Caledonia Centre for Social Development

The Reiving of the Common Lands

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Commonweal = the common good, well-being (Scots).

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Summary

This paper is a reproduction of Chapter 7 of Tom Johnston's 1920 book, *A History of the Working Classes in Scotland*. It represents the only serious analysis of the Royal Commission on Municipal Corporations in Scotland published in 1836 and which documented the extensive loss of Scotland's burgh commons.

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"The wrong committed is now irrevocable."
Crofters' Commission Report (1884)

"It must be declared that …… every particle of their [landlords] alleged landed possessions and rights which they cannot prove to have been acquired legally and equitably, shall at once be reclaimed as public property."
Dr Alfred Russell Wallace.

After many years of historical disputation there seems to be no reasonable doubt but that the earliest and universal form of land ownership was tribal or communal. The land was common property, and the conception of unrestricted private possession in the soil would probably be as alien to our pre-historic forefathers as the conception of private ownership of the atmosphere is to us to day.

In Saxon times there was, first folc (folk) land or people's land – the land held by the village community as a community; and second the boc-land or book land – land granted to individuals by charter[1]; and folc-land, long anterior to boc-land[2], was certainly the original form of soil ownership in Scotland. Even when the land became boc-land, the old folk-land system was not entirely suppressed, and in grants and charters tracts of land were withheld from private ownership and reserved for the use of the community.

Lord Eversley doubts whether the Saxon or manorial system ever obtained a foothold in Scotland[3], but Mr Chambers[4] declares that the Saxon settlers in the south-east of Scotland undoubtedly lived under the land regulations which form such an interesting study of English history, and he has abstracted from the Chartulary of Melrose records of early grants of commonty which seem to justify that opinion.
"The pastures," he says, *"the woodlands, the peataries or mosses, were enjoyed in common by the manorial tenants, each person having a right of common in proportion to what he tilled of the manor."*

But before the Saxon system, there was the Celtic system, of which, fortunately, we have considerable traces, not only in the ancient Irish law tracts but in the not yet dead agrestic customs of the Outer Hebrides. It is impossible, of course, to say how far the land regulations and the clan ownerships of the Irish law books[5] were practised in Scotland by the Irish emigrants who settled upon our Western coasts.

Was it here with us, as in Ireland till the Danish invasion? Was the chief but the military commander elected by the adult males – those who had passed the stage of *the encircling beard*? Was he but the administrator of the common property with his rights and his privileges and his duties clearly defined? Did we have in Scotland descent through females – the sons belonging to the tribe of the mothers – a relic of the matriarchal age? Was land tribal land, and tribal land only? To these questions the Celtic historians have given affirmative

answers, though with varying degrees of emphasis, according to whether they are dealing with early or late Celtic periods.

Mr Innes, in his *Origines Parochiales Scotiae*[6], writes of the *"system of the Celts, where the chief led the clan indeed, and administered the common property for the benefit of all, as the patriarch of the great family, not as the lord of the soil."* Mr Skene[7] says: *"Private property in land did not exist at first, but emerged from the right of common property vested in the community ……. The oldest tenure by which land was held was by the tribe in common …….. the Ri, or King, had no separate possession of land, but in this respect was on an equality with the freer members of the tribe and entitled only to the same right of pasturage for his cattle on the pasture land and to his share of the arable land annually allotted to him."*

Chief s guilty of gross violation of conventional duties of their position were deposed? Tacitus says the Pictish state was *"chiefly democratical."* Again: *"Each clan continued after the ceann-cath was changed into a king, to be the owners of their respective districts in common and to elect their own local or district governments of chief, tanister, and chieftains, and to support them by voluntary tribute denominated calpa (the brawn of the leg). The clan tribute in Ireland was called tuarasdal, literally, wages."*[8]

But the strongest proof of the early land communism of the Celtic tribes lies in the agricultural customs, which despite the ravages of feudalism, despite the thunder of hostile Parliaments, and despite the antipathy of laird and factor, has persisted down to our own day in the Outer Hebrides[9]. In the year 1847 there were still in the Highlands 37,305 acres of common pasture-land, and in the Outer Islands a sort of co-operative share-and-share alike farming of the soil called run-rig, which is probably the only remaining institution linking us directly to our Aryan ancestors. Run-rig is a corruption of Roinn Ruith – division run or division common, and was the usual mode of agriculture all over the North until little more than a century ago.

Each township elects its own Constable, who, upon accepting office, *"takes off his shoes and stockings. Uncovering his head, he bows reverently low, and promises, in presence of heaven and earth, in presence of God and man – Am fianuis uir agus adhair am fianus De agus daoine – that he will be faithful to his trust."* In some places the elected Constable takes a handful of earth instead of uncovering his feet. The object is the same – to emphasise by bodily contact with the earth, that his is conscious of being made of earth, to which he returns. After the harvest is gathered in he summons the people together for *"Nabac"* (neighbourliness). The meetings are held at night, and are *"orderly"* and *"interesting"* and at these meetings all the business of the township is decided by majority vote. What proportion of land will put under green crop next year? That is settled. Then the Constable divides the arable land into rigs or divisions; lots are cast, what a man draws he holds and tills for 3-years (one-third of the soil being allotted every year); part of the soil is set apart for the relief of the poor, for *"the kindness of the poor to the poor throughout these islands is wonderful"*.

A man must not allow his land to go to waste, since that would hurt the community; they have a Common Good fund, into which go all fines, and this is used by the Constable, after due resolution moved and carried at the *Nabac*, for the purchase of fresh stock, bulls, tups, etc.; they reclaim much moorland – *"not infrequently, however, these land reclamations are wrested without acknowledgement from those who made them"*. Should a crofter or his family fall sick, *"his fellow crofters help on his work; if a man's horse dies his neighbours bring his work concurrently with their own,"* and if necessary help him to buy another horse.

Unfortunately, the local laird or his factor, though they exact *"four times the rent"* from the run-rig communities that they can exact from the large farms, are ever on the lookout for opportunities of smashing up the run-rig system by individual tenancies. This *"the more intelligent people regret,"* for the houses of *"tenants of the run-rig system are warm, good,*

and comfortable. These tenants carry on their farming operations simultaneously, and not without friendly and wholesome rivalry, the enterprise of the one stimulating the zeal of the other. ……. Compassion for the poor, consideration towards the distressed, and respect for the dead are the characteristic traits of these people. This is indicated in their sayings, 'Succour to the poor and to the dead (in burying) and the sympathy with the distressed are three things which a wise man never regretted,' " and "The division of the land is made with care and justice. This is the interest of all."

Such tenants, we are told, as have least departed from run-rig husbandry are the most comfortable in North Uist. The Constable engages the Town Herd, apportions him ground for potatoes and bere, and collects and pays his wages. In some parts the tilling, sowing and reaping is done in common, and the produce divided equally at harvest time; but whatever variations there be, the agrestic custom is always based fundamentally upon the idea of common ownership – common land. The clergymen, too, both Roman Catholic and Protestant, it is pleasing to record, stand united in defence of the ancient customs and ancient ways; but the laird slowly usurps; he cannot tolerate free and independent communities, and the writer of the appendix to the *Crofter and Cottars' Commission Report*, already referred to, winds up (strange to find such language in a Blue Book!) with a beautifully poetic wail over the passing of the Nabac townships and their run-rigs. Probably, he says, they are the only remaining examples in Scotland, if not in the British Isles:

" ….. of this once prevalent system of holding the land and tilling the ground. And perhaps it is in the fitting order of things that these, the last lingering footsteps of this far travelled pilgrim from the eye of day, should here sink down on the bosom of endless night, where the last rays of the setting sun sink and disappear in the mysterious fading horizon beyond. ……... Yet I cannot help heaving a sigh of regret on seeing a system once and for ages the land system of millions of the human race, now disused, discarded, and disowned, disappearing, and for ever, on the shores of these eerie Western Isles, washed by the Atlantic tide, whose waves pour their dirge-like strains over the dying, while the wail of Celtic Sorrow wails on the lonely ear of Night:

' Cha till, cha till, cha till mi tuille.
' I return, I return, I return nevermore!' "

So deeply rooted in the instincts and usages of the people was this communal ownership and working of the soil, that when feudalism from the twelfth century onwards, became the theory and practice of our governors, it was found impossible, even in charter grants flowing from the Crown and vesting in the grantee practically unlimited power over life and limb on his estate, to altogether disregard the old customs. The King might declare himself supreme power, and in feudal theory all land rights were vested in the Sovereign; the Barons who held from the Crown, and the Church which held from the Barons, may have had rights of pit and gallows over unhappy tillers of the soil, but Kings, Barons, and Church all regarded s inevitable the continuance of the old Celtic system in so far as it allowed even the poorest of the poor the free and unrestricted use of commonity land s for his geese, or his swine, or his hens.

