</sup> Simon's charter has the following comparative clause: *sicut in carta dicte Cecilie sponse mee predictis monachis inde confecta plenius et liquidius continetur* [6-7]. Accordingly, the comparative clause in Henry's charter reads: *sicut in cartis domine Cecilie et dicti domini Gilberti Auenel militis et heredis eiusdem super eisdem confectis plenius et liquidius continetur* (*Ibid.*, i, no. 174).

**12. David of Bernham, bishop of St Andrews, gives and confirms to Kelso Abbey the chapel of Wedderlie (in Berwickshire) *in proprios usus* and ordains that from now on monks do not have to appoint a perpetual vicar to serve in the chapel but could appoint an honest chaplain who would answer to the bishop.**

[22.1.1240 x 26.4.1253]

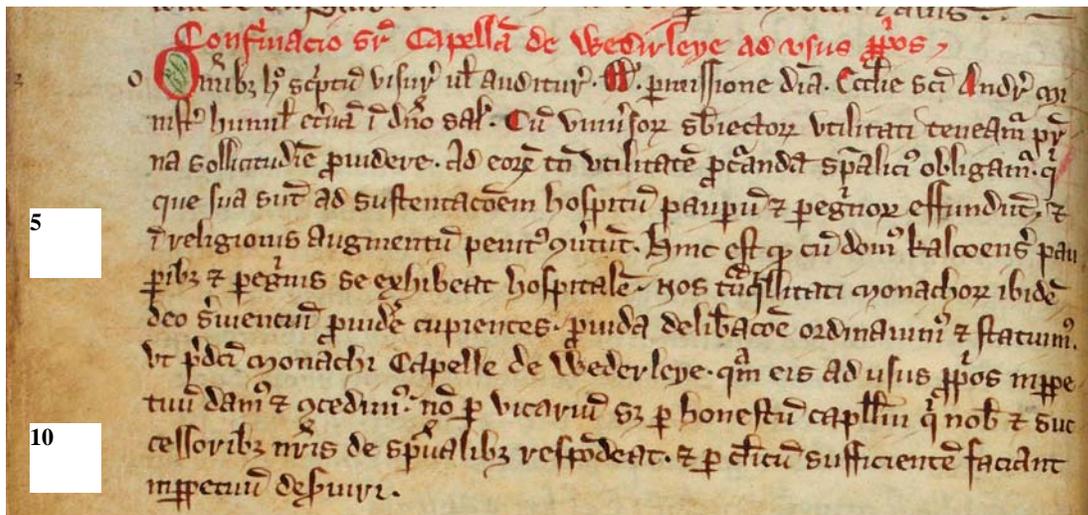
*Rubric:* Confirmacio super Capellam de Wedirleye ad vsus proprios

*Source:* NLS, MS Adv. 34.5.1, f. 165v

*Printed:* *Kel. Lib.*, i, no. 455

Omnibus hoc scriptum visuris uel auditoris . Daudid . permissione diuina . Ecclesie sancti Andr' minister humilis eternam in domino salutem . Cum vniuersorum subiectorum utilitati teneamur paternali sollicitudine prouidere . Ad eorum tantam utilitatem procurandam specialius obligamur . qui que sua sunt ad sustentacionem hospitum pauperum et peregrinorum effundunt . et  
**5** in religionis augmentum penitus conuertunt . Hinc est quod cum domus Kalcoensis pauperibus et peregrinis se exhibeat hospitem ; nos tranquillitati monachorum ibidem deo seruiencium prouidere cupientes ; Prouida deliberacione ordinauimus et statuimus . vt predicti Monachi Capelle de Wederleye . quam eis ad usus proprios inperpetuum damus et concedimus ; non per vicarium sed per honestum capellanum qui nobis et successoribus nostris de spiritualibus respondeat . et per clericum sufficientem faciant  
**10** inperpetuum deseruiri .

Plate 6.6: NLS, MS. Adv. 34.5.1, f. 27v



*Comments:* The legitimacy of this charter is called into question by the fact that it contains the grant of a nonsensical right, namely the liberty to appoint a chaplain in the dependant chapel. The charter is one of series of items which Bishop David of Bernham purportedly issued to Kelso in the mid-thirteenth century, and it appears that the charter in question was fabricated using one of these instruments.<sup>66</sup> However, to understand why this is likely the case, one needs to examine their composition.

The charters in question, which relate to the churches of Simprim and Horndean, contain three main specifications. Firstly, following a preamble, the bishop asserts that he has given the churches to Kelso *ad usus proprios* and has ordained that the monks could appoint honest chaplains (*honestum capellanum*) to serve in these benefices, instead of perpetual vicars. Secondly, he states that the monks may appropriate all of the revenues that these churches received *in proprios usus* and do not have to present the minor teinds to the vicarage. Thirdly, the bishop states that he has sealed the charters in question. As is

<sup>66</sup> *Kel. Lib.*, i, no. 277; ii, nos. 421, 424, 432.

clear, the whole object of these items was to allow Kelso to appoint chaplains in their churches, and therefore, appropriate all of the parochial revenues that these institutions received. Each subsequent specification in these charters builds on the previous point, and this is noteworthy because the charter relating to the chapel of Wedderlie starts off identically to these items. It has the same preamble found in these charters [1-7]. It records the bishop's gift of the chapel *ad usus proprios* [8-9]. And finally, it states that the monks may appoint an honest chaplain to serve in the institution instead of a vicar [9-11]. However, the charter abruptly ends thereafter. There is no mention of revenues or even a sealing clause. Why would the scribe leave out the most important point of this charter - i.e. the clause which allows the monks to appropriate all of the institution's revenues? After all, it is identical to the other charters up until this point, and one would assume that this is not how the charter ended. Therefore, the most likely explanation to account for its fragmented state is that the scribe realised at this point in the fabrication that he picked an exemplar which was not useful for the task he hoped to accomplish, and simply ceased transcription.<sup>67</sup>

This said, it must be noted that there is absolutely no evidence that the chapel of Wedderlie ever gained parochial independence during the thirteenth century. Therefore, there is no chance that what is being demonstrated here is simply the fact that the scribe changed *ecclesia* to *capella* when he transcribed the charter into the cartulary. Wedderlie chapel was first granted to Kelso in the late twelfth century, and in the charters recording

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<sup>67</sup> It must be noted that several historians appear to have found this charter problematic. Though Cowan, in his survey of the Scottish parishes, makes a point of noting the fact that David of Bernham granted Kelso the right to appoint an honest chaplain in the churches of Simprin and Horndean, he fails to mention this charter in his discussion (Cowan, *Parishes*, pp. 83, 182, 297). Similarly, though Marnell Ash discussed Kelso's appropriation of these churches in her study of the bishops of St. Andrews, she fails to discuss this charter. In fact, the only time that the fragment even appears in the thesis is in the appendix where it is listed as an undated act (Ash, 'Administration of St. Andrews', pp. 185, 351).

this arrangement, the dependant status of this institution is made quite clear.<sup>68</sup> For one, the benefactor, Gilbert son of Haldane, quitclaimed all ecclesiastical benefits derived from those residing in the town of Wedderlie, living or dead, to the mother church of Hume, and he stated that for all future time the individuals who attended the chapel were to be buried in the mother church. As part of the terms of the arrangement, Kelso also stated that a cleric of their choosing would serve in the chapel three days per week, on the feast days which were established in the diocese, and on any other day that the cleric wished to serve ‘just like their clerics which serve in the subordinate chapels of Hume and Hallyburton’. Moreover, the monks make it clear that they would allow Gilbert to keep the edifice at Wedderlie as a private chapel for the rest of his life, but after his death, it would revert to the monastery and the mother church of Hume.

Wedderlie also appears to have kept its dependant status during the thirteenth century. For instance, a papal bull produced on behalf of Innocent IV (1243-1254), who was a contemporary of David of Bernham (1239-1253), confirms Kelso’s possession of the *ecclesia de Home cum capella de Wederleie*.<sup>69</sup> Similarly, in the Bagimond’s roll of 1274, Wedderlie chapel is not mentioned, thus implying that it was not responsible for any parochial dues,<sup>70</sup> and in Kelso’s late-thirteenth-century *Rotulus Redituum*, which lists in great detail all of the revenues which the abbey received from their parish churches, it lists revenues derived from temporalities in Wedderlie, but fails to list any spiritual revenues derived from the chapel.<sup>71</sup>

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<sup>68</sup> *Kel. Lib.*, i, no. 299-301.

<sup>69</sup> *Ibid.*, ii, no. 460.

<sup>70</sup> *SHS Miscellany*, vi, pp. 25-77.

<sup>71</sup> *Kel. Lib.*, ii, pp. 465, 472.

Moreover, Wedderlie also appears to have kept this status throughout the late middle ages as well.<sup>72</sup> It does not appear in the parochial taxation roll found in the cartulary of St Andrews Priory,<sup>73</sup> and it likewise appears in the abbey's rental of c. 1567 and the assumption of the thirds of benefices as being a dependant chapel of the parish church Gordon.<sup>74</sup>

*\* For further discussion of this item, including potential reasons why it was created, see pp. 140, 152, 171, 178-79, 188-90.*

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<sup>72</sup> Cowan, *Parishes*, p. 297

<sup>73</sup> *St. And. Lib.*, pp. 28-39

<sup>74</sup> *Kel. Lib.*, ii, p. 495; *Assumptions*, p. 123

*SUSPICIOUS:*

**13. John, bishop of Glasgow, confirms to Kelso Abbey the church of Lesmahagow (in Lanarkshire) with its whole parish at the petition of David, the illustrious king of Scots, and releases it from all episcopal exaction and subjection.**

[1144/5]

*Rubric:* Carta super Ecclesiam de Lesmahagu cum tota perochia

*Source:* NLS, MS Adv. 34.5.1, f. 74v

*Printed:* *Kel. Lib.*, i, no. 180.

Omnibus has litteras visuris uel audituris . Johannes dei gracia Ecclesie Glasg' minister humilis salutem in domino perpetuam / Sciatis me caritatis intuitu ad petitionem domini mei . Daudid Regis Scottorum illustris / consilio et ammonicione virorum timencium Deum / tam clericorum quam laicorum / ex assensu etiam et voluntate totius Capituli mei concessisse et hac carta mea confirmasse abbati et monachis Calchovens

5 monasterii Ecclesiam de Lesmahagu cum tota parochia sua / prout eis libuerit inperpetuum ordinandam / monachos in eadem instituendo / et ipsam cum monachis ibidem seruituris ab omni exaccione et subieccione Episcopali iure perpetuo liberam dimississe et quietam . Hec autem acta sunt coram domino meo Rege . Daudid . et multis aliis tam clericis quam laicis / Anno ab incarnatione domini / m . c . xl . iiii .

*Comments:* The legitimacy of this charter is called into question by a number of factors, particularly its diplomatic. For instance, its address clause does not appear to be contemporary with John's episcopacy [1-2]. Moreover, the formula *caritatis intuitu* is also suspicious [2], and the charter's witness list is cause for concern [7-8]. As demonstrated above, not only does it only list King David, but it is also constructed in a

highly unorthodox configuration.<sup>75</sup> It very well may have been created as such to hide the fact that the monks lacked the information necessary to fabricate a witness list from scratch.

