

Feudal Relations in Burghs of Barony in Aberdeenshire, 1780–1833¹

Ruaraidh Wishart

This article looks at how burghs and landowners, specifically feudal superiors, were combined in a unique institution in Scotland: burghs of barony. It also illustrates how they interacted in four places in Aberdeenshire in the period of 1780–1833. Illustrations have been drawn from four Aberdeenshire burgh collections that are available to consult at Aberdeen City and Aberdeenshire Archives – Laurencekirk, Stonehaven, Macduff, and Rosehearty. These burghs and the sample dates have been chosen mainly for the survival of relevant burgh material within the date period, which ends at the point when the Reform Act of 1833 gave burghs opportunities to gain independence from their superiors. The purpose of the article is to provide an introduction to the topic and note possible directions for associated research. It will not draw any concrete conclusions about relationships between burghs of barony and their superiors across Scotland, although some general observations will be made.

Burghs of barony are not unique to Aberdeenshire. There are many such towns, large and small, right across Scotland that were erected from medieval times² until 1846, when Ardrossan, Scotland's last burgh of barony was erected. They are noted by William Mackay Mackenzie as being 'a class unknown to England',³ and a class that was also quite distinct from royal burghs. One difference between them and their royal counterparts was that they had heavily restricted trade rights until 1672.⁴

Another, perhaps defining, distinction between royal and barony burghs was in their manner of erection. Burghs of barony were established by landowning proprietors in their role as tenant-in-chief by permission of the Crown, but royal burghs were established directly by the Crown. By way of example, Banff received its charter directly from the Crown in 1372, making it a royal burgh.

¹ This article was adapted from a talk given at the Scottish Records Association conference in November 2014, on 'Researching Scotland's Common Lands and Common Good'. I am indebted to the staff at Aberdeen City and Aberdeenshire Archives for the encouragement they have given me in this work. In particular, I would like to thank Martin Hall and Carol Ince for many enlightening conversations on this and the wider topic of Community Land.

² W. M. Mackenzie, *The Scottish Burghs* (Edinburgh, 1949), 80.

³ Mackenzie, *Scottish Burghs*, 78.

⁴ The restriction was eased when an Act of the Scottish Parliament (Act Concerning the Privileges of Royal Burghs, 12 June 1672) allowed burghs of barony to export their own commodities and import all goods except wine, wax, silk, spices and wool.

Macduff's charter of erection, however, was granted by the Crown to the Earl Fife in 1783 (meaning it was not granted directly to the burgh), making it a burgh of barony.

This system meant that burghs of barony were governed to a greater or lesser degree under the feudal system by their subject-superiors, acting under licence from the Crown. This went on until such time as burghs of barony took advantage of the various legislative opportunities that occurred after 1833 to allow them to become more independent of their feudal superiors.

It is worth mentioning here that the system of erection for burghs of barony was similar to a third type of burgh – the burgh of regality. Here the charter of erection was again granted to a subject rather than the burgh, but it was a more powerful subject – either lay or ecclesiastical – who became known in this context as the Lord of Regality. The most important distinction to make when considering these types of burgh is that regality charters also granted lords powers to rule in legal matters (both civil and criminal) within their regality jurisdictions; the superiors in charge of burghs of barony had no such powers.

The motivation for superiors to erect burghs of barony appears to have a monetary dimension. Given the expense involved in obtaining a charter of erection and maintaining a burgh, it seems unimaginable that the early burghs of barony would not have provided some sort of financial benefit to their superiors. At least some (if not most, or all) of the revenues from the burgh went to the superior. Stonehaven's fundamental charter, for example, notes money from the burgh going to both the superior and the feuars⁵ (inhabitants holding land by permission of the superior in return for feu duties and/or services).

This is not to say, however, that there might not have also been a more progressive altruistic motivation for setting up barony burghs. There may have been a hope, for example, that providing inhabitants with more control of local affairs might provide a motivation for economic improvement of the area.

The two early burghs covered in this study (Stonehaven and Rosehearty) both received a portion of burgh revenues for their own purposes, but it has not been possible to prove definitively if this was to the advantage of the superiors involved. It is clear, however, from the 1835 Report of the Royal Commissioners on Municipal Corporations in Scotland that the Commissioners had found evidence across the country that money from what it refers to as 'taxations', here meaning petty customs, were being 'employed by the superiors as a source of private emolument'.⁶

⁵ Aberdeen City and Aberdeenshire Archives (hereafter ACAA), AS/Kstn Stonehaven Fundamental Charter Box, Fundamental Charter (1624): lines 23–4 concern land duties being passed to the feuars for the town's 'comon weals', and line 32 binds the feuars to pay the grassums to their superior.

