LAND TENURES IN SCOTLAND

IN THE

XII AND XIII CENTURIES

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CHAPTER I

Introduction - the evidence

The history of this period in Scotland can to some extent be studied in terms of English influence on the country. However true such an interpretation of the period may be, it is the interpretation which the nature of the sources forces upon it. Certainly there was far more English influence upon Scotland in XII and XIII centuries than at any time before XVIII and a much closer co-operation between the governing circles and the landowning class of the two countries than at any time before 1603. It is this very co-operation which gives the history of the period its form. For a reconstruction, if it is not to be entirely imaginative, must use the written material available and the written material for the period is the record of the section of the population which had close affinities with England - which was in its nature Anglo-Norman. It results in the history of a political class whose influence over the law and government and the top level of social structure of the country was fundamental - but whose influence on the lower levels of society is unrecorded and thus left to the imagination.

The records of the period are sparse in the extreme. There are only two native chronicles - Melrose and Holyrood - and the narrative must be filled in from fortuitous accounts by English and Irish chroniclers and Scandinavian sagas. Government record is almost non-existent and the main sources of information are collections and

haphazard survivals of legal deeds or charters. The historical bias which this record will produce is obvious and it must be used cautiously. It has been estimated that English history in XIII century is constructed 60% from government record, and almost 40% from monastic chronicles. Although the trend of research in recent years has been to increase the tiny percentage constructed from charters, a foundation picture is there, which has only to be filled in in parts and altered in parts. Scottish history of this period is almost entirely an exercise in writing history from charters and this work is very largely a study of charter material of the XII and XIII centuries.

The use of charters to investigate land tenure is a natural one. The documents were drawn up to record land transfers, the exchange and creation of tenure, and the use of them to reconstruct the tenurial system involves no stretching of the evidence. An excellent summary of the charter material of Scottish history is provided in the Stair Society's Sources and Literature of Scots Law and need not be repeated here.

Charters, however, do create certain fairly obvious distortions. Some are inherent in the document itself. The highly conventionalized formulae which it uses to describe the transaction which it records can produce an effective concealment of its true nature. Certainly it makes no allowances for divergences of situation and its effect is to impose an artificial legal uniformity by using one form of document to apply to all forms of land transaction. Because there is little or no corrective evidence we cannot know how far the fact was concealed by formal legal terminology.

This difficulty is complicated in Scotland by the further difficulty of disentangling Scottish fact from Anglo-Norman form. In XII century Scotland the charter is par excellence the instrument of the Anglo-Norman political class, and it reflects its ideas, purposes and interests. It is English in origin and in character. Until the mid XIII century at least, it remains to some extent responsive to changes in the English document. The earliest extant Scottish charter, that of Duncan II to the monks of St. Cuthbert, was clearly drawn up under English influence, and its matter is as English as its form.[1]

Edgar's grants are in a similar position. They all owe their preservation to the Durham ownership of Coldingham. With one exception, all the charters before the reign of King David, and those for a great part during his reign, deal with the southern part of Scotland, the Anglian part and the part most open to English influence, and they cannot be regarded as in any way reflecting such traditional Scottish practice as may have existed. The value of deduction from charters drawn up in a fairly stereotyped form is, however, revealed by a comparison of the only three land grants of Alexander I which have survived. Two are to Coldingham,[2] with its strong Anglian and Anglo-Norman connections, and the other is to Scone,[3] recording a gift of the island of Loch Tay - in the centre of the old Scottish kingdom. None of them is very definite, and certainly the Scone charter is no more

1. L.C. XII
2. L.C. XXVI; XXXI
3. L.C. XLVII

particularly Scottish than the Coldingham grants. Any difference arises from the fact that the Coldingham grants are confirmations of Edgar's gifts sicut breve fratris mei Edgaris regis vobis testatur while the Scone charter records a new grant with provision for the building of a church on the island of Loch Tay.

The grants of Alexander I are very few - in comparison with those of his successor, David I, issued during his brother's reign when he was acting as Earl in the south. The chances of survival are perhaps adequate explanation, but the division of authority in that reign whereby the king devoted his attentions to the northern part of the kingdom, and his brother David was responsible for the south, may also be the reason - that English influence had not penetrated to the north, and the division postponed its arrival. Certainly the acta of Earl David are significant of future development. David was predominantly an Anglo-Norman baron, owning important estates in England and having strong affinities with other Anglo-Norman barons. His grants in his capacity as English baron of lands in his English estates to English religious houses are no different from his equivalent Scottish documents and his administration of the south as Earl paved the way for his comprehensive Anglo-Norman policy as king.

The composition and working of the Scottish royal chancery has not yet been studied, but in this early period it was obviously both an initiator and a model. There must have been considerable English staffing in David's chancery and continued employment of those clerks earlier used in administering his English property and the southern earldom. The English training and background of the chancery staff

was probably the most effective organ for spreading new concepts and imposing them on local practices. This process was backed up by baronial action. The Anglo-Norman barons who drifted into Scotland with the encouragement of the Crown in XII century must inevitably have tended to run their Scottish estates on the same lines as their English property and close links must have been forged. Their Scottish documents were in all probability drawn up by the same scribes who drafted their English charters. Another important instrument in the spread of the charter practice was the church. The large religious houses founded in Scotland in XII century had, without exception, English origin and close English connection. Their personnel were recruited from English houses and the lawyers and scribes employed in the drafting of documents must frequently have been well versed in English practice and have naturally carried their familiar ways into Scotland. Church scribes were often used too for the drafting of documents on behalf of laymen who could not employ their own scribes.

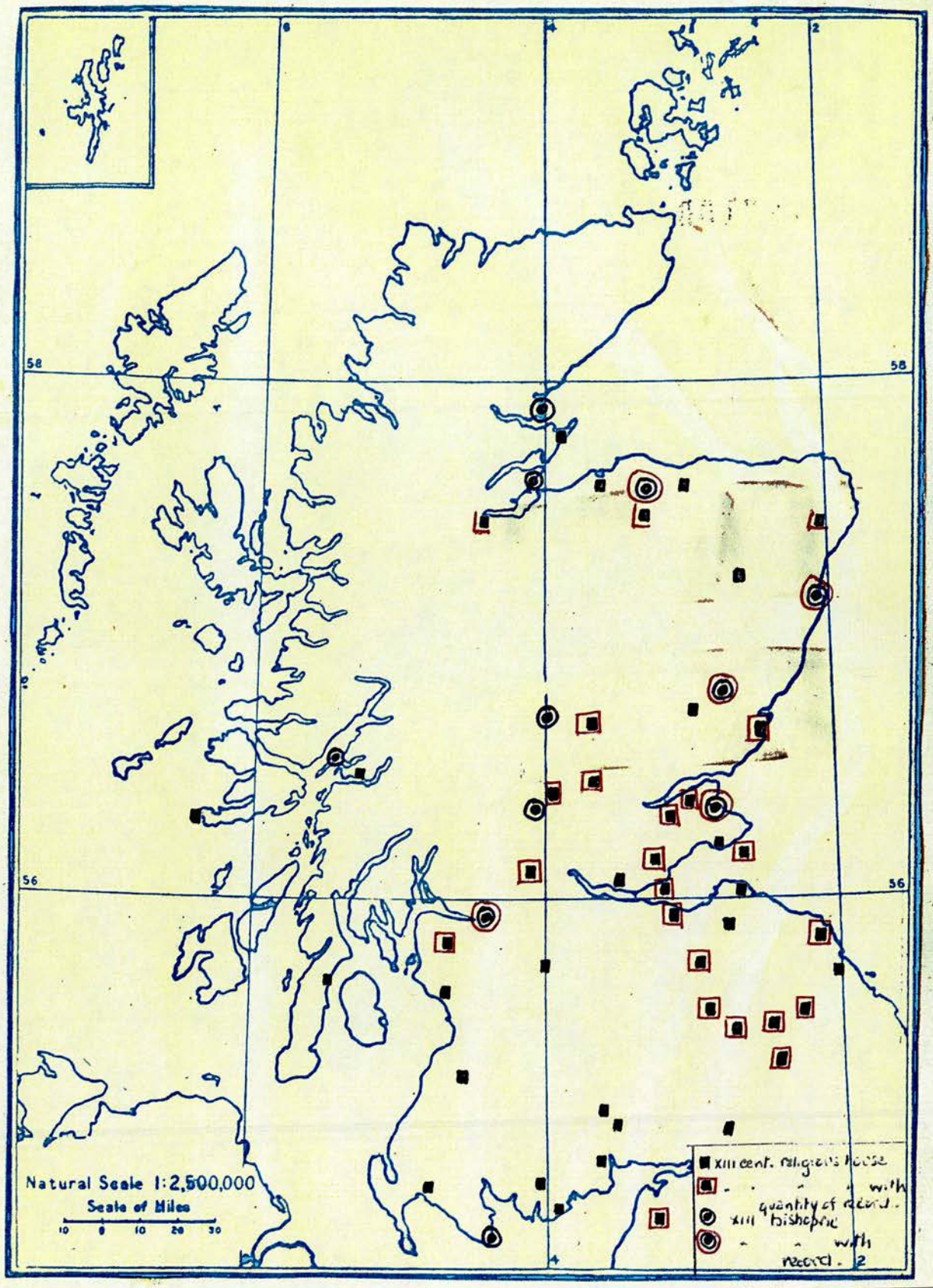
The model, therefore, was alien and it tended to be applied in a conventional and artificial manner to situations which the charter and its forms were never evolved to meet. Some adaptations were necessarily made and it is in these that the Scottish charter begins to show differences from its English equivalent. These, however, though significant, are not extensive in this period. Although this charter practice was to some extent divorced from reality, it did correspond to a very real influence exerted by its users on the institutions and situations with which it dealt - and its use to some extent produced the uniformity and conformity which it assumed. The adoption of

Anglo-Norman charters by the established "Celtic" nobles like Earls of Lennox and Strathearn and the Lords of Galloway is a fact of profound significance and a definite point in the Anglo-Normanizing of Scotland.

The limitations inherent in the charter itself as historical record are, therefore, real but must not be exaggerated. Apart from these limitations, Scottish charters have survived in a way that further restricts their value.

The church was the chief promoter in the use of the charter to record gifts of land, and the church continued to be the chief venerator of the written title to land. The earliest charters all concern the church - charters to laymen are a later feature - and throughout the Middle Ages, religious houses took great care of their documents. Their custom of maintaining careful and consistent record of their title deeds has been responsible for the preservation of the great bulk of charters in the early period. For church property, too, there is record not only of initial endowment but also frequently of subsequent transactions involving the land, and a fairly coherent picture is presented. The record of lay land-holding has survived in a much more haphazard manner. Original charters of enfeoffment are rare. Frequently lands which figure in one charter are never mentioned in subsequent record; their future career is unknown: they may have been revoked, alienated, have escheated, been subjected to important litigation, and it is purely a matter of chance whether we know or not. Consequently our knowledge is weighted very considerably in favour of lands in which a religious institution had some kind of interest.

ECCLESIASTICAL RECORD



The preservation of most of the charter evidence in ecclesiastical record means that the geographical distribution of the record is also limited to the areas which were favoured by religious settlement. These were concentrated in XII and XIII centuries in the south, south-east, south-west and east of Scotland - with the north and west entirely omitted. The map which shows the distribution of cartularies illustrates their limitation, and shows in what parts of Scotland we can expect no information. Serious though this limitation is, it does not produce such a serious distortion as might be expected. Those areas which yield evidence were economically and politically the important parts of the country - the parts which left their mark on the institutions and law. But the distortion is that, since these were the economically and politically important parts of the land, they were the parts subject to and receptive of new ideas and their records are the records of the new ideas - old customs entering but rarely. In the first half of the XII century all the houses with surviving record were in the south except Deer whose records petered out with the house itself during the XII century. All the evidence then is for southern houses. Evidence for the north comes later and is never so full. The same is true of the evidence from cathedral chapters, but in this case the registers of Moray and Aberdeen do much to redress the uneven balance of monastic record.

Purely lay charters are sometimes included in religious cartularies but there is no system about their survival. Because they are so few in number, it is difficult to ascertain the extent to which they were used in the XII century to record land transactions between laymen.

Only six lay charters have survived from the period up to 1153[1] and five of them are royal. Malcolm IV's reign produces lay charters on the same scale and it is not until the last quarter of the century, in William the Lyon's reign (1165-1214), that they become numerous. The vicissitudes of secular life, especially in the war period at the beginning of the XIV century, explain partly why lay charters should not have survived in the same quantity and condition as ecclesiastical records but a more important factor is the continuance of the practice of verbal and symbolic vesting of land in lay society, where reverence for the written word was a later characteristic. Allowing a time-lag of approximately 75 years, the same position is found in England in the XI and early XII centuries. There are no charters of enfeoffment of the big barons of the Norman period, and in the lower spheres of society subinfeudation charters are very rare. It is not until the beginning of the XII century that charters are commonly used in England to record grants of land for knight service (and that involved nearly all lay land holdings in the higher levels of society). The detailed knowledge of land-holding in England and of the structure of English honours comes from government record, financial, legal or administrative (e.g. Domesday Book, the Red Book of Exchequer, the Book of Fees) rather than from charters. Similarly the earliest information about a royal endowment of a layman in Scotland is indirect. Edgar's gift of Ednam to Thor Longus is mentioned in Thor's gift of the land to Coldingham and again in Thor's letter to Earl David asking for confirmation, but there

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1. L.C. LIV; CI; CLXXXVI; CXCI; CCXXII; CCXLVIII.

is no charter from Edgar to Thor and it is unlikely that there ever was one.

> Sciatis quod Aedgarus dominus meus rex Scottorum dedit mihi Aednaham desertam quam ego suo auxilio et mea propria pecunia inhabitavi.[1]

The corporal and symbolic action of sasine was more important than a written record of the grant and a charter was a record of such investiture, not a substitute for it. A charter of Nesius son of Nesius confirming land given to Newbattle by his father gives a back reference to the year 1205 "in quo anno monachos in eandem terram saisiavi"[2] and the charter clearly post-dated sasine by several years. This is more usually implied than explicitly stated, but it was certainly so in later centuries when more detailed evidence abounds, and confirmation of an inference back to earlier practice is occasionally given in charter phraseology.[3] The earliest mention of sasine is in 1150 when a charter of Robert bishop of St. Andrews states that he has concessisse et per libram saisisse Herbertum Glasguensem episcopum de ecclesia de Lohwornora before the king, Earl Henry and the whole court[4] and there is an interesting early XIII century (c.1200) appointment of a deputy to give sasine, and to hand over the charter of the lands - Sir Adam Moram appointed John, Hugh Gifford's clerk, as his procurator ad instituendum et saisinandum plenarie dominum Ricardum abbatem de Cambuskenneth in the lands of Dunypuis

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1. L.C. XXIV; XXXIII.
2. Newbattle 109.
3. e.g. Melrose i 304; Newbattle 155; Maxwells No.4.
4. L.C. CCXXX.

et ad tradendum dictis abbati nomine meo cartam meam eisdem super donatione mea de predictis terris confectam sicut personaliter interessem.[1]

When William de Greenlaw gave the land of Halsington to Melrose, the record of his resignation in his lord's court runs ...de qua se dissaissivit et ipsos solempniter insaisivit.[2] In 1270 Angus, son of Duncan, son of Ferhard, granted to Paisley plenariam et pacificam possessionem et saisinam of his pennyland of Kilmor at Lochgilp and granted that the abbot and convent personally or by proxy should enter the land by the donor's authority et saisinam et possessionem...percipiant et habeant...et de eadem disponant prout melius sibi viderit expedire.[3]

By the XIII century, however, the charter practice had become so widespread as to make the possession of a charter a desirable safeguard. This development is reflected in the occasional notices of the return or handing over of charters on the surrender of the lands, e.g. in 1250 when Thomas of Tyndale resigned his land to his lord Hugh Gifford, because he could not perform the service for it, he surrendered his charters.[4]

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1. Cambuskenneth 82.
2. Melrose i 235,236. ~~infra ch. p.~~
3. Paisley p.137.
4. Yester No.15; see also APS i 502.

CHAPTER II

Feudal Influences

The English influence which was brought to bear on XII century Scotland was that of a fairly highly organized feudal society upon a society whose organization was relatively unknown but which was certainly unfamiliar with the Anglo-Norman feudalism which had developed in England by 1100. The extent of that influence in one of its aspects - land tenure - is the broad study of this thesis. Although the task of assessing the influence of a known upon an unknown may be an impossibility in strict logic, the process of the influence and its final results allow some conclusions to be deduced as to its true nature.

Ultimately Scottish land tenure became entirely feudal. The picture which the earliest legal exposition gives is of a completely feudalized land organization - so much so that it calls itself the Ius Feudale - and the great period of legal compilation of the XVII century carried out this feudal tradition. The only surviving law book of the XIII century - the Regiam Majestatem - provides us with a Glanvillian interpretation of the law, but there is no certainty that it was a true reflection of what did prevail and was practised in Scotland. Between the XIII and XVI centuries is an empty tract, where the system of tenure must be constructed laboriously from charter evidence. The systematization of the law book is clearly open to suspicion, and the purpose of this study is to try to determine the nature and extent of the Anglo-Norman influence on land tenure during the period of close political and

social relations with England in the XII and XIII centuries - to see if the superficial resemblance between the land laws of the two countries is a true one, and to determine how far the feudalizing process had advanced before the English wars interrupted peaceful development.

Anglo-Norman influence on Scotland took a personal and peaceful form. By a process of whose nature we are ignorant, large numbers of Anglo-Norman barons became established in Scottish lands as tenants-in-chief of the Scottish king. Most of them were substantial English property-holders and to many of them their Scottish property must have been a minor concern, compared with their real source of wealth in their English estates. A nucleus seems to have been imported from David I's honour of Huntingdon where Bruces, Balliols and Hastings were principal mesne lords before they ever held lands in Scotland.[1] The elevation of their overlord to the Scottish throne was a source of profit to them. It is significant that the first surviving Scottish lay charter is David I's grant of Annandale to Robert Bruce - granted if not in the first, at least in one of the first years of his reign.[2] A picture emerges of a Scottish king who was more of an English baron than a Scottish prince, establishing his former English followers in Scottish property and associating them with him in the governing of his new realm. David himself came straight from the background of Henry I's court and the honour of Huntingdon. His barons similarly came from English fiefs and brought with them lesser men whom they in turn set up as Scottish mesne lords.[3] The tendency to achieve

1. Moore: Lands of the Scottish Kings in England.
2. L.C. LIV.
3. see Coutts: Norman Invasion of Scotland passim.

uniformity of administration and practice between English estates and Scottish estates was strong, and the effect of inter-relating tenures was probably the most potent medium of Norman influence. This Norman infiltration was not only large in numbers and extent, but the incomers formed the political and governing and landowning class of the realm, and were in a strong position from which to introduce the concepts and practices of Anglo-Norman feudalism with which they were familiar into the thoughts and actions of the Scottish government and administration and into the rules and customs of land tenure.

It is important to remember that the influence which thus penetrated Scotland was not the newly-fledged continental product - Norman feudalism; nor the adaptation of the Norman Conquest; but Anglo-Norman ideas and practice, modified, developed and somewhat mellowed by forty years of contact with Anglo-Saxon society and institutions and the conditions of England in the closing years of the XI century. The background was the court and administration of Henry I - the age of Glanvil. Henry I ruled 1100-1135; David I 1124-1153.

Stenton makes a statement, full of relevance to Scotland in the XII century.

> There can be no doubt that a general clarifying of feudal conceptions occurred in that time of rapid but obscure social development, the reign of Henry I. It is naturally reflected in the increasing precision shown by the feudal documents of the period and in particular by those which record grants of land for knight service.[1]

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1. English Feudalism p.154.

The situation on which this impact was made is relatively unknown. The period before 1100 is only illuminated by a few scraps of chronicle and saga - accounts of political events by outside observers. Certainly it was a period of important change, and of unsettled conditions. The acquisition and absorption of Anglian Lothian within the Scottish kingdom in the early XI century introduced a society and institutions of an English basis, a remnant of the Northumbrian kingdom, whose affinities were with northern England rather than with the Celtic societies of Picts and Scots. The absorption of Strathclyde introduced an entirely different element, and the actions and integrating conflicts within the newly united kingdom must have had fairly widespread repercussions even upon such notoriously conservative institutions as the rules of landholding. The unstable politics of the XI century alone, with the constant dynastic conflict, must have produced a fairly constant change in the personnel of the big landowning class. Such a change is abruptly recorded in the Anglo-Saxon chronicle for 1093: "And then the Scots chose as King Donald Malcolm's brother and drove out all the English who were with king Malcolm before."[1] The XIV century historian Fordun attributed a large-scale feudal land reorganization to Malcolm II in the early IX century, saying that he took all the land of Scotland and granted it out to his followers, reserving only for himself the moot hill at Scone, upon which the kings were accustomed to sit enthroned to propound judgments, laws and statutes to their subjects.[2] He contrasted the new

1. Anderson's Annals p.117.
2. E.S. i 523 n.

arrangements - about which he was most reticent - with the old - about which he was very precise - and if the tradition is accepted as genuine, even to the slightest extent and in its vaguest interpretation, it could be taken as reflecting the sort of development which was taking place in XI century Scotland and as indicating the state of affairs before Anglo-Norman influence became important. Malcolm Canmore's reign was probably more unsettled in this respect than that of David I. The attitude of a king who was aware of practice in the south, the impact of the Anglo-Saxon refugees and the effect of the incorporation of the wealthy Lothian with all its Anglian connections would present acute problems. Nothing is known of Malcolm Canmore's royal activity in domestic affairs and little secular government activity qualifies for mention in Turgot's pious life of Margaret. Likewise there is little reflection of secular and social problems - but the rules and practices of landholding could not be unresponsive to the political changes involved in Malcolm's Anglo-Saxon connections or to the more deeprooted impact of Lothian's inclusion in the kingdom.

With the kingship of Malcolm's sons, Duncan, Edgar, Alexander and David, the way was open for the new Anglo-Norman influence. By the reign of David I, it is clear that the king was finding effective Norman answers to the problems which faced the government of Scotland. The outward form of government action and of legal procedure becomes Norman - the personnel are predominantly Norman. By the XII century specific local divergences emerge and while the problem of the XII century is the way in which Anglo-Norman influence asserted itself and the extent to which it effected basic change, the problem of the XIII

century is the working out of practice and procedure to suit the differing Scottish conditions and the formulation of a specifically Scottish order of land organization.

It is unfortunate that this XII century period of Anglo-Norman infiltration is so lacking in documentation. Concrete record of lay land grants is very sparse and the impact on land law is unrevealed. The evidence of the settlement of the incomers is almost entirely indirect. The recurrence of their names as witness to royal acta is evidence of their importance. Their ownership of Scottish land can be deduced from their subsequent grants to tenants, and especially to the church, which have survived, but knowledge of the circumstances of their settlement is largely conjectural.

Two problems present themselves forcibly.

First - where did the crown get the land from which it endowed these incomers and how was it previously held? David I's reign brought a large-scale redistribution of land. Not only was a considerable lay following provided for, but religious institutions were endowed to an extent of generosity which earned David the title "sair sanct for the croon" from an impoverished successor. It seems that either a widespread displacement of previous holders was involved - or that the XI century royal demesne was phenomenally large. Even if the assumption of the concept "lord of the land" in theory allowed the king to dispose of land freely, existing ownership would present strong practical obstacles to its disposal. No indication is given of revolutionary displacement - and the charters are normally reticent as to the source of the land granted. Some of the royal charters to the church are

more informative,[1] but in those cases land came either from the royal demesne or had been held previously by individual churchmen. The larger aspect of this question must, therefore, be regarded as unanswerable.

Secondly, there is little information about the reactions of the established aristocracy - the mormaers in the districts north of the Forth. They survived and were not displaced, but their attitude to the importation of a new class of alien barons, and to the policy of the government and the new political aristocracy (viz., that they held their estates as fiefs of the king) would be interesting. Perhaps some conclusions can be drawn from the occasional salutation clauses of David's and Malcolm's charters - Francis, Anglicis et Scottis. It is only by the reign of William that such distinctions are omitted. In the long run these people fell into line. Their property became earldoms and they became earls. The transition from mormaer to earl can be traced in two cases - in witness lists of Malcolm IV's charters. Malcolm is at one time named mormaer of Athol and at another earl.[2] His father Madach appears as earl in the witness lists of charters of the reign of David I.[3] The old families remained in their positions of power until the XIII century and the Anglo-Normans only penetrated by opportune marriages with heiresses, e.g. Comyns in Buchan and Umphravilles in Angus.[4] An important exception was Moray whose mormaers played a rebellious part and in

1. see infra p.243 et seq.
2. Book of Deer p.95; APS i 364; St.Andrews p.129.
3. Scone No.1; APS i 358; Raine: North Durham App.12, 13.
4. Scots Peerage passim.

consequence Moray suffered a land redistribution and was planted with new people. Another established lord was Gospatric Earl of Dunbar. He had been Earl of Northumberland until 1072, but after his ejection from the north of England he retained vast influence in the south-east Border area - the region of most intensive Anglian influence and settlement. His charters reflect much that is parallel to Northumbria, which was in many respects out of line with the rest of English development.[1] The sort of social organization which prevailed in the south-east was, however, probably more prepared to accept an overlayer of Anglo-Norman feudalism than the rest of the country.

Whether the other Northern earls very readily accepted the obligations involved in a feudal relationship between themselves and the Crown, or whether they ever acknowledged such a relationship, it is almost impossible to tell. An important unknown factor is the extent to which their previous relationship corresponded to the feudal one, or could be translated into feudal terms. Superficially at least the second generation seems to have followed the government lead and adopted the feudal relationship vis à vis their own tenants and followers. Yet a doubt remains; these feudal relationships may have been the only documented ones - and the memory of others consequently lost. It is in those charters relating to the earldoms of Lennox, Strathearn and Buchan that the greatest divergences from English practice are found.[2] At the beginning of the XIII century an interesting feature appears in one or two charters. In a charter of 1200 the Earl of Strathearn

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1. Maitland EHR V; Jolliffe EHR ~~XXIII~~ CII.
2. see infra ch.V.

describes himself Gilbertus filius Ferthead dei indulgentia comes de Stradhern.[1] It is a tantalizing thought that this might be a re-assertion of princely right as against feudal subordination where gracia Willelmi would be a truer form. Gilbert's charter contains other regal elements. He acts with the "assent of our knights and thegns" and describes his purpose volentes in feudo nostro et patrominio ecclesiam dei exaltare. He accepts a feudum although its partnership with patrominium is equivocal, but any inferences are limited by the uncertainty of how far the idea of a feudum was new in XII century Scotland.