*\* For further discussion of this item, see pp. 157-59, 176, 180-81.*

**14: Pope Innocent III or IV makes a declaration concerning the churches of Horndean and Wedderlie (in Berwickshire).**

**[22.2.1198 x 16.7.1216 or 28.6.1243 x 7.12.1254]**

*Rubric:* None

*Source:* NLS, MS. Adv. 34.5.1, f. 171v

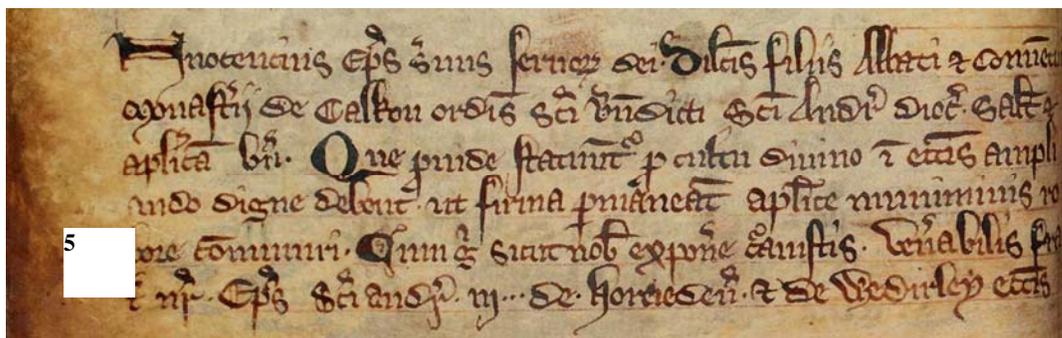
*Printed:* *Kel. Lib.*, i, no. 469

Innocencius Episcopus seruus seruorum dei . Dilectis filiis Abbati et Conuentui  
 Monasterii de Calkou ordinis sancti Benedicti sancti Andree diocesis . salutem et  
 apostolicam benedictionem . Que prouide statuuntur pro cultu diuino in ecclesiis ampli  
 ando digne debent . ut firma permaneant apostolice muniminis ro  
 5 bore communiri . Cum igitur sicut nobis exponere curauistis . venerabilis fra  
 ter noster Episcopus sancti Andree . m ... de Horneden' et de Wedirley ecclesiis

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<sup>75</sup> Bishop John's charter is the only charter in phase three of the cartulary which has a witness list and fails to list three or more individuals.

Plate 6.7: NLS, MS. Adv. 34.5.1, f. 27v



*Comments:* Like no. 13, the legitimacy of this charter is called into question by the fact that it refers to the chapel of Wedderlie as being a church [5]. This nomenclature contradicts all other extant evidence about the status of this institution. Moreover, it is also noteworthy that in terms of its textual characteristics, the item is identical to many of its spurious counterparts. For one, it is fragmented just like the other Wedderlie charter. Moreover, it is the last charter in the papal section of the cartulary.

\* For further discussion of this item, see pp. 141, 169-70, 179, 188-90.

**15. King William I forbids anyone to take poinds against the abbot of Kelso, within or outwith the lands of their church, until the abbot or his officers have first been required to do justice and have failed to do it.**

[9.12.1165 x 1171]

*Rubric:* Carta Regis Willelmi ne quis unquam namum capiat super Abbatem neque infra neque extra

*Source:* NLS, MS Adv. 34.5.1, f. 10r

*Printed:* *Kel. Lib.*, ii, no. 5.

*RRS*, ii, no. 95.

Willelmus Dei gracia Rex Scott' . Justic' . vicecomitibus . et omnibus probis hominibus tocius terre sue salutem . Mando et firmiter precipio . ne quis unquam namum capiat super Abbatem de Kelch' neque infra neque extra terras eiusdem ecclesie . priusquam ipse abbas uel ministri sui requirantur de rectitudine facienda . et ipsi a rectitudine facienda defecerint . Si quis autem balliuorum uel aliorum hominum meorum huic  
5 precepto meo contraire presumpserit ; in plenam misericordiam meam uel successorum meorum se nouerit incidisse . Testibus hiis . Nicholao cancellario . Ricardo de Moruill' . constabulario . Hugone Ridel apud Edinburg' .

*Comments:* The integrity of this charter is called into question by the fact that *dei gracia* is found in the address [1]. Though Geoffrey Barrow has suggested that it may be due to a copyist, it is equally, if not more, likely that the reason this formula is found in this charter is because it was fabricated using Alexander II's brieve which follows it in the cartulary.<sup>76</sup> There are no substantive differences between this charter and Alexander's apart from the witness list and the fact that one is in the first person singular and one uses

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<sup>76</sup> *RRS*, ii, p. 75-76.

the first person plural. Moreover, as discussed in chapter three, the short witness list found in King William's charter could have easily been created with information at the abbey's disposal, and it is noteworthy that this charter is also the only surviving brief of protection which granted the holder of a court freedom from poinds.<sup>77</sup>

\* *For further discussion of this item, see pp. 159-62, 176-77.*

**16. William de Vieuxpont gives to Kelso Abbey the church of Langton (in Berwickshire).**

**[1191 x 29.7.1198]**

*Rubric:* Item Willelmus de veteri ponte super predictis cum omni plenitudine sua

*Source:* NLS, MS Adv. 34.5.1, ff. 55r-55v

*Printed:* *Kel. Lib.*, i, no. 142.

Univeris sancte matris ecclesie filiis et fidelibus / Willelmus de veteri ponte / Salutem . Nouerint omnes tam  
 posteri quam presentes me dedisse et concessisse et hac carta mea confirmasse ecclesie sancte Marie de  
 Kelch' et monachis ibidem deo seruientibus in liberam et puram et perpetuam elemosinam de Langtune cum  
 omni plenitudine et integritate sua et cum omnibus communitibus aysiammentis ipsius uille et cum omnibus ad  
 5 ipsam ecclesiam iuste pertinentibus et cum toftis et croftis et terris sicut ego ipse Willemus eam quandam hec  
 carta facta est coram multis perambulaui . uidelicet sicut uia iacet ab orientali parte ecclesie usque in  
 Wedyrburne / et ita per Wederburne usque ad humpulles / et in langgelandes sicut diuisa uadit inter terram  
 domini et terram Ecclesie / et per langgelandes uersus occidentem usque in Wederburne uersus aquilonem  
 usque ad toftum Radulphi et toftum Gilberti et ita usque ad diuisas tofti Henrici persone et ad toftum Henrici  
 10 iuxta quandam ueterem fossam ubi ipse Henrici quondam posuit faldum suum . Hanc autem ecclesiam dedi et  
 concessi eis ad operacionem et operis sustentacionem ipsius ecclesie de Kelchou pro anima Regis Daud et  
 Regis Malcoloni et Comitis Henrici et anima patris mei et matris mee et omnium antecessorum et

<sup>77</sup> *Ibid.*, ii, p. 72.

15 successorum meorum ita libere et plenarie in perpetuam elemosinam possidendam sicut aliquam aliam ecclesiam liberius quicquid et plenius habent et possident et secundum assisam Regis David . Ita quod non licebit eis predictam ecclesiam de Langtune aliquod . tempore alicui dare sed eam omni tempore in manu sua retinere ad operacionem ut iam dictam est ipsius ecclesie in qua corpus Henrici Comitis requiescit / Hiis testibus . Widone abbate de Lundo' . Johanne decano de ffogghou . Magistro Ada de Hersille . Willelmo de Bolteby . Willelmo de Capel' . Willelmo de Butemund / Simundo de Ferligtune / Johanne de Duns / Waldeuo de Aula .

*Comments:* The legitimacy of William's charter is called into question by a variety of elements, all of which were discovered through a comparison of it with a series of three charters purportedly produced on behalf of William's son.<sup>78</sup> In fact, this charter appears to have been created by simply cutting and pasting portions of one of his son's charters into a coherent, albeit flawed, piece. Several factors appear to give this process away. For one, there are inconsistencies in the perambulation. The perambulation in the charter in question [6-10] is identical to the perambulation found in each of his son's charters. However, it does differ in one crucial respect: the word *quondam* appears twice in conjunction with Henry the parson in his son's charters, but only once in this charter [9-10]. It therefore appears that the scribe removed the *quondam* the first time that Henry was found in the perambulation in an attempt to make the charter appear contemporary with the benefactor's lifetime. However, he forgot to remove *quondam* the second time around.

Another element of the charter which suggests that it was created through a cut-and-paste process is the *pro anima* clause. All of the charters produced on behalf of William's son have the following feature:

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<sup>78</sup> *Kel. Lib.*, i, nos. 139-41.

*pro salute dominorum meorum Regis Willelmi et Regine et eorum filii  
Alexandri et ceterorum liberorum eorum et pro salute mea et coniugis mee  
et heredum meorum et pro animabus Regis Daudid et Malcholomi et  
comitis Henrici et pro animabus patris mei et matris mee et omnium  
antecessorum et successorum meorum*

However, William's charter only has the second half of this clause [11-13]. There is no mention of the donor, the current king, or anyone that was alive. It was highly uncommon for the scribes who produced Kelso's and Melrose's charters not to mention the current king, if past kings were mentioned (see Comm. II, no. 3). However, it was even more uncommon for scribes not to mention the donor.<sup>79</sup> Ultimately, the most logical way to account for the omission of these individuals was that the second half of the *pro anima* clause was simply extracted from one of his son's charters.

Apart from the cutting-and-pasting phenomenon, a final piece of evidence which calls into question the authenticity of this charter is the portion of the charter which precedes the attestation clause [14-16]. Unlike what was described above, this portion of the item does not appear to have been extracted from one of the charters produced on behalf of William's sons. However, it does appear to contradict some of the information found in these instruments, and may have been produced in an attempt to associate William's donation with a particular time, similar to the way that removing *quondam* from the perambulation, and chopping out portions of the *pro anima* clause, would have placed it into a particular era in Scotland's history. The clause in question states that they were to hold the church in accordance with an assize of King David. However, the

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<sup>79</sup> It only occurs one other time in the Kelso Abbey cartulary (*Ibid.*, i, no.187).

charters of William's son have *secundum asisam episcopatus*. It is difficult to see why the scribes of the latter charters would have opted to refer to an episcopal assize instead of a royal assize, unless it was simply more important legislation.

This said, the only point which keeps the possibility alive that this charter is authentic is the witness list [17-19]. However, some of these individuals including John, dean of Fogo, could have been derived from the charters of John's son, while individuals like Guy, abbot of Lindores, who was formerly a monk at Kelso, could have been derived from sources available to the scribes.

*\* For further discussion of this item, see pp. 141, 171, 194-95.*

**17. Hugh Mulard, Walter son of Baldwin, William son of Robert and Walter son of Ralph of Essex, by the consent of their wives, quitclaim to Kelso Abbey all claim which they had against them. They also state that they will not pursue any claim against the monks concerning any fishery between the pool fishery of Ord and the fishery of Blackwell (in Northumberland) in return admittance into Kelso's fraternity.**

**[x 1194]**

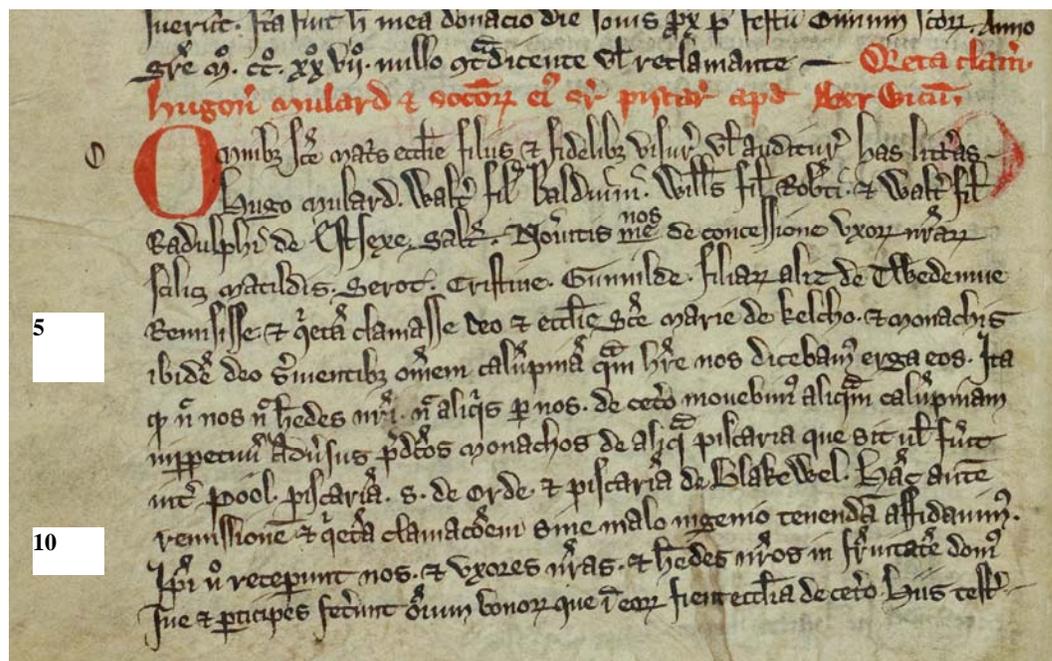
*Rubic:* Quieta clamacio Hugonis Mulard et sociorum eius super piscariae  
apud Berwicum

*Source:* NLS, MS Adv. 34.5.1, f. 27v.

