CHAPTER 1

Introduction

There are potentially many different ways of subdividing the eighteenth-century legal profession. Distinctions might be drawn based on qualification, function, social status, or by reference to the status of the courts in which lawyers most commonly carried out their business. Contemporaries might have said that there were three distinctions that particularly mattered: that between central court practitioners and those who worked provincially; that between those who argued in court and those who did not; and that between those who were qualified as notaries (a status required to carry out certain functions under statute) and those who were not.

These categories were not necessarily mutually exclusive: many who argued in the courts, including even a few advocates in the Court of Session, were also qualified notaries. In some cases, however, it was regarded as being incompatible to attempt to hold one status while having another. In the central court, an advocate could not simultaneously hold office as a writer to the signet. In the local courts, the rule came to be established that lawyers could not act for clients if they also held office as town clerk or that a sheriff substitute could not act as an agent in the same court.

The first distinction comprises another, separating those who enjoyed the exclusive privilege of transacting business before the Court of Session in Edinburgh from those who did not. The former group comprised members of the Faculty of Advocates, writers to the signet and, from 1754, those admitted as agents by the lords of session (a group which eventually emerged as the s.s.c. Society). These groups formed the elite of the profession, involved in matters that were national in scope, because their court heard cases from across Scotland and drew men from every quarter to develop their careers there. Other lawyers essentially had a local practice (even when that local practice was based in the inferior courts of Edinburgh). One tangible difference that this entailed was that local writers did, albeit rarely, serve as jurors (as ‘assysors’ or assizers) in criminal cases (at least prior to 1825); advocates in the College of Justice were exempt from this duty.

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2 E.g. nrs, Sheriff court of Hamilton, criminal jury trials, SC37/50/1, 21 Oct. 1745; John M. Pinkerton, ed. Minute Book of the Faculty of Advocates, 1713–1750 (Edinburgh: Stair Society,
The second important distinction was functional: it differentiates those who were admitted to plead in a particular court from those who were not. This cut across the divide between practitioners in the central court (where only members of the Faculty of Advocates could plead) and the local courts. Proof of ability was usually necessary before a judge would admit a man as a pleader in his court and the formal admission was normally recorded in the court book (continental treatise writers refer to “matriculation in the album of the court”, although such language was generally not used in Scotland). The alternative to pleading was to be engaged in a purely chamber practice, giving legal advice, drafting deeds, buying and selling property, uplifting rents and managing money on behalf of clients.

Pleaders were generally called ‘procurators.’ Even members of the Faculty of Advocates, when appearing in the supreme courts (the Court of Session, the Teind Court and, in criminal cases, the High Court of Justiciary), were often described in the court record as ‘procurators’, the same title as that enjoyed by practitioners even in the smallest burgh court. Outside the courts, the term ‘writer’ was generally used. It had many popular synonyms (doer, law agent, man of business, solicitor) but all of them referred simply to anyone who held himself out as sufficiently expert to manage the legal affairs of others. The title implied no authorisation by any public authority. It meant no more than that enough members of the public were willing to repose confidence in an a writer’s skill and judgement that he was able to make a living from undertaking some aspects of legal business.\(^3\)

While the pleader/non-pleader distinction was absolute in the central court (writers to the signet or agents there had no right of audience before the judges), this was not necessarily the case in local courts where standards were more relaxed. Local writers might often be found acting as procurators in the court; the generic term ‘writer’ was generally applied to them in non-curial contexts. In this regard, the burgh of Aberdeen is unusual because it had a local Society of Advocates. These men were ‘procurators’ in the local Aberdeenshire courts; if they are found described as ‘writer’ then, strictly speaking, that did them a disservice. Writers in Aberdeen did exist, but they were generally chamber practitioners who were not members of the Society of Advocates. Although its membership was large, the Society of Advocates in Aberdeen remained reasonably exclusive, taking care to examine new members who prided themselves

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\(^{3}\) NRS, Court of Session, Bill Chamber, CS271/71484, *Memorial for the Society of Procurators before the Sheriff Court of Ayrshire against Alexander Jamie, and Others*, 25 June 1813, p. 6.