Certainly the use of the word was common in charters from the end of the XII century to describe the situation of lands and perhaps their feudal position, e.g. Malcolm IV confirmed land to Holyrood in feudo de Rothmaniec;[2] in the early XIII century Holyrood also held land in feudo de Romanoch;[3] the prior of St. Andrews granted land in ffeodo de Clacmannane,[4] and the St. Andrews register contains a reference to feodum de Hauwic;[5] Alexander II granted land to Scone in feudo de magna Blar;[6] pre 1177 Paisley was given land in feuodo de Penuld;[7] c.1200 Roger de Quincy confirmed to Dryburgh all gifts of land in his fief;[8] William son of Patrick gave Coldstream "all the land which they

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1. Inchaffray IX.
2. Holyrood 22.
3. Newbattle 130.
4. St.Andrews p.398.
5. St.Andrews p.262.
6. Scone 67.
7. Paisley p.48.
8. Dryburgh 140.

hold in feudo meo de Hersill.[1] An interesting expression is used in a quitclaim of land to Dunfermline by Emma de Smithestun. She quitclaimed totum feudum et jus quod habui...in feudo de Smithestun[2] - the word being apparently used in two senses: the rights in a holding and the holding itself. In one early XIII century charter the royal demesne is described as the king's fief when land is granted quae iacet iuxta terram eorundem monachorum quam tenent de feudo regis in Poverhou. The land subject to grant was in Nesius's fee of Forton and apparently the drafter of the document regarded the king's land as a holding in the same way as any lord's.[3] Charter evidence, therefore, creates the impression that the concept of a fee had become firmly established by the beginning of the XIII century, but it gives no indication of the nature of its introduction and acceptance.

It is, however, doubtful whether the outlook and behaviour of the inhabitants of XII and XIII century Scotland was truly feudal, whether, for instance, the lord-vassal relationship was a deep-rooted social reality as it was a legal one. The only surviving record obviously stresses the feudal elements and says nothing of any others, but some of the feudal expressions in Scotland are rather self-conscious. There is included in the XII century legal compilation, the Assize of King David,[4] the following clause de homine invento sine domino.

> A man who was found in the land of the lord king without a lord after the writ was read in the king's court let him have the space

1. Coldstream 24.
2. Dunfermline 195.
3. Newbattle 107, 109.
4. The question of how far these provisions were statutes of David is irrelevant here, so long as they are accepted as late XII century or early XIII century legal maxims.

> of fifteen days to find himself a lord. And if at the next term he has not found himself a lord the king's justiciar shall take 8 cows from him and guard him at the king's will until he find himself a lord.[1]

Such a legal pronouncement presupposes a society wherein people of substance were sometimes found without lords and a will on the government's part to fit them all into a form of feudal organization. In England a similar law was made as far back as the X century in the laws of Aethelstan.

> And we have ordained respecting those lordless men of whom no law can be got, that the kindred be commanded that they domicile him to folk-right and find him a lord in the folk mote; and if they then will not or cannot produce him at the term, then be he henceforth a flyma (runaway or outlaw) and let him slay him for a thief who can come at him; and whoever after that shall harbour him, let him pay for him according to his wer or by it clear himself.[2]

The sanctions of the X century are more serious and more primitive but their import is the same.

With these qualifications, the charter evidence can be used, if not to reconstruct, at least to indicate some of the lines of the process of Anglo-Norman influence in this period. The principal caution is the difficulty of distinguishing between concepts which originate from Anglo-Norman feudalism which was new from the other side of the Border, and reflections of indigenous Scottish tradition.

For David I's reign, 1124-1153, there are seven surviving charters recording gifts of the king to lay tenants.

1) The gift c.1124 to Robert de Brus of

> Estrahanent et totam terram a divisa Dunegal de Stranit usque ad divisam Randulfi Meschin; et volo et concedo ut illam terram et

1. APS i 321.
2. S.C. p.74.

suum castellum bene et honorifice cum omnibus consuetudinibus suis teneat et habeat videlicet cum omnibus illis consuetudinibus quas Randulfus Meschin unquam habuit in Cardvill et in terra sua de Cumberland, illo die in quo unquam meliores et liberiores habuit.[1]

2) The gift c.1135 to

Arnulfo isti meo militi totam terram de Swinton...in feudo et in hereditate sibi et heredibus ita libere et quiete et honorifice tenere et habere sicut Udardus vicecomes eam tenuit liberius et quietius per illud servitium inde faciendo monachis Dunelmie quod ipse Udard eis inde faciebat.[2]

3) Another grant to Robert de Brus 1147/53.

in feudo et hereditate illi et heredi suo in foresto vallum de Anant...ex utraque parte aquae de Anant sicut divisae sunt a foresto de Seleschirche quantum terra sua protenditur versus Stradnit et versus Clud...[3]

4) An undated gift to Alexander of St. Martin of

Alstanefurde et terram quam Arkil tenuit per divisas quae sunt inter Hadingtoun et Alstanefurd silicet Robedd'ne et sicut illa tendit ultra petream usque ad metam quae dividit terram de Alstanefurd et de Garmeltun et de meta illa usque in rivulum qui tendit ad capud de Kipduf versus occidentem et illam partem terrae de Drem quam retinui in manu mea quum dedi Drem Cospatricio et ex capite de Kipduf per semitam quamdam quae vadit in Radepo et de Radepo per divisam quamdam quae ex transverso versus Drem usque penes Drem et inde per divisam quamdam vadit in superiori parte terrae Roberti filii Gaifridi usque ad terram de Fortona. Quapropter volo et praecipio quod praedictus Alexander et heredes sui has terras teneant de me et heredibus meis in feodo et hereditate bene et in pace libere et quiete et honorifice per servicium dimidii militis. Ego autem omni anno dabo ei de camera mea decem marcas argenti usque donec perficiam ei plenarium feodum unius militis.[4]

5) A confirmation of Earl Henry may be included in this group.

dominae Beatrici de Belchaump terras et tenuras suas de Rogesburgh quas ipsa de patre meo tenuit. Volo itaque et praecipio quatenus illas terras et tenuras de me habeat et teneat libere et honorifice sicut ipsa de patre meo liberius et quietius tenuit.[5]

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1. L.C. LIV.
2. L.C. CI. There are two forms of this grant, but several reasons for preferring this one. (see infra p.28)
3. L.C. CXCIX; Reg.Ho.Roy.
4. L.C. CLXXXVI.
5. L.C. CXCI; Dryburgh 145.

6) A grant c.1150 to

> Waltero de Riddale, Whitimes et dimidium Eschetho et Lilislive per suas rectas divisas cum omnibus appendenciis suis juste ad eas pertinentibus in nemore plano pratis pascuis et aquis et stalungiis quae sunt de occidente de Richeldoun sibi et heredibus suis ad tenendum de me et heredibus meis ~~in~~ feudo et hereditate libere per servitium unius militis sicut unus baronum meorum vicinorum suorum qui libere tenet feudum suum melius et liberius habet et tenet. Et si ego et heredes mei Waltero vel heredibus suis praedictas terras propter justam alicuus calumniam warantizare non poterimus ego et heredes mei ei et heredibus suis excambium ad valentiam ad suum rationabile...dabimus.[1]

7) The grant 1150/3 to Baldwin clienti meo of a toft in the burgh of Perth free and quit

> ab omni servitio burgi excepta vigilia infra burgum et claustura burgi secundum suam possessionem. Reddendo mihi inde per annum i turet et ii coleres et pro hoc quietus sit ab omni alio servitio et defendo ne ipse de aliquo placito sui alicui [respondeat] nisi in praesentia mea aut justiciae meae. Praeterea concedo ei ut cum Baldewinus voluerit a villa recedere quatenus possit domum suum et suum toft in burgagium vendere.[2]

It is not a very impressive collection, and none of the charters is at all specific about the conditions of burdens of tenure, but together they can yield some information about royal enfeoffments of barons of the first half of the XII century.

The first striking point is that all these lands are in the south of Scotland - all, with the exception of Annandale which lay in the British-Strathclyde-Cumbrian area, lying in the region whose traditions were predominantly Anglian. No charter of David's has survived granting land to laymen north of the Forth. This may, however, be a distortion created by the chances of charter survival. Indirect evidence of land-holding in David's reign frequently comes from charters by his

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1. L.C. CCXXII.
2. L.C. CCXLVIII.

barons granting away land which they held of the king - particularly to the church - and from the charters of his grandsons confirming his gifts, e.g. Malcolm IV's to Walter Steward confirming the lands which King David gave him,[1] and similarly to Randolf Frebern[2] - but again the lands are in the southern region, and there is no evidence of the impact of Anglo-Norman influence on the larger northern part of the kingdom.

Without exception the grants are to incomers. Nevertheless, indirectly they give some information about other landholders, either predecessors or neighbours. The first Bruce charter is the most fruitful in this respect. The Annandale land was bounded by the holdings of Dunegal and Randolf Meschin and the conditions of Bruce's tenure are described as those of Randolf Meschin. Dunegal is certainly not a Norman name but nothing is known of him. Randolf Meschin was an important figure in the north of England and his position is significant. He had been newly settled in the land round Carlisle and elsewhere in Cumberland as a result of a miniature Norman conquest and a fairly drastic redistribution of land in the period after 1092 when William Rufus asserted his lordship over these northern parts.

> In this year King William with a great army went north to Carlisle and restored the town and built the castle; and drove out Dolfin (son of Cospatric, former Earl of Northumberland) who ruled the land there before. And he garrisoned the castle with his vassals; and thereafter came south hither, and sent thither a great multitude of churlish folk with women and cattle, there to dwell and to till the land.[3]

Randolf was therefore representative of the new Norman tenurial ideas and he achieved his position by the displacement of previous holders of

1. Anderson's Diplomata XXIII.
2. infra p.31
3. Anderson's Annals p.108, from Anglo-Saxon Chronicle MS, E S.A.1092.

the land. David I's explicit attempt so early in his reign to link Bruce's tenure with the newly established Norman fief in Cumberland is significant of development in this period.

Another significant feature is the castle. One result of the 1092 campaign was the building of a castle at Carlisle, and by 1124 Randolf's tenure would in some way be bound up with Carlisle castle, with all complications of Anglo-Norman castle-guard. David granted Bruce the land et suum castellum. The general inference is obvious, but there is no evidence for particular deductions.

Charter No.2 also raises interesting questions about tenants in the early XII century. The land of Swinton was originally granted by Edgar to Coldingham priory c.1100 cum divisis sicut Liulf habuit free ab omnia calumnia et ad voluntatem monachorum sancti Cuthberti disponendam[1] and it was the subject of considerable dispute and of seven other documents before 1150.

1) c.1110 Alexander I confirmed Edgar's grant sicut breve fratris mei Edgari regis vobis testatur, adding the interesting clause

> et praeterea praecipio et defendo ne aliquis vestrum ullo modo de eadem Swintuna placitet aut respondeat ulli homini nisi ego ipse ore ad os vel meis litteris praecepero.[2]

2) At about the same time he issued a mandate ordering the priory

> ut nullo modo intretis placitum neque in aliquam distratiocinationem de terra de Swintune ante quam veniat ad me.[3]

3) c.1117 Earl David confirmed Edgar's grant

> sicut frater meus Eadgarus rex vobis eam dedit et super altare obtulit et sicut suum breve eam ad vestrum opus testatur. Et

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1. L.C. XX.
2. L.C. XXVI.
3. L.C. XXVII.

molo amodo pati ut aliquis vobis aliquam iniuriam vel molestiam idea faciat pro certo sciatis.[1]

4) The land was included in David I's general confirmation of 1126 of Coldingham's property in Lothian.[2]

5) c.1135 David granted the lands of Swintun to his knight Arnulf. The grant survives in two forms.

a) Sciatis quod dedi et concessi hinc meo militi Hernulfo Swintun in feudo sibi et heredi suo cum omnibus hominibus suisque pecuniis. Tenere bene et libere sicut ullus ex meis baronibus melius et liberius tenet et quicquid ad eam pertinens et easdem consuetudines per quas Liulfus filius Edulfi et Udardus filius suus tenuerunt, tenere de Sancto Cuthberto et de me XL solidos reddente monachis de Dulemnia sine omnibus aliis servitiis.[3]

b) Sciatis me...dedisse Arnulfo isti meo milite totam terram de Swintun cum pecunia et hominibus et omnibus rebus juste ad eandem terram pertinentibus: in feudo et hereditate sibi et heredibus ita libere et quiete et honorifice tenere et habere sicut Udardus vicecomes eam tenuit liberius et quietius per illud servitium inde faciendo monachis Dunhelmie quod ipse Udard eis inde faciebat.[3]

6) In 1145 Earl Henry confirmed Coldingham's rights in Swinton and gave it

in perpetuum possidendam et libere disponendam in dominicum servicium suum sicut carta bonae memoriae Aedgari regis...testatur et sicut pater meus eis concessit et reddidit.[4]

Clearly this is an instance where in spite of a feudal grant, the line of original holders had persisted in occupation. Liulf had apparently been Edgar's tenant in Swinton and whether he had been dispossessed or his tenure had ended in death, Edgar's grant had almost immediately produced some quarrel resulting in an impending placitum. One can only infer that the placitum was brought by either Liulf or, more probably, Udard. David had apparently regarded Udard as his

1. L.C. XXIX.
2. L.C. LXV.
3. L.C. C.
4. L.C. CLXXVII.

tenant and tried to replace him by another lay tenant on his death. There is no record of how Coldingham asserted its claim, but some action resulted in the return of the land to Coldingham.[1] It is extremely likely that this case was not unique and that both religious houses and barons sometimes found difficulty in giving effect to the new royal grants, as against families with strong prescriptive right.[2]

The grant to Alexander of St. Martin (No. 4) mentions a previous tenant Arkil, and a neighbour, Robert son of Geoffrey, but gives no indications of their conditions of tenure. This charter also reveals that David had previously given part of Drem to Cospatric - a useful piece of information since Cospatric's earldom is one of which we have

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1. No. 6 reddidit.

2. Lawrie casts doubts upon the genuineness of both charters to Hernulf (No. 5 a and b). It is certainly strange to find two grants in such widely differing forms, but the existence of the charters in Coldingham's possession provides no ground for suspicion of a Coldingham forgery as Lawrie suggests. The priory did acquire ultimate possession of Swinton and the charters could have been surrendered with it. (see supra p.11)

   In form a) is certainly strange and bears signs strange for the royal chancery. The conjunction of David and Earl Henry in the salutation clause is unique. David rex Scottorum et Henricus filius suus omnibus vicecomitibus suis cunctisque baronibus Francis et Anglicis. Henry's assent is frequently recorded in such grants but he is not otherwise joined with his father so closely in royal act. The sort of double tenure which a) creates is very unusual and unknown to feudal principles. The equivalent clause of b) is more convincing. Per illud servitium inde faciendo monachis Dunhelmie quod ipse Udard eis inde faciebat is the sort of vague description which tantalizes us in so many charters - but in the period when so little is known of tenure, the substance of a) cannot be rejected on the basis of preconceived ideas. The limitation in a) of the holding to the grantee and one heir is paralleled in two other charters of David I (supra p.23 No.3; infra p.61) and although the in feudo et hereditate sibi et heredibus suis is more in accord with later form, there is some indication that earlier practice was neither so uniform nor so definite.

   If either or both documents is a forgery, the basis of comparison with other contemporary charters is too slight to allow of proof.

fairly extensive internal information since he was a benefactor of several of the southern abbeys and was also a landowner of pre-Norman influence vintage. A general deduction about land-holding in this area is possible. Alexander was to perform the service of half a knight, but David was clearly desirous that he should perform a full knight's service and arranged for an annual money payment from the exchequer until a full knight's fee had been made up. Is this to be regarded as a money fief paid in instalments - or as a retaining fee - a pledge of David's good faith and true intention of making a further grant when circumstances permitted? If the annual payment were to be regarded as making up the remainder of the knight's fee, it seems that the future perfect of the verb would be required, perfecio instead of perficiam. The second interpretation of the payment therefore seems more likely.

What does emerge clearly is that land was not readily available in that area to give Alexander a full endowment for the return of a knight. In making this grant David had been induced to give away the part of Drem which he had retained when he gave the rest to Cospatric. The arrangements for service in this charter are not paralleled in surviving record, but they are an important indication of the difficulty which XII century kings must have found in finding land in the more fertile and populous areas, with which to endow their followers.

Apart from this one charter, David I's charters do not lay great stress on service. The Hernulf charter, which mentions specific return, provides for a money payment; Baldwin's holding is

exceptional as being a burgage; no service is mentioned for Beatrice Beauchamp; Walter de Riddale is required to perform the service of one knight - but the most interesting fact is that services are entirely omitted from the Annandale charters. The lack of service goes along with the absence of any mention of feudal tenure or any grant to heirs. All the other grants record in some way that the land is held of (de) the king - which leads to the question of whether the Annandale grant was a feudal endowment at all. The second grant is made in feudo et hereditate[1] but no service is imposed. Agreement about service may have been verbal but in both charters the stress is upon rights, customs and privileges with no equivalent mention of duty and obligation. It is not until William the Lyon's confirmation that the rights and privileges are closely defined and the service clearly stated.

> per servitium decem militum excepta custodia castellorum meorum...ipsum quietum clamavi.[2]

Malcolm IV's charters carry us further into the XII century (1153-1165) but not many grants to laymen have survived; nor are those which have so informative as David I's.

1) A grant 1160/2

> to Walter Steward of the lands which king David gave him - Renfrew, Paisley, Pollock, Talahret, Kerkeit, Drep, Muerne, Egglesham, Couheranhe and Innerwick faciendo de illo feudo servicium quinque militum.[3]

2) Another grant to Walter - November 1160-January 1161 (Both are in similar form but have different witness lists.) of lands in

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1. see infra p.61.
2. Nat.MSS. i. XXXIX.
3. Reg.Ho.Roy. ~~printed in Appendix~~

Birkenside and Lasswade and Molle faciendo de predictis terris mihi et heredibus meis servitium unius militis.[1]

3) The grant to Berwald the Fleming which only survives in Gavin Dunbar's transcript.

> Sciatis me in feudo et hereditate dedisse Berowaldo flandrensi in provincia de Elgin Inees et Etherurccard per rectas divisas. Tenendum sibi et heredibus suis de me et heredibus meis hereditarie libere, quiete in bosco in plano in campis pratis pascuis in moris et aquis ffaciendo michi inde servicium unius militis in castello de Elgin. Praeterea eq dono in burgo meo de Elgin unum toftum plenarium tenendum simul cum predicto feudo suo ita libere et ita quiete sicut aliquis ex paribus suis liberius et quietius tenet toftum suum aut feudum suum.[2]

4) Grant to Philip the Chamberlain and his heirs the land of Lundin Fife...volo et precipio ut ipse Philippus et heredes eius predictum feudum teneant de me et de heredibus meis in feudo et hereditate plenarie libere et honorifice cum omnibus libertatibus et rectitudinibus ad idem feudum pertinentibus...per servicium unius militis.[3]

5) Grant of c.1163 to Randulf Frebern and his heirs the lands of Rosyth and Dundas 1160/4

> sicut eas aliquis eas melius et plenius tenuit in tempore regis David and the land which was master Robert's near Newbattle as I held it on the day on which I gave it to him. Tenendas...de me et heredibus meis hereditarie...sicut alii barones mei terras suas de me melius...tenent per servitium unius militis.[4]

6) A charter to Baldwin of a toft in Perth - substantially a confirmation of his father's grant.[5]

7) Finally there is an unprinted charter which is undoubtedly false - but still interesting. It comes from a transcript by Balfour from a copy by Shene, which asLawrie puts it is a "guarantee of inaccuracy of transcription".

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1. Anderson: Diplomata - ~~printed in Appendix.~~ XXIII
2. Innes 51.
3. Lawrie MS. vol.1. from Macfarlane MS.Adv.34/3/25. Appendix
4. Spalding Misc. p.241.
5. supra p. 25.

> Malcolmus Dei gratia rex Scottorum episcopis abbatibus comitibus baronibus justiciariis vicecomitibus ministris et omnibus hominibus totius terre sue Francis Anglis et Scotis tam presentibus quam futuris salutem. Sciant tam posteri quam presentes me dedisse concessisse et hac mea carta confirmasse Duncano comiti et haeredi suo qui de uxore sua Ada nepte mea nasceretur Scradimiggloch et Falichlen et Radhulit et Stradbrannen et totam firmam meam de Cattell in liberum maritagium in bosco et plano in pratis et pascuis in aquis et molendinis et in omnibus libertatibus villae eisdem terris pertinentibus. Quare volo et precipio ut comes Duncanus et heredes sui has prenominatas terras habeant teneant libere et quiete in liberium maritagium. Presentibus testibus Ernaldo episcopo Sancte Andree, Willelmo abbate de Strivelin, Osberto abbate de Jedburgh, Willelmo fratre regis, Ada comitissa, Waltero cancellario, Gilberto comite de Anegus, Ricardo de Morevill, Odonell de Wmphraweill, Ricardo Comyne, Philippo de Colueill, Willelmo de Burdet, Mattheo archidiacono Sancte Andree, Kell filio comitisse, Orme filio Hugonis, Roberto de Quinci. Apud Edinburghe anno 7 regni regis.[1]

Clearly by Malcolm IV's reign crown enfeoffment is following the feudal pattern more regularly, and the charter form is developed. The first five of Malcolm's charters are ordinary military enfeoffments, all involving specified military service in the form of at least one knight. The maximum was five knights from the lands of Walter Steward, but except for the more specific form of the Innes charter servicium unius militis in castello de Elgin the knight service is left undefined.

With the reign of William there are more charters. His long reign left more record; and what has survived is therefore more likely to be a fairer sample than the scattered records of David's and Malcolm's reigns. For this reason, the force of the whole collection is best revealed by presenting the royal charters in

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1. MS. Harl. 4693/46. There is a certain discrepancy amongst the witnesses. Ernald of St. Andrews was not elected until October 1160 and William abbot of Cambuskenneth died before 1159, i.e. they were not contemporaries. Lawrie knows of no niece of Malcolm's at this period, though she may be illegitimate.

tabular form, and discussing them along with the increasing subinfeudation charters of this period in their various aspects. Alexander II's grants are best examined in this way too, and both these reigns, covering the period 1165-1249, have left a sufficient sample of land grants to allow some general conclusions to be drawn. William's charters cover his whole reign with reasonable consistency. Alexander II's leave a tantalizing gap from 1225-1232. No reason has been found for the absence of record of royal enfeoffment during this period of seven years. There are remarkably few charters of enfeoffment of Alexander III. It may be that during the turmoil of the English wars it would be these current charters which were most likely to be destroyed, seized or relinquished to the conqueror.

By the reign of William, Scottish feudalism has become consolidated, its nature accepted and its principles to some extent discoverable from the evidence.

CHAPTER III

Classifications of Tenure

By the late XII century in England tenures were generally classified as knight service, sergeanties, socage, burgage and free alms, the nature and category of the tenure being determined by the obligations due to the superior. These obligations were of two kinds - services and incidents - and the category to which the tenure belonged was of supreme importance both to lord and tenant as their financial relationship depended entirely upon it. Questions of inheritance, wardship, amount of relief payable were also dependent upon the category of the tenure and the multitude of legal problems arising in this way produced expositions on the subject by both Glanvil and Bracton which enable us to see the system of English land tenure through the eyes of contemporary lawyers. Such rigid legal classification must, however, be viewed with a certain suspicion and the difficulties which the lawyers had in producing a rational arrangement in the cause of legal clarity indicates that their analysis was to a large extent artificial. The charters which create or confirm the tenures rarely give any indication of classification. They state the most important obligations of tenant and lord and it is only in their phraseology that we are given a description of the nature of the tenure. Tenure in elemosina was the first to become commonly distinguished and denoted in this way, but in libero burgagio, in socagio, and per serjanteriam had evolved as descriptive clauses by the late XII and early XIII centuries. Correlation of the charters, the law books and administrative record enables

us to see this evolution in England in the course of two centuries; knight service, free alms and burgage were easily distinguishable but the large mass of holdings involving personal service of various kinds, money rents or tenders in kind created a multitude of problems and their differentiation was largely untidy and artificial and led to vexatious problems in search for legal clarity.

Much less is known of classification in Scotland because so little legal record has survived. What we do know suggests the conclusion that it had not proceeded to the same extent as in England. The XIII century "law book", the Regiam Majestatem, is too much a copy of Glanvil to be accepted as a completely true indication of the position in Scotland. For the XIII century there is no contemporary legal discussion of tenure. Government record of tenure in the form of inquest returns is almost entirely lacking and charters are the main source of information; but if in England these are not a source of extensive information for the recognized legal categories they are less so in Scotland. Scottish charters are even more reticent about categories than English deeds of the same date. Even late in the XIII century Scottish charters tend to limit themselves to specifying the reddendo required and remain silent about the general legal position. Some clues, however, are given of probable classifications in Scots law. In free alms and burgage charters the method of expression is the same in both countries and almost always described as in libera elemosina and in burgagio. Military enfeoffments also are similar in lacking any description beyond a statement of the service required, although an important difference does arise over the assessment of a holding in

terms of knights' fees. The differences are most obvious in the case of the vast number of tenures involving miscellaneous services, money rents or payments in kind, classified in England as sergeanty and socage. Returns of inquests indicate no attempt to create order out of lists of seemingly miscellaneous services; e.g. the ancestor of William of Abercromby held several lands: for Balcormok he did the service of one servant with a hauberk and Scottish service for 1½ davachs, for half the land of Weston he gave to the lord a pair of white spurs or 4d, and for the land of Staynton 1 lb. pepper or 12d.[1] Similar English inquests would tend to try to define these services by a categorical term.[2]

The main problem of classification in Scotland is whether or not the distinction was made and observed between military tenure by knight service and minor military tenures or sergeanties, and between sergeanty and socage. The implications of the problem are important. Burgage tenure and free alms tenure (those where similarity of expression and classification is obvious) are just those where it would be expected. The church lands and burghs were two institutions where contact between the two countries would be closest and where initiative could be expected in the drafting of documents. The burghs especially were largely settlements of "foreigners" and there is evidence that their "laws and customs" were to a large extent borrowed from England. Military tenure in both countries was common amongst an influential group and a certain affinity in conditions of tenure could be expected especially since feudal tenure was introduced under the influence of this group. But the other holdings affected the large mass of Scottish

1. APS i 103.
2. e.g. Inq.p.m. i no.714. infra p.40.

land-holders, the liberi tenentes, who had no knowledge of tenure outside the kingdom and were not supplying pressure for the alignment of Scottish rules of tenure with those of England. These tenures are therefore the most likely to effect independent Scottish development and if they are found to represent a limitation on English influence on the development of land law in this matter of classification, they can be regarded as marking a point of Scottish divergence.