⁶ *General Report of the Commissioners Appointed to Inquire Into the State of Municipal Corporations in Scotland* (London, 1835), 47.

Later in the history of barony burghs there is evidence of the progressive altruistic motivation noted above which also reflected the fashion for land improvement. Writing years after the formation of the founding village of Laurencekirk in 1768, its superior Lord Gardenstone stated:

I was convinced that the benefits of situation, joined to a spirit of industry duely encouraged were sufficient to surmount the difficulties, and in said year of 1768 I embarked in the project of a village ... I published advertisements thro' the country – that industrious settlers would meet with encouragements. Very moderate premiums to industry, such as five guineas for the first four looms in any weavers house, were proposed ... My view from the beginning was to make the people who settled in the village easy and independent not doubting that such people would make my adjoining land valuable. I could not carry my land to the gates of a thriving town, but I could answer the same purpose by erecting and establishing a thriving town in the heart of my land.⁷

While the recipient of the charter largely determined the status of the burgh, the charter itself usually determined its governance, and in the case of burghs of barony, also gave an indication of what intervention there might be from the superior.

- The 'free and independent' burghs were largely autonomous, meaning their magistrates were elected by the feuars or burgesses in the town.
- What might be termed 'standard' burghs of barony had their governance influenced directly in some way by the proprietor superior, for example by appointing the town's magistrates.
- There was also a third kind of barony burgh where the town was erected without any form of constitutional governance to speak of, meaning it was run entirely by the superior. (Portsoy is one example: the burgh was erected in 1550 by Sir Walter Ogilvie of Boyne and run directly by the superior until it became an autonomous police burgh in 1889 with powers over policing, paving, lighting, cleansing, and other public health matters.)

Aside from this, it has been difficult to establish for the purposes of this article what rights superiors had in general as they were probably specific to their burgh.

From the burghs covered in this article, it will be seen that some superiors were more proactive than others in the administrative affairs of the towns, sometimes using their position to push their cause. In some cases their actions might be partly dictated by the terms of the charter of erection, subsequent legal agreements, and any other arrangements that might have been made with the burgh administration.

On the other hand, the rights of the burghs were more clearly defined and largely dictated by their charters of erection, and any subsequent legal agreements and legislation that may have been implemented after they were set

⁷ ACAA, AS/Klrk/5/1 Laurencekirk Burgh Memoranda and Rental Book (1751–90), Memorandum concerning the village of Laurencekirk, n.d. (c.1784–85).

up. These issues could be noted in their charter of erection and might include such rights as governing within the burgh bounds, electing magistrates for that purpose, having craft guilds, holding markets, running a harbour, imposing petty customs, and collecting shore dues. The charter might also include rights over some land outside the burgh bounds.

This point about rights to lands, harbours, and other assets raises quite a crucial question with regard to the position of the burgh of barony in the feudal chain. Strictly speaking, the land within barony burgh bounds was owned by the superior; the inhabitants and magistrates of the burgh were subjects of the superior. Did burghs of barony own any assets? Indeed, did they have any ‘common good’?

This last seemingly innocuous question about common good raises a lot of other confusing issues, not least of which, what actually constitutes ‘common good’? Is it land? A fund derived from the burgh’s income sources devoted to ‘the common good’? Any property (movable and heritable) owned by the burgh? Or is it all of the above?

Even more confusingly, the answers to those questions will be different depending upon whether they are answered from a present or historical perspective, as the legal framework governing common good has been quite confused and has changed over time.⁸ From a historical perspective the basic question about land ownership and ownership of wider assets by burghs of barony could also be answered either way.

For example, a decision of the Court of Session on 15 November 1769 showed clear division on how burghs of barony held their land. In *Margaret Park vs. William Gib on terce* due from tenements in burghs of barony (where ‘terce’ was the right of a widow to the life-rent of one-third of her husband’s heritable estate), Lord Monboddoo stated his view that the ‘burgesses of a burgh of barony hold their lands of the Crown as much as the burgesses of a burgh-royal, in burgage’. Lord Hailes on the other hand said, ‘I never heard till now that the burgesses of a burgh of barony hold their tenements of the Crown by burgage-holding: they hold feu of their superior.’⁹

Other examples illustrate further confusion concerning common good and burghs of barony. William Mackay Mackenzie stated that burghs of barony had no property as common good,¹⁰ but William Bell’s *Dictionary and Digest of the Law of Scotland* gave an official legal definition of common good as all property of ‘a corporation’ (this is a corporation in a municipal sense that would include

⁸ The answer from a present-day perspective is not within the scope of this article, but more information about this can be found in A. Wightman and J. Perman, *Common Good Land in Scotland: A Review and Critique* (Inverness, 2005), http://www.andywightman.com/docs/commongood_v3.pdf.

