The Tay Bridge disaster of 1879 and Dundee solicitors

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Introduction

The collapse of the central part of the Tay Bridge on the evening of Sunday 28 December 1879 was of international interest and the pathos of the event still resonates. Almost certainly some local lawyers had clients who sought advice following that disaster. No definitive historical assessment of the capacity of the local legal bar to deal with these issues could ever be concluded. That may be due in part to the assumption that members of the public, in an age of great social deference, progress and concerns about costs, had actually approached a solicitor for advice. There was doubtless then an enduring requirement of client confidentiality, and since then there may have been the destruction (assuming their existence) of files.

It is possible to discover the extent of the *possible* availability of legal advice generally, under explanation, of course, that those with an interest in the Tay Bridge, the associated disaster and the rebuilding may have lived outside Dundee and sought advice from solicitors elsewhere. Indeed, with a distinct possibility of conflicts of interest, some members of the public may have chosen to go elsewhere. This was not a purely theoretical issue: contemporaneously with the collapse of the Tay Bridge was that of the City of Glasgow Bank. The latter disaster was then also of international interest with a need for counsel to take on the immediate and extensive civil litigation, and a major criminal trial.[1]

There is no reason to assume that the local Bars were unable to deal with any issues, commercial or personal, from the disaster. Dundee was unusual in being both a manufacturing town and a port, and it had been for many years before the construction of the bridge in the 1870s. There was a need for capital and labour to maintain such a commercial system, with the distribution and manufacture of goods.[2] That activity suggests business for solicitors and notaries public. Their services also coincided with the rapid growth of Dundee as an administrative unit with local government and regulation, and influx of labour from elsewhere.

The practice of law in the mid-1870s requires at least to be assessed in context of the mid-Victorian era as one of a *minimal* state with a free market.[3] There was, by modern standards, an unregulated environment and, with so little national government, an administrative void. The concept of self-help was a necessary one, but it is likely that the cost of seeking legal advice was prohibitive: many potential clients may have been, or on the cusp of being, impoverished. The political balance between an abuse of executive power and the need for such authority because of the neglect of vital problems only became issues later.[4]

The Dundee Bar

Defining the Bar: the structure of the solicitor branch of the legal profession had been changed by the Procurators (Scotland) Act 1865 (c.85) which legislation had provided that in any county or division of a county, where there did not exist one, a society might be formed in certain circumstances. The Act, by s.27, did not limit or prejudice the privileges of the existing societies which had exclusive privileges, that included societies established by Royal Charter.[5] This left untouched the monopoly of practice in the inferior courts in the major towns 'enjoyed' by members of the older incorporated societies.[6] Further change by the Law Agents (Scotland) Act 1873 (c.63) provided *inter alia* that it was unnecessary for anyone admitted under that Act to become a member of any society.

As always not all solicitors had recourse to Dundee Sheriff Court but many did for parts of the jurisdiction there.[7] Assessing the extent of the Dundee Bar, those in the Dundee District of Forfarshire, might begin with the commercially-produced *Scottish Law List and Legal Directory for 1879*.[8] That included a complete list of *Certificated Practitioners* printed from the Stamp Office Certificate Lists.[9] Statutory authority required solicitors in practice yearly to provide in writing (using a form which was supplied on application) their full name and the address of their place of business for the Stamp Office and pay the appropriate fee.[10] With these formalities completed, a stamped certificate was issued.[11] Specifically, the *Index to the List of Country Practitioners*, that is to say those not in Edinburgh and Glasgow, gives the names and some details of 62 individual practitioners in Dundee who by implication had obtained such a certificate.[12]

The same publication recorded 60 names of members of the Faculty of Procurators and Solicitors in Dundee.[13] These were members of the Faculty of Procurators and Solicitors in Dundee, a society incorporated by Royal Charter in 1819.[14] Given the terms of the 1865 Act (particularly, provisions preserving existing positions) there may have been solicitors who had not joined any

society: they may have had access to another library or did not undertake court work and had no need to be in the court building. Notably, in 1864 alone according to the Law List, 14 solicitors not necessarily qualified recently were newly admitted to the local Faculty. That event suggests a move to preserve a position when confronted with a perceived or latent threat.

The mandatory stamp duty lists suggest slightly more solicitors than the voluntary membership list for the Faculty list (62 rather than 60) but whichever one is absolutely correct, if either is, taken together they give an idea of the extent of legal solicitors who might be available to provide advice. The list of solicitors by personal name includes the date of admission, and that gives some indication of the dates of the length of experience amongst practitioners. These range from Thomas Thow, with 54 years since admission in 1825, to four admitted in 1877.