*Printed:* *Kel. Lib.*, i, no. 65.

Omnibus sancte matris ecclesie filiis et fidelibus visuris vel auditoris has litteras .  
Hugo Mulard . Walterus filius Balduini . Willelmus filius Roberti . et Walterus filius  
Radulphi de Estsexe salutem . Noueritis nos<sup>80</sup> de concessione vxorum nostrarum  
scilicet Matildis . Serot . Cristine . Gunnilde . filiarum Aliz de Twedemue  
5 remisisse et quietam clamasse deo et ecclesie sancte Marie de kelcho et monachis  
ibidem deo seruientibus omnem calumpniam quam habere nos dicebamus erga eos . Ita  
quod nec nos nec heredes nostri nec aliquis per nos . de cetero mouebimus aliquam calumpniam inperpetuum  
aduersus predictos monachos de aliqua piscaria que sit uel fuerit  
inter pool . piscariam . scilicet . de Orde et piscariam de Blakewel . Hanc autem  
10 remissionem et quietam clamacionem sine malo ingenio tenendam affidauius .  
Ipsi uero receperunt nos . et uxores nostras . et heredes nostros in fraternitatem domus  
sue et participes fecerunt omnium bonorum que in eorum fient ecclesia de cetero . Hiis Testibus .

Plate 6.8: NLS, MS. Adv. 34.5.1, f. 27v



<sup>80</sup> Scribe deleted *me*.

*Comments:* Discussion of this charter has been combined with the discussion of no. 19 below.

**18. Matilda, Serot, Christina and Gunnhilda, daughters of Alice of Tweedmouth, by the consent of their husbands, quitclaim to Kelso Abbey all rights which they had or were able to have in the fishery of Reedhaugh. They also state that they will not pursue any claim against the monks concerning any fishery between the pool fishery of Ord and the fishery of Blackwell (in Northumberland) in return for admittance into Kelso's fraternity.**

[x 1194]

*Rubric:* Item dicte Mulierum super le Redhouch

*Source:* NLS, MS Adv. 34.5.1, ff. 28r-28v

*Printed:* *Kel. Lib.*, i, no. 68

Omnibus sancte matris ecclesie filiis et fidelibus visuris uel  
 audituris has litteras . Matildis . Serot . Cristina . et Gunnilda filie Aliz  
 de Twedemue . salutem . Noueritis nos de concessione virorum nostrorum . scilicet . Hugonis Mu  
 lard . Walteri filii Baldewyni . Willelmi filii Roberti et Walteri filii Radulphi de estsexe .  
 5 et heredum nostrorum remisisse et quietum clamasse omne ius quod habuimus uel habere potuimus<sup>81</sup>  
 in piscariam de Redehouh Deo et ecclesie sancte Marie de kelchou . et monachis ibidem  
 deo seruientibus . Ita quod nec nos<sup>82</sup> nec heredes nostri nec aliquis per nos de cetero aliquam claumpniam  
 mouebimus inperpetuum aduersus predictos monachos de kelcho . de aliqua piscaria  
 quod sit uel fuerit inter pool piscariam . scilicet . de Orde . et piscariam de blakewel .  
 10 Hanc autem remissionem et quietam clamacionem sine malo ingenio tenendam

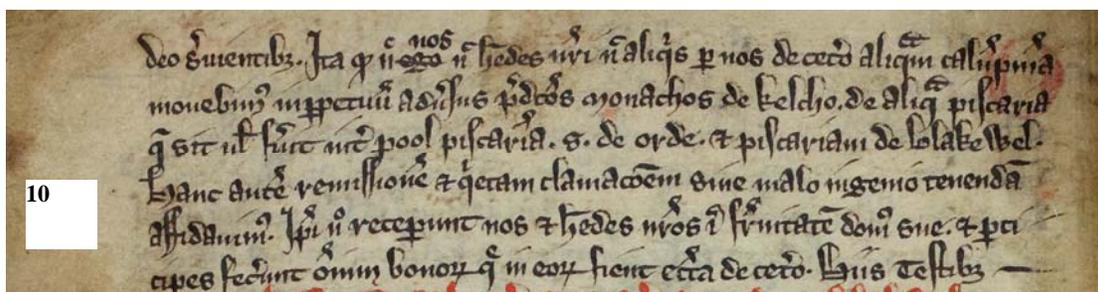
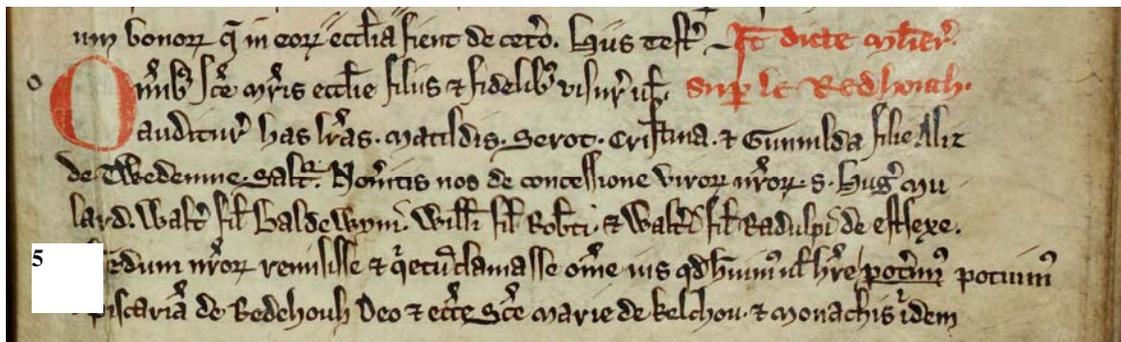
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<sup>81</sup> Scribe deleted *poterimus*.

<sup>82</sup> Scribe deleted *ego*.

affidauimus . Ipsi uero receperunt nos et heredes nostros in fraternitatem domus sue . et participes fecuerunt omnium bonorum que in eorum fient ecclesia de cetero . Hiis testibus .

Plates 6.9 and 6.10: NLS, MS. Adv. 34.5.1, ff. 28r-28v



*Comments:* The legitimacy of nos. 19 and 20 are called into question by a series of corrections and interpolations found in the manuscript. As demonstrated above, *me* was changed to *nos* in the first charter [3], and *poterimus* and *ego* were changed to *potuimus* and *nos* in the second charter [5, 7]. Errors of this sort are generally quite uncommon in the manuscript, and as discussed in chapter three, the nature of these errors may suggest that the scribes responsible for these items were using an exemplar which was in the first-person singular. As mentioned, this is by no means beyond the realm of possibilities. A total of thirteen charters survive in the cartulary which specifically related to the same fishery rights, and most of these charters are configured in one of two ways. Five of the charters state that the benefactors have quitclaimed all quarrel which they had against the monks and promised not to pursue any claim regarding any of the fisheries between the

pool fishery of Ord and the fishery of Blackwell. On the other hand, seven charters state that the benefactors have quitclaimed the fishery of Reedhaugh and promised not to pursue any claim for the aforementioned rights. The fact these transcription errors found in these charters are precisely the types of mistakes that would likely occur if one was relying on a charter in the first-person singular, suggests that they are likely spurious.<sup>83</sup>

\* *For further discussion of these items, including their advanced diplomatic, see pp. 146-50, 174-75, 194.*

**19. Hervey son of Philip gives to Kelso Abbey the church of Keith-Humbie (in East Lothian) and its land, by stated bounds.**

**[early 13th century]**

*Rubic:* Confirmacio Heruei filii Philippi Marescalli super ecclesia de Keth terre et nemore et aliis

*Source:* NLS, MS. Adv. 34.5.1, f. 34v

*Printed:* *Kel. Lib.*, i, no. 89

Universis sancte matris ecclesie filiis et fidelibus . Herueus filius Philippi Marescalli salutem . Nouerint omnes tam posteris quam presentes me concessisse et hac presenti carta confirmasse ecclesie sancte Marie de Kelchou . et monachis ibidem deo seruiantibus ecclesiam de Keth cum tota illa terra et toto nemore ab australi parte riuuli qui currit iuxta ecclesiam . scilicet . per predictum riuulum qui currit iuxta ecclesiam  
 5 usque ad Kyrckeburne et inde usque ad viam que vadit usque ad Hadington . et inde usque ad Kirnestrother

<sup>83</sup> It is noteworthy that William of Maule's charter, which confirmed the quitclaim of all the individuals who gave up the rights in question, only states that the wives consented to the quitclaim of the rights by their husbands. It does not state that they quitclaimed the rights themselves (*Kel. Lib.*, i, no. 55)

sicut Simon fraser eam perambulauit inter Petrum clericum et Cospatricium de Drem . et de Kyrnestrother usque in Reuedene et de Reueden usque ad prefatum riulum qui currit iuxta ecclesiam . et illam terram ex orientali parte vie iuxta ecclesiam usque ad supercilium montis . et per supercilium montis usque ad quercum que est super riulum . Hanc autem terram et totum nemus quod infra diuisas istas est concessi predicte

**10** ecclesie de Kelchou in liberam et perpetuam elemosinam ut faciant tam de toto nemore quam de tota terra predicta sicut de suo proprio quod uoluerint . Concedo etiam predictis monachis et hominibus suis in predicta terra de Keth manentibus communia et aysiamenta terre mee de Keith et in focali et pastura cum rationabili instauramento et aysiamenta bosci mei cum hominibus meis et ut ipsi monachi quieti sint et liberi de multura tam de tota decima ipsius parrochie quam de sua propria segete quam in ipsa terra coluerint vel habuerint . Et

**15** ipsi et homines eorum liberi omnio erunt de opere molendini et stagni . Volo itaque ut prefati monachi de Kalchou hanc prefatam elemosinam ita libere et quiete integre et honorifice teneant et in perpetuam elemosinam possideant ; sicut aliquam aliam elemosinam liberius plenius et melius habent et possident . et sicut hec carta testatur . Hiis Testibus .

*Comment:* The integrity of this charter is called into question by the fact that it has an outdated perambulation which is the same as that which is found in Simon Fraser's authentic charter of donation [4-9].<sup>84</sup> In light of the discussion above (see Comm. I, no. 8), it is difficult to see how producing a charter with such specifications would have been practical, since the perambulation found in the confirmation charter produced on behalf of Hervey's immediate predecessors in the land of Keith – i.e. Hugh Lorens and Ada Fraser – is far superior to the perambulation found in Simon's charter. Moreover, it is also noteworthy that in terms of this charter's locational characteristics, it is identical to many of the other spurious charters in the collection – i.e. it follows a series of charters in chronological order.

\* *For further discussion of this item, see pp. 142, 171-72, 180-81.*

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<sup>84</sup> *Ibid.*, i, no. 49.