⁹ Sir David Dalrymple of Hailes, *Decisions of the Lords and Council and Session* (Edinburgh, 1826), 306.

¹⁰ Mackenzie, *Scottish Burghs*, 82.

burghs of barony).¹¹ Also, Sir Alexander Keith in his quarrying dispute with Stonehaven that will be discussed later, referred to ‘common good’ income being collected by the town.¹²

Again, it is probably safest to treat every burgh on an individual basis. Indeed, Bell and Mackenzie’s views are perhaps more reflective of the actual position before 1833 than they at first appear.

Prior to 1833 most burghs of barony were answerable to a feudal superior if the superiority was still extant, and the privileges they had were largely at the discretion of that superior – usually expressed in their charter of erection. If the feudal superior chose to allow any form of self-government in the burgh, then that body represented a form of municipal corporation that could in theory take control of property and assets. In some cases, feudal superiors named such properties and assets in their burgh’s charter. Some even went as far as to specifically name a common good asset.

So the answer is more qualified than a simple ‘yes’ or ‘no’. Burghs of barony could have assets, and even common good ones at that, if they were granted by the feudal superior either in their charter or at a later date. There are records in the four burgh collections that bear this answer out as well as many of the points made in the background section, and this is also demonstrated in the following studies of assets in the four Aberdeenshire burghs.

In 1624 William Keith, 5th Earl Marischal, granted a fundamental charter to the burgh of Stonehaven that established the basis of the town’s governance by the inhabitants. The town had reputedly been erected in 1587 but the original charter is not extant, so this later charter probably represented a regranting or revision of an earlier arrangement.

The main part of the 1624 agreement allowed the feuars the right to appoint bailies to govern the town in their name and act as their representatives to the Earl Marischal. It also gave them rights to pasturage ground and to levy and collect taxes to be applied to the maintenance of the town. The rights were expressed as follows:

... q[uhi]lk p[er]sons and inhabitants that shall happen to be feiuars in the s[ai]ds towne in all tyme coming shall haw ... the comonty [and] priviledges efter mentioned Wiz in comonty of pasturag of all [and] haill the brays of stonehave ... w[i]t[h] Comonty of casting fewell feall [and] diffot [and] pastorag of all [and] haill the muir called the Smidie muir ... as lykways for upholding off of the common weall of the s[ai]d towne of building bridges [and] calsows the s[ai]ds Noble Lord for himself [and] his fors[ai]ds hes disponed ... In favore of the s[ai]ds Inhabitants to be employed as said is the haill land customs w[i]t[h] the s[ai]d towne [and] priviledges therof in all tym coming [and] ffor collecting Ingathering therof [and] furthering off all comone weals requisit ...¹³

¹¹ W. Bell, *Dictionary and Digest of the Law of Scotland* (Edinburgh, 1838), 188.

¹² ACAA, AS/Kstn Stonehaven Harbour Box 11, *Appellant’s Case in the House of Lords* (Edinburgh, n.d. [c.1832]), p. 7.

¹³ ACAA, AS/Kstn Stonehaven Burgh Fundamental Charter (1624).

In summary, this meant that Stonehaven could impose tax in order to form a public fund, and also had a right to use the commonry (common land for use by all inhabitants – in this case mostly the Smiddymuir) for pasturage, and cutting turfs for fuel, fencing, and roofing purposes (fuel, feal and divot).

Roseheartly was erected by Alexander Forbes, 2nd Lord Pitsligo, in 1681. It has not been possible to locate Roseheartly's Charter¹⁴ but its ratification sets out customs and tolls that the town has the right to collect and use 'at their pleasure':

the burgesses of the said burgh ... to apply the tolls, customs and other duties of the said markets and free fairs to their own proper use ... uplift all and sundry the small customs, anchorages, dock-silver, ground line, and all others duties and emoluments of the said harbour or seaport of Roseheartly, in all time coming, and to apply the same to their own proper use or convey thereupon at their pleasure.¹⁵

A later contract made by a subsequent owner in 1811, Francis Garden Campbell of Troup, with the feuars of the town refers to charter rights that had been granted in 1681 to the feuars of feal and divot on the Lochie Lair and part of the Cairnhill Muir.¹⁶

The Royal Commissioners on Municipal Corporations in Scotland also noted that the original charter nominated the superior as the provost of the town who in turn nominated the bailies and councillors,¹⁷ so the superior clearly had an active role in the town's business.