Sergeanty

The practical importance of the distinction was the incidence of the further obligations beyond stated service or rent - ward, relief, marriage and to a lesser extent the form of inheritance and succession and these matters were therefore accorded an important place in legal treatises. Miss Kimball has shown that sergeanty was

> a category formed by royal officials for ease in the administration of royal rights to wardships, reliefs etc. as tenurial lines developed during the XII century and that the officials developed certain rules for it which helped to differentiate it from knight service and socage.

It was therefore the product of administrative policy and not an essential part of Anglo-Norman land tenure. At the beginning of the XII century the odd services later included in sergeanty tenure were not regarded as pertaining to one particular tenure.

> In Domesday Book there is nothing of sergeanty tenure, just as there is nothing of military tenure. The term does not appear in the Pipe Rolls till after 1189 and Glanvill only uses it once.[1]

In Scotland we do not have much evidence of the government attitude and charters tell us little of classification. The services which

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1. Kimball: Sergeanty Tenure in Mediaeval England p.11.

formed the basis of the English sergeanty occur plentifully and there are a few instances of royal creations of these tenures[1] which are probably representative of many more, but in none of these is the word sergeanty used. The best example of a sergeanty in fact but not in name comes from a 1261 post mortem inquest into the lands of Inianey near Montrose. Jurors declared that Crane held the land heritably by the gift of king William and died vest and seized in the land as of fee, and that neither he nor his successors numquam fecerunt exercitum nec dederunt auxilium nec aliquid aliud in mundo pro dicta terra fecerunt nisi officium janui castri domini regis de Munros.[2] In English terminology this holding would be called a sergeanty but Scottish jurors did not describe the tenure by any classification. Other holdings with the appearance of sergeanties occur, but the name is never applied, e.g. William the Lyon's grant to Ailsius pistorus meus of the land which Reginald the gatekeeper of Edinburgh castle held in Inverleith per servicium sui corporis,[3] and the tenure on which inquest was made in 1261 of the garden of the king at Elgin held inveniendo olera alea ad coquinam domini regis dum in castro de Elgin moram fecerit.[4] More clearly - land was held of the bishop of St. Andrews for 10s. yearly, or doing the office of baker in the bishop's household. It is probably better not to suggest that the minor military holdings which yielded the service of servientes were sergeanties,[5] but one

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1. Allardice charter 1189/99. 5 Hist. MSS.Com.629; Stevenson i p.20; Campbell Charters B.M. LFC XXX 5; APS i 99, 100, 102, 103.
2. APS i 90.
3. Newbattle Orig.III.
4. APS i 89.
5. see infra p.141.

tenure has the appearance of a military sergeanty. Arbroath's custody of the brecbennoch involved it in a unique method of tenure and a form of military service. The wording of the initial grant was

> ...custodiam de Bracbennoch...et cum predicta brachbennoch terram de Forglint datam deo et sancto columbe et le Brachbennoch faciendo servitium quod mihi in exercitu debetur de terra illa cum predicta Brachbennoch [1]

while it was included in William's general confirmation as

> custodiam de Brecbennoch et terram de Forglint cum predicto brecbennoch. Faciendo inde servitium quod mihi in exercitu debetur de terra illa et de predicto brecbennoch.[2]

The lands of Forglint are clearly the endowment of the brecbennoch and the expression of this duty and this privilege in feudal terminology is an interesting example of stretching of feudal concepts to include something essentially non-feudal. There is a divergence between the two grants. The first says the service is due from (de) the land with (cum) the brecbennoch. The second puts the service as due from both the land and the brecbennoch - a groping for the most acceptable expression. In England such a grant would probably have been by this time classified as sergeanty.

The Regiam only takes over Glanvil's one reference to the term sergeanty - as an appendage to a section on reliefs where sergeanty is described as being in the same position as barony for the assessment of relief[3] - but the passage is not independent evidence for Scottish sergeanty. Craig makes no mention of sergeanty and since in England it remained an important form of tenure until the XVII century it seems

1. Arbroath Vetus 5.
2. Arbroath 1.
3. Reg.Maj. II c.71.

unlikely that if it had been carried over into Scotland as a form of classification, all trace of it should have disappeared. It seems that the non-existence of sergeanty tenure so termed and classified is one of the main Scottish divergences from the Anglo-Norman tenurial system.

Socage

The difference between sergeanty tenure and socage tenure was an important legal preoccupation in England in the XIII century. The difference between the two tenures was a matter of extreme doubt - the services in both were so similar, especially when an original sergeanty service had been reduced to a symbolic render or a nominal payment. The incidents in the tenures were vastly and importantly different and classification was frequently necessary to determine what the incidents were. An interesting example of this comes from an inquest of 1242/8 where jurors find a tenant holding a manor for the service of one pair of gilt spurs yearly for all service. They did not find from the rolls that the land so held was socage, but

> since land held by one pair of gilt spurs or sixpence or more is socage it is for king and council to judge whether land held by one pair of gilt spurs for all service is socage or sergeanty.[1]

It is not clear from the record what was the basis of the statement that land held by spurs or 6d. is socage, nor why if this were so the land in question was not described as socage without any need to refer the matter to king and council, but the case indicates that service alone could not be used to settle the question. The surviving tenures in the north - thanage and drengage - defied

1. Inq.p.m. i no.714.

classification. The sort of mixed tenures which created those difficulties are found in Scotland too, but classification was not apparently attempted and therefore was not a problem, e.g. c.1218 Robert Bruce lord of Annandale granted to William de Heneville and his heirs 35 acres of the Bruce demesne in the vill of Moffat and the third part of the mill for a yearly payment of four skeps of meal at Martinmas and, for the third part of the mill, a pair of gilt spurs or 12 pennies at Assumption.[1] An inquest into land in Peebles in 1305 found that it was held by a "payment of 9 marks to the king yearly, 4 shillings to the hospital of Peebles, 12 chalders of provender when the king comes to Peebles and if not, 4 shillings for each chalder, a suitor at the court at Peebles, one-third knight service in the king's Scottish army and finding a man at St. James's day for 8 days during Roxburgh fair to keep the road through Minche Moor free of robbers."[2]

The differences of incident and the conditions of inheritance made socage a particularly important category of tenure. Glanvil brings out the difference between military holdings and socage in succession

> si quis plures reliquerit filios distinguitur utrum fuerit miles per feodum militare aut liber soccomannus[3]

for succession to military fee was by primogeniture but socage could be divided amongst all sons si fuerit socagium illud antiquitus divisum. Socage heirs came of age at 15 instead of 21, custody and marriage went to the nearest relative on the side from which the inheritance did not descend, instead of to the lord of the fee.[4] Bracton says socage

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1. Annandale
2. Bain ii 1675.
3. Glanvil VII 3.
4. Glanvil VII 11.

tenants need not do homage[1] but in fact a number of them did[2] and it was probably a matter of choice, although the element of choice is probably an indication of the fundamentally non-feudal nature of the tenure. By the XII century the reliefs due from knight service and from socage had become fixed and Glanvil states that a relief for a knight's fee was 100s. (confirmed in Magna Carta) while socage relief was equivalent to a year's revenue from the holding.[3] Sergeanty relief was a matter of agreement with the lord, and it was consequently a matter of great importance when a sergeanty was turned into socage or vice versa, e.g. in 1248, Henry III granted to John de Lessinton his steward that he, his heirs and assigns should hold all his land in the vill of Pek of the king and his heirs by the free service (liberum servicium) of one pair of gilt spurs or sixpence to be rendered to the keeper of the king's castle of Pek yearly at Easter for all service; which land John previously held of the king per serjanciam faciendi lardarium regis in castro de Pek.[4]

If sergeanty was not a recognized form of tenure the distinction from socage would have no significance. Socage was, however, recognized earlier than sergeanty as a distinctive tenure in England. Glanvil discusses it in detail and because of that and because of its earlier date it is more likely to have become part of XIII century Scottish land law. The existence of socage tenure in Scotland has been disputed by legal writers since the XVI century. Craig denies its existence

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1. Bracton. fos.77b, 78.
2. P. & M. i 296-307.
3. Glanvil IX 4.
4. Close Rolls 1247/51 pp.24/5.

> I do not regard that distinction [i.e. between military holdings and socage] as either pertinent or useful to the study of the law of Scotland; it is confusing rather than illuminating. It belongs wholly to Norman Law and to thrust it upon Scotland would be a serious mistake....There is no example in Scotland of a charter of lands in which tenure or tenandry is described to be in socage.[1]

but can hardly be taken as consistent evidence as in another section he discusses it as if it were a commonly accepted Scottish tenure.[2] Knowledge of the tenure seems to have come almost entirely from the Regiam Majestatem which carried Glanvil's statement of the rules into Scots law. Erskine, discussing the doubts cast upon the authenticity of the Regiam as an authority for Scots law, refers to the objection that socage was not a Scots tenure and yet the Regiam deals with it as if it were. In defence of the Regiam he maintains socage was known to Scots law and prints a charter granting the lands in Kardene in libero sochagio.[3] Walter Ross strengthens Erskine's argument by referring to a number of similar charters which he has seen.[4]

The rules of socage as stated in the Regiam are substantially those of Glanvil. There are no notable omissions and if socage was known in Scotland it would be the same as English socage. Its first mention occurs under the heading De libero socagio quod aequaliter dividitur inter filios as a limitation on father's power of granting to any of his sons during his lifetime more than the son's presumptive share in the whole paternal inheritance.[5] The rules of socage inheritance come in a later section where the divisibility of socage land

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1. Ius Feudale 1.11.1 i 173.
2. Ius Feudale 1.11.18 p.188.
3. Erskine Institutes i p.13 Appendix. Appendix
4. Ross: Lectures in the Practice of the Law of Scotland ii 61.
5. Reg.Maj.II c.21; S.S. p.136.

is modified and a distinction made between that which was anciently divisible and that which was not.[1] Further rules of inheritance are discussed when socage is contrasted with military fiefs.

> Si quis plures reliquerit filios distinguitur utrum fuerit miles per feodum militare aut liber soccomannus.
>
> Si pater fecerit miles tunc eo casu ejus filius primogenitus succedit in totum.
>
> Si fuerit liber soccomannus dividetur hereditas inter omnes filios per partes aequales si fuerit socagium aliud antiquitus divisum...
>
> Si non fuerit antiquitus divisum progenitus secundum quorundam consuetudinem totam obtinebit hereditatem et secundum consuetudinem aliorum postnatus filius heres est...[2]

The heirs of socage tenants were classed with other free tenants per albam firmam in attaining majority at 15 years.[3] Their wardship until then belonged to their nearest relation, cognate or agnate depending upon the origin of the descent of the fee - if it had come from the father, the mother's relations had wardship.[4] The relief from socage was also distinguished from relief from a knight's fee. A knight's fee paid 100s. juxta consuetudinem regni; baronies and sergeanties made individual bargains with the king iuxta misericordiam et voluntatem domini regis; but de soccagio vero quantum census illius valet per unum annum.[5]

Confirmation of this tenure in other sources more specifically Scottish is difficult to find. Walter Ross's claim to have seen other charters in free socage than that printed by Erskine does not apply to XII and XIII centuries where only one other besides that quoted by

1. Reg.Maj.II c.22, 24. S.S. p.140.
2. Reg.Maj.II c.27. S.S. p.140.
3. Reg.Maj.II c.41. S.S. p.151.
4. Reg.Maj.II c.47. S.S. p.156.
5. Reg.Maj.II c.71. S.S. p.179.

Erskine seems to survive. It seems that if only two grants of this kind survive, the original number cannot have been very disproportionate. The other of those is a grant by Malcolm son of Eugenius of Dunkeld c.1220 to Coupar Angus, granting to it a third of his moveables on death (the later "dead's part") and his burial in the monks' cemetery and he makes arrangement that after his death, his heirs shall double the ferme in the first year from the land of Murthely which he holds of the abbey scilicet tres marcas argenti in primo anno nomine soccagii dupplicabunt.[1] It seems like an arrangement for relief which would conform to the accepted rules for the relief in socage tenure. The Kinglas socage charter also appears to be genuine and its conditioning clauses "free of all secular service, aid and army and quit of all escheat and ward of their heirs or the heirs of their assigns" for a return of one silver penny for all secular service are also in accordance with the recognized nature of socage tenure in England. The date is about 1240 and it is conceivable that if the Regiam was by then being used by lawyers, there would be a tendency to apply the name of the category to tenures which appeared to fit. Because of the definition of socage which appears in the Regiam, if for no other reason, we must expect to find some Scottish references to the tenure even if the category was not widely recognized. The occurrence in the Coupar Angus charter - which is recording an unusual transaction, the legacy of moveables - suggests the skill of a church lawyer and legal training derived outwith the realm.

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1. Moray Charters: Coupar Angus i XL.

A passage in the Fragmenta Collecta of legal writings bears out some of the rules of the Regiam. Discussing how an heir should recover his inheritance, it deals first with the normal feudal situation of securing recognition from a superior and then discusses the wardship of socage heirs.

> Et si terra que tenetur in soccagio sit in custodia parentum heredis eo quod heres infra etatem extiterit custodes illi vastum facere non possunt nec venditionem nec distructionem aliquam de hereditate illa quoquomodo sed salvam eam custodire ad opus dicti heredis. Ita quod cum ad legitimam etatem pervenerit sibi respondeant per leges compota reddentes de exitibus dicte hereditatis salvis ipsis custodibus racionabilibus misus suis nec eciam possunt dicti custodes dicti heredis maritagium dare vel vendere nisi ad commodum dicti heredis.[1]

The authority and origin of the rule is doubtful and of less weight than the Regiam but it provides interesting confirmation.

Other confirmations are found that Scots law operated the rules of socage without applying the name. XIII century evidence of the practice of socage wardship comes from a brieve conferring the office of tutor on the nearest agnate or, if he were heir apparent to the ward, to the nearest cognate.[2] Wardship of this kind was recognized by later legal writers as the type normally implied when there was no feudal wardship of the overlord and even when the terms of enfeoffment specify freedom from wards and reliefs. An interesting mid-XIII century enfeoffment seems to be a variation of this form of wardship. Ralf Noble granted to David de Graham and his wife Agnes half of his demesne of Kenpunt to be held by them jointly and by Agnes for life if David predeceased her, and thereafter their heirs and assigns were to

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1. APS i 371.
2. Reg.of Brieves p.58 No.66.

succeed iure hereditarie. The return was service of one-sixth part of one knight free of ward and relief. If the heir was not of age two of his nearest and most faithful friends were to have custody of the lands with all fruits and issues ad custodiendum ad opus dictorum heredum vel assignatorum.[1]

Lord Cooper has said that the divisibility of socage tenure among sons left no trace on Scots law if indeed it was ever applied. The same comment could be made of English law and yet socage tenure was firmly rooted in the English tenurial system. This particular rule of succession was not, however, absolute and was dependent upon the ancient divisibility of the land - a rule which would not apply to newly created socages and even in the case of old ones would probably be difficult to prove.

Later, it is certain that all these tenures were classified under the wide umbrella of blenche ferme, and that the principal division was made between those who held by military service, by ward and relief, and those who did not, the main groups being - military, blench, burgage, and church holdings, each with clear regulations as to its succession and incidents. This contrasts with the persistence in England of a classification including socage and sergeanty, and in the light of the later differences, it would be dangerous to read XII and XIII century English tenures into Scotland, although it is clear that the essentials of both sergeanty and socage were found there. The only suggestion of any contemporary Scottish classification bears out the later development. It comes from a MS. purporting to be a collection of statutes

1. Menteith Charters No.2.

of Alexander II and refers to tenens per cartam in feodo per liberum servicium vel per fie de hauberk.[1] It must be significant that XII and XIII century records say so much about blench-ferme and feu-ferme and are silent about socage and sergeanty.

Scottish classifications as they appear in the XVI century are the natural development from differences of service observed in the XIII century. They are deduced directly from the service and avoid the controversial and doubtful points which arise so frequently in the artificial English classifications.

In the XIII century some confusion must undoubtedlyhave arisen from the conflict of English influences and the impetus to independent development. At the same time there would be pressure for definition from the same force which pressed for definition in England - the dependence of the incidental obligations on the category of the tenure. It is a reflection of the legal situation in Scotland that the English solution was rejected and an independent one evolved.

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1. Stat.Alex.II CVIII. APS i 400.

CHAPTER IV

Conditions of Tenure

PART 1

Homage and Fealty

The most essential feudal concept was that of homage and fealty of the vassal to his lord. It was originally the bond of a purely personal social relationship, but in the later stages of feudalism, which are those known in XII and XIII century Scotland, homage and fealty have a greatly commercialized significance. As the lord-vassal relationship itself became commercialized and vassalage became dependent upon the endowment of the vassal with a fief, instead of vice versa, the significance of the bond changed too. It is doubtful to what extent the personal aspect of the feudal relationship took root in Scotland. If feudalism was an entirely alien organization, introduced only in its tenurial aspect for the convenience of the governing class, it is probable that the system remained a purely tenurial one and that the feudal relationship was entirely that of lords and tenants. If, however, the tenurial situation at all corresponded with social reality, the relationship would be more than economic and the bonds of homage and fealty would have a more true significance as a symbol of the lord-man relationship. Unfortunately the nature of the sources emphasizes the purely economic relationship - and ignores any more personal aspect that may have existed.

Regiam Majestatem creates the impression that homage at least was a sort of final title to the land - once homage had been given and received the lord was unable to challenge the vassal's right to the lands. If he was uncertain as to who should hold them or if he wished

to claim them for himself, he could delay receiving homage - but acceptance was recognition of the vassal's right,[1] and until homage had been accepted, the lord could not exercise his rights of lordship and claim wardship, relief or service from the heir.[2] In addition to providing a title as against the lord, homage was regarded as a return for the lands - a sort of extra reddendo - and the Regiam states that homage alone (i.e. as a personal and not as a tenurial bond) could only be made to the king:

> Pro solo vero domino non solet fieri homagium except domini principi.[3]

Charter wording confirms this attitude to homage. From the mid-XII century lands were commonly granted pro homagio et servicio suo and in at least one case pro servicio suo et feoditate.[4] Some charters state the position explicitly. The grant of Ralf Noble to David de Graham and his wife of lands in Kenpunt provided that

> David et heredes sui vel sui assignati homagium facient mihi et heredibus meis pro dicta terra et servicium quantum pertinet ad sextam decimam [partem unius militis].[5]

In a charter of 1290/6 which only survives in a transcript of 1408, homage is included in the reddendo clause. David de Wemyss gives Anabel his wife certain lands for her life and to the heirs

> inter me et ipsam procreatis iure hereditario...Reddendo... capitalibus dominis feodorum debita servicia et consueta et michi et heredibus meis homagium et duodecim denarios pro wardis, releviis et omnibus aliis consuetudinibus etc.[6]

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1. Reg.Maj.II c.68. S.S. p.176.
2. Reg.Maj.II c.60. S.S. p.170.
3. Reg.Maj.II c.65 cl.2. SS p 175
4. c.1260 Douglas iii 2.
5. c.1245 Menteith ii 2. infra p.
6. Wemyss ii 3.

A fourteenth century inquest (1333) puts the position more forcefully and refers to the services which pertain to homage, presumably referring to the feudal incidents. It was found that Reginald de Rane's ancestors had been vest and seized in the lands of Ledintoseach and Rotmase as of fee

> faciendo homagium, sectas ad quamlibet curiam per unam sectorem pro terra de Ledintoseach et alia servitia que ad homagium pertinet.[1]

A charter from the earldom of Lennox carries the same implication although the situation with which it is attempting to deal is obscure. Malcolm Earl of Lennox (c.1292-1333) confirming a charter of his predecessor Maldovenus to Gilmor of Luss, heir of John of Luss, acknowledged

> quequidem carta nullum homagium in se continet seu specificant sed cum ob reverentiam nostram et heredum nostrorum volumus et concedimus... the lands to Malcolm ...pro simplice et solo homagio inde tantummodo faciendo... for a service of cheeses in the king's common army quit of all secular services, to the Earl, and of wards, reliefs, marriages, suits of court etc.[2]

Here homage is definitely treated as a return for the lands, something due out of them in the same way as military service or a money return.

This charter also raises the question of whether lands could be held without homage. Regiam Majestatem lists a few tenures which do not involve homage - lands held as dos; free maritagia or lands of younger sisters holding of the eldest sister, up to the third heir on both sides; fees given in free alms; lands given by any method as maritagium so far as affects the husband of the recipient.[3] This

1. Aberdeen i p.53.
2. Levenax p.23. Colquhoun ii 5.
3. Reg.Maj.II c.65. S.S. p.175.

EX BIBL UNIV. EDINBURGEN

case does not, however, seem to be covered. If the land was dos or maritagium and homage were not due till the third heir, the charter would probably have said so instead of simply saying that "the charter contains no homage in it". Does the lack of homage in this instance mean that John of Luss's land was previously held allodially? Certainly the specific freedom of his tenure from the usual burdens of vassalage - ward, relief, marriage, suit of court, could accord with a preservation of allodial privilege. The maintenance of the service of cheeses in the army puts the reddendo also on a non-feudal basis,[1] and homage is the only feudal concession in the terms of the grant. It may be that the charter is an example of the process of the application of feudal principles to a Celtic area which through all its feudal forms preserves a strong foundation of non-feudal custom.

As homage was regarded legally as an obligation involved in landholding and not as a personal relationship, it could be the subject of grant and alienation in the same way as other returns or profits from land. There are a large number of grants of homage and service of tenants which have the effect of inserting a third party between lord and man and in fact rupturing the purely feudal contract of homage. The normality of such a practice is indication of the decline of feudalism as a social force and its position solely as a scheme of land law. The essential relationship of lord and vassal symbolized in homage had been replaced by a purely economic landlord-tenant relationship and homage relegated to the position of a bond of a commercial

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1. see infra p.114

transaction, e.g. the grant of Malcolm Earl of Lennox to John of Luss of the homagium et servitium Maldoseni Macgillemychelmore et heredum suorum et Gillchrist Maccristyne de tota terra de Banwrith so that Maldosenus and Gilchrist would answer to John of Luss for all the services due to the earl,[1] and the grant of Patrick Earl of Dunbar to Galfridus de Caldercote and Margaret his wife

> homagia et servitia Walteri de Greydene et eciam Petri de Greydene et Walterii filii sui de omnibus terris et tenementis que de nobis tenet in villa de Greydene. Tenenda...cum eorum redditibus, wardis releviis maritagiis et escaetis...

for a reddendo of those returns and services which Walter, Peter and ~~William~~ alter were wont to render to the earl.[2]

The concept of liege homage was a product of the commercialization of this relationship, whereby one man could have several lords. The process of insertion could put him in this situation without any action on his part, but the holding of land of several lords was a situation in which most land-holders must have found themselves. Regiam Majestatem states the classic rule on this subject, for regulating the vassal's relations with his several lords.[3] Nevertheless, the earliest recorded instance of the performance of homage would seem to deny this general acceptance of the possibility of homage to several lords.

> Let it be remembered that in 1244 Andrew son of Gilmor Clerauch de Dul did homage to Master John de Hadington, prior of St. Andrews, on bended knees by placing his hands within the prior's hands in presence of witnesses, and there he swore touching the holy relics that he would maintain faithful homage to the said prior and convent and that he would never do, nor by right could do, homage to others than the prior and convent.[4]

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1. Levenax p.20.
2. 1286/9. Reg.Ho.Cart. 60. Appendix
3. Reg.Maj.II c.61.
4. St.Andrews p.349.

Even the Regiam, whose attitude to homage is as precisely legal and unchivalrous as possible, states the personal aspect of homage as well.

> Homage ought to be done in this form, namely, he who does the homage shall become his lord's man and shall bear faith to him for the lands for which he does homage, and shall keep his worldly honour in all things, saving always the faith due to the king and his heirs.[1]

But while doing so, it preserves the idea of homage as return for land - as an incident in land tenure. The tenant "shall bear faith for the lands for which he does homage".

It is interesting that the Regiam says so much about homage and contains only one reference to fealty, and yet the XVI century Craig regarded fealty as essential to the constitution of a feu.

> Fidelitas enim non solum vinculum est feudi, sed vera ejus essentia sine qua nullum feudum subsistere potest; adeo ut fidelitas ipsa ne pacto quidem remitti potest: alioqui in aliam contractus speciem transit nempe in alodium.[2]

The Regiam's note on fealty suggests that it was a title, similar to homage, but of a minor degree. Women who were excluded from doing homage completed their title by doing fealty.[3] Had the position changed between the XIII and XVI centuries, or is the Regiam's preoccupation with homage a distortion?

XIII century record, except the Regiam, is more informative about fealty than about homage. One charter (dated c.1260) records a land grant made pro servicio suo et feoditate[4] instead of pro homagio et servicio. The Register of Moray preserves two forms for oaths of fealty.[5] In 1245 a grant of Arbroath to the Earl of Buchan of land

1. Reg.Maj.II c.62.
2. Ius Feudale 1.9.16.
3. Reg.Maj.II c.57 cl.10.
4. Menteith ii 6; Douglas iii 2.
5. Moray 299, 300.

for a return of 20 marks, counsel and defence records fealty as an additional obligation.

> dictus comes et heredes sui dictis abbati et conventui successive prestabunt fidelitatis iuramentum salva fide domini regis.[1]

In 1312 a similar obligation seems to have been required of another tenant, Alexander Fraser, who held the land of Turry for life - although the word fealty is not used, it must have been implied, for the king's faith was reserved.

> Ego grato animo promisi et promitto eisdem et per presentes litteras fateor me teneri ad prestandum eis et eorum monasterio de cetero fidele concilium auxilium et laborem meum cum necesse fuerit in omnibus agendis suis quociens fuero requisitus et commode potero interesse sumptibus monasterii secundum rationabilem modum vocacionis salva fide domini regis et aliorum dominorum meorum priorum et specialiter ad manu tenendum et promovendum terras et homines eorundem in iure suo iuxta posse meum.[2]

Another Arbroath sub-tenure provides illustration of this attitude to fealty as due from the land. Arbroath granted land to Patrick de Rothan for one mark and a memorandum records that in 1299 Eugenius son and heir of Patrick

> juravit et fecit fidelitatem domino Bernardi abbati...pro dicta terra in claustro ad parliamentum conventus et duplicabit firmam ad terminos sancti Martini et Pentecostes proximo sequentes.[3]

The earliest occurrence of the word is 1177/80 when Henry son of Anselm granted to Paisley the church of Cormannoc with half a carucate of land in the vill in elemosinam with the provision

> si autem contigerit quod personatum predicte ecclesie alicui persone concesserunt domino feudi fidelitatem faciat.[4]

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1. Arbroath i 247.
2. Arbroath i 328.
3. Arbroath Vetus 320.
4. Paisley p.105.

Apart from the Arbroath cases and this early one there are no instances of fealty being mentioned in a reddendo clause. Craig states that

> although sometimes mentioned in the reddendo, it is as often allowed to rest on implication.[1]

It is likely that in the XIII century as in the XVI fealty, like homage, would normally be an implicit rather than an explicit obligation.[2] The question arises as to whether its implication was universal or not. Craig says it was, but suggests that there was some doubt.