"During," says Chambers, *"the good old times of David I and his grandsons we have seen that every hamlet had its common, without which cottagers could scarcely have existed."*[10] So that, under feudal tenures, Saxon tenures and Celtic tenures alike, in every district, every village, there were certain land clearly recognised as common lands, lands to which every man, rich and poor, noble and serf, had indefeasible rights of use; and, if the folklorists are to be believed, and if below all the pomp and pageantry of conquest the agricultural populations toiled on generation after generation, little disturbed by the race changes among the rulers,[11] then it is possible, and indeed probable, that the common lands and tillage in common, stretch

back away to the pre-Aryan, stone-circles totem-fearing people who inhabited our land before History began.

"Looking over our country," says Mr Cosmo Innes,[12]

" the land held in common was of vast extent. In truth, the arable – the cultivated land of Scotland, the land early appropriated and held by charter – is a narrow strip on the riverbank or beside the sea. The inland, the upland, the moor, the mountain, were really not occupied at all for agricultural purposes, or served only to keep the poor and their cattle from starving. They were not thought of when charters were made and lands feudalised. Now as cultivation increased, the tendency in the agricultural mind was to occupy these wild commons, and our lawyers lent themselves to appropriate the poor man's grazing ground to the neighbouring baron. They pointed to his charter with its clause of parts and pertinents, with its general clause of mosses and moors – clauses taken from the style book, not with any reference to the territory conveyed in that charter; and although the charter was hundreds of years old, and the lord had never possessed any of the common, when it came to be divided, the lord got the whole that was allocated to the estate, and the poor cottar none. The poor had no lawyers."

Now, in endeavouring to trace the methods by which the people were robbed of their heritage in the soil, we must remember that the records have mostly either been accidentally lost or deliberately destroyed; we must be careful not to confuse Crown lands with common lands or commonties; and we must eschew consideration meantime of the clearances – Highland and Gallowegian – though, of course, in the compulsory *"removing"* of the early nineteenth century, vast areas of common land were absorbed by our nobility. The Crown lands varied greatly in extent at different periods: swollen by forfeitures after unsuccessful rebellions, and diminished by lavish grants to King's progeny, legitimate and otherwise, and to successful beggars and sycophants at Court. In the time of Alexander III the Crown lands were extensive.[13] Before 1350 they were dilapidated;[14] by 1486 their gross yearly revenue was only £10,600.[15] But the common lands proper disappeared into the omnivorous maw of private landlordism, down three main avenues, and these three main avenues it is now our business to examine.

FIRSTLY, there was the enclosuring legislation dealing with the common lands in the parishes outside the Highland-Celtic area and not belonging to either the Royal Burghs or to the Crown.

As early as the fifteenth century there was evidently *"brekaris of the King's Commone."* And an Act of 1600 (c.13) declares that *"persons who have cultivated or enclosed the King's common, muir, or other commonties,"* are *"to be tried by way of molestation and to restore the same within a year and a day; if they fail they shall be deemed to have committed purprision."* Tucker, Cromwell's Commissioner, reported that the gentry of Fife have "wholly driven out all but their tenants and peasants even to the shore-side."[16] In 1647

"The Estates of Parliament Taking to their consideration the complaintis of several heritors of eist Lothian, mid Lothian, Lithgowshire, Lanerkshire, Air,"

"Alledging themselves to be heavilie wronged in the commounties and muirs they have richt to By some of their neighbours that Lyes narrest to these communities and make their awne particular benefit of them. And in that respect will not suffer them to be divided" … so that *"these commounties that now ar most barroune may be reduced to gude corne land."* The Estates remit to the Lords of Session *" to be decided and determined be them according to justice and equitie ….. with power to them to find out and prescryve the justest and most equitable way of dividing such commounties."*[17]

This (with an occasional modernisation of the spelling) is the first legal blow at the commons in the counties referred to. The poor are not consulted, their wishes nor their necessities ever considered; but the consent of the superior of the soil must be secured, and the majority of the adjacent heritors must agree before division can take place; but the commons of Royal Burghs and those in which the Duke of Hamilton, the Earls of Loudon, Haddington, Dalhousie, Roxburgh, and Maxwell of Ninesweall, and Mr James Sydserf of Ruchlaw are interested, are excepted from the provisions of the Act. Then, in 1695, the procedure is simplified, and the area of appropriation extended, by Act[18] providing for the division of commonties or common muirs (commonties belonging to the King or to Royal Burghs excepted), mosses that cannot conveniently be divided to remain common. This Act was passed on a petition of 4th July, 1695, that *"all the commonties or common muirs within the kingdom shall be divided"* by any three justices of the Peace whenever a division is claimed by any single heritor having an interest in the common, *"notwithstanding of any opposition that may be made by the plurality of the heritors having interest in the commontie."*

Writing of Roxburghshire, Chambers[19] says: *"Smailholm parish had the honour to begin the dividing of commons and approximating the parts, and such has been the effect of this example that there are now no commons in Roxburghshire, which once had commons everywhere, as we have seen."* So far, then, the reiving of the commons belonging to the villages in the *"settled"* districts; but away in far Orkney and Shetland this Act for the division of commons was to have ruinous effects for the common people and enrichment for the lairds not even contemplated by its farmers. The Court of Session has decided that Orkney and Shetland must be regarded as within the scope of the Act of 1695, though the lands there were held not by feudal but by udal tenure (*i.e.* freehold ownership), each tenant being unrestricted owner of his soil. *"Under the provisions of the Act,"* say the Crofter Commissioners of 1884, *"the partition of commonty has proceeded mainly during the last fifty years …….. The wrong committed is now irrevocable."* The privileges of udal tenure have been arbitrarily destroyed, and the common pasturages called *scathalds* have been privately enclosed by the larger lairds. As the law now stands, all commonties over £1,000 in capital value or over £50 in annual rental can be divided on petition by a single heritor through the Court of Session, or if under these sums in value, by the local Sheriff Court, and these decisions can not be appealed against.

Let us now turn to the methods of landlord and aristocrat attack upon the run-rig tenants and their sparse privileges, which had hitherto escaped the robber barons. What run-rig was we have seen, and it was common all over Scotland in the seventeenth century. In the western coasts and in the north the lands were still run-rig and common: the chiefs had not, as a rule, received charters from the King, neither had the tribesmen; the lands were still really held under Celtic tenure. Tradition says that Malcolm Canmore got the chiefs to acknowledge him as the fount of their rights, and that they each delivered to him at Scone a handful of the soil of their various tribal territories as an indication of their submission to feudalism.[20]

Hence, it is said, arose the Moot Hill of Scone, the *Omnis Terra*, all lands being represented there; but, be it observed, the chiefs themselves only enjoyed their tribal rights by tanistry, *i.e.*, life tenure, and they could not bind posterity. Farther, no Act was ever passed in Scotland confiscating all land property to the Crown, so that no king had any legal right whatsoever to donate soil.

In England, William the Conqueror was careful to legally confiscate property before he began to grant it away; but such procedure was never taken in Scotland, and all Crown grants were really *ultra vires*. The Gaels never recognised the feudal grantees. Moray – feudalisd Moray, where the native chiefs had been hunted out – was the one district in Gaelic eyes *"where all petty men had a right to take their prey"*; in other words, the feudal owner was a usurper and a thief, and towards him the ordinary codes of honour could not be extended. *"Even the*

charters did not convey rights to property in the soil; they merely gave to grantees military and judicial superiority, and the right to take fixed rents."[21]

For long centuries the common people clung doggedly to the old free institutions of their forefathers, recognising quite clearly that the acceptance of feudalism meant for them slavery and degradation. In 1597 an Act was passed demanding from chiefs production of their title to the soil. They had none, but they secured lawyers who manufactured for them what Skene calls *"spurious pedigrees"* and *"titles to the land, which did not exist."* As far back as the twelfth century, the King, in Council, had decreed that actual possession for four generations was no valid title; holders must secure feudal charters,[22] and the struggle and the turmoil between the twelfth and eighteenth centuries was at bottom a struggle between the patriarchal tribe and the feudal baron, between the non-chartered, semi-communist Gaels and the ruthless, remorseless, grasping descendants of the pirates who had followed William the Conqueror to plunder England.