James Duff, 2nd Earl Fife, re-erected Macduff as a free and independent burgh of barony in 1783. His charter gave:

full power and privileges to the Burgesses ... to elect their own Magistrates and Counsellors for the exercise of such jurisdictions as is by Law competent and for the due and regular administration of such Common Good as may belong to the Community.¹⁸

¹⁴ The Signature providing an English version is available at the National Records of Scotland, SIG1/56/28 Signature of the lands of Erection of Rosshartie into a free Barony granted to Alexander, Lord Forbes and Burgh of Roseheartly (13 July 1681).

¹⁵ 'Ratification in favour of [Alexander Forbes], lord [Forbes of] Pitsligo', in K. M. Brown *et al.* (eds), *The Records of the Parliaments of Scotland to 1707* (St Andrews, 2007–15), 1681/7/122.

¹⁶ ACAA, AS/Arhy/1/1 Roseheartly Burgh Minutes (1811–1834), p. 4, Copy contract between Francis Garden Campbell and the Feuars of Roseheartly, 11 May 1811.

¹⁷ 'Tables shewing the state and condition of various Burghs of Barony and Unincorporated Towns etc: II Burghs of Barony dependent upon a Superior but having Charters or Grants', in *Municipal Corporations in Scotland – Appendix to the General Report of the Commissioners* (London, 1835), 94.

¹⁸ ACAA, AS/Bmcd/1/1 Macduff Burgh Minutes (1783–1852), Copy Charter of Erection and Novodamus within minute of meeting for 3 September 1783.

Here, there is a clear allowance for the burgh to control its common good. Given that no land was included in the charter the context suggests it was a fund generated from its revenues.

Lord Gardenstone did the same in his charter of erection for Laurencekirk in 1779. He gave:

full power and privilege to the burgesses ... to elect their own Magistrates and Councillors for the exercise of such jurisdiction, as is competent to such Magistrates by Law, and for the due and regular administration of such Common Good as may pertain and belong to the said community.¹⁹

He also drew up an agreement with the council on 7 June 1780 that established a form of burgh taxation to form the basis of a fund for the administration of the town – he bound himself and his successors to pay the town £10 annually for public use, to renew long leases at the end of every 100 years for a premium of two years' rent, to burden future grants of long lease with payment of 1*d.* per fall²⁰ to the public fund on the one hand, and on the other hand that the burgesses each bind themselves to pay 1*d.* per fall to the same common fund up to a limit of 40 falls. The establishment of this fund was dependent upon all the burgesses signing up to it, so when in 1781 he noted that not everyone had subscribed, he set a deadline for everyone to accept, otherwise the offer would be withdrawn. In selling the idea again, he also said:

Many excellent things may soon be done, by means of this fund for your common benefit. One thing I shall only mention at present, which is to collect and convey abundance of good water to every house by pipes, a thing very practicable.²¹

This example concerning Lord Gardenstone shows a feudal superior involving himself paternalistically in the affairs of a town. In this case he tried to force the burgesses to adopt the establishment of the fund by threatening to withdraw it forever, but also argued positively for the benefit that the fund could have.

Later on in June 1781, he made a big hint about the maintenance of another town asset, its street. He sent the council a letter from a visitor, Alexander Ramsay, giving recommendations about how to do this, and demanded that it be engrossed in the town minute book. Ramsay wrote '[the] Inhabitants of your village would take better care of their street if they were made to pay for repairing it'. He suggested that everyone should take responsibility for the maintenance of the stretch of street in front of their house, and could also fix

¹⁹ ACAA, *Translation of Charter in Favour of the Burgh of Laurencekirk, 27 August 1779* (Aberdeen 1876), contained within AS/Klrk/5/1 Laurencekirk Burgh Memoranda and Rental Book (1751–1790).

²⁰ A linear measure of land equal to 6 ells or 18½ feet.