> Tender of fealty was a condition of the renewal of investiture in any and every feu...in the manner of holding military, blench, or in feu-farm; though there are some who deny that it was necessary in the case of holdings in the last-mentioned description.[3]

Here he purports to be speaking historically, but for the XII and XIII centuries there is no means of checking his statement exactly. Two clues are given, however. Litigation arose in the early XV century between Lindores and the Earl of Douglas about the obligations due to him from the abbey's land in Garioch. One of those duties claimed was fealty. The cartulary of Lindores contains an ecclesiastical legal opinion on the case - and although we do not know how far its arguments proved acceptable in a court of law, it cited general feudal law as authority for reducing the importance of fealty in land-holding.

> Item si fidelitas aliqua pro ipsis terris esset debita, videtur ipsis per pactum factum a comite et a rege remissa quia feodum invenitur sine fidelitate in libro feudo quantum fiat investitura c. nulla et invenitur feodum liberum et immune unde communiter dicitur "Ego teneo hoc castrum in feodum liberum et de tali non tenetur quis facere nisi simplicem recognicionem nota Hostiensis in summa de feudis..."[4]

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1. Ius Feudale 1.9.21.
2. see supra p.55. Arbroath i 328.
3. Ius Feudale 2.12.22.
4. reference to Summa Aurea: De Feudis lib.iii of Henry de Bartholomaeis, Cardinal Hostiensis.

> Set comes et rex concedit terras sine omni servicio et exactione seculari in liberam etc. ut - - - modo fidelitas est servicium quo videtur esse remissa...[1]

Hostiensis's authority is XIII century and therefore more applicable than Craig's, if we could be sure that Scottish practice in this matter was in touch with general feudal practice.

This opinion also raises the question of whether fealty was due from lands granted in free alms. Craig does not discuss this, but there is a XIII century document which suggests that free alms could be exempt from fealty as they were from homage. In a document dated 1285 William bishop of St. Andrews makes known his decision in a dispute between Sir Henry of Dundemor and the priory of May

> super fidelitate et fidelitatis iuramento petitis per ipsum dominum Henricum a dictis priori et monachis racione terre de Turbrek in Fyf demosinate monachis supradictis.

Henry had apparently distrained some horses belonging to the priory and the bishop gave judgment

> dictos priorem et monachos racione terre predicte de Turbrec ad fidelitatem faciendam dicto Henrico vel suis heredibus non teneri

and ordered Henry to restore the horses within eight days.[2] The exact circumstances of the case are, however, lacking and we do not know the arguments which influenced the final decision.

Performance of homage and fealty continued in Scotland until the XVII century when Cromwell abolished homage and fealty to any subject.[3] There is no suggestion in Scotland of any big attempt on the part of the crown to make real the prior or at least concurrent obligation of loyalty to the king on the part of mesne lords, cf. 1086 Salisbury oath,

1. Lindores pp.203-4.
2. St.Andrews p.386.
3. APS vi (II) 817b.

but it is probable that this was recognized in the law-abiding parts of the realm. The oaths of fealty to the abbot of Arbroath were made salva fide domini regis.[1] The bonds did, however, have potential dangers when as titles and obligations of land tenure they corresponded to social reality. Family links were strong in Scotland and homage and fealty were a dangerous legal bond to strengthen a personal one. The results were apparent later, but in this early period the links of family with land tenure is too tenuous to be asserted.

The distinction between the king's tenants and mesne tenants was however, an important one. Later, at least, it has constitutional as well as political importance. The references in Scottish record to the word "vassal" are rare, as also are those to "men". The economic aspect is more usually brought out in the use of the word tenant, but in the XIII century the continental word vavassour occasionally occurs.

At the end of the XIII century, in 1296, John Earl of Atholl granted land of Weem and Abyrfeallybeg (Aberfeldy) in Atholl to Alexander de Meyners

> tenendas et habendas...sicut aliquis vavassorius aliquam terram de aliquo comite vel barone in vavassoria in toto regno Scocie tenet aut possidet

for one penny at Pentecost and performing the king's forinsec service and one suit to the Earl's court of Rath in Atholl.[2] A later use of the word occurs in the charter of John de Menteith, son of Walter, former Earl of Menteith, to Ewen son of Fynlay for his homage and service of all the pennyworths of land which the granter held from Sir Walter

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1. Arbroath i 247, 328, supra p.55.
2. Reg.Ho.Misc.

Steward of Scotland, within his vavassorage of Ardmernog.[1] In this use vavassoria may be contrasted to baronia as a descriptive of the status of the holding, but it is doubtful if the word ever acquired the technical significance of baronia. It was a useful description, bearing the same force as more complicated phrases as sicut aliquis comes vel dominus in regno Scocie aliquem vasallum poterit in aliqua terra infeodare in Fergus Earl of Buchan's grant of Fedreth to John Utred pre 1214,[2] or the very usual expression of subtenantry which occurs in the charter of Malcolm Earl of Fife granting the lands of Livingstone and Harmanston to Archibald de Douglas to be held adeo libere...sicut aliquis miles in toto regno Scocie feudum suum de comite vel barone tenet et possidet pro servicio...[3] The royal reservation was made in confirmation-salvo servitio meo. The phrasing of the charter of enfeoffment and the royal confirmation express well the vagueness of the concept of vavassoria.

A use of the word occurs in a vassal's grant to the church late XIII century (1274) - in the grant of Sir Malcolm de Moray to Dunfermline of all his land of Wester Beeth which he held of Alexander de Moray hereditarily to be held in elemosinam sicut aliqua elemosina in regno Scocie ab aliquo Vavassore tenetur...salvo forinseco servicio.[4]

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1. from Inveryne charters in Lamont Papers 9.
2. Coll.Aber.& Banff p.407.
3. 1214/26. Morton i Appendix.
4. Dunfermline 207, 209.

PART 2

Inheritance

Surviving XII century charters raise the interesting question of the heritability of fiefs in the first stages of feudal development in Scotland. Unfortunately the charters are so few that no generalization can be made. In England, in the period immediately after the Conquest, fiefs had tended to be personal rather than hereditary, but the same forces which had produced the hereditary principle in continental feudalism had made it customary in England by the time that Anglo-Norman influence was brought to bear on Scotland. English influence would therefore make for heritability in Scottish fiefs. The Anglo-Norman followers of David I would be inclined to regard their Scottish fiefs as held on the same terms as their English lands and would certainly be disposed to enfeoff their own tenants similarly in both countries.

Many of these enfeoffments would be made without written record of the terms and most of those which were recorded are lost. Two of David I's five surviving charters to lay tenants - those to Alexander de St. Martin and to Walter de Riddale-are made generally to themselves and their heirs, containing the general phrase, common in English charters of this period, in feodo et hereditate,[1] and can be taken as conveying an unqualified hereditary right to the lands.

Some of the other grants are less clear. One of the first charters of David's reign (1124) - that to Bruce of Annandale - is purely personal. It makes no provision for any tenure after Bruce's

1. supra pp. 23-4.

death. In 1147/53 another grant is made of the same land in feudo et hereditate illi et heredi suo in foresto. When William the Lyon issued another charter of Annandale at the end of the century, stating all the privileges adhering to the tenure, it had the full formulae of inheritance tenendum sibi et heredibus suis de me et heredibus meis in feudo et hereditate[1] and it reads as if the terms of the holding were being extended:

> me reddidisse et concessisse et hac carta mea confirmasse Roberto de Brus et heredibus suis totam terram quam pater suus et ipse tenuerunt in valle de Anand per easdem divisas per quas pater suus eam tenuit et ipse post patrem suum.

If the phrase "in fee and heritage" was known and used by David's clerks, a purpose can be argued in its omission, especially when the omission was backed up by the addition of a phrase specifically limiting heritability to one generation. The occurrence of a limitation to one heir in two other charters of David I suggests that it was commonly used and regarded as valid in this period. One of the versions of the Swinton grant to Coldingham has in feuda sibi et heredi suo as alternative to in feudo et hereditate sibi et heredibus suis of the other.[2] A grant was also made to Matthew archdeacon of St. Andrews who was to hold in feudo et hereditate sibi et heredi suo tenendum de me et heredibus meis.[3] Lawrie says that in Scots law a grant to one heir meant a grant to all heirs,[4] but that is surely a legal interpretation of such charter clauses and therefore a later development. At this time of charter evolution a phrase like this would give effect to definite wishes on the part of the grantor.

1. Nat.MSS.Scot. i XXXIX.
2. L.C. C; CI.
3. St.Andrews p.200.
4. L.C. p.342.

Malcolm IV's surviving grants are all hereditary. The phrase in feudo et hereditate sibi et heredibus suis had by then become established form as part of a general clause describing tenure - tenendum - which was usually lacking in David's charters.[1]

1 & 2) Tenendum et habendum sibi et heredibus suis in feodo et hereditate.

3) ...me in feudo et hereditate dedisse... Tenendum sibi et heredibus suis de me et heredibus meis hereditarie.

4) volo...ut ipse...et heredes eius...teneant de me et heredibus meis in feudo et hereditate...

5) tenendas...de me et heredibus meis hereditarie.

The heritable nature of the tenure is the only important descriptive in these charters and as these clauses suggest it is stated quite emphatically. William the Lyon's lay charters continue and develop the tenendam clause and the hereditary descriptions in similar form. All but two of his charters state hereditary succession in the fief, and the two exceptions are explicable. One is a simple charter in forest[2] and the other is the grant of new lands to the Earl of Strathearn which conveys the tenure vaguely in the same terms as his existing holdings - he is to hold them as freely as he holds the earldom of Strathearn.[3]

Charters of subinfeudation do not occur frequently before the mid-XII century, but by then the common form is the grant to the vassal et heredibus suis. Occasionally documents of this period speak of land held by hereditary right - iure hereditario. The earliest is a gift

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1. see supra p.22 et seq.
2. to William son of John, the land of Hunum. Ant.MS. p.328.
3. Atholl Charters No.1.

to Newbattle by Waleran of land in Bereford que michi jure hereditario contigit.[1] The phrase is here used to describe the donor's title to the land which he had inherited as heir of his uncle Rod. There is, however, no means of knowing how usual or unusual this was. The phrase does not occur elsewhere in a similar context. The distant succession (uncle-nephew) may have caused the use of the phrase, or the succession may have been in dispute. Other uses are descriptive of the tenant's tenure, rather than the lord's, e.g. William de Bruce granted land in feudo de Penresax to Ivo de Kilpatrick to be held iure hereditario.[2]

By the XIII century the term ius hereditarium is frequently used to describe a title to land, e.g. the land of Auchtalonie que ad Walterum filium Turpini et antecessores suos iure hereditario pertinebat.[3] After litigation between Malcolm son of the Earl of Lennox and David de Graham over the land of Strathblane, the parties agreed ad colloquium domini regis at Stirling quod dictus David et heredes sui et sui assignati tenebunt...iure hereditario predictam terram de Strathblanan...de dicto Malcolmo...[4] In some cases, as in this, the phrase is used of assigns as well as heirs - they too have to succeed by hereditary right.[5] A rather incomprehensible use of the phrase occurs when in a charter of c.1260 Paisley is said to hold Aldingstone of Adam Carpentarius hereditarie.[6] But it seems that these phrases were simply stressing a situation generally accepted by the mid-XII

1. Newbattle 70.
2. c.1194 x 1214. Annandale ii 3.
3. 1226 x 39. Arbroath Vetus 306.
4. 1248. Lennox ii 9.
5. Menteith ii 2 ~~Appendix~~ ; Lennox ii 11.
6. Paisley p.58.

century. It is possible that in the initial stages of the installing of Anglo-Normans in Scottish fiefs, David first used considerable discretion in the giving of hereditary endowments, but if this was the case, such a policy was soon swamped by the flow of Anglo-Norman law and usage which was simultaneously introduced, and the use of the phrase in feudo et hereditate signifies the definite establishment of a hereditary feudal principle.

PART 3

Alienability of land

Freedom of alienation was a privilege valued by tenants and generally regarded by lords as working against their interests, but as all lords, except the king, were also to some extent in the position of tenants, no clear political line or conclusions could evolve on this subject. Of the two popular methods of alienation - substitution and subinfeudation - the latter was more dangerous to the lord's interests.[1] He had naturally less control over it - for if proper arrangement were made for the performance of the services due to him, he could make little objection at a time when the economic aspect of land tenure outweighed any social and political importance of vassalage itself. Theoretically, the immediate tenant remained responsible for all the obligations inherent in the tenure and arrangements for them would be made in the terms of the grants to sub-tenants. Commonly these obligations were covered by a general reservation of the forinsec service due to the capital lord of the fee, and one

1. see Note p.91.

assumes that specific details would be verbal. Sometimes, however, the specific service was passed on,[1] and in one interesting case the original service to the original lord was retained through a variety of subinfeudations.

1) Grant of John de Normanville to Waleran de Normanville of one carucate in Maxtun

> ad feodofirmam...reddendo...unum tercellium ancipitris vel tres solidos et nichil inde aliud faciendo.[2]

2) Grant of Waleran to Guy his brother of all the land of Maxtun given to him by John for the service of a pair of gilt spurs and no other service except

> superiori domino feodi unum tercellium ancipitris vel tres solidos.[3]

3) Grant of Guy of the same land to his brother Thomas reddendo mihi unum par calcarium deauratorum with the same provision for service to the capital lord of the fee.[4]

4) Thomas finally granted the land to Melrose with the same provisions.[5]

Similar provisions run through one of the most complicated processes of subinfeudation whose record has survived. Rychende, daughter of Wynfridus de Berkely, held land in Cunveth from Arbroath. She granted it to Roger Wishart in fee and heredity

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1. e.g. the grant by Mary to William de Moray of part of the land of Tullybarden ad feodofirmam faciendo servicium Scoticanum forinsecum de dicta terra legitime debitum et sectam curie domini comitis de Strathern et reddendo dicto domino comiti de Stratheren annuatim 12d. et abbathie de insula missarum 6s.8d. (1284 Moray Orig. 15)
2. Melrose i 338.
3. Melrose i 339.
4. Melrose i 340.
5. Melrose i 341.

> free and quit of all services pertaining to me and my heirs except the king's forinsec service for which he or his attorneys shall answer.[1]

When Roger in his turn granted it to the priory of St. Andrews, the abbot of Arbroath confirmed his gift salvo servitio domini regis and reserved the render of 1 lb. pepper to Arbroath.[2] Later, in 1242, Arbroath made a new grant of Cunveth to John Wishart for a return of 8 marks

> et respondendo de forinseco domini regis servicio et de omni seculari demanda ad dominum regem de dictis terris pertinente.[3]

In these cases the position is quite clear. In the first, the second holder profited from his alienation and the two burdens passed right on to the occupying tenant who was to bear them both. But sometimes responsibility was not so well defined, and it was a matter of extreme difficulty for the lord to exact the service from any one particular person, even although his right to it was admitted. Confirmations of subinfeudations, especially royal confirmations, commonly insert a phrase salvo servicio nostro. The use of this phrase begins in William's reign. It is not found in any of David's or Malcolm's confirmations and it probably indicates an increasing concern for the performance of the original service. Subinfeudations were increasing and the feudal pattern becoming so complicated that a reminder of the initial service was probably necessary. Certainly there are more provisions for the king's forinsec service than for any other. The difficulty of pinning the responsibility for service on one tenant in a complicated feudal hierarchy and of bringing legal

1. St.Andrews p.285.
2. St.Andrews p.286.
3. Arbroath i 272.

sanctions to bear on him to secure it was a powerful incentive to Quia Emptores in England whereby the free right of subinfeudation was ended and the process of substitution preserved. Substitution did not involve this difficulty - tenure and responsibility for service were combined in one person and the position was clear and simple. Initially too, the lord had greater control, for his consent was necessary to the receiving of a new tenant and vassal whose homage and fealty were due to him, and English charters of substitution frequently mention the lord's consent. By the XII century, practice varied in different parts of Europe.

> Very generally, the continental vassal could not substitute a new vassal for himself without his lord's consent; but commonly he had some power of subinfeudation.[1]

The position in England is not completely clear. According to Maitland "Glanvil nowhere says that the tenant cannot alienate his land without the lord's consent" and he suggests that it is possible to find in his text the assumption that, without the lord's consent, there could be no substitution.[2] Bracton favours free alienation, and argues that it does no iniuria, though it may do damnum[3] to the lord. Maitland found that the Magna Carta of 1217 was "the first document of a legislative kind that expressly mentions any restraint in favour of the lord".

> Nullus liber homo de cetero det amplius alicui vel vendat de terra sua quam ut de residuo terrae suae possit sufficienter fieri domino feodi servitium ei debitum quod pertinet ad feodum illud.[4]

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1. P.& M. i 340.
2. P.& M. i 332.
3. ibid.
4. C.39. S.C.p 343.

This was only a restatement of an accepted position, for the lord had a right to recognosce lands if the tenant alienated on a scale likely to reduce its value to the lord, i.e. if he did not retain enough to enable him to fulfil his obligations. But the inclusion of this rule in the second reissue of Magna Carta means that it required reassertion in some way, that tenants were assuming a power of alienation which lords wished to check - and it was in fact a forecast of Quia Emptores. Charter phraseology reflects this freedom of alienation and by the XIII century it was common practice to grant land to "heirs and assigns". A grant of this nature was more or less equivalent to an anticipatory consent to alienation and probably covers both subinfeudation and substitution. Grants in these terms in effect gave full power of alienation.

In Scotland the absence of legal records prevents us from reaching such definite conclusions as are possible in England. Regiam Majestatem has nothing to say of a superior's power of restricting subinfeudations and the only statements of law on the subject are two pieces of the miscellaneous survivals grouped in APS as Fragmenta Collecta. The first states the general feudal principle.

De dismembracione tenementi

> Nullus liber homo potest dare vel vendere alicui plus de terra sua quam ut de residuo ipsius terre sue possit fieri domino feodi servicium et quod pertinet ad feodum antedictum.[1]

- which seems to suggest a freedom of alienation with only this restriction, but the second is to some extent contradictory and suggests that the superior's consent was necessary.

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1. Frag.Coll. c.4. APS i 731.

Just causes for recognoscing land

> Quarta est si tenens alienaverit terras suas sine licencia domini sui superioris tunc dominus potest eas eciam recognoscere et in hoc casu non tenetur eas dimittere ad plegium.[1]

It may be that those two conflicting dicta were reconciled in the manner which certainly prevailed later, e.g. Craig states the Scottish custom in this matter:

> Alienation of the feu (or rather the major part of it) is most strictly forbidden and any alienation of more than half the feu is definitely visited by deprivation.[2]

Apart from these survivals which are in any case of doubtful authority and are statements of general feudal law, the information comes from charters. A large number of these suggest that consent of the lord was necessary. The lord's consent is frequently mentioned[3] or he himself often issues a separate charter of confirmation. Most of these confirmations are of gifts to religious houses and are preserved in their cartularies - ascending through the feudal scale as far as the king. Royal confirmations of lay subinfeudations also survive, though not in such numbers nor so consistently.[4] The question arises whether the consent and assent which are thus recorded were necessary to the validity of the gift or merely advisable. The existence of similar confirmations on a comparable scale in England suggests that they were only an extra protection and Maitland's comment is that

> careful examination of them suggests that a subinfeudation effected without the lord's consent was neither void nor

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1. Frag.Coll. c.22. APS i 733.
2. Ius Feudale 3.3.22.
3. e.g. David de Innerlunan ex consensu et voluntate Gillicrist Macgilliduffi granted to Beauly his land of Auchterwaddale which he holds at feu-ferme from the said Gilchrist. (c.1275 Beauly VI)
4. see Melvilles iii 5; Sutherland 2; Morton ii 7.

voidable by the lord so long as the mesne signory endured [and was effective].[1]

What the lord's consent would do was to guard against the escheat of the mesne tenancy, for unless he had consented he was not bound to recognize his vassal's tenant.

Grants to heirs and assigns

Whatever the position in common law, the terms of the grant could convey powers of alienation to the donee, and in Scotland, as in England, gifts were made to "heirs and assigns". The date for the beginning of this practice cannot be definitely fixed. None of William the Lyon's charters take this form, some of Alexander II's do.[2] The earliest record of a grant "to heirs and assigns" is the Earl of Buchan's grant to John son of Uctred and his heirs and assignees of 3 davachs in Fedreth in exchange for the lands of Slaines and Crudan.[3] The date is 1210 and suggests that the inclusion of assigns in a grant was almost simultaneous in both England and Scotland, although whether it arose spontaneously in Scotland as a result of pressures similar to those in England, or was introduced in imitation of English practice, we have no means of knowing. Almost contemporary was a charter of Hugh Freskin, c.1211, which conferred limited powers of assignation on Gilbert archdeacon of Moray with regard to the lands in Sutherland which Hugh gave him. The grant was made to Gilbert et illis heredibus de parentela sua quibus ipse dare et concedere voluerit et heredibus eorum.[4]

1. P.& M. i 342.
2. e.g. Melrose i 177.
3. Coll.Aberdeen & Banff p.407.
4. Sutherland 1.

An unusually detailed grant of powers of alienation is Maldouen Earl of Lennox's confirmatory grant in 1240 to David de Graham of the lands in Strathblane which he received in exchange from the Earl's previous tenant, Feruware Macgilmartine. It includes the clause:

> Concessi eciam ei et heredibus suis et suis assignatis quod possint quandocunque et ubicunque voluerint tam in egritudine quam in sanitate coram duobus testibus attornatos suos instituere qui eis iure hereditario sine omni contradictione mei vel heredibus meis in dicta terra succedant vel saltem si voluerint illam salvo custodiant usque ad legitimam etatem rectorum heredum qui interim de exitibus fructubus et firmis in omnibus disponant secundum quod ille qui discedit melius indicaverit expedire ad opus suum et heredum suorum.[1]

The arrangements here are exceptional, and in most cases grants were made in a straightforward fashion to "heirs and assigns".[2] By the end of the century an alienation could take the form of an appointment of assigns. Thus in 1293 David de Lindsay appointed Newbattle his assigns for receiving 20 pounds which Colin Cambel and his heirs were obliged to pay him from the land of Symoniston in Kyle.[3]

But as freedom of alienation came to be accepted, its inconveniences and losses to the lords were felt, and although there is no indication of a general move to restrict subinfeudation as in England, detailed restrictions were included in the terms of the gift, e.g. the grant, c.1256, of Christina de Valoniis to John de Lydel of her land of Balbanein and Panlathyn

> tenendam et habendam sibi et heredibus suis vel assignatis vel quibuscunque vendere voluerit vel legare exceptis viris religiosis et judeis.[4]

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1. Lennox ii 7.
2. e.g. Douglas iii 2.
3. Newbattle 172, 174. cf. also Melrose i 236.
4. Panmure ii p.140.

In 1284 the abbot of Arbroath granted the land of Latham to Hugh Heem, his heirs and assigns, with the qualification

> Nec licebit dicto Hugoni vel heredibus suis vel assignatis dictam terram alicui viro magne potencie scilicet comiti, baroni vel militi assignare vel ad firmam dare sine licencia nostra speciale petita et optenta.[1]

A similar qualification was made in a grant by Dunfermline to master William de Yetham, abbot's clerk, of a life-holding to be held

> de nobis...pro toto tempore vite sue sibi vel assignatis absque omni exaccione decime et multure dum tamen ipsas terras vel aliqualem partem earundem alicui potenciori se non assignaverit...[2]

and in Paisley's grant in 1272 of Fulton to Thomas and three heirs which provides that they shall not have authority or power

> predictam terram de Fulton alicui persone ecclesiastice vel seculari obligare impignorare vel ad firmam dare alicui ditiori vel potentiori annuo redditu sex marcharum seu aliquomodo ab ipsis alienare sine consensu et assensu nostro. Quod si facere voluerint et nitantur cadat a jure suo et predicta terra ad nos revertetur.[3]

Church tenants were, or should have been, in a special position with regard to powers of alienation. Subinfeudations could not be made without the scrutiny of the house concerned and this matter was the subject of at least two bulls of Innocent IV - one to St. Andrews

> Hinc est quod nos vestris supplicationibus inclinati ut clerici vel laici qui terras possessiones domos aut alia bona vestra in feudum vel sub annuo censu seu redditu tenent a vobis nulli vendere seu donare aut alias alienare sine vestro legitimo assensu presumant.[4]

and one to Dunfermline - <u>Contra feudotarios</u>

> ...ex parte vestra fuit propositum coram nobis quod nonnulli clerici et laici terras domos prata possessiones et

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1. Arbroath i 274.
2. Dunfermline 229.
3. Paisley p.52.
4. St.Andrews p.97.

> alia quod a vobis et monasterio vestro tenent in feudum vel sub annuo censu seu redditu sine vestro assensu vendere dare personis ecclesiasticis et alias ac alias alienare.[1]

Sometimes, fulfilling this general rule, a clause was inserted in a church grant to a vassal forbidding alienation without consent. An early XIII century example comes from Kelso's gift to Thomas de Bosco of the land of East Duddingstone for a return of 10 marks yearly

> Ipse vero Thomas et heredes sui perpetuam alienacionem de predicta terra vel de parte predicte terre non facient nec predictam terram vel ipsius terre medietatem inpignorabunt sine assensu et voluntate nostra.[2]

Examples are common at the end of the century, e.g. Arbroath's gift to Andrew of the capitale edificium of the abbey's land in Crail with the provision that he should not sell, assign or mortgage or in any way alienate sine nostra speciale licencia,[3] and another Arbroath restriction in a feu-ferme grant of land in Aberdeen:

> Dictus vero Patricius et heredes sui dictam terram nullo modo vendent impignorabunt seu alienabunt vel ad firmam dimittent nisi de consensu abbatis qui pro tempore fuerit et conventus[4]

and Coupar's let in 1304 at feu-ferme to John Barbour, burgess of Montrose of land in the town

> nec dictus Johannes nec aliquis heredum suorum dictam terram vendent impignorabunt vel aliquomodo alienabunt sine abbatis et conventui Sancte Marie de Cupro consensu. If they did so abbas et conventus pre ceteris dictam terram habebunt pro eodem precio quod pro ea alias dare voluerint vel pro minori.[5]

In one case, at least, a subinfeudation was granted with the church's consent. Arbroath's tenant in the lands of Kunveth, Rychende de Bercley, subinfeudated it

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1. Dunfermline 289.
2. Kelso Nos.242, 457, infra p162.
3. 1280 Arbroath i 270.
4. 1311/27 Arbroath Vetus 269.
5. Coupar LXXV.