But a time came *"when lawyers discovered that the lands of the tribe could not be held or vindicated, or perhaps could not have money raised upon them without writ, and then came the feudal investiture. The Crown charter was taken, of course, to the chief, who got the whole land of the tribe in barony. And in the charters of the lands of a great clan the Crown charter bestowed upon the chief all the rights of jurisdiction, civil and criminal, with pit and gallows, instead of his patriarchal authority. It was an immense advantage, commercially speaking, to the lord."* He could now raise money upon his lands and sell them. *"But it was not so advantageous for the poor clansmen, who had never thought of writings to bind their patriarchal head, and who now found themselves with no title to property, often without any written leases or rentals. They became altogether dependent upon the will of the laird, and fell a long way below the position, which they had held before the lands were feudalised. That, I think, was the most flagrant injustice inflicted by lawyers."*[23] Still, the old tribal spirit never died. *"Senex,"* the Glasgow family historian, tells us that about 1759 the people on the Riddel estate at Ardnamurchan were *"so barbarous"* that they refused to pay rent to anyone who was not their chief by blood, and soldiers had to be sent up to teach them to pay.[24] An the Earl of Malmesbury, in his Memoirs, reports of the year 1833 that a stranger could fish and shoot over almost any part of the Highlands without interruption.[25]

SECONDLY, the Act abolishing run-rig and enclosing run-rig lands passed, like the appropriation of the Commonty Act, in 1695 was not likely to be of much immediate use to the Highland lairds (notice, too, how near we are to the rebellion of 1715!), but it was certainly of great immediate benefit to the Feudal-Georgian lairds in the non-tribal districts.

The Act itself, entitled, "Act anent lands lying Run-rig," proceeds thus[26]: *"Our Sovereign Lord and the Estates of Parliament"* considering *"the great Disadvantage arising to the whole Subjects from lands lying run-rig,"* and such run-rig lands being prejudicial to planting and inclosing, ordained that *"wherever Lands of different Heritors lyrun-rig, it shall be leisum (lawful) for"* and Heritor to apply to the Sheriff, to the Steward or Lord of Regality or to the Justices of the Peace *"to the effect that these land s may be divided according to their respective interests ……. after due and lawful citation of all parties concerned."*

But the said judges, *"making the forsaid Division, shall be and are hereby restricted, so as special regard may be had to the Mansion houses of the respective Heritors, and that there may be allowed and adjudged to them the respective parts of the Division, as shall be most commodious to their respective Mansion houses and policy, and which shall not be applicable to the other adjacent Heritors."* Special regard to the mansion houses of the rich; no consideration whatever given to the poor!

It is a fitting epitaph on the second of the great methods by which our common heritage was stolen. Not only were the hearthstones of the poor broken for enclosure dykes but the common pasturings and muirs over which these run-rig tenants had rights of usage were silently added to the laird's acres, and the poor were set adrift, to vagrom and to wander. It was the beginning of that great rural upheaval which a later age has dubbed the Clearances; it produced rebellion in Galloway; and even the Dule of Argyle, whose family revenues rested largely on these run-rig clearances, and to whose class-biased historical eye the laird could do no wrong, is constrained to admit that *"the abolition of the run-rig system was always most unpopular in Scotland. In Tyree, as elsewhere, it was abolished and could only be abolished by the authority of ownership."* In other words, the Highland proprietors, like the south country proprietors, cleared off the old system, with its *"flavour of communism"* and to which "the people clung with a dull and blind tenacity," by a hired soldiery and by armed estate officers.

Individual tenancy was not a natural evolution from common tenancy; it was a superimposed system, and its primary purposes were an enlargement of rents and the acquisition by the heritors of thousands of acres of what was to all intents and purpose common land. The run-rig system, says the writer of the Appendix to the Crofters' Commission Report already quoted, was not devised by fools; it was the land system of a *"shrewd and intelligent people,"* and it was the deliberate opinion of the Deer Forest Commission (1892) that the Highlands ought to revert to *"a large extension of the club farm system. Under it crofters have no individual hill stocks but only a joint ownership in the stock ……. When this system is carried on honestly and properly, not only is the very most made of the ground, but the individual crofter is more certain of his or her return than otherwise."*

BUT THERE WAS A THIRD great channel down which our common lands disappeared; magisterial peculation in the corrupt years prior to 1883, when our magistracy was self-elected, was confined to the commercial and land-owning classes, and was subject to no popular supervision in any shape or form.

Previous to the year 1469 the provosts and bailies of the Royal Burghs were popularly elected, but in that year, owing to some alleged great clamour of "simpil personis" against magistrates who held office for longer than one year, Parliament chose to silence the "sinful personis" by carefully enacting that the old councils had themselves to elect their successors; and both old and new councils, sitting together, were to choose the officials for the ensuing year. Each craft in the burgh, it was true, was entitled to send one representative to the meeting which chose the officials, but no extraordinary stretch of the imagination is required to grasp the illusory nature of that concession to democracy. By this Act of 1495 popular election had been suppressed; and from that year until the Burgh Reform Act of 1833, the landowners and the commercial *bourgeois* class controlled all burghal administration of the common lands, and controlled it in such a way that vast areas of common land were quietly appropriated, trust funds wholly disappeared, and to such a length did the plunder and the corruption develop, that some ancient burghs with valuable patrimonies went bankrupt, some disappeared altogether from the map of Scotland, some had their charters confiscated, and those which survived to the middle of the nineteenth century were left mere miserable starved caricatures of their former greatness, their Common Good funds gone, their lands fenced in private ownership, and their treasurers faced often with crushing debts.

In remainder of this part we confine ourselves briefly to the burghal common lands, relying unless where other reference is given upon the House of Commons Committee Reports of 1793, 1819, 1820 and 1821, and upon the bulky, badly arranged, indexless volumes which bear the reports of the Commissioners appointed to enquire into the state of Municipal Corporations in Scotland in 1832.

The chief, if not the only, reason for the creation of Royal or King's Burghs, being to provide the Crown with a convenient breakwater here and there against the surgings of a feudal aristocracy which threatened to assume supreme power in the State, it was necessary that the King's burgesses should have absolute freedom from the jurisdiction of the neighbouring baron and should have an adequate patrimony. The Kings, therefore, granted wide privileges and vast territorial estates – estates *"which were truly in the nature of trust estates and strictly inalienable"* – for the common good use of their chartered burghs. In early times, so vast were these Royal Burgh territories that their boundaries often met! Even in 1617 the jurisdiction of the Magistrates of Rutherglen extended from Polmadie on the south side of the river Clyde to Carron;[27] the entire parish of Ayr at one time belonged to the Burgh of Ayr; Aberdeen *"once possessed lands which extended many miles in circuit round Aberdeen, granted by the Kings of Scotland, for the use of the town."*[28] Even the towns which did not hold their charters from the Crown, but from the neighbouring baron, possessed wide territories of commonity; and adding together the common lands of the Royal Burghs, the common lands of the Burghs which held their foundation rights from private individuals, the extensive commons of the villages and the hamlets, the common pasturages and grazings, and the commons attaching to run-rig tenancies, we shall be rather under than over estimating the common acreage in the latter part of the sixteenth century, at fully one-half of the entire area of Scotland.

In King Malcolm's time extensive grants of forestland were given to Edinburgh; but the charters were *"lost"*, and with the charters the land. Prior to the end of the fifteenth century the Common Good lands were being let out on short leases; but in the year 1508 power was given the Town Council to alienate in perpetuity. At the Reformation the Council received many religious endowments, and in 1603 the superiority of the town ran from *"Edge Buklingbray"* to *"Almond Watter, to the mid watter of Forth."* Property was also held in Leith and Newhaven. In 1630 the magistrates "voluntarily" renounced much of their powers and after James IV's time the alienation of common land to favoured individuals proceeded apace. When, in 1638, Captain Thomas Hamilton, an Edinburgh merchant, instituted a process before the Privy Council to force Sir James Fleming and Sir James Dick, two late Provosts, to produce the town's books, he was acting within the letter and the spirit of an Act of 1535, which allowed inspection of documents relating to Common Good funds. But the Council refused his request; *"it looking too popular and democratick."*[29] Between 1807 and 1818, £28,000 worth of land was alienated, and between 1818 and 1833 land to the value of £7,609 was sold; in 1832 the Council betrayed its legacy trusts by investing them for other purposes; and in 1833 Edinburgh, once so wealthy a burghal community, became insolvent, and handed over its assets to trustees. The superiority of the ecclesiastical burgh of the Canongate was secured at the Reformation by Lord Justice Clerk Bellenden, who also made an attempt to secure its other property, but was frustrated by the King who declared he had *"nae right to it"*; he (Bellenden), however, at the same time possessed himself of the lands of Falkirk, afterwards passing them on to the Livingstones of Callendar. In 1783 the estate of Falkirk was obtained by Forbes of Callendar, who straightway applied to the Court of Session for a division of the Falkirk Muir, and secured it all with the exception of 31 acres.