²¹ ACAA, AS/Klrk/1/1 Laurencekirk Burgh Minutes (1780–1819), minutes of meetings for 7 June 1780 and 6 June 1781.

their part with materials provided for this purpose, ‘when they would otherwise be idle – they would vye with one another who should keep the street in best order and give a complaint ... to the Magistrates when anyone neglected to do his part’.²²

It also worked the other way in Laurencekirk. Occasionally when the town had an issue relating to the public fund the council approached Lord Gardenstone for advice, such as when it wished to claim expenses incurred in managing the town’s quarry on 27 February 1786 or wished to put public money towards funding a Sunday school in this example from 20 April 1790:

The meeting are unanimous of opinion that a Sunday School will be highly beneficial to the young children of this Town and think parts of the Funds could not be better applied than for to encourage such an undertaking, but decline to do any thing decisive in the Matter until they have an opportunity of consulting Lord Gardenstone.²³

The Earl Fife was not so direct in his dealings with Macduff concerning the management of its assets. Only once did he demand that the town should meet – on 26 October 1805 – ‘for taking into consideration the situation of the streets and lanes of the Town, for having the same repaired and nuisances removed therefrom’.²⁴ Otherwise, his involvement in town affairs – perhaps hints for improving the town – came in the form of large gifts. On 16 March 1818 he donated £7,000 towards the improvement of the town harbour and a new pier, and a week later on 21 March an eight-day clock was gifted to the town for the same harbour.²⁵ On 5 December 1827 the Council ‘considered the utility and necessity of setting up the lamps gifted by the Noble Superior to the Town’, and later had them set up and lit for the season.²⁶

In theory, feudal superiors, as tenant-in-chief, also had control of the ‘fixed’ property of their barony burghs (land, harbours, and so on) and under feudal law could appropriate it at any time. The matter became a bit more complicated, however, if property had been transferred to the control of burghs through a legal charter.

In the four burghs researched, if the feudal superiors wanted ‘chartered’ land it appears they felt the need to work around the charters, sometimes by persuading their burghs to hand it to them. For example, in April 1811 a contract was drawn up between the feuars of Roseheartly and the town’s then superior Francis Garden Campbell of Troup. By this contract the feuars were given the pier and harbour in the town (including responsibilities for repairs and improvements), with associated duties (such as harbour dues) and a

²² Ibid., copy letter of Alexander Ramsay, n.d. (c. June 1781).

²³ Ibid., minute of meeting, 20 April 1790.

²⁴ ACAA, AS/Bmcd/1/1 Macduff Burgh Minutes (1783–1852), minute of meeting for 26 October 1805.

²⁵ Ibid., minutes of meetings for 16 and 21 March 1818.

²⁶ Ibid., minute of meeting for 5 December 1827.

payment from Francis Garden Campbell and his heirs of £100 in ten annual instalments towards their maintenance and improvement. He also disposed the ground situated at the shorehead of the Sea Town of Rosehearty in favour of the town for use of shipbuilding, erecting warehouses or anything else for the good of the town. In return the feuars were to give him the right to take away shell sand from the Rosehearty shore, and renounce and give up every claim under Rosehearty's charter of erection of pasturage or cutting feal divots on Lochie Lair and part of Cairnhill Muir 'now inclosed by Francis Garden Campbell'.²⁷

An 1836 parliamentary report into the state of Rosehearty's affairs did note, however, that the town still retained a small part of the Red Moss which was enclosed by the superior's land, and that he still authorised his tenants to take peat and moss out of it.²⁸

An interesting episode that has parallels with this concerns a similar situation with enclosed land in 1812 – not concerning its superior, but a former one. Garden of Troup was not the only landowning family in the area surrounding Rosehearty. The Forbes of Pitsligo family also owned land there, and indeed at one point owned Rosehearty and had the superiority over the town until it was bought by the Garden of Troup estate. On 26 March 1812, William Forbes of Pitsligo contested the town of Rosehearty's claim to the use of a road going through his fields. The town council disagreed as it felt it had a legitimate right by way of its charter and resolved to resist William Forbes' contention.

His response to the town's decision displays a fair amount of passive aggression:

[I] regret to find ...[the] inhabitants of Rosehearty are determined to assert their right to a road through my fields at Pitsligo. I really think this extremely unreasonable and if it were to come into a court of Justice I have no doubt of the issue, but as law shall be my last resort I shall lay the business before the first District meeting of the Road Trustees.²⁹

The threat of further action put a stop to the dispute – the meeting considering Pitsligo's response unanimously decided 'not to interfere in the foresaid matter in any manner of way'.³⁰ It is interesting to note that the issue progressed to this stage, however, given the position of the town superior, Francis Garden Campbell, as Rosehearty's provost.

²⁷ ACAA, AS/Arhy/1/1 Rosehearty Burgh Minutes (1811–1834), p. 4, Copy contract between Francis Garden Campbell and the Feuars of Rosehearty, 11 May 1811.