> concessione dominorum nostrorum abbatis et conventus de Aberbrooth.[1]

Sometimes the restriction was not so complete but only applied to certain classes of tenant whom the church did not wish to have as its vassals - e.g. the gift of Lindores (1244-73) in feu-ferme to Laurence de Monte Alto, clerk, of a toft in Dundee to be held by him and his assigns for 1 mark of silver from him, but 2 from his assigns and hospitality for the abbot and his agents in Dundee if they wish it.

> Et sciendum quod predictus Laurentius predictum toftum nullis secularibus personis nobis dicioribus vel potencioribus nec eciam alicui domui religiose sive viris religiosis assignabit. Nec idem Laurentius vel sui assignati vel eorum heredes predictum toftum vendent vel aliquo modo alienabunt nisi de nostra processerit licencia et voluntate.[2]

Also the gift of abbot William of Arbroath to Hugh Heem, his heirs and assigns, of the right in the lands of Mernys, the mill of Conveth and the land of Latham -

> Nec licebit dicto Hugone vel heredibus suis vel assignatis dictam terram alicui viro magne potencie scilicet comiti baroni vel militi assignare vel ad firmam dare sine licencia nostra speciali petita et optenta.[3]

This also may explain the occasional recovery of lands by religious houses on the grounds that they had been wrongly alienated. Thus in 1253 when Emma, daughter and heir of Gilbert de Smytheston, claimed her inheritance by brieve of mort d'ancestor, Dunfermline successfully contested her claim and Alexander III confirmed the outcome -

> ...in presencia nostra et magnatum de nostro consilio sponte recognovit quod terra de Smythetun in feodo de Muskelburgh cum pertinenciis quam antecessores sui aliquo tempore tenuerant de domo de Dunfermline et quam ipsa petierat per litteras regias de

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1. St.Andrews p.285. see supra pp. 65-6.
2. Lindores LXXXIX. Supra p. 72
3. Arbroath i 274.

> morte antecessoris, fuit et esse debuit propria terra monasterii de Dunfermline et a dicto monasterio alienata iniuste tanquam terra qua data fuit in liberam et perpetuam elemosinam eidem monasterio ab antecessore nostro clare memorie rege David.[1]

Later, in 1284, Dunfermline again successfully asserted its right against a tenant's alienation. John de Lastalrick, tenant of the land of Halys, had apparently enfeoffed his son John and in the abbot's court an agreement was made

> ...salvis dicto Johanni feodo et recto dicti tenementi de Heem ita quod dictus Johannes dictum Symon nec aliquem alium sine licencia domini abbatis aliquo tempore inposterum infeodare possit.[2]

Religious houses, however, frequently made alienable grants to heirs and assigns which would be valueless if a general principle were admitted that church lands were inalienable. There are no parallel cases in the XIII century of lay lords successfully or unsuccessfully contesting subinfeudations.

In the XIV century, however, there is some suggestion that as the law then stood a tenant could not sell or alienate without the superior's consent. In 1377 a case came before the justice ayre of the regality of Moray where the Earl of Moray challenged a sub-tenant's right to possession of land. The tenant defended his possession on the grounds that he had been enfeoffed in fee and heritage by two ladies and produced his charter. The prosecution then claimed quod nullus tanens potuit vendere aut in feodo et hereditate alienare terram sine lisentia et confirmatione domini sui superioris super hoc specialiter procurata et impetrata. The defence did not seek to deny this assertion of law but sought to prove that it had in fact been fulfilled

1. Dunfermline 82.
2. Dunfermline 230.

and that a charter of confirmation had been destroyed. The question of the existence of such a charter as proof of superior's consent was put to a jury which declared it had often seen and heard such a confirmation read in the sheriff courts of the regality at Inverness.[1] This legal position gives point to the 1457 feu-ferme act.[2] If there was no restriction on alienation of any kind, it is difficult to see that the act was giving any more than the vaguest and most indefinite encouragement of this form of alienation. If, however, restriction were in operation, the act could be interpreted as removing a distinct obstacle and giving concrete encouragement to improvement of this kind. The context of the act is of the utmost importance for its significance. Craig interprets it in this latter sense[3] and places it in a legal context where there were no powers of alienation. The legal context may however have changed between the 1290's and 1377.

The question also remains of gifts which themselves created a power of alienation, even if none were permitted at common law. These were usual in the XIII century and in practice conferred a widespread freedom of alienation. Craig, who holds that ordinary feudal law does not permit alienation without the lord's consent (here at variance with Glanvil and Bracton), admits the force of a grant to heirs and assigns, but casts doubt upon the early evolution of this practice.

> I may say that in my opinion the condition against alienation is of no force or effect in the case of any infeftment (whatever the

1. Familie of Innes p.64.
2. APS ii 49 c.15.
3. Ius Feudale 3.3.22.

> manner of holding may be) if conceived in favour of one, his heirs and assignees.... In titles of ancient date, the references to assignees are few and far between, and I suspect the inclusion of them in feudal grants is a modern practice invented to legalise what would otherwise be illegal.[1]

Even a cursory examination of XIII century charters proves that he is wrong about his references to assignees and his assertion of the motive for this practice is also doubtful, as it remains uncertain how far it was necessary to legalize alienation before the XIV century.

The lord was one interested party in an alienation by his tenants, but after the hereditary principle of fiefs was established, the heirs of the donor also had to be considered, and the consent of heirs to an alienation was a feature of the Norman period in England. Maitland notes that

> the Anglo-Saxon thegn who holds bookland does not profess to have his heir's consent when he gives part of that land to a church; his successor, the Norman baron, will rarely execute a charter of enfeoffment which does not express the consent of one heir or many heirs.[2]

This practice continued down to the end of the XII century, but by the XIII century such a strict interpretation of a gift to a man "and his heirs" - that the heir was a person appointed by the form of gift - "silently disappeared", and in the XIII century charters make no mention of heirs' consent.

This concise description of development is broadly applicable to Scotland. Several XII century charters mention consent of heirs, especially charters of mortmain. David I's association of his son Earl Henry with him in some of his grants to the church are the most

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1. Ius Feudale 2.5.7.
2. P.& M. ii 255.

notable instances.[1] Granting of land to the church was however in a separate category altogether and the grants came to be termed grants in mortmain. It is likely that the consent of both lord and heirs was considered more necessary than in ordinary lay subinfeudations as both lost more by the grant. Certainly in England the interests of lords produced a severe restriction on such grants in 1279 (foreshadowed as early as 1217)[2] and the preamble of the Statute of Mortmain cites a general principle of lord's consent.

> Cum dudum provisum fuisset quod viri religiosi feoda aliquorum non ingrederentur sine licencia et voluntate capitalium dominorum de quibus feoda illa immediate tenentur...[3]

In all surviving records of religious land-holdings, it appears to have been usual practice to acquire the consent of lords and the consent of heirs was likewise often recorded - e.g. Richard Comyn's grant of Kynsetburne to Holyrood assensu et consilio Hestild uxoris mee et heredum meorum;[4] the grant to Holyrood by Thor son of Swan of the church of Tranent consilio et concessu heredum meorum (pre 1153);[5] the grant by Herbert the king's chamberlain to Holyrood of the church of Kinel consensu et consilio filiorum meorum Stephani et Willelmi;[6] the grant of Uctred son of Fergus to Holyrood of the church of Torpennoth consensu Lochlan heredis nostri;[7] and the gift of John son of Michael to May of land in Calverburne assensu et voluntate heredis mei.[8]

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1. L.C. XCIX; CXIX; CXXXIV; CLIII; CLXXIX; CCIX; CCXXIV.
2. S.C. p.347 c.43.
3. S.C. p.451.
4. Morton ii 2.
5. Holyrood ii.
6. Holyrood 14.
7. Holyrood 24. (Does the relative frequency of recorded consent in the Holyrood grants indicate a conscious policy on the part of the abbey?)
8. May 24.

Consent of the heir was advisable to ensure against a temptation to a successor to repudiate his father's act which might have been a serious depletion of the patrimony, but consent of the lord was equally advisable - for if the fee escheated to the lord, he might not have favourably viewed an irrevocable free alms tenure, cf. the grant to Inchaffray by Theobald whose charter records

> ut autem hec mea donatio perpetuis rata temporis permaneat ad hoc assensum serenissimi domini mei Roberti comitis de Stradhern impetravi.[1]

A full example of the consent of both lord and heirs being obtained comes from the gift (pre 1177) by Henry de St. Martin of two carucates in Peinuld to Paisley. A document has survived where his overlord Walter Steward granted him

> quandocunque habitum religionis inter monachos meos de Passelet voluerit licentiam et potestatem donandi eisdem in puram et perpetuam elemosinam illas duas carucatas terre quas ei dedi in feuodo de Penuld.[2]

When Henry did grant the land to Paisley he did so per consensum et assensum heredis sui et aliorum amicorum suorum,[3] and Gilbert his heir himself issued a charter of confirmation that the land should be

> liberam et absolutam penitus de me et de omnibus heredibus meis inperpetuum.... Et ne ego vel aliquis heredum meorum huic concessioni et confirmationi mei aliquando innovare possit, coram Robert Croc...et multis fidelibus affidavi et coram aliis tactis sacrosanctis juravi quod nec ego nec aliquis heredum meorum aliquam reclamationem contra hanc presentem concessionem predicte terre imperpetuum faciemus.[4]

William son of Gamel of Twynholm gave the church of Twynholm to Holyrood consensu domini mei Alani filii Rolandi et assensu Walteri filii et heredis mei.[5]

1. Inchaffray LVI.
2. a.1177. Paisley p.49.
3. Paisley p.50.
4. Paisley p.49.
5. Holyrood 72.

There was apparently in the XII century some doubt as to whether a holder of land by inheritance was entitled to alienate his heritage and deprive his own heirs. The Laws of the Burghs reflect this attitude, for although conquest could be freely sold, when necessity compelled the sale of heritage it should first be offered to the heirs for purchase,[1] and an instance of the operation of the rule comes from Glasgow when Robert de Mithingley sold his land to the chapter in mea urgente necessitate. The land had been offered to his relations at three courts in Glasgow

> secundum legem et consuetudinem burgi cum ego tanto ere alieno essem oneratus quod creditoribus meis satisfieri non posset.[2]

Regiam Majestatem contradicts this impression and repeats Glanvil's denial of any claim by the heir against alienation. In discussing endowments of maritagium, he says that a free man can give a maritagium to any woman sive heredem habeat sive non, and goes on to state a more general principle.

> Et si heredem habeat, velit nolit heres, potest quis quandam partem terrae suae de libero tenemento dare alicui in remunerationem servitii sui vel alicui loco religioso in elemosynam. Ita quod si donationem ipsam sasina fuerit secura, perpetuo remanebit illi cui facta fuit donatio et heredibus suis si eis jure hereditarie fuit concessa. Si vero nulla fuerit sasina subsecuta ex tali donatione nihil post mortem donatoris contra voluntatem heredis efficaciter potest peti. Quia id intelligitur secundum regni consuetudinem et juris interpretationem potius esse nuda promissio quam aliqua vera donatio.[3]

The contradiction is continued in the discussion of the difference between conquest and heritage, where restrictions in the interests of the heirs are favoured. While noting the general power of alienation

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1. Leg.Burg. c.21, c.42. APS i.336
2. Glasgow i 236-7. 1280/90.
3. Reg.Maj. II c.18.

of c.18. the Regiam proceeds to state that if a man has several sons

> non potest de facili praeter consensum heredis sui filio postnato de hereditate sua quantam libet partem dare licet voluerit,

and further that he cannot give to an illegitimate son if he has a legitimate son and heir.[1] Then the Regiam deals with the case of a person who has nothing but conquest. He can dispose of part of it, but must not disinherit his son. If he has no children he can dispose freely and if the donee has received sasine, no heir more remote than son or daughter can challenge.

> Si autem hereditatem et conquaestum habuerit, tunc in distincte verum est quod poterit filio suo postnato quantamlibet partem sive totam cuicunque voluerit dare ad remanentiam de conquaesta. De hereditate vero sua nihilominus dare poterit rationabiliter secundum quod dictum est superius.[2]

From all this, it seems that in so far as the law stated by the Regiam was administered, immediate heirs could recover any unreasonable alienation.

Did a grant to "heirs and assigns" overrule these restrictions in favour of heirs? There is no evidence to enable us to decide whether this form of grant gave a freedom of alienation as against heirs as well as lord.

Simultaneously with the spread of this form of grant there appeared another new form which was much more limiting. Clearly at the turn of the century a gift to a man and his heirs was not considered sufficiently precise and gifts to "heirs and assigns" and to "heirs of

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1. Reg.Maj. II c.19.
2. Reg.Maj. II c.20. cf. in burgh law: Quilibet burgensis potest terram suam de conquesta dare aut vendere et ire quocunque voluerit libere et quiete nisi sit in calumpnia. - Leg.Burg.c.21. APS i 336.

his body" are made, extending or reducing the previous scope, but defining it more clearly. A gift to a man and the heirs of his body worked ultimately to the advantage of the lord. It was more likely to escheat on failure of heirs. It also ensured the descent in a particular line and fulfilled a purpose in endowing e.g. children of a marriage. As tenants acquired freedom to alienate, despite both lord and heirs, some means had to be found of ensuring both this provision for children and the greater possibility of escheat. These forms of grant are a XIII century phenomenon, but lack of legal record prevents us from ascertaining how effective they were. In England, by the reign of Henry III their efficacy was gradually being whittled down by legal interpretation as "conditional gifts", so that alienation was valid as soon as a child was born and the condition of title fulfilled.

The most common purpose of these "tailyed" fees was to endow children of a marriage and the most common form is a grant to a man, his wife and their heirs. The form of gift which most often contains the limitation is the gift - in maritagium, the endowment of a woman on her marriage, where it was natural to try to ensure the succession of none but her children.

PART 4

Maritagium

This form of land-holding occupied a special position in the tenurial scheme and derived its special characteristics from its purpose in endowing a woman (usually a close relation of the donor) on

her marriage. Because of the personal relationship which invariably existed between lord and tenant, the conditions of tenure were unusually free, and the land was left as free from burdens as was possible.

The maritagium is a form of grant which seems to have developed very early in the period of feudal organization. It is a very natural and common form of gift in any society and its conditions are merely feudal adaptations. It occurs in Domesday Book, e.g. dedit cum nepte sua in maritagio[1], and one of the earliest charters making such a grant is of 1121.[2] The earliest Scottish examples of this sort of grant come from the reign of William and the tenure seems to appear in charters in a fully developed form.[3] There is no trace of its evolution through the XII century and one cannot say whether or not it developed naturally or was imported in a fully-fledged state from England, or how far spontaneous development and English legal influence interacted. The earliest grants show the tenure already classified and its nature assumed.

1) 1188 x 99. Reginald Prat of Tyndale granted to Richard de Melville

> cum Margarita filia mea Morgunessete (Muiravonside) in liberum maritagium...tenendum ita libere et quiete quam aliquis miles in tota terra domini regis Scottorum...aliquod maritagium possidet.[4]

2) c.1198. Gilbert Earl of Strathearn granted to Malcolm son of Earl Duncan of Fife

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1. D.B. i 138b.
2. Round: Ancient Charters p.8.
3. The maritagium charter of Malcolm IV to Duncan Earl of Fife of 1160 is undoubtedly forged. (Harl.MS. 4693 I 46.) The witnesses are improbable and it is difficult to see where the lady reputed to be the king's niece came from. (supra p.32)
4. Melvilles iii 8.

cum Matilda filia mea terras de Glendovan et Carnibo...in liberum maritagium to be held as freely as aliquid maritagium alicuius comitis vel baronis teneatur et habeatur in regno Scocie.[1]

3) Alex. Seton granted to Adam of Pollesworth

cum Emma sorore mea in maritagium totam terram meam de Beeth... Ade et Emme sorori mee et pueris suis quos inter eos genuerint.[2]

4) Malise Earl of Strathearn granted land to his sister Amabillia

ad ipsam maritandam...tenendam...dicte Amabilie et heredibus suis de corpore suo exeuntibus...sicut aliquod maritagium in toto regno Scotie liberius quietius plenius et honorificentius ab aliquo comite vel baroni tenetur...[3]

The legal treatises are quite specific about the conditions of a maritagium - the obligations of the holding and its form of succession. The Regiam devotes a large section to it and provides a summary of Glanvillian theory. Maritagium aliud est liberum, aliud servitio obnoxium. Free marriage was a gift by a free man of part of his land to a woman in maritagium free from service both intrinsec and forinsec, until the third heir. No homage was done until the third heir, but after him the land reverted to due service and homage was taken. Sometimes service due to the lord was reserved, in which case the husband and his heirs performed it without homage until the third heir, and homage, ward and relief would be paid from the third heir, but a special oath of fealty would be sworn by women and their heirs as equivalent to homage.[4] Although the Regiam made no definite statement about succession, it implied that it was restricted to the heirs of marriage. Because it was strictly conditional, homage could not be taken until a line of succession was assured, for the husband was only

1. Reg.Ho.Misc. cf. infra No.4.
2. Dunf. 177.
3. Lib.Ins.Miss. p.XXXIII.
4. Reg.Maj. II c.57. S.S. p.167.

entitled to hold the land for life after the death of his wife if a child born to them had been heard to cry (auditum clamantem vel brayantem). If, therefore, there had been no heir, the lands could not revert to the donor and his heirs if homage had been done. The postponement of homage was an insurance to the superior that the conditions of the grant could be fulfilled.[1]

Charter evidence on the subject is not very coherent, but there is sufficient to suggest that in practice the character of the maritagium was not so clear-cut as this exposition of it. The charters certainly do not indicate that tenure in maritagium or in liberum maritagium was necessarily different from other tenures. Since the landlord-tenant relationship coincided with a family relationship, it was to that extent different from other landlord-tenant relationships. As feudal tenures became commercialized and the feudal relationship became more and more a purely economic one, the maritagium preserved the original character of the lord and vassal bond. The peculiar bond between lord and tenant produced the two main characteristics of the tenure - the entailing of succession upon direct heirs and the tendency to reduced burdens on the land - but the grants could take various forms to suit individual circumstances.

Succession

Often succession is not mentioned at all, but when it is, it is universally limited to the heirs of the marriage - thus automatically preventing alienation by either husband or wife or both, e.g. the above grant to Adam of Pollesworth had the limitation hanc predictam

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1. Reg.Maj. II c.58. S.S. p.168.

terram dedi predicto Ade et Emme et pueris suis quos inter eos genuerint.[1] When William Comyn granted a maritagium to Adam along with his daughter Ydonia the terms of the grant were tenendas sibi et heredibus suis quos habuit de predicta Ydonia.[2] In the late XII century (1196 x 1200) constable Roland of Galloway confirmed

> Alano de Sancto Claro et Matilde de Windesoure sponse sue et heredibus eorum qui ex eis exient illam terram quam Willelmus de Moreville eis dedit tenendam de me et heredibus meis in maritagium.[3]

An early XIV century grant puts the position more generally. When John of Glasserth gave land in maritagium to Dugal Campbell on his marriage to John's sister Margaret he gave it to them

> et heredibus suis inter ipsos legitime procreandis adeo libere et quiete sicut aliquod maritagium infra regnum Scocie tenetur vel secundum leges regni poterit teneri.[4]

It would be interesting to know whether the limitation on succession was created by the form of those gifts or whether a legal limitation was enforceable otherwise - these clauses only securing the position by including it in the form of grant. Certainly there are some instances of the apparently successful alienation of a maritagium e.g. Isabel grants to Simon de Lindesey ad perpetuam firmam her maritagium in Molle for a return of 10 pounds.[5]

Limitation to a particular line of heirs seems to have spread from the maritagium to other tenures and similar provisions with a similar purpose could be made without creating a gift in maritagium. c.1290 John de Anesley gave ad feudofirmam to John de Wemyss and Amabilla his

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1. Dunfermline 177.
2. Morton ii 5.
3. Anderson: Diplomata LXXXI.
4. Highland Papers ii VI p.132.
5. Melrose i 295.

wife (John de Anesley's daughter) land of Upper Cambrun, to be held of him

> sicut eam tenui vel tenere debui de domino comite de Fiff Faciendo dicto domino comite de Fiff servicium inde debitum... Reddendo...michi tres denarios...nomine feodofirmi

but the limitation of succession was there.

> Si vero dictus Johannes vel Amabilla absque liberis de ipsis legitime procreatis in fata decesserit, alter eorum qui superstes fuerit terram predictam...toto tempore vite sue tenebit...et post finem vite illius qui diucius vixerit dicta terra...ad me et heredes meos vel assignatos meos plene revertetur.[1]

One of the early "fragments" relates an interesting "compromise" of privileges.

> Nota quod maritagium sumitur dupliciter aut enim factum est cum forinseco servicio aut sine. Si cum forinseco servicio tunc heres faciet forinsecum servicium absque homagio faciendo. Si sine servicio forinseco tunc ab omni consuetudini heredes sint quieti et vendi non potest ante tercium heredem. Tercius heres faciet homagium wardam et relivium et ita maritagium vendi potest.[2]

Forinsec service and alienability were apparently exclusive and interchangeable.

Service

Both this fragment and the Regiam mention the third heir as marking an important point in the development of the tenure. In English law a maritagium was probably inalienable until the succession of the third heir and it was certainly free of service until then. According to Maitland

> The most striking feature of the maritagium is a tenurial quality, tenure which for three generations is tenure without service.[3]

There are some indications that this rule of freedom of tenure until the third heir was practised in Scotland although there is no

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1. Wemyss ii No.2.
2. Frag.Coll. c.5. APS i 731.
3. P.& M. ii p.16.

indication in the charters as to whether homage was ever similarly modified. The reasons for the restriction of homage which are expressed would probably ensure the practice of this rule, but the same motive would not apply to the restriction on services.[1] There is certainly an echo of such a modification of service until the fourth generation in the complicated transaction about the forinsec service due from Halsington. The grant was a direct one from Robert de Muscamp to William de Greenlaw of land in Halsington which had been the maritagium of Robert's quondam sister Gilia (and had presumably reverted to him on her death without heirs). William was to do forinsec service, but, as there were circumstances in which Robert's land of Halsington might not be called upon to perform forinsec service, Robert ensured that some return be paid to him in its stead.

> ...faciendo ipse [et] heredes sui vel sui assignati et eorum heredes pro dictis duabus carucatis terre et tertia quam ei prius dedi in excambium...quantum pertinet ad tricesimam partem servicii unius militis in forinseco servitio domini regis cum illud acciderit et me et heredes meos pro predicta villa de Halsigton forinsecum servicium facere contigerit. Et erunt dictus magister Willelmus et heredes sui vel sui assignati et eorum heredes quieti et immunes a multura et a varda castelli et a sequela omnium placitorum et ab omni alio servicio auxilio consuetudine exaccione et demanda pro servicio supradicto. Si vero evenit quod ego et heredes meos pro predicta villa nullum forinsecum servicium aliquo tempore facere debeamus eo quod Malys comes de Strathern de Margeria filia mea heredes habuerit et perventum fuerit ad tertium heredum meum...dictus magister Willelmus et heredes sui vel assignati et eorum heredes solvent mihi et heredibus meis annuatim pro predictis tribus carucatis terre unam libram piperis vel sex denarios ad festum sancti Jacobi in nundinis de Roxburg pro omni servicio auxilio consuetudine exaccione et demanda ut predictum..[2]

The exact circumstances of this tenure are uncertain. Robert held of the Earl of Dunbar - when William de Greenlaw, who held Halsington

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1. Reg.Maj.II c.58.
2. Melrose i 233.

with this maritagium provision, gave the land to Melrose in free alms[1] the action took place in the Earl's court where Robert solemnly gave the lands to the abbot and monks; William se dissaississet et ipsos sollempniter saisisset in eadem and Earl Patrick issued a confirmation to Melrose, calling Robert tenens noster.[2] The connection of Marjory is uncertain, but the fee had at some time formed part of her maritagium and had consequently been freed of services till the third heir. The ending of the period of freedom would be something which subinfeudators would have to guard against in this way.

The only other surviving instance of this is much more definite. An inquest held at Lanark in 1303 found that

> Sir John Comyn, grandfather of the present Sir John, gave the land of Dalserfe to Sir William de Galbrethe in frank marriage with his daughter. It is held neither by ward and relief nor any other service till the third heir...[3]

While these two examples to some extent confirm the general statement of the Regiam on this point - although the lack of evidence again foils any attempt to generalize - a considerable weight of evidence leads to the conclusion that the Glanvillian definition of the Regiam cannot be wholly accepted as Scottish usage. Many of the grants impose service immediately - either forinsec or intrinsec. Practice is extremely haphazard and there is a distinct parallel to grants in libera elemosina where there was a general tendency to reduce or eliminate burdens on the land, but individual grants were dependent upon the ability of the grantor to stand the loss. In maritagium as in elemosina, the greater number of grants make no mention of services

1. Melrose i 234.
2. Melrose i 235/6.
3. Bain ii 1420.

at all, and the tenure seems normally to have been a free one. When services were specified they were usually in the nature of blench or fee ferme, so that if the phrase maritagium were not mentioned the grant would unquestionably fall into one of these two categories.[1] In the early example cited above[2] Alexander Seton required a reddendo of 12s. At the end of the XIII century William de Cunyburg gave to John Fraser with his daughter Alice in liberum matrimonium all the land of Rig which he held of Roger Avenel, to be held in fee and heredity as freely as any maritagium was held in Scotland

> hoc excepto quod ipse et heredes sui reddent mihi...unum nisum sorum vel xii d.[3]

c.1230 Helyas of Brotherstane gave to Symon de Wardrope in libero maritagio with his daughter Mathilda land from his demesne,[4] and almost immediately Symon, with the consent of Mathilda and his heir, gave it to Dryburgh for a reddendo of 3d. to the lord of the vill.[5] In this case there is some uncertainty as to whether Helyas was "lord of the vill". He had mentioned no service in his original grant, nor had he made arrangements for the performance of forinsec service to a superior lord, which this 3d. must stand for if it were not paid to Helyas. The grants are an interesting indication of the extent to which the obligations of a tenure could be omitted from the charter of enfeoffment.

Forinsec service occupied the same position in a maritagium grant as it did in a free alms grant. Provision had to be made for its performance, and the grantor had the choice of assuming the responsibility

1. see above John of Anesley's grant pp.86-7.
2. p.84 No.3.
3. Morton ii 9.
4. Dryburgh 169.
5. Dryburgh 170.

himself or putting the onus on the tenants. There are a few cases where the tenant was required to perform the service, e.g. when William Cumyn Earl of Buchan in the reign of Alexander III gave land to Adam with his sister in liberum maritagium he stipulated

> faciendo forinsecum servicium quantum pertinet ad quattuor carucatas terre.[1]

Most usually, maritagium grants are reticent of their conditions, and give the impression of a generally recognized and accepted form of tenure.

> Tenendam in libero maritagio...sicut aliquis in regno Scocie aliquam terram in libero maritagio ex dono...alicuius baronis liberius...teneat.[2]

Its general acceptance without the need for definition presupposes some well-known rules, but the examples which have been cited show too many breaches of the Glanvillian theory expressed in the Regiam for us to accept the Regiam's definition as that current in XIII century Scotland.