Elgin, a Royal Burgh of the time of William the Lion, had been handed over, free tenants included, to Thomas Ranulph, by King Robert Bruce in the fourteenth century. Falkland (Fife), which in 1459 had a *"common pasturage on the Lomonds of Falkland,"* had alienated £2,300 worth of heritable property between 1790 and 1833. Forfar (an honourable exception) had not alienated land for over a century; instead, its Council had bought off Lord Strathmore and his tolls and customs, and in 1833 owned property almost to the value of £19,000. Forres, an ancient Royal Burgh, had its charters destroyed and was handed over, like Elgin, to his favourite Ranulph, by Robert Bruce. It had *"alienated at an early period, and for trifling feu duties, property in lands and fishings which have of late (1833) become of very great value."* It still owned the Cluny hills, planted with valuable trees and drew £388 yearly in land rent,

besides receiving £59 in feu duties. That there was still some public spirit extant was evidenced by the fact that the tree-planting had been done by the Town Council, and the Commissioners reported *"grumbling"* about the closing of the public road through a neighbouring estate. Fortrose, the worst managed burgh in Scotland, had suffered gross mismanagement under its perpetual self-elected provost, one Roderick M'Farquhar, who had held office for 23 years. *"He suffered no one to participate with him in power"*; he misappropriated money; went to law with the burgh funds on his own account; could not produce vouchers for his expenditure; and was obligingly assisted by his friend, the Innkeeper and Treasurer, who disappeared from the town during a Commissioners' visit. Under this M'Farquhar *regime* the town lost some valuable clay-pits, Platcock green and Craigburn, while some ground was simply taken possession of by a neighbouring laird.
The story of the reiving of the common lands of Glasgow has been elsewhere retailed[30], the Boyds, the Crawfords, the Lennoxes, and the Campbells, after the Reformation, securing control of the magistracy and helping themselves and their friends both to the burgess and ecclesiastical lands. In 1574 we find *"William Maxwell, merchant, in name of the merchants, and six of the deacons of crafts, in name of all the crafts and of the community"* dissent from *"the granting of any part of the common muir to James Boyd, or others, further than had already been given."*[31] In 1575 the Council, under Lord Boyd, decided *"that if anyone of its members revealed anything spoken of or treated of at its meetings he should be removed from the Council and never admitted to it again, but should be held infamous and be deprived of his freedom."*[32] In 1588 parts of the Easter and Wester commons were sold by public roup. In 1600, we read, *"In order to avoid requests of great men for giving off parts of their common lands, as well as on account of encroachments on these lands by neighbours, to the great loss of the town,"* the Town Council agreed that parts of these lands should be sold *and "reiven furth"*; but quarries, coal, limestone and mosses were reserved. A week later (3rd May) the deacons, on behalf of the crafts, promptly dissented from any common land being given off to any person; and in or about the same year the crafts, for some reason or other, rose in arms against the magistrates.[33] In 1681 Parliament ratified an Act of the Convention of Royal Burghs, empowering the Magistrates of Glasgow to sell part of their common muir.[34] From the ratification it appears that John Campbell of Woodside had got in 1676 all the *"little Mailings"* in the Wester Common for 10 merks Scots yearly; Bailie James Ffairie had feued *"all and haill the lands of Cowlaires, Seggieholme, with the hill thereof and west part of that hill called the Sight hill"* for 10 merks Scots early; and Ninian Anderson, merchant burgess, had got the *"Lymehouse boig" for 10 merks. On 10th July 1691, the provost asked power from the Convention of Royal Burghs to sell the lands of Provan, because the city was heavily in debt owing to past "magistrats …….. imploying the common store for their own sinistruous ends and uses, wherein, if the petitioner should be express in the particular it would exceedingly tend to the dishonour and disparagement of those whose dewty it was to have been patriots and supporters of the place."* Powers were granted, and the lands in question, which would have been worth in 1833, £100,000 to £150,000, were sold at a very low price.

In 1833, Greenock owned no land, but had its own Town Hall and public offices, - gasworks, markets, cemetery, and schools. It also owned churches, manses and warehouses. Hamilton still owned a common muir, a public bleaching green, some 60 acres of land, and markets, but its rights of electing magistrates had been lost to the Duke of Hamilton by prescription (*i.e.*, non-use for 40 years). Inverkeithing, whose public lands once stretched to Crossgates, about 4 miles off, had feued away most of its patrimony. Inverness, in 1591 owned the *"lands of Drakes and forest of the same: Markhinch, with common pasturage, called the Burgh haugh, Woodpark, Burnhills, Claypots, Milnfield, the Carse, Corn Lands, the Common Muir, the Water of Ness both sides of Clachnahagyag to the sea with fishings";* but most part of these soil rights had been alienated by methods which the Commissioners reported as *"highly censurable"*. In 1617 we find the then Lord Lovat driving the townsmen of Inverness off their peat mosses and with a petty taste in invective, describing the magistrates as *"lownes, lowsie knaves, villances and beboshed doggis."*[35] Many of the lands were privately acquired by the magistrates; in 1783 and in 1785 the provost secured for himself some portions of the Town

common, and in 1797 one of the Councillors bought land which, with but slight improvement, returned him yearly almost the capital sum he had expended at purchase from the Council. Between the years 1794 and 1833, the Magistrates of Inverurie alienated burgh property to the value of £2,449, which alienations are not to be wondered at when we read that between 1805 and 1817 *"£600 17s.6d had been expended in paying tavern bills, for the entertainment of the Council, to an individual who was, and still is, an innkeeper as well as a resident chief magistrate, and in paying travelling expenses (not incurred on burgh business) and newspapers for the magistrates and council."* This same chief magistrate had embarked upon a brick-making speculation, which entailing a monetary loss of £180, was finally borne by the Burgh funds. The town still drew annually in feu-duties £73 6s 8d., but the corruptions and alienations were so notorious that petition was made by the burgesses to the Court of Session for inspection of accounts. The judges refused the application.

Irvine still owned 422 acres arable and 100 acres moorland; also mills, a quarry, farm-houses, feu-duties of £197, town house, shops, markets, washing-houses, a loom-shop, gardens and *"an extensive common,"* all of which is very surprising, for we read that the Earl of Eglinton held sway as a *"Merchant Councillor, and he and his friends were superior to the law of rotation as they always took in two silly persons to shift."*[36] Jedburgh owned *"little land"*; Kilmarnock had re-sold to its Superior land which it had purchased in 1700, and now was possessed only of half-an-acre and two washing greens; Kinghorn, reported in 1692 as deriving extensive revenues from *"our comon grasse"* and *"the grass of Rodding braes,"*[37] is distinguished for extensive alienations conducted in a semi-secret manner; Kintore had disposed of all its lands to the family of Keith (Lords Kintore), and held *"now no property"*; Kirkcaldy, in 1644, had owned about 487 acres (the lands of East and West Muirhouses, the lands of Hunger-him-out, John Millers Pendicle, Middle Commonty and South Commonty), but it was all feued away in 1723 and 1750.