²⁸ 'Report on the Burgh of Barony of Rosehearty', in *Municipal Corporations in Scotland – Local Reports from the Commissioners on Burghs of Regality and Barony, and Unincorporated Towns* (London, 1836), 145–8 (147).

²⁹ ACAA, AS/Arhy/1/1 Rosehearty Burgh Minutes (1811–1834), pp. 12–13, minute of meeting for 14 July 1812.

³⁰ *Ibid.*

Stonehaven also experienced an attempted land grab, but the outcome was quite different. According to the feuars of the town the agent for its superior, Robert Hill WS, attended a feuars meeting on 6 September 1798 after George Keith Elphinstone, Lord Keith, had bought the superiority to the town. Robert Hill suggested that the greater part of the commonty of the Smiddymuir (mentioned in the 1624 charter) be transferred to Lord Keith. In return it was suggested that entries and charters would be given to the feuars in order to sort out widespread confusion of title that supposedly existed, without a fee for their composition.³¹ The feuars were persuaded and renounced their right to the commonty with much deference, due to the great expense normally associated with drawing up new charters. They also decided to renounce their right to the whole commonty, as there would be great cost in dividing it in order to transfer the part that Lord Keith wanted. All they asked in return was that they be allowed a small part to provide clay for building purposes.³²

Unfortunately Robert Hill's suggestion didn't go any further than that. Despite the feuars' favour of renouncing to him their right to the commonty, Lord Keith still demanded that new charters be drawn up for each property in the town at a cost of a year's rent for their composition if they could not prove title back to the fundamental charter of 1624.³³

This episode concerning the Smiddymuir is part of a wider set of events that led to a breakdown in the relationship between Stonehaven and its superior, and also raised significant questions about the rights of superiors. The town's fundamental charter effectively gave the feuars rights from the Earl Marischal to govern the town, subject to his approval of the bailies (inhabitant burgesses that the feuars chose to act on their behalf in relation to the town's affairs), and to collect the duties necessary for running the town. Later on, the shore dues from the harbour were added to the duties collected by the bailies through a transfer of these responsibilities by the Earl Marischal to the town's control in 1697.³⁴

For most of the period between the 10th Earl Marischal forfeiting his estates after the 1715 Uprising and Lord Keith's purchase of the superiority of the town in 1797, Stonehaven had been owned by the York Building Company, during which time the feuars had chosen their bailies who acted without nomination by the superior. When Lord Keith took the superiority the

³¹ ACAA, AS/Kstn Stonehaven Town Council Box 10, Memorial and Queries for James Thomson Esq. and other Proprietors of Houses in the Town of Stonehaven (1805), pp. 9–10.

³² ACAA, AS/Kstn Stonehaven Town Council Box 10, Loose copy minute of the Bailies and Inhabitants of Stonehaven, 6 September 1798, p. 3.

³³ ACAA, AS/Kstn Stonehaven Town Council Box 10, Memorial and Queries for James Thomson Esq. and other Proprietors of Houses in the Town of Stonehaven (1805), p. 11.

³⁴ ACAA, AS/Kstn Stonehaven Harbour Box 11, *Appellant's Case in the House of Lords* (Edinburgh, n.d. [c.1832]), p. 5.

practice of nomination was resurrected, and this seems to have operated as a formality.³⁵

However, after his accession to the superiority Lord Keith began to make various claims in relation to the feuars and the right of the bailies to manage the town. The issue concerning new charters and tracing title back to the 1624 fundamental charter was the first part of a case that in hindsight was being built to challenge this right – the feuars could perhaps have been disqualified from nominating the bailies if they couldn't trace title back to 1624. His claim to arrears on shore dues going back 40 years was another part of this case.³⁶

These elements were later brought together in May 1813 when Lord Keith was granted an interdict from the Sheriff of Kincardineshire to stop the town from selling the right to collect shore dues by public auction. This had a tremendous effect on the town, as shortly after that date its minutes suddenly stop, and the bailies were prevented from governing the town any further.³⁷ The cause of this situation was that Lord Keith had refused to nominate the latest bailies chosen, and had disputed their right to act on behalf of the town in functions like collecting shore dues. Indeed, this collection of revenues seems to be the real reason he stopped the bailies from carrying out their duties.

