

Copy letter Messrs. Fods,
Murray and Jamison to
Messrs. H. M. MacKay, dated
29th March 1890.

Dear Sir,

Dornoch Burgh
Lornmore

I

At the request of His Grace
the Duke of Sutherland we have
investigated the claim made by
the Royal Burgh of Dornoch
to two portions of the old
Commonly of Lornmore marked
nos 12 and 14 upon the
plan made by David Aithen
on a remit from the
Court in the action for the
division of the Commonly
and which is referred to
in the grand Decree in
the said action dated 28th
July 1785 and 7th March
1786. On referring to the
plan we find that lot
no 12 is marked "part
of

"of the pasture allotment
 "for ye fauers of Dornoch"
 and lot n^o 14 is
 marked "allotment for
 "the fauers of Dornoch
 "of the Moss" - according
 to the plan therefore these
 pieces of ground were
 allotted not to the Burgh
 as a corporation nor to
 the inhabitants as such,
 but to certain fauers who
 were proprietors of heritages
 in the burgh, and who
 had acquired an interest
 in the Community in respect
 of their possessions.

on referring to the
 process we find that
 this must have been the
 case. The Burgh was not
 called as a party to
 the action and at no
 stage was any appearance
 made by the Burgh or by
 the

II

3.

the community generally. Indeed it would have been incompetent to divide the common: by if the Burgh as a Corporation had had any interest in it because by the act of 1695 c. 38 under which the process of Division was raised, Commonlands belonging to the Crown and to Royal Burghs are specially excluded from its operation.

III

There are moreover findings in the Grand Decerniture to the effect that certain persons "proprietors of lands crops and other linements" in the neighbourhood of the Common had been in constant use of casting turf &c. within the bounds of the common and that certain other persons "proprietors of lands, dofts, houses and gardens in the town of Dornoch and neighbourhood"

"neighbourhood" had been
 in constant use of "casting
 fuel" or peat within
 the marshy part of the
 Donmore rig. " the whole
 " proprietors of houses and
 " crofts in and about
 " the town of Donnoch whether
 " those who have reserved
 " their rights to themselves or
 " those who have disposed
 " them to the grandfather of
 " the present Countess of
 " Sutherland, with those
 " tenements in the Countess
 " own person which includes
 " the whole inhabitants of
 " the town of Donnoch".

These findings further
 support the view that the
 allotment made in the
 operative part of the decree
 was not to the inhabitants
 in general as a community
 or to the Burgh as a
 corporation

IV.

5.

corporation but to the
proprietors of housescroft
in respect of their
possession in the Burgh.
From time to time
the Sutherland family have
acquired numerous fees
crofts and tenements
in and about the
Town of Dornoch and
His Grace is now the
owner of all the allot-
ments with the exception
of the ministers.

not so

From a search in
the Estate Office it has
been ascertained that rent
was paid to the Sutherland
Estate for certain portions
of the ground now claimed
by the Burgh so early
as the years 1819 & 1821
and for others in and
from the year 1843, and
His Grace has had contin-
uous

as if they had
division of the
Community

continuous and undisturbed
possession of the two pieces
of ground referred to in
virtue of his titles for
far more than the prescrip-
tive period.

VII

Beyond the expression
in the Grand Decerniture
assigning the lots in
question to the "inhabitants
of Dornoch" we do not
know upon what the
Burgh now base their
claim to these lots. This
expression in the Grand
Decerniture, if taken by
itself, might be equivocal
but we have we think
given conclusive reasons
against the proposition
that the Burgh as a
Corporation, or the inhabi-
tants as a Community,
had prior to the Grand
Decerniture any interest
in

Decree of Court
of Session
thereon

VIII

by
1 as if they had, a
division of the
Community

in the Community, would
have been impossible under
the terms of the act of
Parliament referred to
and upon which the
action was expressly
founded. If they had
none before the Decerniture
it is clear that the Decern-
iture itself would not
give them any right.

Further - more the possession
since the Decerniture conclusively
interprets the Decerniture itself
in the manner we have
indicated and shows that
the Burgh - have no right
to either of the pieces of
ground which they now claim.

In these circumstances we
have advised His Grace
that the claim now put
forward by the Burgh has
no foundation, and that
the lands in question belong
to
Q

to His Grace in virtue
of his titles.

We regret that
there should be any dis-
pute or misunderstanding
between the Burgh and
His Grace with reference to
this matter, but it appears
to us that we have only
to explain the result of
our investigations to satisfy
yourself and the Burgh that
the pieces of ground in
question belong to His Grace
and that the claim of the
Burgh is founded upon
a mis-apprehension.

We note that the
Burgh also intimated a
claim for the rents received
by His Grace for the pieces
of ground in question
while they were in his
possession. Whether the Duke's
right to the subjects is
doubtful

IX

X

9.

doubtful or not this claim for past rents &c certainly surprised us, as all the expenses of the Burgh usually met by rates levied on the inhabitants have been paid by the Duke and his predecessors from a very early period and the inhabitants have thus been relieved of this burden. We have a note made up from the Estate Books shewing that during the present century the payments made by His Grace on behalf of the Burgh to the end of last year amount to nearly £ 3000.

Moreover the inhabitants were as a favour allowed to graze the portion allotted to the Countess of Sutherland after the division of the Donmore Community in 1785 free of rent down to the year.

year 1863. In that year
the nominal rent of
£ 5⁻ was charged and
has since been regularly
paid. If a fair rent should
be put upon the grazing
in question which is still
enjoyed by the inhabitants
it would amount to probably
five times the sum charged
for it.

We are,

Yours faithfully

Signed) Fords, Murray & Jamieson.

copy Letter

Messrs Jdo. Murray & Jamieson
To

M^r H. M. Mackay

29 March 1890

Author, M. Mackay Solicitor
Dornoch