***INFLATED/SUSPICIOUS:***

**20. Wice of Wiston gives to Kelso Abbey the church of Wiston and the dependant chapels of Roberton and Crawford John (in Lanarkshire).**

**[24.5.1153 x 24.3.1160; prob. x 16.6.1159]**

*Rubric:* Carta super Ecclesie de Wycestun cum duabus capellis suis

*Source:* NLS, MS Adv. 34.5.1, ff. 131r-131v

*Printed:* *Kel. Lib.*, i, no. 336

Omnibus sancte matris ecclesie filiis et fidelibus tam presentibus quam futuris visuris vel auditoris has litteras . Wicius de Wicestun' salutem . Nouerint omnes tam presentes quam futuri me dedisse et concessisse . et hac carta mea confirmasse Deo et ecclesie Marie de Kelchou et monachis ibidem deo seruientibus Ecclesiam de Wicestun . uilla mea cum duabus capellis suis . scilicet . uille Roberti fratris lambini . et uille Johannis priuigni balduini tenendam sibi in perpetuam elemosinam . cum terris / decimis / pascuis / focalibus . et ceteris aysiamentis ipsius uille . et omnibus aliis iustis pertinenciis suis ad predictam ecclesiam spectantibus .

5 Hanc autem donacionem feci eis pro salute domini mei Regis Malcholoni . et fratris sui Willelmi . et pro salute mea et coniugis mee . et heredum meorum . et pro animabus patris mei et matris mee . et omnium antecessorum et successorum meorum . Quare uolo ut prefati monachi habeant et possideant in perpetuum predictam ecclesiam de Wicestun cum prenomatis capellis . quam eis contuli in perpetuam elemosinam

10 cum omnibus libertatibus et aysiamentis et rectitudinibus ecclesiasticis . et cum omnibus aliis ad predictam ecclesiam pertinentibus ita libere . quiete et honorifice . et plenarie . sicut aliquam ecclesiam aliam in regno Scocie . liberior quociens . honorificius . et plenius tenent uel possident . Hiis testibus . Herberto Glasg' Episcopo . Salomone . et Helia clericis eius . Baldwino vicecomite . Waldeuo filio eius . Waldeuo

15 vicecomitato . Symon' locard' . et aliis .

*Comments:* The legitimacy of the charter which records Wice of Wiston's donation is called into question by a series of diplomatic features which appear to be too advanced to have been produced in the mid-twelfth century. As discussed in chapter three, address

clauses which reference the charters directly did not emerge until the turn of the thirteenth century [1-2]. Moreover, the charter's holding clause also has features which postdate the period in which this charter was purportedly produced. Among other things, it states that Kelso was to hold Wice's gift 'just as any other church in the Kingdom of Scotland' [12-13]. As noted in chapter three, such a phraseology did not become common until the late twelfth century.

Apart from the aforementioned, the fact that the scribe who produced the charter consistently incorporated the placename Wiston into the text is also cause for concern. The dispositive clause in Wice's charter refers to his donation as the *Ecclesiam de Wicestun uilla mea* [3-4], and Wice is referred to as *Wicius de Wiceston*' in the address [2]. As discussed in chapter three, before the late thirteenth century, the parish church of Wiston was invariably referred to as the church of the ville of Wice, except in this one particular instance, and the surname 'of Wiston' does not appear to have emerged before the turn of the thirteenth century.<sup>85</sup>

\* *For further discussion of this item, including the fact that it was associated with an inspeximus, see pp. 152-57, 176, 191-93.*

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<sup>85</sup> See chapter two for a discussion of how few private charters recording donations of churches appear to have been produced during the reign of Mael Coluim IV.

**21. Hye of Simprim gives to Kelso Abbey the church of Simprim (in Berwickshire) with a toft, croft and eighteen acres of land.**

[24.5.1153 x 24.3.1160; prob. x 16.6.1159]

*Rubric:* Carta super Ecclesiam de Sympring' cum pertinenciis suis

*Source:* NLS, MS Adv. 34.5.1, f. 110r

*Printed:* *Kel. Lib.*, i, no. 273.

Omnibus uisuris uel auditoris has litteras Hye de Simprinc' / salutem . Sciatis me presente Petro filio meo et concedente dedisse et concessisse et hac carta mea confirmasse / Deo et ecclesie sancte Marie de Kelch' et monachis ibidem deo seruientibus Ecclesiam de Simprinc' / cum tofto et crofto . cum decem et octo acris terre . ita libere tenendam et possidendam in liberam / puram / et perpetuam elemosinam / cum terris / decimis / et  
5 aliis Ecclesiasticis beneficiis sicut aliquam aliam ecclesiam in Regno Scocie liberius / quocius et plenius tenent uel possident / Hanc autem elemosinam feci eis pro salute anime Regis Dauid et pro salute domini mei Regis Malcoloni / et pro salute mea et omnium antecessorum et successorum meorum . salua tenura Thor Archideaconi in vita sua . Hiis testibus . Berculfo de Hupsetligtun / Ricardo Marchaldo / Wicio de Wicestun / Dodino de Dodinestun / Johanne persona de ffogghou / Magistro [ ] de Hupsetlingtun / et multis aliis .

*Comments:* The legitimacy of the charter which records Hye of Simprim's donation is called into question by a series of diplomatic features which appear to be too advanced to have been produced in the mid-twelfth century. As discussed in chapter three, address clauses which reference charters directly did not emerge until the turn of the thirteenth century [1]. The charter also has other features which postdate the period in which this charter was purportedly produced. Among other things, it states that Kelso was to hold Hye's gift 'just as any other church in the Kingdom of Scotland' [5]. Moreover, the fact that the scribe who produced the charter incorporated the toponymic surname 'of Wiston'

into the witness list also suggests that it has been tampered with or may even be a forgery.<sup>86</sup>

*\* For further discussion of this item, including the fact that it was associated with an inspeximus, see pp. 152-57, 176, 191-93.*

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<sup>86</sup> See chapter two for a discussion of how few private charters recording donations of churches appear to have been produced during the reign of Mael Coluim IV.

## COMMENTARY II

SOME OTHER NOTEWORTHY CHARTERS AND FEATURES OF THE  
CARTULARY

1. A charter purporting to record a grant of Robert, bishop of St Andrews, to Kelso Abbey of freedom from all episcopal subjection and exaction which states that the abbot and monks may seek chrism, oil and ordination from any bishop of Scotia or Cumbria.

[17.7.1127 x 1131]

*Rubric:* Confirmacio quod Ecclesia de Kelch' sit solute et quieta ab omni subieccione et exaccione

*Source:* NLS, MS Adv. 34.5.1, f. 162r

*Printed:* *Kel. Lib.*, ii, no. 443

5 Robertus dei gratia Ecclesie sancti Andree Episcopus . Omnibus sancte matris ecclesie fidelibus . salutem . Sciant omnes sancte Ecclesie filii presentes et futuri . quod pro amore dei . et honore et petitione Daud illustris Scottorum Regis concessi solutam et quietam . et omni subieccione et exaccione liberam Ecclesiam sancte Marie de Calcho . quam idem Rex Daud in abbaciam pro dei amore edificauit . ita scilicet . ut Abbas et monachi eiusdem ecclesie a quocumque episcopo uoluerint in Scocia uel in Cumbria crisma suum et oleum et ordinacionem ipsius abbatis et monachorum et cetera sancte ecclesie sacramenta accipiant . Teste eodem Rege . Daud . et filio suo Henrico . Matilda Regina . Johanne Glasg' episcopo . Asscelino Archidiacono . Adelulfo sancti Oswaldi priore . Nicholao Sconensi priore . Willelmi Regis nepote . Hugonis de Moruilla . Roberto de Unfranuilla . et aliis.

Comments: This charter appears to have at least one point of discrepancy, namely the fact that it refers to the monastery as the ‘church of Saint Mary of Kelso’ [4]. As discussed in chapter one, early charters found in the Tiron archive refer to the monastery as the ‘church of Roxburgh’, and Abbot Herbert is invariably referred to as the ‘abbot of Roxburgh’ in all extant witness lists. Therefore, the notion that the religious house was named the ‘church of Kelso’ in such an early document seems unlikely. Nevertheless, this discrepancy could be attributed to the fact that a scribe altered it at the time of the production of the cartulary, or in some earlier context. Hence, there is no firm evidence to suggest that the authenticity of this charter should be questioned.

This said, historians should be aware of the fact that Bishop Robert was clearly very unhappy with Kelso’s exempt status, and he complained about it to John of Salisbury in 1157. In a letter to John of Canterbury, treasurer of York, wherein he begins by expressing displeasure with the treasurer for a lack of correspondence, he states:

For you would have been denounced for such excess of silence, had not the venerable father, Robert bishop of St Andrews, curbed my indignation by desiring that his person and his cause should be commended to your diligence. The abbot of Kelso, incited by the example of the *acephali*, harasses him, clutches after a strange form of liberty, following a path of disobedience which Christ does not recognise, and exalts himself to the level of a bishop. The archbishop of Canterbury commends the bishop’s cause to you, and so do I.<sup>87</sup>

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<sup>87</sup> *The Letters of John of Salisbury*, 2 vols, ed. by W. J. Millor and others (London: Nelson, 1955-1979), i, no. 43.

It is unclear what prompted this. Nevertheless, it may have been tied to extenuating circumstances, rather than the fact that Robert never granted exemption to Kelso in the first place. For one, John of Salisbury's statement that Arnold was clutching "after a strange form of liberty" and was exalting "himself to the level of a bishop" suggests that Robert was concerned about how Arnold was acting as an *acephali* (i.e. an exempt abbot), not that he was not an *acephali*. Perhaps Arnold was seeking out the privilege of wearing the mitre in 1150s, which his successor, John, successfully acquired in 1165. Then again, it may be tied to a bull which Arnold received from Hadrian IV in 1155. This bull confirmed the fact that the abbots of Kelso did not have to be ordained by the bishops of Saint Andrews.<sup>88</sup>

Nevertheless, it is certainly possible that Kelso forged the charter as well. As discussed above, virtually all of the extant documentation which other exempt houses used to assert their right of exemption have been shown to be fabrications.<sup>89</sup> Therefore, the notion that Robert's charter is authentic would be an exception to the rule. Moreover, several scholars have uncovered the fact that certain religious houses did forge charters during the lifetime of the individuals who purportedly issued them, so it is possible that Robert was reacting to the existence of this charter.<sup>90</sup> This said, it may very well have been fabricated just prior to the production of Mael Coluim IV's general confirmation which opens by stating that Robert was responsible for granting this right to Kelso.<sup>91</sup> Shortly prior to the production of this instrument, Arnold, abbot of Kelso, succeeded

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<sup>88</sup> *Scotia Pontificia*, no. 35.

<sup>89</sup> Brooke, 'Approaches to Medieval Forgery', p. 384.

<sup>90</sup> Brett, 'Forgery at Rochester', p. 403; Davies, 'Cartulaire de Redon', p. 273.

<sup>91</sup> *Kel. Lib.*, i, pp. iii-vii; *RRS*, i, no. 131.

Robert as bishop of St. Andrews. Kelso may have seized this opportunity to finally settle the issue of its exemption once and for all. Furthermore, if it was created following Arnold's ascension, then this could also explain why it refers to the monastery as the 'church of St Mary of Kelso' and not the 'church of St Mary of Roxburgh'. However, whatever the case, historians should definitely use this charter with caution.

## 2. The Other Fishery Charters

*Source:* NLS, MS Adv. 34.5.1, ff. 25v-27r, 28r-29r

*Printed:* *Kel. Lib.*, i, nos. 55-63, 66-67. 69-70

*Comments:* As discussed in chapter three, these items are the earliest 'authentic' private charters in the Kelso, Melrose and Holyrood collections which have address clauses that refer to the charters in which they are found. Moreover, they also happen to be the earliest private charters in both collections which have the phraseology *caritatis intuitu*, and as discussed above, there is evidence which suggests that the scribe responsible for copying these charters into the cartulary was using a formulary or exemplar to create some of them (Comm. I, nos. 17-18). If this was the case, then there is no way to gauge which of these charters are authentic. Therefore, historians should use them with caution.