Kirkwall, which by its charter of 1536 had received large areas of land, had made extensive alienations in 1793. Mr Horne, W.S., for the Commissioners of Woods and Forests, handed away 10,000 acres common belonging to Kirkwall, Stromness and Shandwick,[38] and Kirkwall now only owned a few farms and crofts and some waste land, the cathedral, a school and a town hall; Kirkcudbright still drew annual land rents to the value of over £900. The ancient Royal Burgh of Cowie (Kincardineshire), which got its original charter from King David I, was re-erected into a free burgh in 1541, and was at the beginning of the seventeenth century a *"flourishing and wealthy town,"* had entirely disappeared; *"no vestige of the burgh now remains; the burgh lands together with Auchtorthies – at one time a portion of the lordship of Urie – form the modern estate of Cowie."*[39] Of Lanark we read: *"A considerable portion of the property has been alienated, but a large portion remains."* In these Lanark transactions, not only the customary *"neighbouring proprietors"* but also the hereditary provost had benefited considerably, and during the Franchise Reform agitation of 1792 he (the Provost) was shot at and his orchard wrecked. The public property extant in 1832 consisted of lands, houses, a mill, feu-duties, a common of 500 acres, an extensive plantation, six shares (value £600) in the Clydesdale Inn, washing-house, hospital, green, grammar school, etc., estimated at £25,784.

At Lauder, with a total burghal and parish population of 2,063, there still remained over 1,700 acres of common land, of which 895 acres were arable. Prior to 1814 its extent had been much greater, but in that year the magistrates enclosed part and feued it out to the highest bidder; and the extent of the feuing may be gauged by the fact that the town was now (1832) receiving £100 annually from that source alone. Of old time the common belonged to the burgesses, and the arable lands were cropped in rotation and the proceeds "equally distributed by lot" among all the burgesses; only resident burgesses were entitled to graze their cattle on the common. Tillage and pasture were still fixed by lot, but the privileges had been restricted to burgesses, and the burgesses had been by various pretexts cut down in number. First it was decided that no one should be admitted burgess who was not the owner of one of the small

strips of land lying between the town and the common, called burgess acres. There was no legal authority for this stipulation. The burgess acre, once 315 in number, gradually fell into fewer and fewer hands, until when the Commissioners reported there were only 105, the purchase price of each being about £200, and the lot being in the hands of 25 resident and a few non-resident burgesses. Then the burgess entry fee was raised from £5 in 1796 to £30 in 1832, a proceeding as illegal as the restriction to owners of burgess acres, but even more effective in limiting the rights of common to a few favoured individuals.

At Lochnaben, the large farm of Priesthead held by the town for *"many ages,"* was sold privately in 1801 to the father-in-law of the provost, no mention of the transaction appearing in the minutes, and the town was reported as now *"irretrievably bankrupt."* Indeed the Court of Session, after the Priesthead sale, had been forced to sequestrate the Burgh – a proceeding rendered perhaps the more necessary by the fact that *"Thomas Johnstone, the other baillie, cannot subsrive"* (i.e. write his name).

Montrose had escaped the general pillage rather by good luck than by good intent of its middle class rulers. Between 1790 and 1817 portions of its heritage had been sold in lots at 1s. per square yard, but by 1817, by an oversight, the magistrates had not been elected in accordance with the set or constitution of the burgh, and the Government issued a warrant for an election by poll of all the burgesses[40]. The result was the deposition of the old corrupt magistracy and their friends, and the election *"advanced reformers"*. To this fortunate mis-observation of the set of the burgh, the people of Montrose owed the fact that, in 1832, they had a common property of £54,986, comprised of lands, houses, a harbour, money invested in public works, and £1,300in the bank.

Musselburgh at one time *"possessed very extensive property … but a great part of it was sold or feued many years ago"*; still in 1832, it owned 5 mills, a brick and tile work, quarry, parks, haughs, links of Musselburgh and Fisherrow, commons, plantation, ground at Ravenshaugh, harbour, schools, town hall, assembly room, salmon fishings, steel-yard, and six shares in the race stand, a total value of £35,000. There had been many *"private sales"* during the preceding 50 years.

Nairn, we are told, *"formerly possessed a considerable extent of landed property, of which very little now remains"*; but the reiving is difficult to trace, owning to the loss of part of the town's records and the imperfect and unsatisfactory state of the remainder. In 1832 a Court of Session action was raised against the magistrates by the burgesses; but the Court, as was its wont, upheld the thieves and dismissed the action on the ground that the Council records were not produced; *"heavy costs"* were given against the burgesses and "numerous other technical objections were in reserve," ready, if by any chance aberration of justice, the Court should order the defenders to produce the town records.

Newburgh (Fife) in 1631 had owned over 400 acres, of which only 174 acres were left. New Galloway, once a Royal Burgh, now owned nothing: the provost lived in London, and the Town Clerk in Kirkcudbright – 20 miles away.

Sir Hew Dalrymple Hamilton seems to have been the chief beneficiary in *"the distribution"* of the property of the citizens of North Berwick; he paid £400 for the island of Craigleith, but only £100 of this sum reached the Town Treasurer, who was, by the way, refused access by the Town Clerk to the municipal ledgers; in 1832 the town still possessed some land, a small croft, market stalls and a bake-house.

The burgh of Paisley, granted in 1460 by the Abbot of Paisley to the provost, bailies and community, with a right to the burgesses to hew stone in the Abbey quarries, possessed, in 1832, property worth £53,914, including an inn, "buildings at the cross," houses, stables, sheds, markets, schools, coal-rees, a dye-work, a foundry, a quarry, bowling green and house,

and common lands valued at £9,958; between 1790 and 1830 the magistrates had hived off property valued at £25,963, including the estate of Ferguslie, sold for £12,000.

From the town lands of Peebles, we are told, there were great alienations "long ago,"[41] though, in the 40 years before the Commissioners reported, property valued at £1,491 had been disposed of; it still owned lands and feu-duties, a corn, flour and barley mill, a waulk-mill, with houses and machinery, schools, tenements, shares in Tontine Inn and the gas company, a farm, and a quarry.

Perth, in William the Lion's time, was granted privileges of trade and commerce all over Perthshire, and owned extensive areas of land. Between 1746 and 1830 there were "numerous and extensive" alienations; between 1800 and 1828 the burgh muir was enclosed and feued away; Gowrie house and gardens had been donated in an extravagant excess of loyalty to the Duke of Cumberland, and being sold by him, were re-purchased by the burgh; the corruption of its magistracy was notorious even in an age when corruption was common - £3,000, for example, being spent on re-building an arch of the bridge over the Earn, while an entire bridge three miles farther up cost only £500; in 1832 it still retained ownership of lands at Meikle Yullylum and Uthank, Dawhaugh, Cow Causeway, Soutarland, North and South Inches (100 – 120 acres), Sand Island, Maggie's Park, etc., and mills, granaries, oil mill, sawmill, fishings, harbours, coal and wood yards and lime sheds.

In 1593 Peterhead had owned the moss, fisherlands and certain commons and pasture rights; the commons were divided in 1774. At the Reformation the burgh of Pittenweem became possessed of *"all an haill that great house or lodging of the monastery of Pittenweem and lands between Anstruther Wester and St. Monace and Abercrombie,"* also the lands of Balcaskie and Grangemuir except *"the commonties be east the march stones pertaining to Anstuther Wester and Milntown."* The town still owned lands, mills slaughter-house, byre, shipbuilding yard, and shares in a granary; and although there was no mention made of recent alienations, and although it was drawing nearly £200 from its common *"mures and braes,"* there was danger, for the noble family of Kellie resided in the immediate neighbourhood.

At Port Glasgow, a *"feuars town"* dating from 1668, reliable information was difficult to obtain; but the Council owned buildings, warehouses and ground valued at £15,300, a coal-ree, flesh and fish markets, dry dock and engine, a school, gas work, fire engine, etc, Portobello about 1760 *"was only a single cottage, surrounded by an extensive common"*; seventy years later it was a town without a constitution, with no common land, indeed owning nothing whatsoever. Queensferry had sold its Ferrymuir lands to Dundas of Dundas; but there was *"no reason for selling and no satisfactory account of where the purchase money went"*; only the common called the Loanings was retained in 1832.