The *Certificated Practitioners* list has the name missing of at least one solicitor which may be seen on the Faculty membership list. Whether that is a mere administrative omission of the publishers, time delay with gathering details and publishing or something else is uncertain. Moreover, as a solicitor may have retired from paid work, and yet still be certified as a solicitor, or was a member of the Faculty alone did not mean that they were available to provide advice.

Finally, reference might be made to *The Dundee Directory, 1878-1879*.[15] This commercially available practical guide to services in the city lists solicitors alphabetically and by address, and appears to be more comprehensive than the others but is not of course based on any statutory authority. Seven names appear in this *Directory* that are not found on either of the two lists referred to earlier and the circumstances suggest that they were qualified as solicitors but for whatever reason were not formally registered as practising and were not members of the local Faculty.

The practitioners: there were employed solicitors: William Hay (solicitor since 1842 and member of the Faculty since 1846) was the Town Clerk of Dundee, Clerk to the Dundee Water Commissioners, and Clerk to the Board for Burgh Cemeteries. John Boyd Baxter LLD was Procurator Fiscal for the Dundee District of Forfarshire.[16] Similarly, James Hay had a business address of Sheriff Court buildings: he is listed elsewhere as a Sheriff Clerk Depute, the Sheriff Clerk then holding a legal qualification.[17]

Assessing from these lists the numbers of solicitors free to advise the public is problematic. Some qualified solicitors may not have been in practice as such (perhaps not partners in firms but employed as 'clerks' in chambers), a few employed solicitors held appointments that excluded them from private client work, some were retired but remained members of the local Faculty. Mere lists do not give any meaningful indication of personal circumstances: two solicitors had unspecified places of business, but given their years of admission (1825 and 1836) they were probably retired but kept their names on the rolls. Conversely, John William Thomson, at 62 Reform Street, had been admitted in 1836 and still seems to have been in business more than 42 years later in 1879.

A reasonable estimate might be that around 60 solicitors were available on the face of these records to give advice to the public. That must be subject to two major caveats: *first*, the existing clients of many solicitors may have prevented a consultation with a member of the public because of an actual or perceived conflict of interest. *Secondly*, some solicitors may not have wished to become involved in bridge-related matters at all because they specialised in land, property or wills, trusts and succession.

Geographically, the largest group of places of business and numbers of solicitors for those in private practice in the mid-Victorian era were in Bank Street, Reform Street, and Ward Road, all Dundee. The remaining solicitors, practising on their own account and in smaller firms, were at Murraygate, Seagate, Castle Street, High Street, Euclid Street, Euclid Crescent, and Meadowside: all these offices were in a very short distance or each other.

The Business of Local Solicitors

The North British Railway Company, apparently an unlimited liability partnership, had its head office at 4 Princes Street, Edinburgh. Thomas Thornton was described as 'a legal adviser' to the North British Railway Company.[18] Further: 'Of the Tay Bridge he [Thornton] was practically the author, having initiated and carried through all the earlier bills incidental to this great undertaking. Indeed, the idea of the first Tay Bridge has been ascribed to him, the first meeting taking place in his office many years ago to consider the propriety of having such a viaduct constructed. The project was one which secured the support of the North British Railway Company ….'[19] Thornton's initiative may have preceded railway company support.

Thornton had been managing clerk to the Town Clerk of Dundee for six years before entering partnership in private practice. That would have given Thornton some insight into, and experience of, the limits and mode of

working of government, such as it was. Indeed, much of local government, and perhaps what came to be national government was in the hands of local solicitors as agents. From 1863 James Pattullo (a solicitor since 1842) and Thomas Thornton (a solicitor since 1857) were in business as Pattullo and Thornton and at 1879 the firm was at 1 Bank Street, Dundee, perhaps with other employed solicitors.[20]

Thornton became Clerk to Forfarshire Prison and Lunacy Board, and to the Harbour Trustees and Water Commissioners at Dundee. His obituarist noted that Thornton sat on 'very many boards', these were unspecified. Whether Thornton was solely a legal adviser as such to the railway company, an entrepreneur associated with railway expansion, or his firm was the local administrative office for the railway company is not clear now.[21] In daily business the tasks of Thornton and the firm may have been each or all of these roles, and more.