### 3. The Cranstoun and Preston Charters

*Source:* NLS, MS Adv. 34.5.1, ff. 123v-124v.

*Printed:* *Kel. Lib.*, i, nos. 316-18.

*Comments:* As discussed in chapter four, several of the spurious charters in the cartulary are associated with inspections. These three charters are as well, and the *inspeximus* in which they are found was created on behalf of the abbots of Melrose and Dryburgh in 1310. The occasion for the inspection was the fact that William of Lamberton, bishop of St. Andrews, exchanged the church of Nenthorn for the churches and rights recorded in these charters, and it is not beyond the realm of possibilities that the inspection was conducted so that the abbot of Kelso could pass on the *inspeximus* to the bishop. It is also not beyond the realm of possibilities that the inspected charters are forgeries which were created to circumvent the fact that Kelso may have lost the originals relating to these possessions. Moreover, the two charters found in the *inspeximus* which relate to the church of Cranstoun contain some very unorthodox features. Among other things, they record the fact that the church was given ‘for the use of the subsacrist’ (*ad usus secretarii*). Such a stipulation is not duplicated elsewhere in the Kelso, Melrose or Holyrood collections, and this study has yet to uncover a similar stipulation in any other collection that it has surveyed. Moreover, these charters also have *pro anima* clauses which fail to mention King William even though they were produced during his reign. This too is very unorthodox (see Comm. I, no. 16), and suggests that they should likely be used with caution.

#### 4. The Other Charters after the Thematic Break in the Innerwick Section

*Source:* NLS, MS Adv. 34.5.1, ff. 104r-105v.

*Printed:* *Kel. Lib.*, i, nos. 255, 257.

*Comments:* As discussed in chapters three and four, two of the charters found after the thematic break in the Innerwick section appear to be spurious. However, there is reason to be cautious about the content of at least two other charters as well, namely the charter which records Robert of Kent's gift of 'two parts' of the land and pasture of Innerwick and the charter which records Robert Avenel's gift of one-sixth of the land and pasture (see table 6.4 below). Not only are these charters located in the same region of the cartulary where the forgeries are located, but they also have other conspicuous characteristics. For instance, Robert of Kent's charter has the same witness list as Robert Hunald's charter, which is found earlier in the section. Is it possible that it was produced at the same time as Robert Hunald's charter, thus accounting for its similarities? Yes. However, it is equally possible that it was fabricated using Robert Hunald's charter.

Table 6.4: The Innerwick Section

	Benefactor	Transaction	Ref.
	Walter s of Alan II	Gives land in Innerwick in alms perpetually	247
	Alan s of Walter	Confirms group's gift of land in Innerwick for 33 years	248
	Robert Hunald	Gives land in Innerwick at ferme perpetually	249
	Roland of Innerwick & Wife	Give land in Innerwick at ferme perpetually	250
	William of Halk. & 5 others	Gives land in Innerwick at ferme perpetually	251
	Vincent s Robert Avenel	Gives land in Innerwick at ferme perpetually	252
	Walter s of Alan II	Confirms group's gift of land in Innerwick at ferme per.	253
<b>Break</b> →	Roland of Galloway	Gives a saltpan in New Abbey in Galloway	254
<b>Comm. II</b> →	Robert of Kent	Gives land in Innerwick at ferme perpetually	255
	Robert of Kent & 2 others	Give land in Innerwick at ferme for 33 years	256
<b>Comm. II</b> →	Robert Avenel	Gives land in Innerwick at ferme perpetually	257
	Robert & Ralph of Kent	Promise not to sell land in Innerwick except to Kelso	258
	Papal Judges Delegate	Settlement between Kelso & Alan Mont. over Innerwick	259
	Alan s of Walter	Confirms group's gift of land in Innerwick for 33 years	260
	King William I	Confirms group's gift of land in Innerwick for 33 years	261
	Patrick IV, earl of Dunbar	Promises entry into land in Bothwell	262
	Edulf s of Gamel	Quitclaim of mill-pond in Spartleton	263

This said, the existence of Robert Avenel's charter is suspicious for other reasons. Firstly, as discussed above (see Comm. I, no. 7), the size of the writing changes beginning with this item, and it appears that the scribe may have initially left the folio blank which contains nos. 247 and 248. Secondly, if in fact the individual who is given credit for the production of this charter is Robert Avenel, lord of Eskdale, then a contextual anachronism is present, seeing as the chronicle of Melrose states that Robert died in 1185.<sup>92</sup> Thirdly, the presence of this charter in combination with the other charters relating to this gift potentially causes logistical problems seeing as the combined total of each knight's portion was supposed to equal one whole part. Moreover, Walter

<sup>92</sup> *Chron. Melr.*, p. 93. There are other Robert Avenels, but all appear in charters from the thirteenth century (*Melr. Lib.*, i, no. 40-41, 61, *Inchcolm Chrs.*, no. 11, *Dunf. Reg.*, no. 165).

son of Alan's charter states that the total ferme owed by Kelso to all of their benefactors was supposed to be twenty shillings and two pairs of boots.<sup>93</sup> As demonstrated on table 6.5 below, if one includes Robert Avenel's charter, there are too many portions of the property which purport to have been given to Kelso. Furthermore, there are also too many renders, if in fact Robert Avenel was a contemporary of Robert of Kent, Robert Hunald and Roland of Innerwick.

*Table 6.5: Table Outlining Portions of Property Given and Ferme Owed by Walter Stewart's Knights in Comparison to Walter's Quitclaim*

Benefactor	Portion of Property Given	Ferme Owed
Robert of Kent	two parts (i.e. two thirds)	1 mark
Robert Hunald	one-sixth	40 pennies & one pair of boots
Roland of Innerwick	one-sixth	40 pennies & one pair of boots
Robert Avenel	one-sixth	40 pennies & one pair of boots
Total Based on Charters	all land and pasture + one-sixth	23 shillings, 4 pennies & three pairs of boots
Walter Stewart's quitclaim	all land and pasture	20 shillings & two pairs of boots

## 5. The Episcopal Charters Relating to the Churches of Simprim and Horndean

*Source:* NLS, MS Adv. 34.5.1, ff. 110v-111r, 154v-156r, 158v-159r.

*Printed:* *Kel. Lib.*, i, no. 277; ii, nos. 421, 424, 432.

*Comments:* As discussed in chapters three and four, the fragmented Wedderlie charter which purports to have been produced on behalf of David of Bernham appears to have

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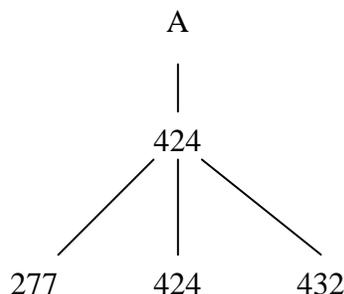
<sup>93</sup> *Kel. Lib.*, i, no. 257.

been based on one of the charters which relate to the churches of Simprim and Horndean. However, it is far from clear that all of the four charters which relate to these churches are authentic. In fact, some of them may have been created using an extant exemplar much like it appears that the fishery charters were. What suggests this is that they appear to contradict the content of an *inspeximus* produced on behalf of the prior of St. Andrews.<sup>94</sup> The charter which was inspected by the prior states that Bishop David gave the churches of Simprim and Horndean to Kelso *in proprios usus*, and allowed them to appoint a chaplain instead of a vicar in both churches, and appropriate all of the teinds. However, the other three charters do not list the two churches in conjunction as the *inspeximus* does. Two state that the bishop gave the churches of Simprim to Kelso *in proprios usus*, and one states that he gave the church of Horndean to Kelso *in proprios usus*. Could it have been that the monks used the *inspeximus* to create individual charters for each church (see Figure 6.1 below)? This must be considered to be at least a possibility, and there appears to be some potential for this hypothesis. Among other things, the charter relating to the church of Horndean does not have a time date, while the Simprim charters have the same time date as the charter in the *inspeximus*. Was the scribe hesitant to copy the time date in the *inspeximus* because he was attempting to make the Horndean charter look as if it had been produced on a different occasion? Whatever the case, these individual charters should be used with caution.

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<sup>94</sup> *Ibid.*, i, no. 424.

Fig. 6.1: A scenario in which the three less comprehensive charters were created based on the *inspeximus* (with 'A' representing the lost charter that was inspected)



## 6. The Shotton Charters (especially nos. 365-66)

*Source:* NLS, MS Adv. 34.5.1, ff. 138v-141v.

*Printed:* *Kel. Lib.*, ii, nos. 359-66.

*Comments:* There are a total of seven charters in the Kelso Abbey cartulary which deal with Kelso's possessions in Shotton, Northumberland. These include a charter produced on behalf of Robert of Throckley, and another charter produced on behalf of Robert's son, Robert, which confirms 'all the pasture and tenements' which Kelso held from Robert of Shotton, Walter of Shotton and Walter Corbet. These charters purport to date from the early thirteenth century. However, in 1285, Edward I appointed two men to hold an assize of novel disseisin, which was arraigned by Robert of Throckley against the abbot of Kelso, and this assize related to a tenement in Shotton.<sup>95</sup> There is no evidence to suggest that there is any relationship between the production of these charters and the

<sup>95</sup> *CDS*, ii, no. 270.

assize. Nevertheless, when using these charters, historians should keep in mind the fact that a tenement in Shotton was a matter of dispute with Robert of Throckley in the late thirteenth century.

### **7. The *de Bois* Charters (especially no. 456)**

*Source:* NLS, MS Adv. 34.5.1, ff. 96v-97r, 165v-166v.

*Printed:* *Kel. Lib.*, i, no. 242; ii, nos. 456-57.

All three of these charters are virtually identical, and they relate to Abbot Henry of Lambden's gift of the land of East Duddingston to the de Bois family in return for 10 marks per annum and their provision of forinsec service. One of the charters purports to have been issued to Reginald de Bois, namely no. 456, and the other two were purportedly given to Reginald's son, Thomas, namely nos. 242 and 457. As demonstrated on table 6.6 below, the witness lists found in these three charters are very peculiar. The witness list in no. 242 - i.e. one of Thomas's charters - has the same witness list as no. 456 - i.e. Reginald's charter. On the other hand, no. 457, which purports to have been issued to Thomas, has a slightly different witness list from no. 242, even though the rest of this charter is identical to no. 242. Ultimately, there are only two rational ways to account for this strange phenomenon. Firstly, no. 242 and no. 456 were produced on a different occasion than no. 457, thus accounting for the differences in their witness lists. Secondly, no. 456 was fabricated using no. 242 as an exemplar, and following this action, the scribe decided to alter the witness list of no. 457 to make it appear more legitimate.

After all, it would appear side by side with no. 456 in the cartulary. Either way, historians should certainly be cautious about using no. 456, or the witness list in no. 457, to reinforce any argumentation.

Table 6.6: A Comparison of the Witness Lists in the Three Duddingston Charters

242 (same as 456)	457
William of Bosco the chan.	William of Bosco the chan.
<b>Nees of Rames</b>	<b>Ralph of Bosco his bro.</b>
<b>Micheal Wymet</b>	<b>Mr Hugh of Melburn</b>
Stephen of Lillesleaf	Stephen of Lillesleaf
Hugh le Bret	-----
Thomas le Bret	Thomas le Bret
Richard of Duddingston	Richard of Duddingston
William <i>Mautalent</i>	William <i>Mautalent</i>
Theodore of Reeden	Theodore of Reeden
Alan of <i>Hertesheued</i>	Alan of <i>Herteheued</i>
Peter of Hadden	Peter of Hadden
Peter of Fans	Peter of Fans

## 8. King William's Dodin Charters

*Source:* NLS, MS Adv. 34.5.1, ff. 18v, 147r.

*Printed:* *Kel. Lib.*, i, no. 32; ii, no. 389.

*RRS*, ii, nos. 74, 96.