In his preface to the first volume of the Burgh Records Society, the Editor, Mr Cosmo Innes, declares that *"in some, but rare, instances the lords were so powerful or so artful as to establish a permanent influence within the burgh, but only by sufferance or by violence. I know of no instance where a chartered burgh formally surrendered its independence."* If cavil can be offered this, it may perhaps best be done in the case of Renfrew, for when in 1429 the Campbells controlled the burgh they signed away its rights to the then Duke of Argyll; in 1703 Queen Anne conveyed to the Council *"much of the property in land and fishings,"* and in 1832, even despite a century of assiduous theft, rents and feu-duties brought to the public exchequer an annual sum of £2,162. There were four recent sales of land to the provost; in each case he was buyer and seller and sanctioner of the sale, and in one instance the minutes of the Council bear testimony to the fact that the only reason for the sale is that it would be *"beneficial to the provost."* He was also lessee of the canal, upon such terms that the canal was no benefit to the burgh, and the tone of the local administration may be judged by an item in the annual accounts: *"Tavern expenses for magistrates £153. 9s."*

In Rothesay the Factors of the Earl of Bute were practically hereditary provosts[42]; but the Commissioners in 1833 reported that the town still owned the lands of Craigmore, an east and a west common, two washing greens, two small loanings, gardens and a part of the shore frontage[43]. Rutherglen, whose superiorities had once extended to Carron water, in 1833 only retained 32 acres of arable land called the green, property in Castle Wynd, house and garden in Farme Loan, town's mill, council hall and schoolhouse – a total value of £10,000.

St Andrews had feued away in 1797 the Pilmour Links and commonty, ostensibly for the purpose of wiping out debts on the Town Church; but was still in possession of the North and South haughs, land in Priory and Newmiln, East Bents, Grey Friars Gardens, coal yard, ridge at the harbour, public land known as *"the Scores,"* part of Windmill brae, salmon fishings and mills. Sanquhar burgesses divided up the common muir among themselves in 1831, leaving to the town only 181 acres valued at £24.

In the year 1681 we find in the Acts of the Scots Parliament a long ratification of the arbitral decree between the Burgh of Selkirk and the Earl of Roxburgh and other lairds[44], regarding the division of *"the great and vast bounds of ground called the Common of Selkirk."* The common, it appears, had *"lain unprofitable these many ages," and has been the seed and ground of much trouble, contention, and debate,"* so Earl Roxburgh and his fellow heritors had nominated two arbiters and the Burgh of Selkirk two, and these arbiters *"apportioned"* the common; in later times the Pringles of Clifton appear to have benefited by farther alienations; and when, in 1748, the burgesses petitioned the Court of Session regarding the plundering of their Common Good, the demeanour of the judges was so hostile that they did not press for judgement. In 1833 Selkirk still retained two commons, divided (except a small portion reserved for the burgesses' cattle) into 5 farms, Dunsdale haugh, 3 mills and mill lands, feu-duties, and a salmon fishing on the Ettrick, carrying a total annual rent of £1,039.

Stirling, in the seventeenth century, possessed lands and property of *"considerable"* value; but its magisterial corruption was carried to so great an extent that Lord Advocate Dundas confiscated its charter, and in 1705 the Convention of Royal Burghs authorised the sale of all its land to pay its debits. In 1833 its sole assets were fishings in the Forth, 3 acres at the burgh mill, some ground called "the Valley," corn market and granaries, and some house property and churches.

Stranraer, naturally, was in a *"very embarrassed state,"* for its business had been conducted beyond memory of living man by a non-resident provost, the Earl of Stair, by his two Edinburgh agents and be *"his factor in the country."* So late as 1829 this *"Council"* was selling the common muir.

The story told by the records of the Burgh of Tain is the same sad story of the northern burghs; in 1587 it owned the lands lying between the four girth crosses, the lands of Innerraithie, Gorlinges, Clerk Island, Priest Island; in 1833 it owned but 50 acres. At one time Tain owned 3,000 acres of moorland, but on *"the conterminous proprietors making considerable encroachments,"* the magistrates concluded that in whatever encroachments there must be, they, the magistrates, should be the encroachers, and so they feued out the moor among themselves at 6d per acre.

Whithorn, whose Council was manned carefully by dependants of the Earl of Galloway, owned nothing in 1833 but a croft and a windmill; and the same noble family, by the same ignoble process, had secured for *"trifling feu-duties"* almost the entire 1,200 acres which had constituted the ancient royalty of Wigton. For a feu-duty of £16 the Earl, who was "patron of the place," took over Wigton lands yielding an annual rent of £400; and it is a matter of some wonderment that the docile sycophants who constituted the magistracy did not also part with the lands of Gallowhill and Philiphall, the town hall, the ball rooms, and the schoolhouse.

Wick had lost in the law courts its limited right to commonty over the Hill of Wick, and owned no property; Abernethy owned nothing, nor did Alloa. Bathgate was the proud possessor of the site of a fountain and a right servitude over 42 acres of moorland. Beith had no local government of any kind. Bo'ness owned nothing; Castle-Douglas owned a shop; Coldstream was stripped bare, not even possessing *"rights in its street dung"*; Crieff had two fields; Dalkeith, nothing; Dunkeld, nothing; and Dunoon, nothing.

In 1785 the only remnant property of the Burgh of Dunse was an *"extensive common"*; but in that year the common was divided between the neighbouring Superior and his feuars; in 1833 all was gone except 10 acres of moor and a whinstone quarry. The property of Fraserburgh – parks, links, etc., was vested in the feuars. Eyemouth owned nothing, nor did Gatehouse-of-Fleet. Galashiels had not even a constitution. Galston owned nothing, and Girvan but a few houses.

Hawick (in 1833 drawing annual rents of £6,317) seems to have put up a spirited fight against the Duke of Buccleugh's attempt, in 1770, to appropriate its common muir. The case came before the Court of Session, and *"after having defended in court for some time, was by reason of the deficiency of the burgh funds, referred to arbitration of the Lord Chief Baron of Exchequer."* The result was a foregone conclusion; the Lord Chief Baron divided the common, donating a *"large part"* to the Duke of Buccleugh and other conterminous heritors. In 1833 the people are, say the Municipal Commissioners, *"aggrieved, but the decreet arbitral, followed by possession for upwards of 50 years, bars all discussion as to the title of the proprietors. No blame can attach to the magistrates and council for the time, who appear to have done their duty in defending the rights of the burgh."*

Kilsyth, Johnstone (which had no constitution), Keith, Langholm, Largs, and Kirriemuir owned nothing. Huntly had lost its charter giving privileges of common pasture, fuel, and quarries, and these rights had been withheld by the Duke of Gordon "for about 60 years." Kilmaurs' burgesses and feuars owned 5 roods of common land. Only the burgesses of Kirkintilloch had rights in the scanty commonties. Gardenstone drew £10 annually from *"the estate of Johnstone."* The heritors of Lerwick had already secured the common lands. Melrose owned nothing; Newmilns, only a public green, some houses, and an inn. Maybole had lost its records prior to 1721, and now owned but a little house property, the ball green, and 4 falls of land, the Commissioners significantly reporting that in the year 1516 the provost and prebendaries of the local church were given power to let out their lands, and that this power was given *"with the advice of Gilbert, Earl of Cassilis."* Rosehearty, in 1681, had possessed rights of pasture in certain lands, and the commonty of the Cairnhill of Pitsligo and certain mosses, including *"the large moss called the Red Moss"*; but these rights had been alienated in 1811. Stewarton owned nothing, and Stonehaven only *"a right to common and pasture of trifling extent, two small farms, a piece of ground at the Cross, and £384 in harbour shares."* Stornoway owned its quay; Strathaven and Thurso owned nothing.

The old title deeds of the Royal Burgh of Arbroath were taken by force from the Abbey and destroyed by George, Bishop of Moray, but the new charter granted by James VI. in 1599 specifies as burghal property *"the common muir and lands called Muirlands."* These lands were feued out in the latter part of the eighteenth century for little over £1 per acre. In 1833 the town property, including the White Hart Inn, was valued at £35, 874. Aberdeen, in 1459, owned, among other lands, those of Rubislaw, Counteswells, Hazelhead, Forrester Hill, and Northfield Cruieffs, extending altogether about 14 miles in circumference; it also possessed very valuable salmon fishings on the Dee and the Don. But in 1551 the then magistrates procured from the Crown a new charter, which permitted them to dispose of the common property by perpetual feus. Before this time even nineteen-year leases of town property were forbidden by the Courts, but immediately upon receipt of the new charter all the fishings and most part of the lands were feued away in perpetuity for insignificant feu-duties to favoured individuals. Fishings worth, in 1819, a rental of £10,000 were bringing to the town in 1833

only £27 7s.8d; between 1793 and 1817 heritable property valued at £19, 444 was disposed of, the Common Good was squandered recklessly, and in the latter year the city, in a state of *"hopeless insolvency,"* surrendered the management of its estates and its revenues to its creditors.

