



Convention of Royal and Parliamentary Burghs.

REPORT

BY THE

SUB-COMMITTEE on the REPRESENTATION and APPEAL from the
ROYAL BURGH of DORNOCH to the CONVENTION of ROYAL
and PARLIAMENTARY BURGHES.

COMMITTEE—

The ASSESSORS for EDINBURGH, WHITHORN, KILRENNY, LOCHMABEN, and DORNOCH.

The ASSESSOR for DORNOCH, *Convener*.

In terms of the remit on the Appeal to the Convention by the Burgh of Dornoch, regarding the loss of portions of their Common Good, the Sub-Committee appointed by the Annual Committee have considered it, and beg now to report on such points in the representation as they have been enabled to investigate.

The claims preferred by the Burgh are:—

- I. For the restoration, by the Duke of Sutherland, of nearly twenty imperial acres of good Arable Land.
- II. For the restoration, by the Duke of Sutherland, of the Ground Rents of certain houses built on the Burgh Links, which His Grace has collected since about the year 1820.
- III. For the restoration, by the Duke of Sutherland, of the Salmon Fishing *ex adverso* of the Burgh's lands.
- IV. For recovery of Burgh Lands presently occupied by Lady Matheson.

The Committee have great pleasure in reporting that Claim II—for the restoration of the Rents or Feu-Duties of the Houses, has been most amicably settled by His Grace the Duke of Sutherland. In September last, Mr James Auldjo Jamieson, W.S., visited Dornoch, and, on behalf of the Duke, renounced all claim to the feu-duties of the twenty-two houses built on the Burgh Links at Littleton, the

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Corporation foregoing any claim for arrears, and becoming bound for any obligations undertaken by the Duke in feu-charters or long leases. These voluntary concessions by His Grace have given great satisfaction to the town's people, and the Committee heartily congratulates the Burgh on the result. This concession will add £5, 10s. annually to the Common Good.

Regarding Claim III. for the Restoration of the Salmon-Fishings *ex adverso* of the Royalty, the Committee heard with considerable satisfaction that it also had been conceded by the Duke of Sutherland, and recorded the matter as having been settled in their Minutes; recently, however, they found to their regret that the report was inaccurate, or, at least, premature. The Committee, having been misled by the report, did not go into this claim, but they hope that His Grace's concession of the Feu-duties is a favourable augury for the further concession of the Fishings at an early period.

Claim I.—For the restoration of twenty acres of good land, which once formed part of the Lonemore Common, demanded, and has received, the serious attention of the Committee, and it has proved a very arduous undertaking, being an admittedly difficult question.

When the Appeal from Dornoch came before the last Convention, the Clerk of the Convention also submitted and read a letter from Messrs Todds, Murray, & Jamieson, W.S., agents for the Duke of Sutherland, transmitting a copy of the correspondence which had taken place between the Town Clerk of Dornoch and them, in regard to the claims made by the Burgh. These documents related chiefly to the claim for the land, and were carefully considered by the Committee, along with the other productions—a voluminous Decreet of the Court, Crown Charters, Prints, Plans, numerous Letters, etc.

The lands in question formed part of a very large Common, over which several of the adjoining proprietors and the smaller feuars and inhabitants (or burgesses?) of Dornoch had common rights of pasturage and of casting fuel or divot. It is not a common in the sense of an exclusive Burgh Common, but of lands in which certain specified persons, and the inhabitants of Dornoch generally, had common rights or servitudes. In one of the letters of Messrs Todds, Murray, & Jamieson, which they sent to the Convention, they remark:—"It would have been incompetent to divide the common 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, commonies belonging to the Crown and to Royal Burghs are specially precluded from its operations." There is no contention that the Loanmore Common was ever the property of the Burgh, or held in burgage. Fortunately for Dornoch, the common or Links, which are burgage, and cannot be divided, are in the happy possession of the Burgh to this day. They extend to about 1000 acres, on which the burgesses graze upwards of seventy head of cattle. So long ago as 1630 Sir Robert Gordon described them thus:—"About this town, along the sea coast, there are the fairest and largest links or green fields of any pairt in Scotland, fitt for archery, goffing, ryding, and all other exercise; they doe surpass the feilds of Montrose or St Andrews." It is on the outskirts of these Links that the houses referred to in the second claim are situate, and, because they are burgage, the Burgh has substantiated their title to the rents.