*Comments:* As discussed in chapter three, there are several royal charters which appear to be spurious. One of the dimensions which calls at least three of these items into question is the fact that they have anachronistic or anomalistic diplomatic features. The two charters in the Kelso Abbey cartulary which purport to record King William's

confirmation of the toft of Dodin in Berwick (and in the case of no. 389, his confirmation of the ville of Duddingston as well) also have anomalistic features. Firstly, both no. 32 and no. 389 are the only surviving charters of King William which only mention the French and the English in their 'peoples address' clauses. Moreover, no. 389 is one of only seven surviving charters of David I, Mael Coluim IV, and William I which have explicit warrandice clauses. Like Barrow, Kenji Nishioka and John Reuben Davies have provided explanations for these anomalies. In the case of the anomalistic address clauses, Nishioka asserted that they are the result of the fact that the archetype for these two charters was Earl Henry's charter of confirmation which has the same formula.<sup>96</sup> Similarly, in the case of the warrandice clause, Davies constructed a convincing three point explanation for its presence in no. 389.<sup>97</sup> However, having established that diplomatic anomalies did help to build a case against the authenticity of other royal charters in the Kelso Abbey cartulary, the question ultimately arises whether elaborate explanations are needed to account for the anomalies in these items. Could an equally valid explanation for their irregular features be that they are forgeries? It seems possible, particularly with regards no. 32 - i.e. the charter which only confirms the toft. Not only is no. 32 found in a section of the cartulary where there appears to be a large number of questionable items, but as pointed out by Nishioka, this charter is stylistically identical to his father's charter: a point which is slightly worrisome. Earl Henry's charter states that he gave the toft to Abbot Arnold to be held in feu (*in feudo*), and William's charter copies this statement verbatim, only in respect to Abbot John. The notion that it would be

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<sup>96</sup> K. Nishioka, 'Scots and Galwegians in the 'peoples address' of Scottish Royal Charters', *Scottish Historical Review*, LXXXVII, 2 (2008), pp. 206-232 (pp. 213-14); *Kel. Lib.*, i, no. 29; *Charters of David I*, no. 184.

<sup>97</sup> J. R. Davies, 'The Donor and the Duty of Warrandice: Giving and Granting in Scottish Charters' (unpublished article).

acceptable to have such a formulation in a mid-twelfth century charter, like Earl Henry's, seems reasonable. However, by the time of King William's reign, frankalmoigne terminology had solidified, and it is hard to believe that such a stipulation would have been included in a charter of King William, even if it was found in his father's charter. Moreover, when Mael Coluim IV confirmed the toft in an earlier charter, it is clear that the scribe who produced it was working under clear instructions not to duplicate this terminology. His charter states that they were to hold the toft 'just as any other church better and freely holds and possesses any other alms'.<sup>98</sup> Ultimately, this, and the points made above, should lead historians to at least be cautious when using these charters.

## 9. David I's confirmation of Bernard de Balliol's Donation of the Woodhorn Fishery

*Source:* NLS, MS Adv. 34.5.1, ff. 17r, 18v.

*Printed:* *Kel. Lib.*, i, nos. 25, 33.

*Charters of David I*, nos. 211

*Comments:* In his edition of early Scottish charters, Archibald Lawrie admitted puzzlement about how King David would have confirmed a fishery on the Northumberland side of the River Tweed. However, ultimately he concluded that the charter recording this action, which is found twice in the Kelso Abbey cartulary, was authentic.<sup>99</sup> Though no new evidence has been uncovered to show that this action could

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<sup>98</sup> *Kel. Lib.* i, no. 27; *RRS*, i, no. 106.

<sup>99</sup> *ESC*, p. 475.

not have occurred, it is noteworthy that this is the only surviving charter of King David which relates to property in Northumberland. Moreover, both copies of this charter are found in a section of the Kelso Abbey cartulary that has a large number of questionable items. Whether or not these points have any implications is unclear, but once again, historians should treat them with caution.

### 10. Three Other Early Kelso Abbey Charters

*Source:* NLS, MS Adv. 34.5.1, ff. 143r-143v, 144v.

*Printed:* *Kel. Lib.*, ii, nos. 372, 375, 382.

*Charters of David I*, nos. 91, 149, 375.

As discussed in chapter one, all extra-cartulary evidence suggests that Kelso Abbey was known as the ‘church of Roxburgh’ before the appointment of Abbot Arnold in 1147. If nothing else, then the contradiction between these references and the material in these three charters certainly calls into question how accurately they were transcribed. However, as discussed above, there is reason to doubt the authenticity of the two Lesmahagow Priory charters, and they have the ‘church of Kelso’ nomenclature (Comm. I, nos. 2, 15). Moreover, there is certainly reason to be cautious when using Bishop Robert’s exemption charter which likewise uses the term. Therefore, it may be unwise to simply dismiss the presence of the ‘church of Kelso’ in these three early charters as evidence of scribal tampering.

## 11. Charters with the Same Witness Lists as Other Charters

*Source:* NLS, MS Adv. 34.5.1, ff. 60r-61r, 62v-63r, 64r-64v, 65v-66v, 68r, 72r-72v, 84v-87r, 95r.

*Printed:* *Kel. Lib.*, i, nos. 152-53, 156, 158, 161-63, 167, 177, 205-06, 209, 211-12, 237-38.

As discussed in chapter three, there is serious reason to believe that scribes were essentially cutting and pasting witness lists from authentic charters to create new ones. This obviously raises a lot of questions when one finds that a charter has an identical set of witnesses to another charter, even if it is a logical possibility that those individuals could have been present for the production of both charters, or that both charters were produced on the same occasion. The following is a table listing several charters which have identical, or virtually identical, witness lists to other charters. Noteworthy contextual information is included as well.

*Table 6.7: Noteworthy Charters Containing Identical or Near Identical Witness Lists*

Charters	Notes
Nos. 152, 153	Both of these charters were purportedly produced on behalf of Anselm of Mow, and they have identical witnesses apart from the fact that the final witness in each charter differs.
Nos. 158, 177	One of these charters records Richard of Lincoln and Matilda's confirmation of Anselm's donation of pasture land in Mow, while the other records their confirmation of his gift of land, forest and waste in Mow. They have identical witness lists.
Nos. 156, 162	One of these charters records Alexander son of William and Isolda's dual gift of an oxgang, while the other records the fact that Isolda gave the oxgang alone. They have identical witness lists; however, the charter which only mentions Isolda's gift is not mentioned in Ailmer Scot and Christina's confirmation charter (No. 169).
Nos. 161, 163, 167	These three charters, which were produced on behalf of Richard Scot, Alice, his wife, and Richard of Lincoln all relate to a field in Mow, and all of them have the same witness lists, though certain witnesses have sporadically removed from

	Alice's charter. It may be noteworthy that Richard of Lincoln's charter confirms Richard Scot's charter, but not the charter of his wife.
Nos. 205, 206, 211	Two of these charters have virtually the same witness lists, and the other has many of the same witnesses arranged in the same order as the previous two. All purport to have been produced on behalf of Bernard of Hadden and relate to land in Hadden. One is a general confirmation, one a convention, and one a charter of donation.
Nos. 209, 212	Both of these charters are general confirmations relating to property on the Anglo-Scottish border. One was purportedly produced on behalf of Eustace de Vescy and the other by his wife, Margaret, daughter of King William. They have virtually identical witness lists.
Nos. 237, 238	One of these charters records the donation of Michael and Christina of Makerston, and the other records their lord's confirmation of this donation, namely Walter Corbet. Both charters have identical witness lists with the exception of the last witness. However, there are some discrepancies in these charters. Walter's charter states that Michael gave the land with the consent of his wife, and the other charter says that they gave it jointly. Walter's charter also does not mention Michael and Christina's charter, a point which is highly irregular.

## 12. Significant Interpolations and Corrections

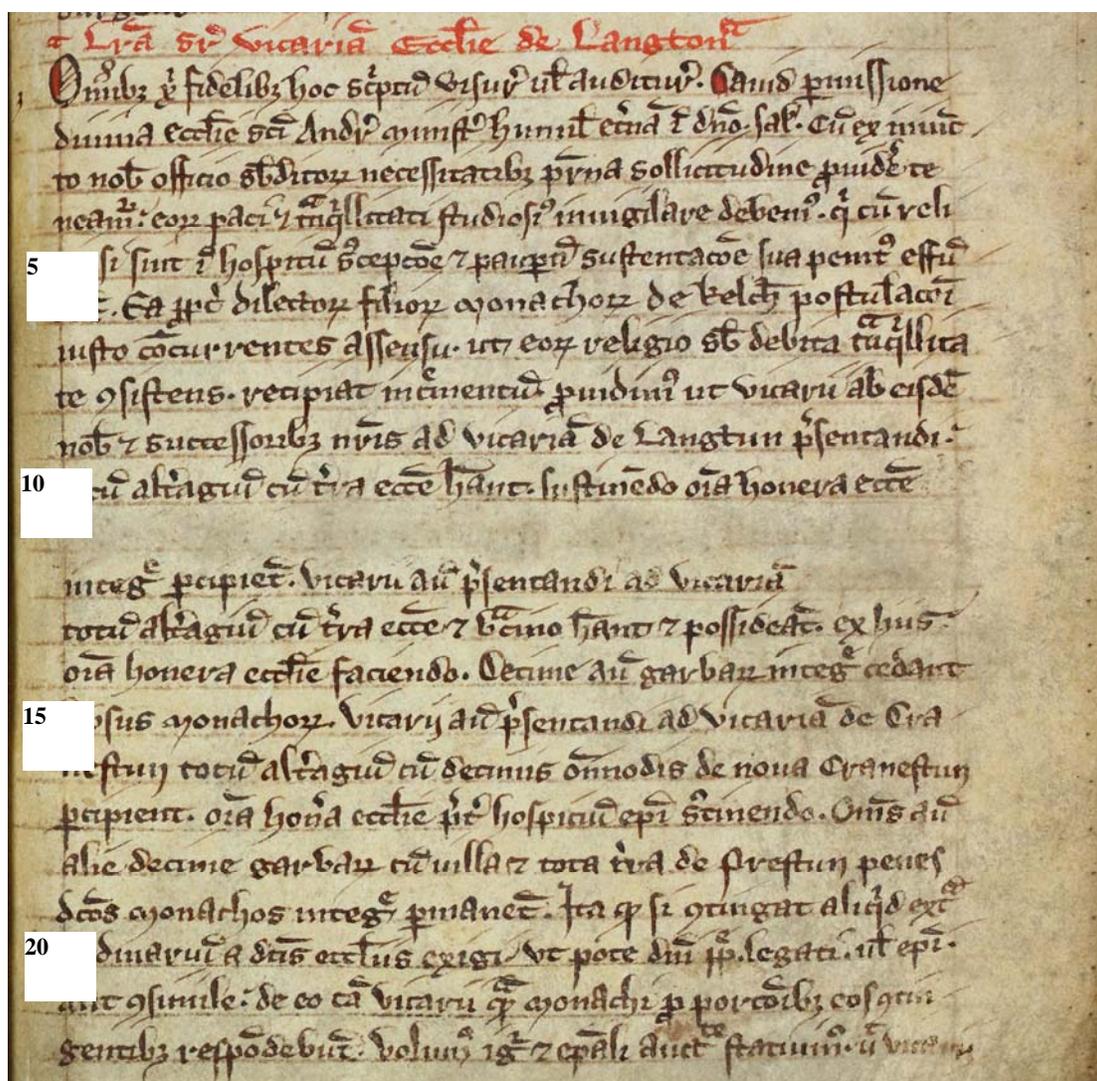
As discussed in the introduction to this study, the Bannatyne Club editions, while having intrinsic value to the Scottish historical community, also have several deficiencies. One of the Kelso Abbey cartulary's notable faults is its failure to acknowledge interpolations and corrections, and historians should be aware of two points in particular. Firstly, a scribe has changed the content of numerous comparative clauses from *sicut aliquam aliam elemosinam* to *sicut aliquam aliam ecclesiam*.<sup>100</sup> Exactly why this individual felt compelled to take this action is unclear, however.