The Burgh of Annan, once in possession of extensive territories, had suffered alienations almost as extensive; its common muir was divided among the "town and country heritors" at the beginning of the nineteenth century, and in 1833 its remnant revenue was derived thus - £53 10s in land rent, £182 in feus, and £90 from fishings. One of the contributory causes to the necessity for these Annan alienations is probably unique in Scots burghal history. The Sheriff of the county had been imprisoned in Annan gaol for a debt of over £2,000, and the magistrates very generously allowed him the run of all the building, and permitted him to hold his courts in the Town House within the gaol. This proceeding the Court of Session and the House of Peers declared to be a deliberate violation of the magistrates' duty and *"subjected the magistrates in the debt,"* which debt, of course, was immediately paid from the Common Good funds of Annan. Another debtor, warded for a sum of £1,200, had escaped from Annan gaol in the early years of the nineteenth century, and again the Common Good was mulcted

Anstruther Easter, about 1700, had a lawsuit with Sir John Anstruther over its right to the collecting of street dung, and was forced to sell its common land for £500 to liquidate the costs. The lands in question were sold a few years later for £5,000. Anstruther Wester, in 1833, still owned its East Common, West Common, West Muir, two Milltown Muirs, the Burns, and the Billowness. Ayr still possessed an extensive common, though much land had been feued away. At Newton-on-Ayr the *"Freeman's Daills"* (Deals – drawn annually by lot) were feued away in 999 years leases for an *"elusory feu-duty."* Banff, in 1581 a wealthy and prosperous community, has been *"skinned"* by the families of Fife, Banff, and Findlater, and the Municipal Commissioners give an illustration of the process from the records of 1738, when the then Provost is discovered purchasing 20 acres for thirty shillings!

Brechin at one time held extensive superiorities, certainly running to over 1,760 Scots acres; but most of it was feued prior to 1770; and away back in 1681 an Act of Parliament was passed ratifying the alienation of a great part of the common muir (made several years previously by magistrates with the consent of the *"late Bishop of Brechin"*) in favour of Carnegie of Balnamoon[45]. But in 1833 Brechin still held common land and kept a common shepherd. Burntisland, created a Royal Burgh in1568, had its liberties assailed in 1625 by Sir Robert Melville, who brought an action against the town for reduction of charter; but the action was withdrawn upon the town thirling itself to Sir Robert's mills. *"There is,"* as the Commissioners significantly point out, "a blank in the town's records at this date"; in 1835 the common land yielded revenue of £253.

Campbelltown owned no property, the Duke of Argyll refusing to give even a permanent title for the schoolhouse land. Crail had alienated most of its heritage, but still owned lands, quarries, houses, etc., in sufficient quantity to pay all the burgh annual expenditure. Cromarty, under what compulsion or by what trickery we know not, parted in 1670 with its wide territories to Sir John Urquhart for a mere song – 5,000 merk Scots, with an annual feu-duty of 20 merks; two years later the Council petitioned the Parliament that they were *"depauperat"* and *"dispeopled"*; they were expunged from the list of Royal Burghs, and Urquhart stepped in, appointed a baron bailie, and the freedoms, the privileges and property of Cromarty were gone!

Of one time prosperous Cullen, on the Moray firth the Commissioners declare: *"The property of the burgh was in ancient times considerable but it was alienated to the family of Seafield"*; and again: *"The town"* (once a Royal Burgh) *"is so unimportant that some years ago the family of Seafield removed it from the situation which it then occupied – being too near their*

residence – to its present site." The treasurer's books shewed that the town's financial assets had been *"lent"* to the same noble family. The lands of the Burgh of Cu'ross had passed into the hands of Sir James Gibson Craig, who had planted 80 acres of the common muir; to the hands of the Dundonald family who had received over 500 acres *"now covered with wood"*; and Sir Robert Preston and Dundas of Blair, are specially mentioned as *"fortunate owners"* of other ex-burghal properties. Cupar, once in possession of 1,000 acres, had feued most part of them by 1735 at an outside feu-duty of 1s per acre; but there had been no fewer than 42 alienations between 1790 and 1830, occasioned, we suppose, by the magisterial practice of borrowing money from themselves at twelve per cent interest. Dingwall's "*extensive property"* had been feued or given away, all except 7 or 8 acres and some fishings; the proprietors, we are told, refuse to pay lighting charges, and "the town is now lighted." Dornoch had lost its all.

Dumbarton, with at one time superiorities running to Loch Lomond, was even in less prosperous times fair game to the Dukes of Argyll, who during the latter half of the eighteenth century controlled the Council by means of *"Councillors elected from every corner of the country"*;[46] and during that halcyon time the provosts and magistrates helped themselves and their friends to the finances and the properties of the burgh with a shameless indifference to the loud and angry protests, which came periodically from the burgesses and the common people. In February, 1787, for example, the burgesses of Dumbarton brought an action before the Court of Exchequer against the magistrates in order to force them to produce their books in Court; and the defence was, that the Act of 1535, upon which the burgesses founded, was in desuetude, and that the Convention of Royal Burghs was the only body entitled to supervise the actions of the magistrates. Sir John Dalrymple, one of the judges, referring to this plea, said that the Convention was the most incompetent possible revising authority because the burghs comprising it *"were all and each of them guilty of the same malversations of which the magistrates of Dumbarton were at present accused."* The majority of the judges, however, decided against the burgesses.[47]

Dumfries, a Royal Burgh prior to 1214, with many lands and privileges, was granted in addition all the possessions and revenues held by Grey Friars in the neighbourhood during the fifteenth century; but gross swindling and theft had pared the estates away. The councillors were usually tacksmen of the Common Good; *"the heirs of eleven provosts of Dumfries owned property which had once belonged to the burgh"*; and in 1833 the total land revenue remaining was £114 from feu-duties and £179 from land rents. Maxwelltown possessed no property. The Town Chamberlain of Dunbar alleged that his books had been burned in 1827, so that no details can be given of the alienations there; in 1832, however, the common remaining was valued at £5,000, and the publicly-owned lands, mills, houses and quarries at £9,500.

Dundee, in Charles II's time, appears to have owned the lands of Logie, with mansion-house, gardens, and orchards, 16 acres of lands of Balgay, and other minor acreages. In William and Mary's time it got such part of the forfeited estates of the Earl of Lauderdale and Sir Robert Milne as lay in the neighbourhood: - Dudhope, the Burgh of Rottenraw, the acres of East Ferry, the lands and salmon fishings of Draffine, the lands of Duntoune of Baldovie, Kirkton, Oxengate of Ratecults, and Catermiln in Perthshire. Previous to Lauderdale's disappearance we can guess what lies behind that item reported to the Convention of Royal Burghs by the Treasurer of Dundee in 1692: *"At law with my Lord Lauderdail for 7 years - £20,000."* Scots money, of course; only £1,666 13s. 4d. in present day coinage, but it is one of the methods by which the common lands of people disappeared.[48] Another similar item of expense is given thus: *"For maintaining the honour of the good town in waiting on noblemen and others in whom the burgh is concerned - £1,200."* In the later part of the eighteenth century, particularly during the 40 years' regime of the notorious Provost Riddle, alienations were of common occurrence, and between 1792 and 1833 property worth £19,710 was disposed of.

In James VI's time the Burgh of Dunfermline owned the lands of Balyeoman, the east and west town greens, Kingseathill parks, and Daasdendanhill; in 1833 it still owned several farms, *"part of the muir with the coal which for some years has been worked on account of the burgh,"* 700 acres (150 of which are planted with trees), the Halliblade acres and some houses at the town colliery; the grass from the common green and the common loan brought £39, and £121 came from the common land. There had been several alienations in the early part of the nineteenth century, however, and although the alienations were made by public roup, it was discovered, at the enquiry of 1819, that one of the methods in vogue was for a bailie to bid against all-comers until he secured the property, and then at the next secret council meeting succeed in getting the Council to knock the price down to a fraction of what had been publicly offered. Still it is to the credit of the Dunfermline councillors that they alone, of all the councillors in Scotland, supported the agitation for a wider municipal franchise and refused to be silenced by the complacent and self-interested declaration of the Convention of Royal Burghs that reform would *"unhinge a constitution which had stood the test of ages."*

Dysart reported itself in 1692 ruined by *"defending and maintaining of the town's propertie against the Lord Sinclair and Sir James Cockburne,"* the former gentleman having secured possession of the harbour of Dysart *"by ane decreet got surreptiously before the lordis of Session"*; all that was left was *"the hand bell and the pettie customes."* By 1833, however, the town possessed a farm, a quarry, the harbour, and gardens and houses. Earlsferry in Fyfe, owned only one acre of land, some small feu-duties, a harbour and the *"right to play golf on the links"*; Kelso (whose town records had disappeared) possessed a reservoir, a small field, and some shares in the Tweed bridge. The historian of East Kilbride tells us briefly that *"The common …… was once very extensive, but excepting a few acres is now enclosed"*[49]; and the historian of Tranent[50] declares that the common there was *"of great extent,"* had been *"free to all villagers from time immemorial,"* but had been *"taken over"* by the Superior and the feuars with the assistance of a special Act of the Privy Council.