NOTE to PART 3 (p.64 note 1)

Subinfeudation and Substitution

Subinfeudation and the extension of the feudal hierarchy was the most usual form of alienation of land. The donor retained rights in the land and it could be a profitable way of exploiting property, if a valuable reddendo were exacted. A good bargain with a prospective tenant could produce a return in excess of the obligations which the

1. Morton ii 5. (and cf. John de Anesley's grant, supra pp.86-7)
2. 1281/1298. Grants iii 11.

land already carried. An instance of this is the case, already quoted, of the land of Maxton,[1] where the tenant passed it on with the obligation of paying the return to the superior lord, and himself exacted a new service of a pair of gilt spurs. In another case, Richard de Moreville, Constable of Scotland, held the land of Gilmoreston from Glasgow ad firmam for fifteen years from 1170. Before 1189 he granted

> Gillmoreston, anciently called Pentiacob, to Edulf in fee and heredity as freely as any knight holds his fee from me per servicium unius militis.[2]

Unless Richard de Moreville was granting away what he had not, since 1170 - probably at the end of his 15 years' lease - he had converted his lease into a fee, from which he exacted a knight's service. Later (1214 x 1249) Adam son of Edulf granted part of this same land[3] to his son Constantine for a twentieth part of a knight's service.[4] Thus we have evidence of one knight's fee originating in a vassal.[5] The incidents from a subordinate tenure could be a profitable concern even if no direct service were received, e.g. Adam Blar's subinfeudation to Duncan de Crambeth of the land of Balbard which he held of Dunfermline for half a mark and king's forinsec service. Duncan was to hold it for a render of ½ mark and forinsec service to the abbey salvis dicto domino Ade warda et relevio cum ceciderit - but Adam's homage was reserved to Dunfermline to ensure Adam's position as nominal tenant although his tenancy had ceased to be effective.[6]

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1. supra p.65.
2. Glasgow i 44, 45.
3. originally called Pentiacob, then Gillemoreston and finally Eddleston.
4. Glasgow i 173.
5. Also see Paisley's subinfeudation to Robert Maleverer of a carucate in Molle for a return of 1 mark yearly. Paisley had received Molle from Eschine wife of Walter Steward free of service before 1177. (1225/35. Paisley pp.74, 76, 77.)
6. Dunfermline 314, 315.

The other method of alienation - the complete substitution of a new tenant in the place of the donor - was less commonly practised. Instead of creating a potentially profitable mesne lordship it cut off all the original tenant's interest in the land. Later, the form developed in this transaction included complete co-operation of lord and tenant. The donor resigned the land to the lord in favour of the donee. Resignations in favorem were popular and became highly developed in the XIV century. Survivals from the XIII century are few but sufficient in number to prove the existence of this alternative method of alienation, but they do not allow us to draw any conclusions as to popularity.

Sometimes the substitution was apparently left to the donee's initiative. In c.1245 Ralf Noble granted to David and Agnes Graham half his demesne of Kenpunt and land in Ileviston which he held of Henry de Bohun, Earl of Hereford. In 1255 Thomas, Ralf's son, granted to these tenants

> quod possint si voluerit terras cum pertinenciis quas de me et heredibus meis tenent iure hereditario in Iliveston tenere si ad opus eorum viderint expedire de domino [Humfrido de] Boun comite de Herford et heredibus suis sine aliqua contradictione mea vel heredum meorum.[1]

In another case, it was to be left to arrangement between the donor's lord and the grantee. When Andrew de Dalrewach granted Dalrewach which he held of the Earl of Strathearn to William of Moray, William was to be allowed to hold it of the Earl in chief when it pleased him and the Earl, without any impediment from Andrew.[2]

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1. Menteith ii 3.
2. Atholl Charters 7; Moray Orig. 16.

Both methods were used in the XIII century, and there is no indication of any legislation on the lines of Quia Emptores to restrict subinfeudation in favour of substitution. The restrictions on both seem to have been practical and feudal restrictions applicable equally to both.

BILSTON
EXTRA STRONG

CHAPTER V

Service and Return - Military Tenures

BILSTON
EXTRA STRONG

Service and Return

Land tenure was dependent upon the performance of homage and service, which were the two obligations of the vassal party to the feudal contract. When the feudal charter became stereotyped grants were made pro homagio et servicio suo.[1] Homage was a symbol of the relationship between the two parties and remained vague. Service was originally undefined but by the XII century had become concrete and closely detailed. According to Stenton the specification (and therefore limitation) of duties and services involved in the tenure of land is the marking point for feudalism.[2] This is rather his own definition of feudalism than a true insight into this form of social organization, but certainly, definition of service is a characteristic of XII century Anglo-Norman feudalism and the reddendo or faciendo clause of a charter is quite specific.

Occasionally, instances of an older attitude to service to one's lord crop up. In time of difficulty the ties of homage and fealty might involve a vassal in services which were not explicit in the terms of his tenure. In 1306 Malise Earl of Strathearn issued an interesting writ.

> pro eo quod Gilbertus de Glenkerny pater dilectus noster et speciales de tam bono affectu nobis servicium suum prestitit corporale, adherendo nobiscum et commorando cum vi sua et potencia in guerra Scocie contra tenorem carte sue de tenemento de Glenkerny quod de nobis tenet, volumus...quod illud servitium taliter nobis

1. supra p.50.
2. Anglo-Saxon England p.672.

> impensum nullum sibi vel heredibus suis aut tenore carte sue in posterum faciet nec generabit preindicium nec etiam erit in aliquo tempori nobis seu heredibus nostris debitum aut consuetum nisi ad voluntatem ipsius domini Gilberti aut heredum suorum.[1]

The period of the English wars probably produced several cases like this.[2] William the Lion granted a charter with an earlier note - he gave Inverleith to Ailsius the king's baker for a general service of his body,[3] but this charter is exceptional.

The incentive to a subinfeudation was frequently a wish to reward services already rendered, but always a future service was included in the terms of the grant - even though it was a light or a nominal one, e.g. c.1300 William de Ferrars granted to Robert de Harcars pro suo fideli servicio impenso land in the vill of Mourtune

> salvo tamen forinseco servicio secundum quantitatem et portionem illius tenementi domino regi debito...reddendo unum par albarum cyprotecarum apud castrum meum de Locris for all other services.[4]

If the tenant failed to perform the service - perhaps because of successive alienation - his lands escheated to the lord,[5] e.g. in 1250 Godfrey son of Thomas of Tyndale in plena curia dominorum apud Forfar coram Alanum senescallum justiciarum Scotie resigned his land to his lord Hugh Gifford per fustum et baculum et pro defectu servicii quod facere non potui and he relinquished his charters and title deeds.[6] A legal action had been necessary to evict the tenant, but the plea of defect of service was successful and incorporated as a cause in the instrument of resignation.

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1. Grants iii 12.
2. cf. Melrose aid to Robert I infra p.
3. Newbattle III, LV.
4. Reg.Ho.Cart. 69.
5. see ch.IV, part 3.
6. Yester No.15.

PART 1

Military Services

Among surviving royal enfeoffments military services are most important. Of 36 charters recording grants by William the Lion to his tenants-in-chief, 21 specify knight service; 4 a minor military service (an archer or a servant with a horse and hauberk); 5 provide for a money rent; 2 for renders in kind. Only one makes provision for an undefined "service of his body". Alexander II's charters are in similar proportions: of 33 charters, 18 stipulate knight service; 7 stipulate service only in the vaguest terms; 3 a money rent; and 2 renders in kind. These charters are chance survivals and cannot be used as grounds for definite conclusions about the proportions of any particular kind of tenure, but the overwhelming percentage of military grants is probably a fair reflection of the situation in the politically and economically important areas of the country. Many of the most important fiefs would probably not be the subject of written grants at all - cf. English honours whose military quotas are only known through Exchequer record.

In comparison with English military tenures, the burdens placed upon these Scottish fiefs are remarkably small. The largest known return in both reigns which cover the period 1165-1249 is ten knights, and that is placed upon the two largest fiefs of the group - Annandale, and the earldom of Lennox along with other vast tracts of territory. Ten knights was not a great return for these fiefs and even if the burden of military service were similarly apportioned over the productive regions of the kingdom, the resulting feudal muster would not make

a very impressive feudal army. Not only would the Annandale and Lennox contingents be the largest, but the next on record is two knights from the Hays for their Errol property, from William de Freskin and the Earl of Fife. To a surprising degree the Scottish kings dealt in fractions of knight service as returns even from their bigger tenants, and comparison with a smaller English baron or even a substantial mesne lord is more applicable than with the English king.

In the early XIII century in England the large military quotas of the XI and XII centuries had been drastically reduced and it is conceivable that there was a similar movement in Scotland, but there is no evidence at all that large quotas were ever imposed or exacted or that arrangements were made to convert them into a financial return. Arrangements between tenants-in-chief and their own vassals rarely involve service of more than one knight. Church lands were never required to produce a quota of knights. The service of one knight was the most common of the amounts due to the crown, and knight service of tenants-in-chief was commonly divided. In William's reign a half was the smallest division occurring in a royal charter, but in Alexander II's charters smaller fractions are more common and complete units less so.

The natural process of subinfeudation is a sufficient explanation of small fractions of knight service in ranks of society below the immediate crown vassals. Every subinfeudation involved the making of some arrangement for the performance of the service which the fief already owed and this usually took the form of arranging that the subtenant should undertake a part of the service for which his lord was

responsible. In 1185 Earl David, who answered for at least ten knights, gave to another tenant, Hugh Giffard, the land of Fintry to augment the lands he already held

> faciendo michi et heredibus meis de hoc feodo et de alio feodo quod ei antea dederam servicium dimidii militis.[1]

In 1185 x 1214 he granted to Richard de Lindesay 12½ virgates in Bartun for service of one-sixth of a knight for all services,[2] and in 1214 he gave David de Andree and his heirs the davach of Rossuthet for a return of one-tenth of a knight's service.[3] William de Brus, who owed ten knights for his Annandale fief, granted the land of Kynemund to Adam de Carlisle for one-quarter of a knight's service,[4] and the land of Cnoculeran to Roger Crispin for one-twentieth of a knight's service.[5] The earldom of Lennox whose own render is uncertain[6] was apparently greatly subdivided. Grants of Earl Maldouen (1217-1251 x 70) provide a wide range of fractions -

> to Umfrid de Kilpatrick the land of Colquhoun for one-third of a knight's service;[7]
>
> to Maurice a carucate of land for one-seventh of a knight's service,[8] and Auchincloich for one-thirtysecond of a knight's service;[9]
>
> to Donald a quarter of an acre for one-twentieth of a knight's service.[10]

Earl Malcolm (1251 x 70-c.1303) granted an acre to Lord Patrick Graham

> faciendo forinsecum servicium domini regis quum evenerit videlicet tertiam partem de octava parte servicii unius militis[11]

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1. Yester No.4.
2. Reg.Ho.Misc.
3. B.M. Cotton Charters XVIII No. 23. Appendix from Reg.Ho.Misc.
4. Annandale i 2 - 1194 x 1214.
5. c.1218. Annandale 7.
6. supra p.97.
7. Levenax p.25.
8. Levenax p.26.
9. Levenax p.27.
10. Levenax p.91.
11. Levenax p.39.

and to three women land resigned by their father for one-twentieth part of a knight's service in the common army of our lord king.[1]

The widespread incidence of fractions of knight service due to the king by his tenants-in-chief cannot, however, be entirely explained by the normal and rapid development of subinfeudation. To a certain extent they may be due to the process of substitution whereby a tenant substituted another party for himself as tenant of all or part of his land by resigning it to his lord for regrant. Such a division of fiefs would involve division of services. The process need not necessarily be voluntary and a charter of Alexander III in 1264 is an interesting case of this. Henry de Nevith, tenant of the lands of Lure and Nevith which together rendered the service of one knight, had defaulted in the service and resigned part of them, Lure, to Alexander who gave it to a new tenant who was to be responsible for Lure's share of the knight's service due from both. Lure's share was not stated, but some definite arrangement must have been made or understood.

> Alexander dei gracia rex Scottorum...dedisse...Hugoni de Abirnethy pro homagio et servicio suo totam terram de Lure cum pertinenciis quam Henricus de Nevith miles pro defectu servicii nostri nobis inde debiti per fustum et baculum nobis reddidit... salvis dicto Henrico de Nevith...terris de Nevith...salvo servicio nostro quantum pertinet ad servicium unius militis quod nobis debetur pro terris de Nevith et de Lure.... Tenendam et habendam Hugoni...in feudo et hereditate.... Faciendo inde nobis...quantum pertinet ad eandem terram de servicio unius militis quod nobis de dicta terra de Lure et de terra de Nevith debetur...[2]

It seems unlikely, however, that such arrangements could account for all the fractional services of crown tenants and it seems that some of them must originate from the enfeoffment itself. David I's

1. Levenax p.47.
2. Carnegies ii No.27 p.479.

enfeoffment of Alexander of St. Martin[1] is an example of this at an early stage of feudalization. In that case, there seems to have been lack of land available to make up a full knight's fee and it is probable that this was a fairly general condition. Unless existing holders were displaced, the royal followers could only be endowed, and any new grants made, from either crown lands or such land as became available from time to time. There may have been a land shortage in the XII and XIII centuries - the introduction of newcomers into the landowning class must have involved considerable adjustment of conflicting claims and interests and the fractional services of so many crown grants may be the result of such pressure.

From the end of the XII century many of the reddendos of royal charters specify the performance of forinsec service in addition to or instead of the definite service involved. Forinsec service had a definite meaning in Anglo-Norman deeds - the service which was due to a superior outwith the arrangement made between a grantor and his vassal,[2] e.g. Walter Percy in 1290 granted land of Tarveht to William Avenel for a return of a pair of gilt spurs or sixpence for all service salvo forinseco servicio domini regis et domini episcopi Sancte Andree[3] and reservation of the forinsec service due to an overlord was an important clause in both English and Scottish charters. A good example bringing out the contrast is John de Normanville's grant to Melrose of 4 acres in Makeston to hold quiete ab omni servicio forinse et privato.[4] Forinsec service, however, was properly applicable only to subinfeudations

1. supra p. 23
2. supra ch.IV part 3.
3. Reg.Ho.Misc.
4. Melrose i 251.

and in its generally accepted sense it had no place in royal enfeoffments. In Scotland, however, it was an important part of the obligations of tenants-in-chief - an extra service over and above and independent of the more specific feudal service on the English model. Sometimes the extra service is qualified as Scottish service, or Scottish forinsec service, which seems to indicate its indigenous character.

Only two surviving charters of William the Lion make provision for this kind of service.

1) Grant to Robert son of Henry Pincerne of the lands of Gasingrei in Fife

> faciendo forinsecum servicium tantum scilicet quantum pertinet ad dimidiam carucatam terre de Kellinshire.[1]

2) Grant to John Walker of land of Ballebothe (near Crail)

> per servicium unius servientis in equo cum halbergello et faciendo in auxiliis et aliis forinsecis serviciis tantum servicium quantum pertinet ad dimidiam carucatam terre scotticam in Karelshire.[2]

Alexander II's grants record it more frequently and more fully and it is frequently reserved in grants of land to the church in free alms, e.g. grant to Moray of three davachs of Fynlarg in Strathspey faciendo forinsecum servicium in exercitu,[3] to Dunfermline of the land of Dollar faciendo forinsecum servicium,[4] to Arbroath the land of Tarvas faciendo forinsecum servicium in exercitum quod pertinet ad predictas terras.[5]

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1. 1189 x 1192. Hist.MSS.Com. Report V p.623.
2. c.1200. B.M. Campbell Charters. LFC xxv 5. Appendix III No 3
3. Moray 37.
4. Dunfermline 75.
5. Arbroath Vetus 102. see also infra p.297.

1) Grant to Ness of the lands of Bamff and Foyle

faciendo quarte partis servicii unius militis et faciendo aliud forinsecum servicium quod ad easdem terras pertinet.[1]

2) Grant to Patrick son of William son of Orm of Glengeyth, Ardauch, Hauchenacreve, Sythensbeg and Sythens Mor

per servitium dimidii militis et faciendo forinsecum servicium quod pertinet ad easdem terras.[2]

3) Grant to Gylandris mac Lod of the lands of Neveth barr, Tulachmaccarbaloch, Balekergrossyne, Katteche, Kennebred per servicium unius militis along with other lands which he acquired from his wife which are to be covered by this service of one knight

infra dictum servicium unius militis simul cum predictis terris et faciendo forinsecum servicium quod pertinet ad omnes predictas terras.[3]

4) Grant to Gilbert Durward of his lands of Both and Banchory

pro servicio decima partis unius militis et faciendo forinsecum servicium quod ad easdem terras pertinet.[4]

5) Grant to Maldeven of the earldom of Lennox

faciendo forinsecum servicium quod pertinet ad [alias nostras] plenarias villas in exercitibus et auxiliis.[5]

6) Grant to Gillascop mac Gilcrist of several holdings in Argyle

faciendo medietatem servicii unius militis in exercitu et in auxilio quantum pertinet ad plenum servicium unius militis et faciendo servicium scoticanum sicut barones et milites nostri ex aquiloni parte maris Scocie pro terris suis faciunt.[6]

7) Grant to Robert Waluchop of the land of Tulinaebry

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1. 1232. Bamff Charters No.1.
2. 1232. Atholl Charters from Lawrie Charter Collections. Appendix II Nos
3. 1232. Brechin i 2.
4. 1236. Cawdor 2. Reg.Ho.Roy.
5. 1238. Levenax p.1. Previously Earl David had held it from William for 10 knights (Lindores I).
6. 1240. Highland Papers ii 121.

faciendo terciam partem servicii unius militis et forinsecum scoticanum quantum pertinet ad praedictas terras.[1]

8) Grant to Anselm de Camelyne of Inverlunane

faciendo nobis et heredibus nostris medietatem servicii unius militis et [ad] exercitum Scoticanum quantum pertinet ad dictam terram et reddendo nobis annuatim quamdiu dicta Maria dictam dotem suam tenuerit (it was reserved to her) x libras sterlingorum et post eius obitum quolibet anno xii libras.[2]

9) In 1262 an inquest made on the land of Mefth, on whether the ancestors of Eugenius thane of Rattlen held it of the king heritably and in chief found that Yothre mac Gilkys had held it heritably all his life of the king per servicium unius servientis et faciendo exercitum Scoticanum.[3]

10) In 1270 the inquest on the death of William de Abercromby's ancestor found that the land of Balcormok

reddit servicium unius servientis cum haubergello and

quod facit in servicio Scoticano pro una davata terre et dimidia davata.[4]

These records of royal holdings leave the nature of the forinsec service undefined, but from these charters certain conclusions can be drawn.

1) The general vagueness of its description suggests that it was based upon a well-known assessment. The two William charters base it upon the carucate as measured in the appropriate shire. Another unit of assessment is the davach, the land measurement associated with Scotia, as opposed to the Anglian carucate or bovate. In 10) the davach is associated with servicium Scoticanum, and in 6) we are told

1. 1247. Ant.Aber.& Banff. p.299.
2. 1247. Carnegies ii 478. No.26.
3. APS i 101.
4. APS i 102.

that the king's barons and knights north of the Scottish sea do this Scottish service for their lands. This is the only evidence which explicitly links it with Scotia, though there are significant implications in many charters. In the Lennox charter, the service is based on vills, but more usual practice is to describe the service in the much more general way as "pertaining to the lands".

2) The Lennox charter definitely states that the service involved both service in the army and payment of aids, and in one case the burden is called Scottish army and in that case (No.9) the other service was a normal feudal military one. Some army musters from non-feudal resources can therefore be deduced.

Information which can be gleaned from these charters to royal tenants-in-chief, and the general conclusions to which they give rise, can be supplemented from other sources, and the existence of an important kind of service due to the king exigible from fiefs as well as ordinary feudal services - checked, modified or extended. There are three ways of following this out - XII and XIII century royal grants to the church, the charters of Robert I, the first XIV century king, and the records of arrangement for military organization in the lower ranks of society - the subinfeudations of the XII and XIII centuries.

The charters of Robert the Bruce are more consistently full in their references to forinsec service and unusually detailed in their provision for it. Although they reflect something of XIII century organization, they must, however, be interpreted with care. Bruce was faced with the task of reconstruction after the chaos of the war

period. Records had been lost, personnel had changed since Alexander III's reign and systematic uniform administration had been in abeyance for a period of several years. It was necessary to ensure continuing military strength and Bruce's charters show a preoccupation with the details of military service which was lacking in the XIII century charters. There is less vagueness throughout and there is a general impression that an effort was being made to define individual obligations of forinsec service more certainly, at least in its military aspects.

1) Grant to Robert Steward of lands in Cunningham

faciendo nobis et heredibus nostris in communi exercitu nostro servicium trium militum et sectam curie ad curiam nostram de Are cum accederit.[1]

2) Grant to James de Garuyach of the forest of Cordys

faciendo quintam partem servicii unius militis in exercitu nostro et Scoticum servicium inde debitum et consuetum.[2]

3) Grant to James of Cunningham of land of Hassendean for a return of £11 yearly

et faciendo forinsecum servicium dimidii militis.[3]

4) Grant to William Barbitonsor of land in the barony of Minto

faciendo...servicium forinsecum quantum pertinet ad decimam partem unius militis in exercitu nostro.[4]

5) Grant to John de Soulis of land of Kirkandres and Breccalech

faciendo...forinsecum servicium debitum et consuetum tempore bone memorie domini Alexandri regis Scocie predecessoris ultimo defuncti.[5]

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1. R.M.S. i 54. Reg.Ho. No.80. 1315/21.
2. Aberdeen i 43. 1325.
3. R.M.S. i 13.
4. R.M.S. i 21.
5. R.M.S. i 28, and a similar service in R.M.S. i 30.

6) Grant to John Monfode of part of the barony of Tranent

faciendo...forinsecum servicium unius architenentis in exercitu nostro.[1]

7) Grant to Sir James Douglas of lands of Kyncaville and Caldorclere for a return of £12:5:10 yearly et faciendo forinsecum servitium dimidii militis.[2]

8) Grant to William de Strabrok of land of Pitmulin and Dubordach in the earldom of Buchan

faciendo...forinsecum servitium quantum pertinet ad quintam partem servitii unius militis in exercitu nostro et Scoticum servitium debitum et consuetum.[3]

9) Grant to Mary Comyn of land in the king's thanage of Fermartyn free of all services

salvo nobis tantum de dicta terra servitio Scoticano in exercitu nostro.[4]

10) Grant to Hugh de Barclay and Helena his wife of land in the thanage of Balnheluy for service of three suits to the sheriff court of Aberdeen and Scoticum servitium quantum pertinet ad quadraginta libras terre.[5]

11) Grant to Randolf of the earldom of Moray

faciendo...pro dicto comitatu servitium octo militum in exercitu nostro et Scoticanum servitium et auxilium de singulis davatis debitum et consuetum...[6]

12) Grant to Archibald Douglas of various lands

faciendo...forinsecum servitium quantum pertinet ad medietatem servicii unius militis et Scoticum servicium de predictis terris cum pertinenciis debitum et consuetum.[7]

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1. R.M.S. i 58.
2. R.M.S. i 59.
3. R.M.S. i App.1 No.3.
4. R.M.S. i App.1 No.6.
5. R.M.S. i App.1 No.7.
6. R.M.S. i App.1 No.31.
7. R.M.S. i App.1 No.66.

13) Grant to Henry dicto Buthrivambe of land of Thuluchnedie near Clunie

per servitium unius servientis cum haubergello in equo et faciendo forinsecum servitium quod pertinet ad eandem terram.[1]

14) Grant to Oliver Carpenter of land in Clydesdale for a return of 4 marks yearly

et faciendo inde forinsecum servicium nostrum unius architenentis et tres sectas curie...[2]

15) Grant to John son of Gilbert son of Donald Mackane of the lands of Southaike (Galloway)

reddendo...annuatim ad guerram nostram quando contigerit unum peditem armatum cum sustentatione sua quadraginta dierum et faciendo inde forinsecum servitium quantum pertinet ad dictam terram.[3]

16) Grant to Richard McCuffock of lands in the parish of Soureby

Reddendo inde nobis et heredibus nostris ad guerram cum contigerit unum peditem cum gladio et lancea et sustentatione sua quadraginta dierum et faciendo inde forinsecum servitium debitum et consuetum.[4]

17) Grant to John son of Gilbert MacNeill of the land of Larganfield in the Rhinns of Galloway

reddendo...ad guerram nostram quando contigerit unum peditem cum gladio et lancea et sustentatione sua quadraginta dierum et faciendo forinsecum servicium quantum pertinet ad dictas terras.[5]

18) Grant to James son of Dunsleph of land from the demesne of Kintyre

faciendo nobis et heredibus nostris dictus Jacobus et heredes sui pro terris predictis forinsecum servitium unius navis viginti et sex remorum cum hominibus et victualibus pertinentibus ad eandem.[6]

19) Grant to Colin Campbell of the land of Lochawe

sicut aliqui barones nostri in Ergadia baronias suas de nobis tenent seu possident inveniendo...unam navem 40 remorum in

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1. R.M.S. i App.1 No.81.
2. R.M.S. i App.1 No.86.
3. R.M.S. i App.1 No.100.
4. R.M.S. i App.1 No.101.
5. R.M.S. i App.1 No.102.
6. R.M.S. i App.1 No.105.

servicio nostro cum omnibus pertinenciis suis et hominibus sufficientibus sumptibus eiusdem Colini et heredum suorum per quadraginta dies quociens fuerint premoniti. Et cum exercitum nostrum per terram habere voluerimus dictus Colinus et heredes sui facient forinsecum servicium pro dicta baronia sicut alii barones nostri fecerunt pro baroniis suis.[1]

20) Grant to Hugh of Ross of half the land of Kinfauns in Perthshire

reddendo inde nobis et heredibus nostris prefatus Hugo et heredes sui tres denarios argenti...tantummodo pro varda relevio maritagio secta curie et pro omni alio onere servitio consuetudine exactione seculari seu demanda et sine transitu ad exercitum nisi quando homines inhabitantes terras nostras dominicas ad exercitum transierint.[2]

21) Grant to Patrick de Ogilvy of Bordland of Kettins, Forfarshire

faciendo...quintam partem servicii unius militis in exercitu nostro et Scoticum servicium quantum pertinet ad duas partes unius davate terre.[3]

22) Grant to Henry of Annan of lands of Mestry in Stirlingshire

faciendo inde nobis et heredibus nostris forinsecum servicium quantum pertinet ad [ ]partem servicii unius militis et Scoticum servicium nostrum.[4]

23) Grant to Walter Steward of the baronies of Eckford, Nisbet, Langnewton and Maxton and Caverton

faciendo...servicium unius militis in communi exercitu nostro.[5]

24) Grant to

faciendo quolibet anno imperpetuum communem sectam curie et in exercitu nostro Scoticanum servicium.[6]

In discussing the incidence of forinsec service in subinfeudations it is important to distinguish between the normal use of forinsec service in the commonly accepted feudal sense of the service due to the

1. R.M.S. i App.1 No.106.
2. R.M.S. i App.1 No.108.
3. R.M.S. i App.1 No.2.
4. R.M.S. i 85.
5. R.M.S. i App.1 No.88.
6. Ant.Aber.& Banff iii 313.

grantor's superior lord, forinsec to the contract between lord and man and this less orthodox use of the word. It is impossible to make this distinction in the greater number of cases where a general reservation salvo forinseco servicio domini regis is made. Even more detailed arrangements do not make the position clear. When David de Line gave Simon de Scroggas half a carucate in 1208 he provided that

> Simon ibit mecum super [equum] suum ad forinseca regis servicia facienda. Ego vero dum mecum sit sibi et equo suo omnia necessaria inveniam et si equus suus in meo servitio moriatur ego illi alium reddam et si contigerit quod ipse mecum ire non potuerit alium in loco mihi inveniet[1]

and when Simon gave the land to Glasgow, David arranged that whoever held the land of the bishop should perform this service under the same terms.[2] The service involved might easily be ordinary feudal forinsec service, but it might also be the other sort of forinsec service. Certainly the arrangement for replacement or compensation of the tenant's horse was known to feudal law.[3]

In some cases, however, there is no doubt that the phrase is not used in its usual sense and the import of the arrangements is similar to those in royal charters.