A second dimension of the manuscript which historians should be aware of is the fact that a section of item no. 419, namely a charter produced on behalf of Bishop David of Bernham which records vicarage arrangements in the churches of Langton and Cranston, has been erased from the manuscript by means of scraping [11-12]. Like the aforementioned, it is not clear what purpose this action served. However, what is clear is

<sup>100</sup> NLS, Adv. MS 34.5.1, ff. 109r, 112v, 131v, 164v; *Kel. Lib.* i, nos. 270, 284; ii, nos. 338, 449.

that this action was not the result of an attempt to clean up a case of dittography. Rather, the information which was scraped appears to have been part of the body of the charter in question. Ultimately, the fact that scribes were scraping portions of charters may reinforce the proposal given in the conclusion that the manuscript was meant to be presented to outsiders.

Plate 6.11: NLS, MS. Adv. 34.5.1, f. 154r



## APPENDIX

### 1. CALENDAR OF ACTS PERTAINING TO KELSO ABBEY, OR ONE OF ITS DEPENDANTS, WHICH WERE THE SUBJECT OF WRITTEN RECORD, THE RECORD OF WHICH HAS NOT SURVIVED.

1. Bull (*recordatio*) by Pope Innocent II confirming the properties and rights of Kelso Abbey. (x 24.9.1143) [Date: x d. P. Innocent II]

*Kel. Lib.*, ii, no. 460; *Scotia Pontificia*, no. 24.

2. Charter recording an agreement between Kelso Abbey and Holyrood Abbey concerning Arthur's Seat. (x 12.6.1152) [Date: x *Kel. Lib.*, i, no.2.]

*Kel. Lib.*, i, pp.iii-vii; nos. 2, 12.

3. Charter (*carta*) by King David I stating that the provosts of Berwick are to pay forty shillings from the burgh ferme to Kelso Abbey at two payment dates annually. (x 24.5.1153) [Date: x d. K. David I]

*Kel. Lib.*, i, no. 30.

4. Brieve (*littera*) by Bernard de Balliol conveying the fishery of Woodhorn to Kelso Abbey. (x 24.5.1153) [Date: x *Kel. Lib.*, i, no.25.]

*Kel. Lib.*, i, nos. 25, 33.

5. Bull (*recordatio*) by Pope Eugenius III confirming the properties and rights of Kelso Abbey. (x 8.7.1153) [Date: x d. P. Eugenius III]

*Scotia Pontificia*, no. 35.

6. Bull by Pope Hadrian IV confirming the properties and rights of Kelso Abbey. (1.9.1159) [Date: *Scotia Pontificia*, no. 35]

*Scotia Pontificia*, no. 35.

7. Charter (*carta*) by William de Vieuxpont giving the church of Horndean to Kelso Abbey. (x 7.3.1161) [Date: x *Kel. Lib.*, i, no.417]

*Kel. Lib.*, i, no. 140, ii, no. 321.

8. Charter (*carta*) by King Mael Coluim IV confirming the half ploughgate which Serlo, cleric of King Mael Coluim, gave to Kelso Abbey. (x 9.12.1165) [Date: x d. K. Mael Coluim IV]

*Kel. Lib.*, i, no. 23.

9. Bull (*recordatio*) by Pope Alexander III confirming the properties and rights of Kelso Abbey. (x 30.8.1181) [Date: x d. P. Alexander III]

*Kel. Lib.*, ii, no. 460; *Scotia Pontificia*, no. 97.

10. Bull by Pope Lucius III confirming the properties and rights of Kelso Abbey. (25.5.1182) [Date: *Scotia Pontificia*, no. 114.]

*Scotia Pontificia*, no. 114.

11. Charter (*carta*) by Odenell de Umfraville giving the teinds of his foals to Kelso Abbey. (x 1195) [Date: x *Kel. Lib.*, i, no.329.]

*Kel. Lib.*, i, nos. 325-327, 329.

12. Bull by Pope Celestine III asserting that Kelso need not provide hospitality for over-demanding archdeacons. (16.3.1195) [Date: *Scotia Pontificia*, no. 160.]

*Scotia Pontificia* no. 160.

13. Charter by Ralph son of Dougal giving land in Dumfries to Kelso Abbey. (x 2.2.1196) [Date: *Kel. Lib.*, i, x no.13.]

*Kel. Lib.*, i, no. 11.

14. Charter (*carta*) by Bernard son of Brian giving the serfs to Kelso Abbey which reside on the toft in Hadden which he gave previously to the monastery. (x 2.2.1196) [x *Kel. Lib.*, i, no.13.]

*Kel. Lib.*, i, no. 13.

15. Bull (*recordatio*) by Pope Celestine III confirming the properties and rights of Kelso Abbey. (x 8.1.1198) [Date: x d. P. Celestine III]

*Kel. Lib.*, ii, no. 460; *Scotia Pontificia*, no. 165.

16. Charter (*carta*) by Jocelin, bishop of Glasgow, confirming the church of Campsie to Kelso Abbey. (x 17.3.1199) [Date: x d. B. Jocelin]

*Kel. Lib.*, i, no. 222.<sup>101</sup>

17. Charter by Jocelin, bishop of Glasgow, confirming the church of Dumfries, the chapel of St Thomas, five acres of land in Dumfries and various rights to Kelso Abbey. (x

17.3.1199) [Date: x d. B. Jocelin]

*Kel. Lib.*, i, no. 11.

18. Charter(s) (*carte*) by Richard of Gordon giving or confirming rights in Gordon to Kelso Abbey. (c.1199) [Date: Richard occ.]

*Kel. Lib.*, i, nos. 126, 127.<sup>102</sup>

19. Charter by John of 'Hunkedoun', rector of Durrisdeer, giving a fishery called 'Folestrem' to Kelso Abbey. (late 12th c.) [Date: John occ.]

*Kel. Lib.*, i, no. 28.

20. Charter (*scriptum convencionali*) recording an agreement between Richard of Lincoln, husband of Matilda, and Kelso Abbey concerning land in Mow. (x early. 13th c.) [Date: Richard occ.]

*Kel. Lib.*, i, no. 173.

21. Charter (*carta*) by King William I confirming the agreement between Kelso Abbey and Hervey, the marshall, concerning the chapel of Keith-Hervey. (x 4.12.1214) [Date: x d. K. William I]

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<sup>101</sup> The reference in this charter suggests that it was referring to an independent confirmation, not Jocelin's general confirmation (*Kel. Lib.*, ii, no.413).

<sup>102</sup> The charter refers to multiple items produced on behalf of Richard of Gordon. There is only one charter surviving for Richard (*Kel. Lib.*, i, no.118).

*Kel. Lib.*, i, no. 99.

22. Cyrograph (*cyrographum*) recording an agreement between Kelso Abbey and Eschina of London and Henry of Mow concerning the church of Mow. (x 4.12.1214) [Date: x *Kel. Lib.*, i, no.147.]

*Kel. Lib.*, i, no. 147.

23. Charter (*carta*) by Eschina of London giving two oxgangs in Mow, a toft and croft, sufficient pasture for 400 sheep, etc. to Kelso Abbey. (x 4.12.1214) [Date: x *Kel. Lib.*, i, no.178.]

*Kel. Lib.*, i, no. 178.

24. Cyrograph (*cyrographum*) recording an agreement between Kelso Abbey and Melrose Abbey concerning the boundaries of Bowden, Eildon, and Darnick. (x 4.12.1214) [x d. K. William I]

*Kel. Lib.*, ii, no. 412; *Mel. Lib.*, i, no. 145.

25. Cyrograph (*cyrographum*) recording an agreement between Kelso Abbey and Melrose Abbey concerning the boundaries of Mow and Clifton. (x 4.12.1214) [x d. K. William I]

*Kel. Lib.*, ii, no. 412.<sup>103</sup>

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<sup>103</sup> The two charters which record agreements between Kelso Abbey and Melrose Abbey discuss Mow but make no mention of the regional boundaries dividing Mow and Clifton (*Kel. Lib.*, i, nos. 172, 179).

26. Charter (*carta*) by William Comyn giving disputed land in Lanarkshire to Lesmahagow Priory. (x 4.12.1214) [Date: x *Kel. Lib.*, i, no.9.]

*Kel. Lib.*, i, no. 9.

27. Charter (*carta*) by William Comyn perambulating and giving the lands of Draffan and Dardarach to Kelso Abbey. (x 5.10.1218) [Date: x *Kel. Lib.*, i, no.103.]

*Kel. Lib.*, i, no. 103.

28. Charter(s) (*littere*) by Master James, papal legate, confirming Kelso Abbey's right to excommunicate those invading its lands. (Date: 1221) [Ferguson, *Medieval Papal Representatives*, p.86.]

*Kel. Lib.*, ii, no. 437.

29. Bull (*recordatio*) by Pope Honorius III confirming the properties and rights of Kelso Abbey. (x 18.3.1227) [Date: d. P. Honorius III]

*Kel. Lib.*, ii, no. 460.

30. Bull (*recordatio*) by Pope Honorius III confirming Legate John de Salerno's declaration concerning churches in the dioceses of St Andrews and Glasgow to Kelso Abbey. (x 18.3.1227) [Date: d. P. Honorius III]

*Kel. Lib.*, ii, no. 462.

31. Charter (*carta*) by Ada of Courtney giving the land of 'Pullys' in Hume to Kelso Abbey. (c. 1232) [Date: c. *Kel. Lib.*, i, no.129.]

*Kel. Lib.*, i, no. 291.

32. Bull(s) from unnamed popes giving Kelso Abbey immunity from papal indults. (x

6.11.1233) [Date: x *Kel. Lib.*, ii, no.396.]

*Kel. Lib.*, ii, no. 396.

33. Charter (*carta*) by Ralph le Nain giving three acres in Yetholm to Kelso Abbey. (x

16.5.1234) [Date: x *Kel. Lib.*, ii, no.392.]

*Kel. Lib.*, ii, no. 392.

34. Charter(s) (*carte*) by Patrick II, earl of Dunbar, giving or confirming property rights

in Fogo, Hume and/or Greenlaw to Kelso Abbey. (x 1248) [Date: x d. E. Patrick II]

*Kel. Lib.*, i, no. 77.

35. Charter (*carta*) by King Alexander II confirming the agreement between Kelso

Abbey and Hervey, the marshall, concerning the chapel of Keith-Hervey. (x 6.7.1249)

[Date: x d. K. Alexander II]

*Kel. Lib.*, i, no. 99.

36. Charter (*scriptum*) recording an agreement between Kelso Abbey and the major

provosts and community of Berwick concerning the mill of Berwick. (x 6.7.1249) [Date:

x *Kel. Lib.*, i, no.38.]

*Kel. Lib.*, i, no. 38.

37. Charter recording a composition before papal judges delegate between the

monasteries of Kelso, Arbroath, Lindores and St Andrews and Peter of Ramsay, bishop

of Aberdeen, concerning the values of vicarage portions. (c. 20 Apr 1250) [Date: Ferguson, *Medieval Papal Representatives*, p. 253]

Ferguson, *Medieval Papal Representatives*, p. 253.

38. Charter(s) (*carte*) by Thomas de Chartres confirming the churches of Trailflat and Dungree to Kelso Abbey. (x 1266) [Date: x *Kel. Lib.*, ii, no.345.]

*Kel. Lib.*, ii, no. 345.

39. Charter (*carta*) by Ralph de Berneville giving lands, returns and possessions to Kelso Abbey. (x 1275) [Date: x *Kel. Lib.*, i, no.45.]

*Kel. Lib.*, i, no. 45.

40. Charter (*carta*) by Alice, daughter of Edgar son of Donald, confirming the church of Closeburn to Kelso Abbey. (x 23.10.1264) [Date: x *Kel. Lib.*, ii, no.342A.<sup>104</sup>]

*Kel. Lib.*, ii, no. 341.