In a petition to the Sheriff of Kincardineshire, the feuars say

... whatever right of confirmation Lord Keith may have, he is not to make use of that right for the purpose of depriving the Feuars of Stonehaven of their property. He seems to think that by refusing to confirm the Feuars nomination, he can deprive them of bailies and Managers altogether, and that having so deprived them of persons to manage their concerns and defend their rights, he may seize upon these rights with impunity ...³⁸

The feuars claimed that their right to collect the shore dues was expressed in the charter as a right to collect 'land customs' and these they had collected from time immemorial (it was only later that a more specific and legally acceptable origin of the right was claimed).³⁹ On the other hand they stated that Lord Keith had not produced any title that gave him the right to claim them, and that the right had not been bought by him at the judicial sale that gave him the superiority to the town. On this basis they claimed the shore dues

³⁵ ACAA, AS/Kstn Stonehaven Town Council Box 4A, Petition of the Bailies of Stonehaven to the Sheriff of Kincardineshire, 20 May 1813, p. 2.

³⁶ ACAA, AS/Kstn Stonehaven Town Council Box 10, Memorial and Queries for James Thomson Esq. and other Proprietors of Houses in the Town of Stonehaven (1805) pp. 6, 10, 11, 16.

³⁷ ACAA, AS/Kstn/1/1 Stonehaven Burgh Minutes (1786–1837), pp. 161–4. The last minute of meeting before October 1823 was dated 10 May 1813.

³⁸ ACAA, AS/Kstn Stonehaven Town Council Box 4A, Petition of the Bailies of Stonehaven to the Sheriff of Kincardineshire, 20 May 1813, p. 3.

³⁹ ACAA, AS/Kstn Stonehaven Harbour Box 11, *Appellant's Case in the House of Lords* (Edinburgh, n.d. [c.1832]), p. 5.

were theirs as ‘it appears that his predecessors in the superiority of Stonehaven expressly conveyed away this very right which he now says belongs to him’.⁴⁰ The feuars went on to state that Lord Keith had made other ‘pretensions’ in claiming rights to the Hill of Downie, the Moss of Cairnie, and the rocks and quarries of Stonehaven. It would seem that the feuars and Lord Keith had very different ideas about how far the rights of superiority and those of the burgh extended.

The feuars petition ultimately did not work, and the dispute went between lawyers for nearly ten years, during which time the bailies were not allowed to govern the town – Lord Keith’s factor took over.⁴¹ There was also no conclusion to this affair as Lord Keith died in March 1823 and his trustees finally nominated new bailies to the town in November allowing them to manage it once more.⁴²

The matter of how far the superior’s rights extended in Stonehaven did not end there, because another related problem arose two years later when the town gained an act of parliament in 1825 to improve its harbour. The act set up a harbour trust consisting of a number of gentlemen of Kincardine County, including the MP for the area, the Sheriff Depute and Stonehaven’s superior, alongside three elected feuars from the town.⁴³ The membership of this body shows that it had both burgh and county interests, and a lot of authority with regard to the harbour area in the town. But what authority did this organisation have in relation to the wider burgh area, and how did that operate with regard to burgh lands? Was it part of the burgh administration, with access to the same rights under the fundamental charter? Or was it independent of the burgh and deprived of access to charter rights, having been established by parliament?

The previous questions about rights of superiors and the ones above concerning the new harbour trust came into conflict in 1825 when the harbour trust gave notice to the superiority’s new incumbent, Sir Alexander Keith, that it was going to take building material out of the Redcraig Quarry on the Stonehaven braes – one of the quarries previously claimed by his predecessor. Predictably, the new superior objected.

The points that were argued over in the subsequent case in the Court of Session were these:

- The act of parliament establishing the trust gave the trustees the right to acquire land and open quarries, forcefully if necessary, within certain limits outside the town for the purpose of improving and maintaining the harbour.

⁴⁰ ACAA, AS/Kstn Stonehaven Town Council Box 4A, Petition of the Bailies of Stonehaven to the Sheriff of Kincardineshire, 20 May 1813, p. 8.

⁴¹ ACAA, AS/Kstn/1/1 Stonehaven Burgh Minutes (1786–1837), p. 186, minute of meeting for 6 December 1823 notes this fact in relation to a demand for the town’s documents to be returned.

⁴² *Ibid.*, p. 169, minute of meeting for 26 November 1823.

⁴³ ACAA, AS/Kstn Stonehaven Harbour Box 11, Act for Improving and Maintaining the Harbour of the Burgh of Stonehaven, 20 May 1825, p. 2.