1) Exchange between Anselm Camnoys and the gatekeeper of Melrose of all the land of Lifstund for a bovate in Edinham which the gatekeeper bought from Adam's brother Richard. The gatekeeper is to hold Lifstund

> Reddendo annuatim domino regi 2s.6d. ad duos terminos et forinsecum servitium quod ad terram pertinet.[4]

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1. Glasgow i 85.
2. Glasgow i 87.
3. Ius Feudale 2.11.21 cf. ER. i 153, 167, 285
4. Reg.Ho.Misc. 1214/49.

2) Grant by Arbroath to Philip de Fedarg of land in Tarvays at feu-ferme for half a mark yearly

> et faciendo forinsecum servitium domini regis quantum pertinet in omnibus ad sextam partem unius davachi.[1]

Here the abbot can be seen passing on to tenants the service to which he was bound by the tenor of Alexander II's charter of Tarvays.[2]

3) Grant of Alan Durward to Gilbert lord of Glenkerny of the land of Tulachfyny in Mar

> faciendo...forinscecum (sic) domini regis Scoticanum quando accidet quantum pertinet ad tantam terram.[3]

4) Grant of Gilbert third lord of Glenkerny to his eldest son Gilbert of all the land of Gerbothy for the service of a pair of white spurs

> et faciendo Scoticanum servicium domini regis quantum ad dictam terram pertinet.[4]

5) Grant of John de Moray to his brother William of the lands of Culnacloyth and Ruthtrelen in Strathbolgy which he held of the Earl of Sutherland for one pair of spurs and one penny

> faciendo forinsecum servicium Scoticanum domini regis quantum pertinet ad dictas terras.[5]

6) Grant of Robert son of Warnebald and Richend de Bercley his wife to Arbroath of lands in Fordun free and quit of all service

> salvo forinseco domini regis in exercitu et communi auxilio de quibus dicti monachi respondebunt quantum ad easdem terras iuxta pertinent.[6]

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1. Arbroath Vetus 257.
2. Arbroath Vetus 102. supra p.102.
3. c.1256. Grants iii 6.
4. 1280. Grants iii 10.
5. c.1284. Sutherland 8.
6. 1238. Arbroath Vetus 261.

7) Grant of Henry of Hastings to Lindores of the vill of Flandres in Garioch wherein he promises to acquit it

> ab omnibus auxiliis exercitibus et aliis omnibus forinsecis serviciis.[1]

Similarly Eggou Ruffus granted Lingoch to the canons of May promising to acquit them ab exercitu et expedicione,[2] and the settlement of the dispute between the abbey of Lindores and the bishop of Dunblane 1211/14 over the lands of Eglesmagril arranged that for a payment of six marks annually to the bishop the land would be free to Lindores of all aids, armies, can, conveth etc., but that Gilbert Earl of Strathearn would undertake the burden of army and the bishop all other burdens.[3]

8) Grant of Eva de Rothes to Moray of all the lands of Inverlothy free of service

> salvo forinseco servicio Scoticano domini regis quantum ad eandem terram pertinet quod predictus episcopus et successores...tantummodo facient domino regi de dicta terra.[4]

In these selected cases the incidence of this sort of forinsec service can be seen descending to sub-tenants even through several levels (No.5). Most of the evidence in its more significant forms comes from the ancient Scottish earldoms where this sort of service played an important part in the internal organization.

I Lennox

Most of the XIII century Lennox subinfeudations stipulate forinsecum servicium domini regis along with the service immediately due to the earls.[5] Some of them, however, are more informative.

1. 1261. Lindores CXVIII.
2. St. Andrews p.382.
3. Lindores XLII.
4. 1263. Moray No.125.
5. Levenax 10,11,14,24,30,32,36,37,41,48,50,93. Fraser's Lennox 10,11.

1) Grant by Earl Maldouen to Gilmor of the land of Luss

reddendo...in communi exercitu domini regis duos caseos de qualibet domo in dicta terra in qua sit caseus pro omnibus aliis servitiis tam forinsecis quam intrinsecis et consuetudinibus et exactionibus et demandis et faciendo de regalibus auxiliis communibus quantum ad duos arachos in comitatu de Levenax iuste pertinet.[1]

2) Grant of Earl Malcolm to Malcolm of Luss of half a carucate and half a quarter in Glyne

faciendo inde forinsecum servicium in exercitu domini regis communi quantum pertinet ad tantas terras in comitatu de Levenax.[2]

3) Grant of Earl Malcolm to Malcolm of Luss confirming grant of Earl Maldouen to Gilmor of Luss for a return of the service as contained in Maldouen's charter (No.1 supra)

videlicet pro duobus caseis in communi exercitu domini regis quum contigerit de qualibet domo in dictis terris de Luss in qua sit caseus.[3]

4) Grant of Earl Malcolm to Arthur Galbraith of a quarter of land in Buchmonyn and a quarter in Gilgirinane

faciendo mihi et heredibus meis in forinseco servicio domini Regis quantum pertinet ad unam quartariam terre in comitatu de Levenax in servitio Scoticano.[4]

5) Grant of Earl Malcolm to Patrick Galbraith of the land of Camkell

faciendo...in communi forinseco servitio domini regis quum contigerit quantum pertinet ad unam dimidiam quartariam terre in comitatu nostro de Levenax...[5]

6) Grant of Earl Malcolm to Patrick Galbraith of the land of Balecarrage

faciendo inde nobis et heredibus nostris in communi exercitu domini regis quantum pertinet ad unam carucatam terre in Levenax.[6]

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1. c.1240. Levenax p.19.
2. post 1270. Levenax p.24.
3. Levenax p.23.
4. Levenax p.29.
5. Levenax p.31.
6. Levenax p.32.

7) Grant of Earl Malcolm to Luce son of Master Michael of Fintry his clerk of half an arrachar of Nentbolg for a return of two pounds of wax

> et faciendo forinsecum servicium domini regis quantum pertinet ad dimidiam unius arrachar in Levenax.[1]

8) Grant of Earl Maldouen to Patrick de Graham of three quarter carucates of Auchincloich and three of Strathblanane

> faciendo forinsecum servitium domini regis quum evenerit videlicet tertiam partem de octava parte servitii unius militis pro predictis tribus quartariis carucate terre de Strablanane quantum ad dictas terras pertinet.[2]

9) Grant of Earl Malcolm to Walter Sprewl of the land of Dalchorne

> faciendo inde mihi et heredibus meis ab ipso et heredibus suis forinsecum servitium domini regis in communi exercitu et auxiliis quantum pertinet ad tertiam partem servitii unius quartarie terre in Levenax pro omni alio servitio consuetudine exactione et demanda seculari.[3]

10) Grant by Walter of Ross and Mary his wife with the consent of Malcolm Earl of Lennox to Patrick Graham of the lands of Drumloche and Drumfode

> faciendo inde domino comiti forinsecum servicium quantum pertinet ad dictas terras.[4]

The earldom of Lennox also gives some examples of food contributions to the royal army.

1) Grant of Maldouen Earl of Lennox to Duncan son of Gilchrist of land in Luss

> faciendo in communibus auxiliis regis cum communiter per regnum evenerint quantum ad unum arochor in Levenax pertinet et inveniendo in communi exercitu regis de qualibet domo in qua casei fiunt duos caseos.[5]

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1. Levenax p.34.
2. Levenax p.38.
3. Levenax pp.40-1.
4. Fraser's Lennox ii 14. (probably ordinary forinsec service)
5. 1217. R.M.S. ii 187.

2) Another grant of lands in Luss to Gilmore son of Maldouen

> Reddendo inde nobis et heredibus nostris ab ipso et heredibus suis in communi exercitu domini regis duos caseos de qualibet domo in dicta terra in qua fit caseus pro omnibus aliis servitiis tam forinsecis quam intrinsecis et consuetudinibus et exactionibus et demandis; et faciendo de regalibus auxiliis communibus quantum ad duos arachor in comitatu de Levenax juste pertinet.[1]

and 3), the later more general arrangement

> Reddendo...in exercitu domini Regis tantum cibum quantum pertinet ad quartariam terre in Levenax cum portione terre sue de uno equo qui sufficiat ad tantum cibum portandum; et faciendo de regalibus auxiliis omnibus quantum juste pertinet ad unam quartariam in Levenax quotiens contigerit.[2]

II Buchan

1) Grant of William Comyn Earl of Buchan to John son of Galfridus

of half the land of Carcheor for ½ mark at the two terms and

> faciendo inde forinsecum servicium domini regis quo pertinet ad dimidiam carucatam.[3]

2) Grant of William Comyn Earl of Buchan to Cospatrick Macmedethyn

of Stratheyn and Kyndrochit for 2 st. of wax and

> faciendo forinsecum servitium comitatus de Buchan quantum pertinet ad predictas terras de Stratheyn et Kyndrochit.[4]

3) Grant of Earl Alexander to the chapter of Aberdeen of the land

of Cnookikuby in free alms with the unusual concession

> nos forinsecum domini regis tam in auxilio quam in exercitu et in omnibus aliis demandis secularibus per nos et successoribus nostris petitis...faciemus.[5]

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1. 1225 x 50 x 51. Levenax pp.19-20 and also pp.20-21 (1283 x 92) and Fraser's Lennox ii No.28.
2. Levenax p.85.
3. Reg.Ho.Misc.
4. Aberdeen i 14.
5. Aberdeen i 31. Ant.of Aber.& Banff p.468. 1273.

III Strathearn

1) In 1284 Muriel, a tenant of the Earl of Strathearn, granted to William de Moray her land of Tullybardin for a return of twelve silver pennies yearly to the Earl of Strathearn and 1 silver penny yearly to herself and her heirs and

> faciendo...forinsecum servitium domino comiti de Stradhern quantum ad dictam terram pertinet scilicet servicium Scoticanum.[1]

Muriel later resigned the land and substituted William de Moray as tenant of Earl Malise and in 1297 the earl quitclaimed the service due to him from William de Moray except

> forinsecum servicium Scoticanum domini regis in quo nobis tenetur de terras quas de nobis tenet et secursum ac auxilium quod nobis in defensionem regni per potenciam suam armigerorum equorum et armorum fecit ex libera voluntate sua nobis ex mutuo concessit.[2]

In 1319/33 a charter granted William the lands of Tulibardyn in the earldom of Strathearn

> faciendo...forinsecum servicium regium et nobis et heredibus nostris servicia debita et consueta quantum ad eandem terram pertinet.[3]

2) Grant of Earl Malise to Malise de Logy his steward's son of the lands of Cultenaclothe, Garfene and Kynpeny with Corecase in Glenalmond

> faciendo tantummodo ipse et heredes sui pro me et heredibus meis Scoticanum exercitum et commune auxilium domini regis quantum pertinet ad predictas terras.[4]

3) Grant of Andrew de Dalrewach, a tenant of the earl, to William de Moray of the land of Dalrewach

> faciendo...forinsecum servicium domino comiti de Strathern quantum pertinet ad dictam terram scilicet servicium Scoticanum.[5]

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1. Moray Cartae Orig.13.
2. Moray Cartae Orig.17.
3. Moray Cartae Orig.18.
4. c.1275. Grandtully 69 p.125.
5. Atholl Charters No.7. Moray Cartae Orig.16.

Royal religious endowments followed a general principle of leaving church lands as free from secular burden as possible.[1] Sometimes, reservations were made, and these and the clauses of quittances are often revealing about the burdens which could be, or normally were, borne by the land. Taken together, they imply that an army service was an important burden upon land. A revealing clause comes from the confirmations by Alexander II and III on the possessions of Lindores - free and quit

> de auxiliis exercitibus et aliis forinsecis servitiis de predictis terris.[2]

c.1236 Alexander II granted to Andrew bishop of Caithness three davachs of Fynlarg in Strathspey

> faciendo forinsecum servicium in exercitu quod pertinet ad dictas tres davachas. Ita tamen quod quieti sint de auxilio faciendo de eisdem tribus davachis.[3]

Similarly he granted to Arbroath a number of holdings for which the monks were responsible for forinsec service in the army although they were acquitted of aid.[4]

The army service also crops up in a subinfeudation by Philip de Evermel to Newbattle of land in Romanno free and quit

> ab omni exercitu et expedicione et omni forinseco servicio et auxilio et operactione,[5]

and these XIII century arrangements have a strong resemblance to some of the earlier quittances. Two of Macbeth's grants to the church are

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1. see ch.XII.
2. Lindores CXX, CXXI.
3. Moray 37.
4. Arbroath Vetus 102.
5. Newbattle No.130, and see ch.XII.

recorded as being free from army.[1] If the documents reflect a genuine tradition, this service can be put back to the pre-Norman period. David I's grants offer several examples. Twice he reserved the defence of the realm, when otherwise freeing church lands from burden.[2] He granted Hoctor common to Andrew bishop of Caithness, free and quit of all service exceptо communi exercitu,[3] and in 1147 he confirmed Cospatric's grant of Edenham and Nisbet to Coldingham, free and quit of all burden save corrody

> et excepto exercitu regis unde monachi erunt attendentes ipsi regi et ipse Cospatricus de exercitu erit quiete in perpetuum.[4]

Malcolm IV granted Conclud to Glasgow salvis tamen exercitibus meis.[5] William the Lion reserved defence of the realm from the privileges and immunities given to his new foundation of Arbroath,[6] and another charter of his to May gave the privileges

> quod omnes terre eorum et omnes homines eorum in terris ipsorum manentes sint libere et quiete de exercitu et expeditione.[7]

It is not until the reign of Alexander II that the term "forinsec" is used to describe these services in charters to the church, but it does seem likely that its use was part of the development of charter phraseology. The import of David I's and Malcolm IV's saving clauses is substantially the same as Alexander's charters to Arbroath and to the bishop of Caithness. The link between the two, the general army service or common army and the forinsec service, is more certainly established by a writ of Bruce to Melrose in 1301. Melrose held Largs

1. L.C. V.
2. L.C. LXXIV; CLXIX.
3. Dunfermline 24; L.C. CCXXXI.
4. L.C. CLXXVIII.
5. Glasgow i 15.
6. Arbroath Vetus 1.
7. May 16.

free from forinsec service

> excepto communi exercitu contingente pro defensione regni et ex toto regno congregando,

but when Bruce was fighting in Carrick he had exacted service frequentius from the land of Largs communi exercitu regni minime utato vel summonito. He therefore promised that henceforth he would take nullum forinsecum servitium sive exercitum from the abbey's tenants there

> nisi quando communis exercitus totius regni levatur propter ipsius regni defensionem; ad quod exercitum faciendum omnes regnicolae ex debito teneantur, et ideo precipimus et inhibemus ne aliquis nostrum hominum dictorum monachorum ad aliquam exercitum veniendi nisi ad communem exercitum totius regni decetero compelleat.[1]

The XII century reservations of defence and army could not have a meaning very different from this.

The import of all these charter extracts (which are representative rather than exhaustive) seems to be of a dual obligation involved in land tenure at this period - a feudal service directly imposed upon the land, the subject of a contract between lord and tenant, and another more general service requiring no definition. The two are neither necessarily exclusive nor alternative. Sometimes both are exacted; sometimes either the one or the other; but the quittances of the church charters suggest that unless a positive quittance of forinsec service were given in whole or in part the tenants would be regarded as liable.

The concurrence of the two different services would explain why the more general one is called forinsec. The service was essentially non-feudal and yet the Anglo-Norman lawyers versed in feudal practice

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1. Melrose i 351.

and feudal terminology would consciously or unconsciously give the burden a feudal form and forinsec service was the term which best applied to it. It was not forinsec service in the English legal sense, but it was a duty outwith the feudal bargain and forinsec would be the word by which an Anglo-Norman would describe it. The application of the word Scottish,[1] either with or without forinsec, is also understandable in this context. The burden was Scottish, as opposed to feudal, English or Norman. The first mentions of Scottish service come from the 1240's, from three of Alexander II's charters, one of which speaks of "forinsec Scottish service" [2] while another describes it as "Scottish service as our barons and knights north of the Scottish sea do for their lands".[3] The third provides a connection with the cases of "common army" by calling the service "Scottish army".[4] The other occurrences of Scottish service both in baronial charters and in Bruce's charters all bear out Alexander II's description ex aquilone parte maris Scocie. One case in Strathearn defines forinsec service as scilicet servicium Scoticanum,[5] and the phraseology frequently links it with common army.

In Scotia, then, forinsec service tends to be called Scottish service, but forinsec service itself is more commonly the subject of charter arrangement in the north than it is in the south. Certainly more detailed information comes from grants of land north of the Forth. In the south, the phraseology is more general and little attempt is

1. supra p.104.
2. supra pp.103-4 No.7.
3. supra p.103 No.6.
4. supra p.104 No.8.
5. supra p.116.

made to describe the service, although those scraps of information which are given seem to indicate that the service was at least superficially the same in both parts. Forinsec service would play a less important part in the more intensively "feudalized" part of the country. Of possible differences of organization we are not told, but both are in general principle the same - an extra or pre-feudal burden, a survival of an earlier military organization. Their persistence throughout the feudalizing period along with the feudal services is significant of the basic differences between contemporary English and Scottish societies. Scottish organization was given a feudal form, but it retained its original characteristics - modified and adapted - and from all the evidence they came into their own in the period immediately after the Wars of Independence. It may be too that the more highly organized non-feudal military system in Scotland (as compared to the more loosely organized fyrd) helps to explain Scotland's power of resistance to English aggression when the feudal forces in society were assembled in favour of English overlordship. We certainly have more evidence in the XIII century for the operation of the non-feudal army than we have for the feudal army, recruited strictly on a basis of knight service.

There is not very much information about the way in which this forinsec service was performed - or what it involved. The army service was the aspect which figures most in the arrangements, and certainly in the defensive organization of the XIV century more stress would be laid upon it than upon any other. Aid was certainly involved,[1]

1. see infra p.203.

and probably works of some kind - perhaps similar to Anglo-Saxon bridge work (and fyrd is a useful comparison for common army). There are some indications that by the end of the XIII century in some cases at least it was commuted, e.g. tenure of Dunyduf by Inchaffray for a return of 12 pennies a year for all service and defence and an extra 3d.

> tantummodo pro quolibet regis auxilio seu exercitu quocciens dominus rex communem exercitum exigere contigerit a toto suo regno.[1]

Forinsec service seems to have been assessed and apportioned in some commonly accepted way. All the charters speak of a land assessment and there is no case of a close definition.

> de singulis davatis debitum; quantum pertinet ad duas partes unius davate terre; quantum pertinet ad quadraginta libras terre; quod pertinet ad eandem terram; etc.

A generally known assessment, requiring no definition, would accord with a firmly established organization and must be contrasted with the more precise definition of feudal services in the same charters. The contrast is well brought out in Alexander II's charter to Gillascop mac Gilchrist where Scottish service is spoken of as an accepted duty which barons and knights north of the Forth do for their lands, and the feudal service is carefully stipulated and defined.[2] It might be supposed that assessment would be ground for much dispute, but all the legal records for the period have been destroyed and no such information has survived from other sources.

Some charter clauses suggest that to some extent this kind of forinsec service was organized in the big earldoms. The Lennox charters recorded the assessment as pertaining to so much land in the

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1. Inchaffray C. 1271.
2. supra p.103 No.6.

earldom of Lennox: ad tantas terras in comitatu de Levenax,[1] which can be compared to the Northumbrian communis exercitus in comitatu.[2] Organization was probably commonly restricted to a fief, cf. Simon de Lindsay required as service from his man Patrick for the land of Molle forinsec service quantum pertinet ad tantam terram in terra mea.[3]

One charter speaks of the forinsec service of the earldom of Buchan,[4] while two grants in the earldom of Strathearn stipulate a payment of forinsec service to the earl: scilicet servicium Scoticanum.[5] Standing in isolation these statements would give the impression that forinsec service could be exacted by the great earls as well as by the king, but the import of all the charters together is rather of a delegated organization within the earldoms, and some other charter phrases are less ambiguous, e.g. in Lennox faciendo mihi et heredibus meis in forinseco servicio domini regis,[6] or Strathearn faciendo pro me et heredibus meis Scoticanum exercitum et commune auxilium domini regis.[7] There is no further evidence of this, but the position of the Celtic earldoms in the feudal and political organization of the kingdom makes it highly likely that they were responsible for the military arrangements in the area which they covered. Their render of specific feudal service is extremely doubtful,[8] and forinsec service was probably their

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1. supra pp.113-4 Nos.1, 2, 4, 5, 6, 7, 9.
2. Newminster Cartulary p.26. Maitland: Northumbrian Tenures EHR V. Outside the earldoms a local reference was also quite common, cf. "as much as pertains to 2 carucates of land in Lothian" (HMC. 2nd Report p.166 No.6.)
3. Melrose i 141.
4. supra p.115 No.2.
5. supra p.116 Nos.1 & 3.
6. supra pp.113-4 Nos.4, 6, 9.
7. supra p.116 No.2.
8. supra p.19.

sole military and financial obligation. It is possible to take this idea a little farther and to suggest the delegation of the organization of this sort of service to royal tenants-in-chief was more general.

A practical example of the raising of an army comes from an inquest at Forfar in 1250 about service due from some of Arbroath's lands. The jury said that they had seen Nicholas of Inverpefir

> sequentem curiam abbatis de Abirbrothoc pro terra sua de Inverpefir et quod de eadem terra annuam firmam dicto abbati reddere consuevit et quod exercitum et auxilium facere solibat cum hominibus dicti abbatis preterquam in exercitu quem dominus rex ultimo habuit cum eo in Ergadia 1248 et tunc idem Nicholaus misit homines suos in exercitum cum hominibus domini regis de ballia de Forfar.

The abbot had taken the case to judges delegate but in case the abbot wished to disinherit him Nicholas intended

> habere dominum regem defensorem suum contra prefatum abbatem in causa memorata.[1]

Unfortunately we do not know the outcome of the case. Apparently royal tenants served together in their sheriffdoms, while tenants of others served under their own lords' leadership. Probably Nicholas was trying to raise his status - but it appears from this that he had to turn up or send men even though he held from the abbot in ferme.

Another recorded instance of the assembling of the "exercitus" also suggests organization by earldom but it has a strange context and is open to suspicion. St. Andrews had appealed for royal judgment against Robert Burgonensis for the seizure of the land of Kyrkenes.

> Tandem rex misericordia motus misit nuncios per provincia de Fif et Fothrithi et convocavit hominum multitudinem in unum locum

viz. Constantine Earl of Fife

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1. Arbroath i 250.

> cum ſatrapys et ſatellitibus et exercitu de Fyf, et Macbeath thaynetum de falleland et primicerios et duces et tunarcas exercitus

but of this assemblage three were chosen, Malcolm Earl of Fife, magnum iudicem in Scotia, Dufgal, an old man, and Meldoineth, to give judgment.[1] The account reads as if the meeting was specifically called for this judgment and although the gathering of the army could conceivably have been used as a convenient opportunity for deciding such a case, it seems highly unusual practice to summon a military assemblage for a judicial purpose. It may be, however, that there was little distinction in personnel or appearance between the shire court and the local levy. If the description can be taken as at all genuine it shows the army meeting as an army of the earldom and under the earl's leadership.

The Laws of Alexander II contain a passage of regulations de forisfactis absencium ab exercitu

> ...Quod rex debet habere forisfactum comitum si thani eorum remanserint ab exercitu sed quantum esse debet non fuit discussum. De omnibus vero aliis qui ab exercitu remanserint scilicet de terris episcoporum abbatum baronum militum et thanorum que de rege tenent debet rex solus habere forisfactum, scilicet de thano vi vaccas et i iuvencam, de oghtierne xv oves vel sex solidos. Sed inde non habebit rex nisi medietatem et thanus vel miles aliam medietatem. De rustico i vaccam et i ovem et hec similiter debent dividi inter regem et thanum vel militem. Sed ubi per thanum vel militem licenciam habent quod ab exercitu remanserint rex solus habebit forisfactum... Nullus vero comes vel serviens comitis in terram alicuius de rege tenentis ad hoc forisfactum exigendum venire debet nisi tantum comes de Fyffe et ille non sicut comes sed sicut unus marus restat regi comitatus de Fyffe ad rectitudines suas exigendas. De gaveles vero ubi Rex et comes impartiuntur rex et comes habebunt medietatem et thanus aliam medietatem. Sed ubi ipse thanus fuerit in forisfacto dividetur inter regem et comitem.[2]

The second half of this passage allows a large part to earls of the fines for absence. The sentence forbidding entry of an earl or an

1. St. Andrews p.117.
2. APS i 398 c.2.

earl's servant into the land of a king's tenant to exact forfeiture, except the Earl of Fife and he only in his capacity as a royal official, is interesting. Its full meaning cannot now be determined. It may perhaps be taken as suggesting a note of resistance - of royal insistence upon direct administration in face of earls' encroachment upon the military organization. Whatever its meaning, it does link up with the earls' responsibility which is indicated in other context and with the tendency to regard the service as organized by earldoms. The part played by thanes in this also suggests the pre-Anglo-Norman origin of the arrangements. Clearly the army described here is not a feudal one. Its personnel does not reflect the feudal hierarchy - earls, thanes and rustici, with knights and barons only casually mentioned and not really provided for. The sanctions for non-performance are not feudal - fines are imposed and no mention is made of forfeiture of fiefs for non-performance of feudal services.