Thornton's achievements were illustrious: 'Few legal businesses have attained to equal importance'.[22] Yet, after the disaster, Thornton 'effected such compromise on a gigantic scale on behalf of the railway company in the Tay Bridge disaster, where some eighty lives were lost, and yet no claim arising from the accident found its way to Court. The total compensation paid was probably less than expenses for a few litigations would have reached'.[23] Thornton acted as a law agent and advised the railway company and acted on instruction in settlements.[24] There was, however, a strong element of pragmatism. With the retirement of James Pattullo, Thornton entered partnership with his son. By the time the new bridge was being constructed the firm of Thomas Thornton, Son and Co., was at 15 Albert Square, Dundee.[25] Thornton was in politics 'a strong Liberal',[26] but he does not seem to have developed a public political career as such. His views were probably in essence economic liberalism, with complete freedom of contract, including employment matters, subject to little in the way of statutory control but guided by decisions of the courts on the common law. He can be expected to know from his time in local government the extent of the regulatory void in an era in which the *laissez-faire* theory of economists predominated. That experience may account for his familiarity with the procedure of sending private legislation through Westminster.

Shiell and Small, solicitors, 5 Bank Street, Dundee were constituted by John Shiell (1869), David Small (1842) and William James Small MA (1870?).[27] David Small was the Justice of the Peace Clerk for Forfarshire at Dundee and the firm had extensive business with railways. Their extant records show their involvement with eight railway companies, including the Dundee and Newtyle Railway Company.[28] There is no doubt then about interest in all aspects of the building of the Tay and Forth Bridges.[29] Even apparently modest firms, such as Kerr and McFarlane with two partners, at 26 Castle Street, Dundee, had business that included William Kerr being Clerk to the Dundee and Newtyle Railway Company.[30]

It is not immediately obvious what the relationship was *ex officio* as regards the many railway companies and Shiell and Small, and others such as Kerr and McFarlane. The legal and economic position is likely to be very complex, partly because this was not new business as there had been 'an outlying cluster' of railways around Dundee from the 1830's.[31] Even once the new Tay Bridge was operating there were a number of local committees composed of representatives of railway companies to regulate the use of the railway stations and goods yards.[32]

As to the remainder of solicitors in Dundee, nearly all were agents for insurance companies, either life assurance or commercial insurance companies. Whether and to what extent these solicitors were engaged in disaster-related business is a matter of speculation. That type of business was, however, often combined with other appointments: DS and T Littlejohn, 27 Bank Street, Dundee provide a notable example: David Littlejohn was Clerk to the Police and Gas Commissioners of Broughty Ferry, and Clerk to the Broughty Ferry School Board. He was also Joint Agent for Northern and Standard Insurance Offices. Thomas Littlejohn was Joint Secretary and Solicitor to Forfarshire Building Society, as well as Joint Agent to the Northern and Standard Insurance Offices.

The expansion of the jute industry, coinciding with the construction of the Tay Bridges, needed a greatly increased labour force beyond what could be provided locally, leading to an increase in a mobile labour force. Wiliam Currie of Shiell & Small, was Commissioner for taking affidavits in the Supreme Courts of Ireland.[33] Similarly, but more impressively, William Scott, 30 Reform Street, was 'Master Extraordinary for taking affidavits in the Irish Court of Chancery'.[34] Politically, the 'dominant political tone in Dundee was Radical' but trade union membership was then very restricted.[35] Industrial disputes, if any reached solicitors, are most likely to have been considered as contractual issues, so far as employees of the construction and jute companies were concerned.

Not all legal involvement necessarily involved solicitors in Scotland. While

nearly all of the dead and missing passengers were from places in east central Scotland, William Beynon, aged 39 was a photographer from Cheltenham and seems to have been in Scotland as a commercial traveller. His remains once recovered were returned to Cheltenham for burial.[36] Assuming a comity of jurisdictions, there is be no reason to suppose that any claim, if there was one, from English solicitors on behalf of the widow of the deceased would have been turned away by Pattullo and Thornton on behalf of the railway company or the charitable relief committee as incompetent.

It is not likely that there was any doubt in law, as a matter of negligence, as to the liability of the North British Railway Company to their staff and passengers killed in the collapse on 28 December 1879.[37] The law of negligence had been extensively tested across Britain. In 1884 in a Scottish court the legal authorities cited were from English courts.[38] Lord Young held there to be on the particular facts no negligence on the part of the railway company which caused the accident led to legal liability: 'Railway companies are, as a rule, attentive to the comfort and safety of their passengers; they generally provide platforms and other luxuries and conveniences such as were unknown before their time'.[39] That may have been so, but their liability was certain.