For the expiscation of the matter in dispute, the Committee feel it necessary to incur an outlay of £5, 10s. 6d. in obtaining excerpts from the "Decreet of Division of the Common of Loanmore, in the case of the Countess and Earl of Sutherland against Sir Hector Munro and others, 1785 and 1786."

The division of the Common under the direction of the Court of Session became necessary by several adjoining proprietors objecting to the Countess

of Sutherland claiming the whole lands as her exclusive property. The Court, however, held it proved "that the following persons, proprietors of lands and crofts, have been in the constant use of pasturing their sheep and cattle on the Common of Loanmore for a period beyond forty years, until interrupted of late by the managers of the Sutherland family;" and again "that the following persons, proprietors of lands, crofts, and other tenements in the neighbourhood of the Common of Loanmore, were in constant use until interrupted within these few years, as above, of casting turf, feal, and divot within the bounds of the said Common without interruption, and that for a period exceeding forty years, and past the memory of man."

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The Corporation of Dornoch aver that the inhabitants or burgesses enjoyed the privileges above named, of pasture, turf, feal, and divot, and base their claims to the several allotments of the lands on the following sections of the Decree.

"Found and hereby find that each person having interest in the said Common is entitled to the under mentioned quantities of land in the same, lying and situated in manner after mentioned, as marken in the plan, and filled with march stones placed in the lines of division of the different allotments, viz." . . .

"No. Sixth.—The allotment for the inhabitants and possessors of Houses and Yards in Dornoch is bounded at the west by a straight line of march stones, with the letters G. S. upon the west side, and the letter D. upon the east side; at the north, by a straight line of march stones, with the letter D. upon the south, and the letter M. upon the north; and at the east by a straight line of march stones, with the letter D. at the west side, and the letters G. S. upon the east, consisting of 26 acres, 2 roods, and 28 falls . . . being bounded by the sea at the south." *This lot has been in the possession of the Burgh since 1786, when they appear to have got it absolutely, and hold it on no other title than this Decree.*

"No. Twelfth.—This allotment is laid off for the inhabitants of Dornoch, adjoining their division of the Moss, from which they can have access either from the county road at the north, or the great road leading west through the Common from Sandy Croft, and is bounded as follows, viz., at the south, by the great road with march stones, lettered upon the north side D., upon the south side with the letter R.; upon the north side by the Meikle Dean park and two march stones, marked with the letter D. upon the south, and G. S. upon the north side; at the west, by a line of march stones, lettered upon the east side D., and on the west side G. S., and consisting of seven acres, one rood, and 39 falls . . . And assigned and hereby assign the said respective quantities of land in said Common, lying and described in manner foresaid, to the several persons named, their heirs and assignees respectively, as their absolute property in time coming." *This lot is in the possession of the Duke of Sutherland, and is now claimed by the Burgh as forming part of the Common Good.*

"No. Fourteenth.—The allotment of the Moss for the inhabitants of the Town of Dornoch is bounded upon the east by a line of march stones running along the west side of the Meikle Dean park, lettered upon the west side D.; upon the east side G.S.; upon the north side by the edge of the Moss a little to the south of the county road; upon the west side by a straight line of march stones lettered upon the east side D.; and upon the west side G.S.; and upon the south side by the allotment of 7 acres 1 rood, and 39 falls of pasture foresaid, and consisting of 7 acres. *This lot is also in the possession of the Duke of Sutherland, and is now claimed on the same grounds as the above. Lots 12 and 14 are about 20 acres imp., and of about £12 sterling agricultural value annually.*