41. Charter by Jordan Fleming giving a half ploughgate in Berwick, with the toft and croft, to Kelso Abbey. (Unknown) [Date: Not Applicable]

*Kel. Lib.*, i, no. 28.

42. Charter by Laurence, the cleric, giving the teinds of Carse to the church of Dumfries which were to be transferred to Kelso Abbey at the market of Roxburgh every year of his life. (Unknown) [Date: Not Applicable]

*Kel. Lib.*, i, no. 11.

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<sup>104</sup> Adam of Kirkpatrick appears to be the closest known successor of Alice, daughter of Edgar.

43. Charter by Adam son of Henry of Dumfries giving land in Dumfries, which several men held from him, to Kelso Abbey. (Unknown) [Date: Not Applicable]

*Kel. Lib.*, i, no. 11.

**2. CALENDAR OF ACTS PERTAINING TO KELSO ABBEY, OR ONE OF ITS DEPENDANTS, WHICH PROBABLY WERE OR MAY HAVE BEEN THE SUBJECT OF WRITTEN RECORD. HOWEVER, NO EVIDENCE OF A RECORD SURVIVES.**

44. Exchange between Selkirk Abbey and King David I of the lands Melrose and Eildon for the lands of Kelso, etc., respectively. (c.1138) [Date: c. foundation of Melrose Abbey]

*Kel. Lib.*, i, no. 2.

45. Gift by John, bishop of Glasgow, of the church of Sprouston to Kelso Abbey. (x 1.7.1140) [Date: x *Kel. Lib.*, ii, no.382.]

*Kel. Lib.*, i, nos. 2, 23; ii, no. 382.

46. Gift by King David I of the church of Sprouston to Kelso Abbey. (x 24.5.1153) [Date: x d. K. David I]

*Kel. Lib.*, i, nos. 2, 23; ii, no. 382.<sup>105</sup>

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<sup>105</sup> Geoffrey Barrow suggests that the Sprouston *notitia* (*Kel. Lib.*, i, no. 23) may be referring to a lost charter (*ChDdI*, no. 150). However, the gift may have been initially documented in the general confirmation charter (*Kel. Lib.*, i, no. 23).

47. Gift by Gerold of land in Kelso to Kelso Abbey. (x 24.3.1160) [Date: x *Kel. Lib.*, i, pp. iii-vii.]

*Kel. Lib.*, i, pp. iii-vii.

48. Gift by William 'Finemund' of the church of Cambusnethan to Kelso Abbey. (x 24.3.1160) [Date: x *Kel. Lib.*, i, pp. iii-vii.]

*Kel. Lib.*, i, pp. iii-vii, no. 272.

49. Gift by Dodin of the church of West Linton to Kelso Abbey. (x 24.1.1162) [Date: x *Kel. Lib.*, ii, no.436.]

*Kel. Lib.*, ii, no. 436.

50. Gift by Walter Corbet of the church of Makerston, with land belonging to the church, to Kelso Abbey. (x 1166) [Date: x *Kel. Lib.*, i, no.235.]

*Kel. Lib.*, i, no. 235.<sup>106</sup>

51. Gift by 'Paginus' de Bosseville of one oxgang in Ednam to Kelso Abbey. (x c.1166) [Date: x *Kel. Lib.*, i, no.12.]

*Kel. Lib.*, i, no. 12.

52. Gift by Waltheof of one ploughgate in Hadden to Kelso Abbey. (x 1171) [Date: x *Kel. Lib.*, i, no.214.]

*Kel. Lib.*, i, nos. 205, 214.

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<sup>106</sup> Walter Corbet's charter exchanges the original land of the church (apparently held by Kelso Abbey) for the land described in the charter (*Kel. Lib.*, i, no. 235). There is no early documentation conveying the original land to Kelso Abbey.

53. Gift by William de Moreville and Muriel, his wife, of six oxgangs in Broxmouth to Kelso Abbey. (x 1174) [Date: x *Kel. Lib.*, ii, no.322]

*Kel. Lib.*, ii, no. 322.

54. Gift by Hugh Sansmanche of the church of Morton and one ploughgate to Kelso Abbey. (x 1177) [Date: x *Kel. Lib.*, ii, no.404.]

*Kel. Lib.*, ii, no. 404.

55. Gift by Gilbert of 'Halach' of land in Roxburgh to Kelso Abbey. (x 24.3.1178) [Date: x *Kel. Lib.*, ii, no.448.]

*Kel. Lib.*, ii, no. 448.

56. Agreement between Kelso Abbey and a woman in Roxburgh concerning land in Roxburgh held by Kelso Abbey for 2 shillings annually. (x 24.3.1178) [Date: x *Kel. Lib.*, ii, no.448.]

*Kel. Lib.*, ii, no. 448.

57. Exchange between Kelso Abbey and Coldingham Priory of the churches of Gordon and St. Laurence at Berwick (with the chapel of Earlston), respectively. (x 1177) [Date: x *ND*, no.454.]

*ND*, no. 454-455; *Kel. Lib.*, ii, no. 420.

58. Agreement between Kelso Abbey and Coldingham Priory concerning the rights in Berwick which Kelso Abbey gave to the church of St Laurence of Berwick. (x 1178)

[Date: x *Kel. Lib.*, ii, no.420]

*Kel. Lib.*, ii, nos. 420, 445.<sup>107</sup>

59. Gift by Adam, priest of the church of Greenlaw, of a half ploughgate near the church of Greenlaw to Kelso Abbey. (x 1182) [Date: x *Kel. Lib.*, i, no.74.]

*Kel. Lib.*, i, nos. 74, 82.

60. Gift by unknown individual of the chapel of St. Thomas of Harlaw (x 25.3.1182)

[Date: x d. Pope Lucius III]

*Scotia Pontificia*, no. 114.

61. Gift by Herbert of Maxwell of the church of Maxwell to Kelso Abbey. (x 4.7.1195)

[Date: x *Kel. Lib.*, ii, no.413.]

*Kel. Lib.*, ii, nos. 409, 413.

62. Agreement between Kelso Abbey and the lepers of Harlaw concerning the chapel of

Harlaw. (x 4.7.1195) [Date: x *Kel. Lib.*, ii, no.413.]

*Kel. Lib.*, ii, nos. 409, 413.

63. Gift by Herbert Maxwell of the oratory of St Thomas in Maxwell to the church of

Maxwell, which was owned by Kelso Abbey. (x 4.7.1195) [Date: x *Kel. Lib.*, ii, no.423.]

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<sup>107</sup> Kelso apparently held onto the rights which it gave to the church of Saint Lawrence of Berwick after it exchanged the church with Coldingham Priory for the church of Gordon. Some sort of composition must have been arranged.

*Kel. Lib.*, ii, no. 423.

64. Agreement between Kelso Abbey and King William I concerning land near the gate in the burgh of Haddington from which Kelso Abbey was to receive four pennies annually. (x 2.2.1196) [Date: x *Kel. Lib.*, i, no.13.]

*Kel. Lib.*, i, no. 13.

65. Gift by King William I of the return of the cain of the land which Ralph son of Dougal and Donald, his brother, held, and the return from the land which Gilpatrick, their brother, held in 'Glenham' to Kelso Abbey. (x 2.2.1196) [Date: x *Kel. Lib.*, i, no.13.]

*Kel. Lib.*, i, no. 13.

66. Gift by Fergus 'Mackabard' of the church of Dunsyre to Kelso Abbey. (x 2.2.1196) [Date: x *Kel. Lib.*, i, no.13.]

*Kel. Lib.*, i, no. 13.

67. Gift by unnamed individual of the church of Duddingston to Kelso Abbey. (x 7.7.1202) [Date: x d. B. Roger of St Andrews]

*Kel. Lib.*, i, no. 83.

68. Gift by Gerold of 'Thanu' of a tenement in Broxmouth to Kelso Abbey. (x 4.12.1214) [Date: x *Kel. Lib.*, ii, no.323.]

*Kel. Lib.*, ii, no. 323.

69. Gift by William of Courtenay and Ada, his wife, of land in Hume to be held at ferme for ten years by Kelso Abbey. (x 11.9.1217) [Date: x *Kel. Lib.*, i, no.294.]

*Kel. Lib.*, i, no. 294.

70. Gift by Robert of London of wasteland in Cadzow, also known as Roshaven, to Kelso Abbey. (x 10.7.1222) [Date: x *Kel. Lib.*, i, no.183; ii, no. 460.]

*Kel. Lib.*, i, no. 183.

71. Quitclaim by Richard son of Hugh of land in Easter Duddingston to Kelso Abbey. (x 20.1.1226) [Date: x *Kel. Lib.*, i, no.242.]

*Kel. Lib.*, i, no. 242; ii, nos. 456-457.

72. Gift by Eustace de Balliol of twenty-six acres beside Heleychesters to Roger, monk of Mercheley. (x 1229) [Date: x *Kel. Lib.*, i, no.267.]

*Kel. Lib.*, i, no. 267.

73. Gift by Richard Baird of the land of Little Kype to Lesmahagow Priory. (x 2.11.1232) [Date: x *Kel. Lib.*, i, no.181.]

*Kel. Lib.*, i, no. 181.

74. Gift by Ralph le Nain of three acres in Yetholm to Kelso Abbey. (x 16.5.1234) [Date: x *Kel. Lib.*, ii, no.392.]

*Kel. Lib.*, ii, no. 392.

75. Gift by Adam of Makerston, vicar of Cranston, of land in Preston to Kelso Abbey. (x 1241) [Date: x *Kel. Lib.*, ii, no.318.]

*Kel. Lib.*, i, no. 318.

76. Gift by unnamed individual of the church of 'Lesingibi' in Cumberland to Kelso Abbey. (x 7.12.1254) [Date: d. P. Innocent IV]

*Kel. Lib.*, ii, no. 460.

77. Gift by unnamed individual of the church of Strathaven to Kelso Abbey. (x 7.12.1254) [Date: d. P. Innocent IV]

*Kel. Lib.*, ii, no. 460.

78. Gift by Thomas son of Thomas of Gordon of a *perticulum* of land in Gordon to Kelso Abbey. (x 26.8.1258) [Date: x *Kel. Lib.*, i, no.120.]

*Kel. Lib.*, i, no. 120.

79. Gift by Thomas son of Richard of Gordon of land in 'Stroth', adjacent to the Brown Moss peatery in Gordon, to Kelso Abbey. (x mid-13th c) [Date: x *Kel. Lib.*, i, no.122.]

*Kel. Lib.*, i, no. 122.

80. Gift by Thomas son of Richard of Gordon of land at 'Brademedue' in Gordon to Kelso Abbey. (x mid-13th c) [Date: x *Kel. Lib.*, i, no.122.]

*Kel. Lib.*, i, no. 122.

81. Agreement(s) between Kelso Abbey and Adam of Dowane, or his predecessor(s), concerning the land of Greenrig. (x late-13th c) [Date: x *Kel. Lib.*, i, no.195.]

*Kel. Lib.*, i, no. 195.

82. Agreement between Kelso Abbey and Reginald of Corehouse concerning land in 'Fincorrocks' which was to be held for three marks by Reginald. (x late-13th c) [Date: x *Kel. Lib.*, i, no.198.]

*Kel. Lib.*, i, no. 198.

83. Gift by Kelso Abbey of the land of Draffan to Hugh of Crawford and Alice, his wife, or their predecessor. (x 22.7.1271) [Date: x *Kel. Lib.*, ii, no. 474A.]

*Kel. Lib.*, ii, no. 474A.<sup>108</sup>

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<sup>108</sup> Whether or not a charter would have been given to Hugh and his wife is unclear. Much depends on their relationship to the original recipients of Draffan, namely Lambin Asa and A. son of James. If they were kin of such individuals, then a charter may not have been produced. However, it does not appear that they were.

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