Concluding Remarks

A national inquiry followed immediately after the disaster: the authority for the hearings was the Regulation of Railways Act 1871 (c.78), section 7, 'Inquiry into accidents, and formal investigation in serious cases'. Recalling that the disaster occurred on Sunday 28 December 1879, the statutory inquiry into the Tay Bridge disaster sat for a few days from Saturday 3 January 1880. The technical assessment of an independent engineer was commissioned and the inquiry resumed at Dundee on 26 February 1880 to 3 May 1880. Thereafter, the commissioners sat at Westminster from 18 April 1880 to 8 May 1880 to consider the engineering issues.

At the inquiry the Board of Trade was represented by Mr Trayner, an advocate at the Scottish Bar who was later raised to the Bench as Lord Trayner. Others appeared for interested parties, notably JB Balfour, advocate, later as Lord Kinross, Lord President of the Court of Session, for the North British Railway Company. There seemed to have been no direct involvement in the tribunal by any member of the local Bar except for William B. Dunbar, representing the Procurator Fiscal who was recorded as being there 'to watch the case for the Lord Advocate'.[40]

The inquiry was a statutory extremity appointed to inquire in open court into the cause of *an accident* (undefined in the Act) with suitably wide powers in order to make a report to the Board of Trade.[41] The report was to state 'the causes of the accident and all the circumstances attending same, and any observations thereon or on the evidence or on any matters arising out of the investigation which they think right to make to the Board of Trade.'[42] There were two resulting reports and the minority inquirer criticised overtly Sir Thomas Bouch for his design of the bridge, and implied that the majority agreed with him. The majority report of two others criticised aspects of the engineering of the bridge but without naming Bouch personally.

Considering Dundee solicitors only is probably too narrow an approach: first, Dundee solicitors may have instructed solicitors elsewhere, such as in Edinburgh, to deal directly with the North British Railway Company on their behalf. Secondly, legal advice was available elsewhere in the general vicinity of the Tay Bridge as shown by the same law lists. To the north, Forfar was the county town and there about 60 solicitors were members of the Society of Procurators and Solicitors of Forfarshire. The society had been incorporated in 1867.[43] To the south, There were also around 60 members of the Society of Solicitors and Procurators of the Eastern District of Fife. That society had been incorporated in 1870.[44] There were 18 solicitors in Cupar, and 4 solicitors there who also gave their place of business as Dundee; one gave 'Newport and Dundee'.

It is possible that there may not have been a marked increase for legal advice and assistance for the public from solicitors in private practice in the east of Scotland: those with a claim need only notify the North British Railway Company representatives for serious consideration, or similarly approach the charitable relief committee, the latter established with the generous assistance of the public. There was little direct involvement for what national government existed to provide assistance. Solicitors for clients with commercial interests in the Tay Bridge may have experienced different and immediate professional pressures.

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1. Robert S. Shiels, 'The City of Glasgow Bank litigation and the demand for counsel' 2015 S.L.T. (News) 97-102.
2. Gordon Jackson with Kate Kinnear, *The Trade and Shipping of Dundee, 1780-1850* (Dundee: Abertay Historical Society; Publication no.31, 1991), p.77.
3. Vernon Bogdanor, *The Strange Survival of Liberal Britain: Politics and Power Before the First World War* (London: Biteback, 2022), p.258.