"Ordain the several proprietors before and after named to make payment to the pursuer of their respective proportions of said expenses as stated in said scheme of division and after specified, viz.: . . . the said inhabitants of the Town of Dornoch of the sum of £13, 17s. 1d." *The "Inhabitants" share the expense of the process.*

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The Committee have been unable as yet to discover how the Burgh got possessed in 1786 of the allotment "sixth" in the process, and failed to get the allotments "twelfth" and "fourteenth." If they were not conveyed to the Burgh of Dornoch, they certainly were not conveyed by express deed to the Sutherland family. The terms employed in describing the several allotments in the Decree are so alike, the march stones (now non-existent) being all marked D—doubtless for Dornoch, that there is a strong presumption in favour of the Burgh's ownership.

The lands in dispute appear to have been let on lease in 1830 for twelve years, at a nominal rent, to Mr Fraser, father of the late Provost, and in the letter of tack are described as "part of the Lonemore formerly allotted to the Town of Dornoch as Burgh Common, and now become Lord Stafford's property." The Town Council are of the opinion that the lands were never disposed by the Burgh to Lord Stafford. This point should be of easy settlement, and the Committee look with confidence to the agents of the Duke of Sutherland to throw whatever light they can on this transaction.

The Burgh was in the unique position of having, down to 1886, all the various expenses incidental to the Corporation, including the Town-Clerk's salary paid by the Sutherland estate, and therefore the Minutes of the Burgh are most meagre, and contain no details of administration or accounting, as is the case in burghs having a Common Good out of which their burdens are paid.

In the letter previously referred to from Messrs Tods, Murray, & Jamieson, it is stated "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 or not, this claim for past rents, etc., 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 showing 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."

The Committee consider this statement of the case hardly in accordance with the facts, for against the £3000 should be placed, *per contra*, the revenue from the Burgh's patrimony during the same period as factored by the Sutherland Estate; for instance, the concession of Claim II. accounts for between £300 and £400, and if the Salmon-fishing was once rented at £20 a-year, the balance, if any, against the Burgh in some years would be small. In olden times the revenue from the Town's Fairs were considerable, and were intromitted by the Sutherland Estate.

The present extraordinary position of the Burgh has arisen from the circumstance that when the Sutherland Estate ceased in 1886 to pay the burdens of the Corporation, etc., they omitted to restore the Burgh's patrimony, which they had previously factored. This, your Committee, believe was done through inadvertence, and will be put right as soon as the facts are established.

The Committee have the greatest confidence that the kindly relations which have always existed between the House of Sutherland and the Royal Burgh will not only remain intact, but be strengthened by the discussion of these claims in a friendly spirit, and that the Ex-Provost, His Grace the Duke of Sutherland, will be only too glad to make all fair concessions to the Burgh if, by so doing, he can add to the dignity, independence, and prosperity of the ancient City and Royal Burgh. The progress of Dornoch in recent years is evidence that the Burgh deserves all encouragement. Ten years ago the assessable rental was only £600, two years ago it had risen to £1000, and last year it was about £1260. The magnificent Links

are becoming increasingly attractive to Golfers, and the town, with its delightful air and sea-bathing, is becoming a health-resort. At present the Corporation are arranging to introduce a Water Supply and Drainage System, at a capital outlay of £2400.

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The Convention may be interested in being reminded that in former times it was an important and frequent function of the Convention to help Royal Burghs in recovering their Common Good and other rights. The following cases may be cited :—North Berwick, Dunbar, Linlithgow.

As the Committee have not exhausted the remit, they beg to recommend the Convention to re-commit the whole subject to the same Committee, with powers to take the opinion of Counsel if necessary, and to report to the Annual Committee, with powers to said Annual Committee to take such steps as they may consider advisable.

D. WILLIAM KEMP,
Assessor for Dornoch, and Convener of Committee.

EDINBURGH, *April* 1891.