- The Redcraig Quarry was in the Stonehaven braes within the limits set by the act of parliament, although Sir Alexander Keith maintained it formed part of his lands of Boggatyhead – not the commonalty
- The fundamental charter of 1624 defined the Stonehaven braes as commonalty land for use of the burgh for pasturage, fuel, feal and divot. This was argued by the harbour trust to mean the land was held in common for all purposes (including quarrying), as it had been used for time immemorial.
- Between 1715 and 1797 the quarry had been run by the town. The harbour trust claimed it was used for maintaining buildings and public works in the town (such as the steeple and the harbour) as well as providing a source of revenue by selling stones to outsiders.
- Annual agreements made with the feuars by Lord Keith and his successor for use of the quarry provided them with a right to take stones freely from the quarry for their own use on their properties. Sir Alexander Keith argued this right did not extend to public works being carried out by the managers of the town.
- In 1797 George Keith Elphinstone purchased the superiority to the town, which was then passed to Sir Alexander Keith – according to the trustees this did not provide title to specific subjects in the town.⁴⁴

The Court of Session opinion in this case noted that the right to the braes conferred on the feuars by the 1624 charter was only a right of pasturage, not of quarrying. In any case there was no evidence that rights to the braes had been acquired by the harbour trust. This made the charter irrelevant and shifted focus to the act of parliament that established the trust. The Court's opinion on this was that it gave the trustees a right to open quarries, not to enter on existing ones.⁴⁵

So despite raising the issue of how far Lord Keith's superiority extended over the town's assets, the question was never answered. The Court of Session ruling directed attention away from a definition of the superior's rights in subsequent action at the House of Lords and, in an effort to keep the improvement work on the harbour going during the dispute, the trustees quickly decided to open other quarries on the braes and transport stone from elsewhere.⁴⁶

What can we take from this short study? In all four of the burghs examined the superiors attempted to influence the management of assets, to a greater or lesser degree. Some were more paternalistic than others and some more forceful than others in imposing their will. The charters of erection also seem to have been the key to the fortunes or misfortunes of the towns – out of the four burghs, the free and independent burghs of Macduff and Laurencekirk

⁴⁴ ACAA, AS/Kstn Stonehaven Harbour Box 11, *Appellant's Case in the House of Lords* (Edinburgh, n.d. [c.1832]).

⁴⁵ *Ibid.*, pp. 21–2.

⁴⁶ ACAA, AS/Kstn Stonehaven Harbour Box 4, Progress Reports by Robert Stevenson on Stonehaven's Harbour, 24 June 1826 and 21 October 1826.

fared much better in their relationships with their superiors than Stonehaven and Rosehearty, which had less independence. In particular, the superiors of those burghs with less independence attempted to sidestep their town charters in order to gain control of town assets.

It is also interesting to note that the free and independent burghs in this study were erected in the 1780s, just as the vogue for land improvement was coming into fashion. While the older towns of Rosehearty and Stonehaven were given common land in their charters, Laurencekirk and Macduff were not. The motivations for this move are not clear, but the probable effect would have been to focus town efforts away from traditional land-related activities like grazing and onto more 'progressive' matters concerning trade and industry. In any case, Lord Gardenstone's aspirations for Laurencekirk suggest a connection between later burghs of barony and the effect of 'land improvement' as an urban phenomenon which is worth consideration alongside its more widely known effects in rural areas. There may also be a connection between burgh land grabs by superiors and the land improvement vogue, similar to the land improvement disputes associated with the Highland Clearances.

Stonehaven's harbour dispute highlights the potential confusion that could arise between burgh charter rights, superior rights, and those of more recent trusts controlling burgh assets like harbours. The wider issues experienced by Stonehaven and its new superiors could be put down to a number of factors: failure to keep legal documents (such as the fundamental charter) up to date and fit for purpose; the difficulties of working with an ancient landholding system and burgh system that were both out of date and unclear on how far rights of superiors extended; and a lack of awareness from local administrators and distant legislators of what their harbour trust legislation needed to take into account in terms of other relevant legal documents, landholding systems, and burgh systems that were in force.

It may be that there were similar problems experienced in other burghs of barony that might provide useful comparisons. The issue of confusion over rights in relation to burgh assets being put out to trust would perhaps prove fruitful as a study of its own.

It is also worth considering that surviving estate collections for feudal superiors in archive repositories could provide more information on these points and other issues concerning the relationships between superiors and their burghs. They may also provide insights into the motivations behind superiors' actions in relation to their burghs of barony.

While it has not been possible to prove any general points that affected all burghs of barony in Scotland, hopefully this all too brief review of relationships between superiors and magistrates in four Aberdeenshire burghs of barony provides a useful start for further study of this unique institution in Scotland's history.