4. Bogdanor, *The Strange Survival of Liberal Britain*, ibid, p.107.
5. J. Henderson Begg, *A Treatise on Law Agents* (Edinburgh: Bell & Bradfute, 2nd ed. 1883), pp.16-19.
6. David M. Walker, *A Legal History of Scotland: Volume VI, The Nineteenth-Century* (Edinburgh: Butterworths, 2001), p.292.
7. For a brief history, focusing on criminal business, see Wm. G. Boyle, 'The Palace of Scottish Blackguardism' in Graham Ogilvy (ed.), *Dundee: A Voyage of Discovery* (Edinburgh: Mainstream Publishing, 1999), pp.163-180.
8. *The Scottish Law List and Legal Directory for 1879* (Edinburgh: William Paterson, 1879).
9. *The Scottish Law List and Legal Directory for 1879*, ibid, pp.87-172.
10. Stamp Act 1870 (33 and 34 Vict. c. 97), s.63; taking effect, by s.1, from 1 January 1871: and see Begg, *A Treatise on Law Agents,* pp.49-50.
11. A document could not be received in evidence in a civil case court, if it should have been stamped but was not: Stamp Act 1870, s.17.
12. *The Scottish Law List and Legal Directory for 1879*, ibid, p.178.
13. *The Scottish Law List and Legal Directory for 1879*, ibid, pp.246-8.
14. Begg, *A Treatise on Law Agents,* p.16; and see in particular p.379 where it was said that the society had been 'in existence since the last century [the 18th] and was incorporated by Royal Charter in 1819'. There were said in 1883 to be 55 members: Begg, ibid, p.379. The difference between lists may be that one is the formal list of practising solicitors or law agents and the other for the society includes retired members.
15. *The Dundee Directory, 1878-1879*, (Dundee: James P. Mathew & Co., 1878), p.473
16. Baxter was assisted by William Bishop Dunbar, a solicitor since 1869: *The Scottish Law List and Legal Directory for 1879,* ibid, p.353. Dunbar wrote extensively on criminal law in action: (1887) *31 Journal of Jurisprudence* 599. Dunbar also seems to have dealt with the Tay Bridge disaster professionally, notably in recording the deaths of those casualties from the collapse who came to the notice of the authorities: e.g., Murray Nicoll, Clare Nicoll and Grant Buttars, *Victims of the Tay Bridge Disaster,* (Dundee: Tay Valley Family History, 2005), p.76
17. *The Scottish Law List and Legal Directory for 1879*, ibid, p.349. The Sherif Clerk was a solicitor in Forfar, the County town and, Hay, a qualified solicitor since 1873, therefore the Depute for Dundee.
18. Obituary (1903) 19 *Scottish Law Review* 137-9.
19. Obituary (1903), ibid, pp.138-9.
20. James W. Barnet (1866) also had a place of business at the same address. Later, the firm became Thomas Thornton, Son and Company.
21. University of Dundee Archives: MS17: Thornton Collection. The North British Railway Company files of the firm are at MS17/2.
22. Anon., 'Sir Thomas Thornton LLD' (1895-96) 3 S.L.T. 89-91. For an obituary see Anon., 'The late Sir Thomas Thornton LLD' (1903-1904) 11 S.L.T. 9-10.
23. Anon., 'Sir Thomas Thornton LLD', ibid, p.89.
24. National Records for Scotland: BR/NBR/10/22 contains letters between Thornton on compensation and the several letters from Thornton invite instructions, or at least defer to the railway company directors. That was particularly so about the largest claim: see Robert Shiels, 'The Tay Bridge disaster and the major personal claim', (2015) 122 *Green's Reparation Bulletin* pp.4-7.
25. *The Scottish Law List and Legal Directory for 1884* (London: Stevens & Sons, 1884), p.182.
26. Anon., 'The late Sir Thomas Thornton LLD', ibid, p.10.
27. No other solicitor had post-nominal letters suggesting graduate status but that did not much matter when potential solicitors were apprenticed directly to practicing members of the profession.
28. University of Dundee Archives: MS105: esp. MS105/2-9.
29. University of Dundee Archives: MS105/6/1: Shiell and Small file on 'Forth Bridge and Tay Bridge Papers'.
30. *The Dundee Directory, 1878-1879,* ibid, p.127.
31. Alastair Durie, 'Movement, Transport and Tourism' in Trevor Griffiths and Graeme Morton (eds.) *A History of Everyday Life in Scotland, 1800 to 1900* (Edinburgh: Edinburgh University Press), p.150.
32. C. Hamilton Ellis, *The North British Railway* (London: Ian Allan, 1955), p.122.
33. *The Scottish Law List and Legal Directory for 1879*, ibid, p.106.
34. *The Scottish Law List and Legal Directory for 1879*, ibid, p.155.
35. David Howell, *British workers and the Independent Labour Party, 1888-1906* (Manchester: Manchester University Press, 1983), pp. 153 and 471.
36. Nicoll, et. Al., *Victims of the Tay Bridge Disaster*, ibid, p. 18.
37. *Horn v North British Railway Company* (1878) 5 Rettie 1055.
38. *Muirhead v North British Railway Company* (1884) 11 Rettie 1043, at p.1047, fn.1.
39. *Muirhead v North British Railway Company*, ibid, at p.106.
40. Report for the Select Committee on the North British Railway (Tay Bridge) Bill (4 August 1880) (no.311: Sess.2): Minutes of Proceedings (3 January 1880).
41. The Regulation of Railways Act 1871 (c.78), s7(4).
42. The 1871 Act, ibid.
43. *The Scottish Law List and Legal Directory for 1879*, ibid, pp.277-9.
44. *The Scottish Law List and Legal Directory for 1879*, ibid, pp.274-6.