An analysis of the various document bearing upon the estates forfeited after the rebellion of 1745 shews, that despite the runrig and enclosuring Acts already considered, the commonities in rural districts of Scotland were still of considerable extent. In 1790, after the bankruptcy of the York Buildings Company, the Seton estates, which they had purchased, fell to the agent for their creditors, thereafter being disposed of to the Earl of Wemyss. "After MacKenzie acquired the estate," we read,[51] *"the active little village community of Seton was entirely broken up and dispersed, for when called upon to produce the title deeds of their properties, most of* them, *it was found, had no titles to show, their houses and lands having been handed down father and son through many generations. Those who were unable to produce titles were at once unconditionally turned out of their houses, while the few who sent of their parchments to Edinburgh beheld them no more, and had likewise shortly after to follow suit, leaving their ancient heritages behind them."* On the Perth estate the commons, in 1747 – 1756, were still of great extent, as was evidenced by the Government survey.[52] Omitting roods and falls, the common acreage, detailed by the surveyor, for the parish of Muthill alone, was

Common Moor of Alichengrew	33 acres
Common Moor of Strageth	100 acres
Common Moor of Drumquhar and Cult	84 acres
Common Moor of Cottary	87 acres
Common Moor of Milran and Drumnahard	3 acres
Common Moor of Lintibbert (with pasture)	123 acres
Common Moor of Blairnroar	3,194 acres
Common Moor of Megginch	93 acres

Oakwoods of Drummond and Broadmeadow, enclosures where tenants had pasturage rights	112 acres
Moor of Strathill	131 acres
Parkneedless enclosure carrying rights of pasturage (*This enclosure was to "enhance the beauty of the house.")*	249 acres
Moor of Craignech	179 acres
Moor of Tomrechan	558 acres
Moor of Tonrechan (part)	9 acres
Moor of Middle Glenichorn	450 acres
Drummond Moor	249 acres
Orthal Commonty (part Moss), and Loan of Drummond Mill	1,176 acres

In the Barony of Balquhidder there were 1,368 acres common; in the Parich of Comrie 5,058 acres common, in the Barony of Callender 2,206 acres common, in the Barony of Milnab 83 acres common, in the Barony of Auchterarder 22 acres common, in the Barony of Stobhall 589 acres common, in the Barony of Kinbuck there had been 1,528 acres of commonty in the Cambuschinny Moor; and of Sheriffmuir (1,226 acres) we read: *"This Moor is commonty to lands of several neighbouring gentlemen, so that nothing useful can be expected until it is divided. Several parties carved out holdings after the troubles in 1745. Balhaldie has made considerable enervallment. He keeps a herd who on all occasions turns off the Kinbuck cattle greatly to the prejudice of the tenants."*

At the beginning of the nineteenth century, one eleventh (13,800 acres) of the entire area of Renfrewshire was common;[53] and Lord Cockburn, the Lord Advocate, writing in 1845[54] on the fromation of the Edinburgh Society "for protecting the public against being robbed of its walks by private cunning and perseverence," says:

"When I was a boy, nearly the whole vicinity of Edinburgh was open beyond the Causeway it was almost Highland. Corstorphine Hill, Braid Hill, Craiglockhart Hill, the Pentland Hills, the sea-side from Leith to Queensferry, the river-side from Penicuik by Roslin and Hawthornden to Lasswade, the Valley of Habbie's How, and innumerable other places now closed or fast closing were all free." ….. Much of it by indulgence of owners, but "much more of it because the people had acquired prescriptive rights" in unenclosed country ….. "Law (to prevent enclosure and theft) was dear," the gentry were in favour of private property, and "each Justice protected his brother, knowing that he would shortly require a job for himself. Thus everything was favourable to the way-thief, and the poor were laughed at. The public were gradually man-trapped off everything beyond the high road."

Sometimes determined resistance to encroachment succeeded in preserving for the public a remnant of their old-time property, as the women of Dunoon succeeded in saving the freedom of their Castle Hill from the Duke of Argyle[55]. Sometimes the peasants spent their money in vain, as the Braidwood folks did when they sought legal redress against the filching of their common and loch[56]. But law was dear and hostile, and fanatical burghers or peasants who would defend the common patrimony by force were generally bullied or starved out of the district as a preliminary process to the theft.

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[3] *Commons, Forests and Footpaths*, Lord Eversley, p4-5.
[4] *Caledonia*, Vol.3, p134, Chambers.
[5] Particularly the "Senchus Mor" in the *Early Irish Laws*, Vol. 2, xlvii, 3, p53.
[6] Innes, *Origines Parochiales Scotiae*, Vol.ii part I, pxix. See also Preface *Acta Parl, Scot.*, Vol.i.
[7] Skene's , *Celtic Scotland*, Vol.3 pp 138, 139 and 142.
[8] *The Poetry and Traditions of the Highland Clans*, Stirling Lib. Pamphlets (Glasgow) Vol.99, p7.
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[10] *Caledonia*, Vol.3, p144, Chambers.
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[12] Innes. Cosmo, *Scotch Legal Antiq*., p154.
[13] Macintosh, *Hist. Civ. Scot*, i., p251.
[14] Cochrane. Patrick, *Medieval Scotland*, p85.
[15] *Exchequer Rolls*, Vol. 9, p.lxix. The Rolls give the revenue as £106,000, but there is an obvious error in the addition of the constituent sums.
[16] Tucker's Report in *Miscellany* of Scottish Burgh Record Society, 1881. See also Hume Brown, *Scotland in the Time of Queen Mary*, p26.
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[30] See the present writer's *Our Scots Noble Families* and the late Sir James Marwick's *Early Glasgow*.
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[34] *Acta Parl. Scot.*, viii, p431, c.157.
[35] *Scot. Hist. Review*, Vol. 5, p424.
[36] William Law Mathieson, *The Awakening of Scotland, 1747 – 1797*, p104.
[37] *Miscellany – Scot*. Burgh Record Society, p96.
[38] Parliamentary Papers issued 25, 8, 52.
[39] *The Court Book of the Barony of Urie, 1604 – 1747* – Barron (Scot. Hist. Society Pubns), p xli.
[40] Lord Cockburn's *Memorialls*, p321.
[41] At least one of these alienations is detailed in Renwick's *Gleanings from the Records of the Royal Burgh of Peebles, 1604 – 1652*. Chapter xiii shows how by a combination of open theft and legal trickery *"Hamilton Hill glided out of the Burgh's possession."*
[42] W. Law Mathieson, *The Awakening of Scotland*, p104.
[43] *Daily Mail* 26, 12, 61. Reference to encroachments upon burgh land at Ardbeg road.
[44] *Acta Parl. Scot*., Vol.viii., p419. See also Vol.x., p307b.
[45] *Acta Parl. Scot*., Vol.viii., p402,c.144.
[46] W. Law Mathieson, *The Awakening of Scotland*, p104.
[47] *Scots Magazine*, February, 1787, p97.
[48] *Miscellany* – Scot. Burgh Records Socy., p62.
[49] Ure, *History of Rutherglen and E.Kilbride*, p203.
[50] P.M'Neill, *History of Tranent*, p222.
[51] P.M'Neill, *History of Tranent*, p193.
[52] See *Northern Chronicle*, 15th June, 1910.

[53] Chambers' *Caledonia*, vol.vi., p798.
[54] *Journal*, 1831 – 1854, vol.ii., p104.
[55] *Glasgow Post*, 8/8/35, 15/8/35, 10/9/35; *Courier*, 5/8/38.
[56] *Daily Mail*, 28, 3, 62. The Sheriff at Hamilton told the people they could produce *"no written title."*