An interesting piece of detail about this sort of military organization in the south of Scotland comes from a XIV century charter of Alexander abbot of Dunfermline to a tenant on the abbey lands. He is given a qualified exemption from army service.

> Concedimus et ei et heredibus suis libertatem remanendi ab exercitibus domini regis nisi ita communis sit exercitus quod homines de Inverhesk et de Munketun domi non possint remanere; et tunc unum solummodo hominem inveniet.[1]

It implies a distinction between ordinary army and common army - and may correspond to the early charter references to army and "expedition". Common army seems to involve a more widespread and universal personal obligation than ordinary military service and was probably more akin to the English fyrd.

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1. Dunfermline 301.

The picture then whose outlines only are ever given is of a dual military organization, based on the one hand on feudal military service and on the other on a non-(and probably pre-) feudal burden and assessment for a common army. Both were based on the land; both were returns for land held; and there must in the XII and XIII centuries have arisen a certain amount of confusion in adjustment and adaptation. Two kinds of army and two kinds of military service must have produced many problems for the government. David's charters to laymen are so few that it is impossible to tell whether he was aware of the problem or how he tackled it - whether perhaps he planned a complete replacement of the old by the new. By William's reign we have evidence that the old was certainly a forceful institution and received royal sanction as such. It continued in importance during the reigns of Alexander II and III, and played a large part in the tenures which were created or confirmed by Robert I. Its importance at that period may only be superficial - a result of the larger number of Robert I's charters which survive as compared with those of the XIII century kings - but the reason for the increased number of charters, the large-scale land-owning reorganization, was likely to bring the important tenurial obligations to light. The selection of instances of forinsec service, Scottish service, Scottish army and common army which has been made from Bruce's charters shows how widespread was its incidence. Certainly the evidence which has been analyzed leads to the conclusion that the military organization of Scotland was never more than a compromise between Anglo-Norman feudal practices and an indigenous system, which was probably the more effective partner throughout.

PART 2

Feudal Military Service

Of the obligations of military tenure in England, Stenton has said

> From every standpoint it is remarkable how little we really know about the nature of military service in the century after the Conquest. The length of time for which a knight must serve, the conditions under which he or his lord might find a substitute, the system by which the king's barons found garrisons for his castles, and the circumstances which entitled them to take an aid from their men are all involved in obscurity. We are, in fact, driven to conclude that the organization of military service was essentially the business of the great baronial courts: that so long as a due contingent of suitable knights answered the king's summons, he was not concerned with the arrangements which produced them.[1]

Broadly this is applicable to Scotland too - but its application extends from the XII into the XIII century. The position was complicated, and the obscurity deepened by the existence of the older non-feudal military service, and the information about feudal military organization is even more vague than it is in XII century England. Partly because of the existence of previous forms of organization and partly because feudalization was not initiated under wartime or conquest conditions, there was not the overwhelming preoccupation with knight service which is found in England. There were no big military fees and the largest quota required from a crown fief was 10 knights.[2]

An important aspect of this feature is that the knight's fee never became a significant unit of land organization. Since no large quotas had to be produced, there was no need for landowners to keep large contingents to perform their services, or to proceed to the next stage of endowing large numbers of knights with land. There are, however, indications of some abortive development in this direction.

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1. English Feudalism p.168.
2. supra p.97.

Several pieces of land, fiefs, were held for the service of one knight, mainly at the end of the XII century.

1) pre 1177 Alan son of Walter Stewart granted, to Adam son of Gilbert Torboulton, Prevaic etc.

> per servicium unius militis inde faciendum...sicut aliquis miles de me vel de aliquo barone in terra regni Scocie tenet.[1]

2) pre 1189 Richard de Moreville granted Gilmoreston to Edulph to hold

> sicut aliquis miles feudum suum de me liberius et quietius tenet per servicium unius militis.[2]

3) Earl David granted to Malcolm son of Bertolf his land in Leslie

> Tenendam et habendam de me...per servitium unius militis.[3]

4) William de Moreville constable of Scotland granted to James de Laudon the land of Laudon per servicium unius militis.[4]

5) c.1200 Alan Steward granted to Robert Croc the land of Kellebrid (Kilbride) with its waste

> pro terra centum solidorum quam eidem Roberto debui...faciendo pro ista terra et feodo suo servicium unius militis.[5]

Some charters make definite reference to a knight's fee:

1) David I's charter to Alexander of St. Martin makes a suggestion of such a unit. Alexander was to hold Athelstaneford by the service of one knight but was to receive 10 marks annually from the exchequer usque donec perficiam ei plenarium feodum unius militis.[6]

2) When Earl David's son, John of Huntingdon, gave to Norman son of

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1. Fraser's Lennox 1.
2. Glasgow i 45.
3. Reg.Ho.Misc.; Hist.MSS.IV p.493.
4. B.M. Cotton Charters XVIII No.25.
5. Fraser's Lennox 2.
6. L.C. CLXXXVI.

Malcolm the land which Earl David had given to Malcolm,[1] he added the land of Caskyben and expressed the service

> faciendo inde mihi et heredibus pro omnibus prenominatis terris servicium feodum unius militis.[2]

3) 1194-1214. William de Bruce granted to Ivo de Kilpatrick land in the fee of Penresax

> faciendo mihi et heredibus meis servicium octave partis feudi militis.[3]

4) 1293. John Balliol granted to John de Insula land of Whytesum

> faciendo inde nobis servicium dimidii feodi unius militis.[4]

The evidence of Bruce's charter[5] is borne out by an inquest during the English occupation which referred to knights' fees in Annandale.[6] Since Annandale owed a service of 10 knights it is not surprising to find extensive endowment of knights there, but the phraseology of record compiled under direct English influence must not be given too much weight. Seemingly confirmatory evidence comes from government record. The inventory of documents handed over to Edward contains the tantalizing entry:

> Item 1 rotulus de feodis militum continens iii pecia.[7]

and in 1292 the Chamberlain accounted at the Exchequer for

> 180 lib. 17s. 8d. in feodis militum.[8]

These, however, may have simply been sums of money - wages paid to knights.

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1. supra p.129 No.3.
2. Coll.Aber.& Banff p.547; Leslie App.III p.148.
3. Annandale i 3.
4. Reg.Ho.Roy.
5. supra No.3.
6. Bain ii 709.
7. APS i 118.
8. E.R. i 10.

Stenton shows that the feudum unius militis is a conception which gradually developed as the process of subinfeudation went on, and the need was felt for some general term to denote an estate charged with the service of a single knight.[1]

> The evidence suggests...that many of the knights' fees which appear in the great thirteenth century feodaries are artificial creations which had only acquired their permanent shape in the course of time.[2]

One charter which he cites to show how this happens bears comparison with David I's grant to Alexander of St. Martin.[3]

> Hugo de Baius clericis et laicis, Francis et Anglis omnibusque suis bonis hominibus salutem. Notum sit nobis (sic) me dedisse et concessisse in feudo et hereditate Roberto Rabacio et suis heredibus dimidium feudum unius militis scilicet in Medewella et in Chailesmers quod Ricardus filius Bernardi pater eius et idem Robertus Rabacius tenuerunt de patre meo Rannulfo faciendo idem servicium quod ipse et pater eius patri mei Rannulfo facere solebat et volo ut illam terram teneat quam melius et liberius ipse et pater eius de patre meo Rannulfo tenuerunt quoadusque perfecerim ei plenarie feudum cuiusdam militis. Sciatis etiam pro concessu et recognicione predicte terre se facturam mihi unam percam in muro castelli Welleburnie...[4]

Besides the charter of David I, the other three uses of the phrase occur in charters of men who were closely concerned with the administration of English estates. English clerks may have been employed - probably more used to drafting documents for English lands than for Scottish. It seems, then, that the knight's fee in its technical sense did not become part of Scottish land organization. If the phrase is taken in its simplest descriptive sense, as meaning a fee large enough to maintain a knight, it can be regarded as applicable in Scotland, but it never became a classified unit, with its rights and

1. English Feudalism p.157.
2. English Feudalism p.158.
3. supra p.129.
4. c.1158. English Feudalism p.274.

duties clearly defined, as in England. Like other Scottish tenurial institutions, the stress was on the service rather than on the nature of the tenure, and knights' fees can be ranked with sergeanties and socages.

PART 3

Organization of feudal military service

Very little indeed is known of the actual obligations of feudal military service, either of the way in which it was arranged or of what it involved. In a simple case where a tenant owed the service of one or more knights, the difficulties cannot have been great, but the vast majority of charters stipulating military service demand a fraction of a knight's service. The table of royal grants of William the Lion's and Alexander II's reigns show how common these fractions were among royal tenants;[1] they were in the nature of the system even more common and more fractional in subinfeudations. Some selected examples illustrate their extent.

1) c.1170. Waldeve son of Cospatrick granted to Helias son of Huctred the land of Dundas

> pro servitio dimidii militis...ut nullus miles de barone tenet liberius in tota terra regis Scotie.[2]

2) 1185 x 1214. Earl David granted to Richard de Lindesay 12½ virgates in Bartun faciendo servicium sexte partis unius militis pro omnibus serviciis.[3]

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1. Appendix I
2. APS i 92.
3. Reg.Ho.Misc.1

3) 1185. Earl David granted to Hugh Giffard the land of Fintry to augment his previous fee

> faciendo michi et heredibus meis de hoc feodo et de alio feodo quod ei antea dederam servicium dimidii militis.[1]

4) 1214. Earl David granted to David de Andree and his heirs a davach of Rossyth

> reddendo decimam partem servicii unius militis pro omni seculari servicio...[2]

5) 1194 x 1214. William de Brus granted to Adam de Carlisle the land of Kynemund

> faciendo michi...servicium quarte partis unius militis pro omnibus serviciis.[3]

6) c.1218. William de Brus granted to Roger Crispin all the land of Cnoculeran faciendo vicesimam partem servicii unius militis.[4]

7) Robert de Muscamp granted to William de Greenlaw three carucates in the vill of Halsington

> faciendo...servicium tricesime partis unius militis in forinseco servitio domini regis cum illud accederit et me et heredes pro predicta villa servitium forinsecum facere contigerit.[5]

8) 1214 x 1249. Adam son of Edulph granted to his son Constantine land in Eddleston

> faciendo mihi et heredibus meis servicium vicesimae partis unius militis.[6]

9) c.1240. Gilbert Marshall Earl of Pembroke gave to David Lindsay of

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1. Yester No.4.
2. B.M. Cotton Charters XVIII No.23. Appendix Reg.Ho.Misc.
3. Annandale i 2.
4. Annandale i 7.
5. Melrose i 232. Note "forinsec service" here may be either strictly feudal or Scottish; in either case it is an interesting example of the dual obligation - supra p.109.
6. Glasgow i 173.

Braeinuvvel the land of Garmeltoun of Byres for the service of half a knight.[1]

10) c.1270. Malcolm of Moray granted to his son William de Moray the land of Lamabrid which he held of the king. He was to pay one pair of white spurs or a penny

> et faciendo domini regis dimidium servicium unius militis et forinsecum Scoticanum quantum ad dictam terram pertinet.[2]

The earldom of Lennox alone provides several examples. It has already been mentioned that we do not know the services by which these earldoms were held, but in the case of Lennox one clue is provided: it was given to Earl David, along with other lands, for a service of ten knights. We do not know, however, whether this was a reduction or an increase, but certainly the military tenures within the earldom were highly fractionalized.

1) Earl Maldouen granted to Umfrid de Kilpatrick the land of Colquhoun

> faciendo inde mihi et heredibus meis ipse et heredes sui tertiam partem servitii unius militis.[3]

2) To Maurice son of Galbraith he granted a carucate

> faciendo...septimam partem servitii unius militis pro omni alio servitio.[4]

3) To Maurice and his son Arthur he also granted Auchincloich

> faciendo inde trecesimam secundam partem servitii unius militis.[5]

4) To Donald he granted a quarter of an acre in Gleanfredne faciendo nobis...vicesimam partem servitii unius militis.[6]

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1. note in Haddington ii p.225.
2. Moray Orig.7. Note: Another interesting example of service to the crown being handed down where it involved both feudal and Scottish service, cf.c.1284 grant of John de Moray, William's elder brother, to him of the lands of Culnacloich and Ruthtrelen, when the service was 1 pair of spurs or 1d. et faciendo forinsecum servicium Scoticanum domini regis. (Moray Orig.8)
3. Levenax p.25.
4. Levenax p.26.
5. Levenax p.27.
6. Levenax p.91.

5) Earl Malcolm granted to Lord Patrick Graham land in Auchincloich and Strathblane

> faciendo forinsecum servicium domini regis quum evenerit videlicet tertiam partem de octava parte servitii unius militis.[1]

6) He granted to three women land resigned by their father

> faciendo...vicesimam partem servitii unius militis in communi exercitu domini nostri regis...[2]

These fractions, ranging from one-half to one-thirtysecond, and in one case subdivided into one-third of one-eighth, must have called for some sort of generally accepted arrangement either of commutation or of contribution to the expenses of equipment and service. A charter of Alexander II suggests that sometimes at least these fractional services were in fact performed by a money payment. Ivo de Kilpatrick held pro servicio quarte partis unius militis nomine albe firme.[3] Some later indications are given of the way in which this division was worked. A grant made by Lindores was for a service of a ferme of 5 marks, three suits, presence at justice and chamberlain ayres

> unacum sustentacione quarte partis unius equi et servi pedestris... tempore belli in exercitu regis contra invasores regni quocies evenire contigerit...aut summam tresdecim solidorum et quatuor denariorum pro quarta parte dicti equi tantum [4]

and in a Lennox charter of c.1373 the reddendo was

> solvendo inde nobis et heredibus nostris in communi servicio regis quando contigerit terciam partem sustentacionis unius sagittarii et tres sectas...[5]

There is no evidence that a system comparable to English scutage

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1. Levenax p.39.
2. Levenax p.46.
3. Reg.Ho.Roy.
4. Ant.Aber.& Banff iii 410.
5. Fraser's Lennox ii 29.

prevailed in Scotland - but it does seem as if some assessment of the value of a knight's service must have been known and accepted.

Nothing survives to indicate how long military service of this kind was supposed to last or how often it could be called for. Some provisions for sustenance survive. In a subinfeudation of c.1295 John son of Lagman son of Aelcolm McFerchere gave to Colin Cambel two pennylands of Kamesnemiclach and Hasketeyhewyne in fee and heredity

> faciendo michi et heredibus meis forinsecum servicium domini regis et eius auxilium et faciendo sectam in curia mea de Ardorkynryke ad tria placita per annum. Ipse vero et heredes sui vel sui assignati invenient michi et heredibus meis in congregationibus Ergadie cum necesse fuerit duos homines cum eorum victualibus de dictis duabus denariatis terre quousque duraverit prout consuetum est in patria.[1]

The arrangements for an exaction of cheeses in the terms of some of the Lennox charters have a similar purpose although the application is to forinsec service.[2] Another Lennox charter is more general - a grant by Gillemichel to his son Malcolm of one quarter of land for a return of 10s. to the Earl of Lennox in the king's army as much food as pertains to one quarter in the earldom. The confirmation of Gillemichel's son Duncan adds

> cum portione terre sue de uno equo qui sufficiat ad tantum cibum portandum.[3]

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1. Inventory of Lamont Papers p.7 (BRS).
2. supra pp.114-5.
3. Levenax pp.83, 84.

PART 4

Castle Guard

In England, the garrisoning of castles was a duty which tenants by knight service were called upon to perform. In Scotland, the evidence is very slight and does not warrant a general conclusion. Neilson has examined it and favours a conclusion that a system of castle guard similar to the English prevailed in Scotland, but his evidence comes almost entirely from the XIV century and largely from English record of the lands subject to occupation when defence measures of English organization were an important institution. It is dangerous to apply conclusions derived from such evidence back to Scotland generally in the XII or XIII centuries. Neilson noticed that castle ward seemed rare in counties north of the Forth, but for the XII and XIII centuries some clues are given.

The earliest and most important is a charter of Malcolm IV which gave Berewald the Fleming land of Innes in provincia de Elgin... faciendo michi inde servicium unius militis in castello de Elgin.[1] It suggests some organization of land-holding based upon the castle and its area of domination or province. Confirmation of the administrative importance of this area comes from further south at a similar date - castrensis provincia of Stirling[2] - and some XIV century charters of Edward III seem to suggest land-holding based on the castle

1) of Hawick

> dicta baronia de nobis tenetur ut de castro nostro de Rokesburgh per servicium forinsecum sicut cetere baronie in eodem comitatu tenentur.[3]

1. Innes p.51.
2. Dunfermline 2.
3. 1347. Rot.Scot. i 700.

2) of Westerkirk which is more specific

> tenetur ut de castro nostro de Rokesburg per forinsecum servicium salvo quod...aliquid inde dabitur pro custodia dicti castri nec aliquo tempore dare consuevit.[1]

William the Lion's Annandale charter seems to imply that castle guard was a part of knight service. Annandale was to be held

> per servitium x militum excepta custodia castellorum meorum unde ipsum quietum clamavi.[2]

If castle guard were recognized as an essential part of knight service which could only be relieved by quit claim, the lack of reference to it could be understood. Another case of a quittance of this kind by William the Lion comes from the retrospective evidence of an inquest at Selkirk in 1305 where the jury found

> that William king of Scots gave the sheriffdom of Selkirk to Andrew de Synton to be held by answering to the king and his heirs for the issues and being freed of castleward of Roxburgh and suit thereto which he and his heirs used to make for the barony of Synton.[3]

In this second, however, the service involved was not knight service (the tenant fermed the issues) and it is possible that castle ward was due from land other than that which owed knight service.

A quittance given by a mesne lord has survived. Robert de Muscamp, who held of the Earl of Dunbar, granted the land of Halsington to a tenant

> faciendo inde ipse et heredes sui vel sui assignati et eorum heredes mihi et heredibus meis servicium tricesime partis unius militis in forinseco servicio domini regis cum illud acciderit et me et heredes meos pro predicta villa de Halsinton servitium forinsecum facere contigerit et erunt...quieti et immunes ab omni alio servitio et a multura et a varda castelli et a sequela

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1. Rot.Scot. i 707.
2. N.MSS. i XXXIX.
3. Bain ii 1681.

> omnium placitorum et ab omni alio seculari servicio auxilio et demanda pro servicio supradicto.[1]

Here the service involved was knight service.

A more detailed piece of information comes from the XIII century. A charter printed by Neilson, which purports to be of Bruce but (from the witness list) is clearly concocted from one of Alexander II (c.1221), assumes that castle guard was normally part of knight service.

> Robertus... Sciatis nos...confirmasse Bernardo de Howden et heredibus suis pro custodia quam facere tenetur in castello de Roxburgh de eo quod pertinet ad feodum militis unde custodiam facere debent, dent nobis singulis annis ad Pentecostem viginti solidos; Sed si forte ingruat necessitas vel guerra oriatur per quod oporteat eos custodiam suam facere in dicto castello nostro et ibi steterint per quadraginta dies quieti sint ab illo anno de predictis viginti solidis reddendis. Item si eant in exercitu per preceptum nostrum et transeant aquam de Forth versus aquilonem vel marchiam nostram versus austrum ab illo anno quieti sint de predictis viginti solidis; Ita tamen quod sive custodiam suam fecerint sive predictos denarios solverint sive in exercitum iverint et necessitas ingruat intrent in dictum castellum nostrum ad illud defendendum vel ad exercitum eant si opus est. Si vero commune auxilium ponatur per totam terram nostram et auxilium quod ad feudum suum pertinet reddiderint ab illo anno quieti sint de predictis 20 solidis et de custodia in dicto castello facienda.[2]

The charter is also an example of the process of commutation, which must have begun early where the institution of castle guard prevailed. Neilson points an interesting comparison with this and chapter 29 of Magna Carta

> Nullus constabularius distringat aliquem militem ad dandum denarios pro custodia castri si facere voluerit custodiam illam in propria persona sua vel per alium probum hominem si ipse eam facere non possit propter rationabilem causam; et si nos duxerimus vel miserimus eum in exercitum erit quietus de custodia secundum quantitatem temporis quo per nos fuerit in exercitu.[3]

The process of commutation was well advanced by the XIV century which

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1. Melrose i 232.
2. Haddington MS. p.876. printed by Neilson in Juridical Review.
3. S.C. p.296.

produces numerous cases of payment ad wardam castri regis or to the "castle guard of Roxburgh".[1]

The Border castles, Roxburgh, Berwick, Dunbar and Dumfries, seem to have been garrisoned mainly on this system.[2] Dumfries provides a link with the XII century. Neilson found that the baronies of Dumfriesshire, except Annandale, paid money in name of castle ward to the castle of Dumfries,[3] and the exception of Annandale may be explained by William the Lion's quittance excepta custodia castrorum meorum. Also, Annandale had originally been gifted along with its castle et castellum suum so that Annandale would be militarily focussed on the baronial castle of Lochmaben rather than on the royal castle of Dumfries - as the lands of the Earl of March were focussed on his castle of Dunbar.

All these examples prove the existence of a service of castle guard before the XIV century when its existence becomes quite clear and when it probably formed part of the general definition of military service at this period. It is not, however, quite clear whether it was an essential part of knight service alone. Apart from the holding of Synton of William the Lion, the two charters of Edward III of Hawick and Westerkirk suggest that it could also be regarded as a duty involved in forinsec service. This, however, might be the result of a certain confusion as to the exact distinction between the two forms of service.

Castle ward was put alongside army service in the laws of the Burghs as one of the causes which might take a burgess out of the burgh.

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1. Bain iii pp.318, 319; iv No.2; iii No.134; Rot.Scot. i 27.
2. Bain iii pp.323, 324; Testa de Nevill 392, 393.
3. E.R. i 205; 282; Bain iii p.315.

Quilibet burgensis potest namare foris habitantes infra forum suum et extra infra domum suam et extra sua licencia propositi sui nisi commercia vel nundine teneantur in burgo et nisi fuerit in exercitu regis vel in custodia castelli.[1]

PART 5

Lesser military service

Although there are far more references to knight service than to any other forms of military service, there is sufficient evidence to suggest that minor military service, of the sort which in England would have been classified as military sergeanty, must have existed. Armoured knights on horseback were the nucleus of a XIII century army, but more mobile horse, infantry and archers were equally important. The Lanercost chronicler spoke of the part played by the unarmoured horseman in the Scottish army and he is found in numerous charters - both as tenant-in-chief and as fairly small sub-tenant. In 1165/70 William the Lion granted Granton to Gregory de Melville in exchange for the land Malcolm IV gave him in Ednam per servicium unius arcarii cum equo in exercitu;"[2] before 1189 he confirmed a subinfeudation of the lands of Granton and Stenhouse by Richard de Melville to Galfridus de Melville, his uncle, salvo servitio meo;[3] and the Allardice charter of 1189/99 to Walter Scott stipulated tenure per servicium unius arcarii cum equo et halbergello along with common aid.[4] Alexander II made similar grants and these royal enfeoffments are the origin of

1. APS i 333.
2. Melvilles iii 2.
3. Melvilles iii 5.
4. Reg.Ho.Roy.

some, at least, of such services, passed down the feudal scale in subinfeudations, e.g. Robert of Lothian (1189/99) granted to Roger Frebern land in his fee of Aberdour

> faciendo...servitium unius servientis cum equo et halbergello in exercitu domini regis.[1]

Sometimes such services were created by a bargain between baron and tenant, and their destination was not the royal army but the baronial following and retinue. The most explicit grant of this kind is that of Alan constable of Scotland when he granted the land of Farinsly to Alan de Ross

> inveniendo nobis et heredibus nostris ipse a (sic) heredes sui in expedicione exercitus nostri unum juvenem cum haubergello et reddendo in auxiliis quantum pertinet ad unam carucatam terre.[2]

Frequently such grants stipulate a service of this kind in addition to the king's forinsec service and there is some difficulty in knowing in what sense the word forinsec is used. If it is used in the feudal sense, then the detailed other service is purely and wholly to the lord. If it is used in the non-feudal sense, it will imply duality of service - the feudal military service being imposed along with the more vague non-feudal burdens.[3]

In 1211 Hugh Freskyn granted to Gilbert archdeacon of Moray the land of Skelbol (Skibo) in Sutherland, and Fernebachlyn and Inverchyn (Invershin) and all his land of west Sutherland between these lands and the bounds of Ross

> faciendo servicium unius sagittarii et adquietando forinsecum servicium domini regis quantum ad dictas terras pertinet.

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1. Spalding Misc. p.243.
2. 1200 x 34. Reg.Ho.Misc. registered in Deeds (Dal.) Dec.12.1700.
3. supra p.101 et seq.

William the Lion confirmed the grant salvo servitio meo,[1] and when Gilbert became bishop of Caithness he granted to Richard his brother all the land in Sutherland which Hugh Freskyn gave him. Alexander II confirmed this grant in 1235 salvo servitio nostro.[2] By 1275 a dispute had arisen between the bishop of Caithness and the Earl of Sutherland about the castle of Skibo and the lands, and the difficulty was solved by division with the church to hold the castle salvo forinseco servitio domini regis.[3] After the first grant the archer disappeared from the record, although the king's service was constantly reserved. We can therefore conclude that in this case the archer was Hugh Freskyn's private affair.

A similar juxtaposition occurs in the Earl of Buchan's grant (pre 1214) to Utred of the lands of Fedreth

> faciendo...mihi...liberum servicium unius sagittarii et faciendo per annum tres sectas capitales curie mee de Ellon cum forensi servicio domini regis quantum pertinet ad praenotatas terras.[4]

An interesting example of how this military service was passed down the feudal ladder comes from the early XIV century. The barony of Bowden apparently had to find thirty archers for the king's army and an inquest found that the territory of Bowden was given out ad tenuram quattuor husbandorum and was accustomed to find one armed man who ought to be dux of the thirty archers.[5]

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1. Sutherland 1 and 2.
2. Sutherland 6.
3. Sutherland 7.
4. Coll.Aber.& Banff p.408.
5. Kelso ii 471 - 1327.

There seems to have been no check kept by the crown on military subinfeudations. In England from 1086 the priority of fealty to the crown amongst sub-tenants was stressed and the inquiry of 1166 into the number of knights who had been enfeoffed on vassal's land showed royal concern lest baronial military organization become too extensive. We have no evidence in Scotland, as in England, as to how far baronial enfeoffments for knight service were related to the military return they owed to the crown. It is probable that barons drew from their fiefs a military force in excess of the return demanded of them by the crown. On the purely feudal aspect this can be checked in some cases. The gift of Richard de Moreville[1] is a possible example. He held the land of Gilmoriston from Glasgow at ferme for fifteen years from 1170 and before 1189 he had granted it in fee for the service of one knight.[2] It is possible that the grant was made after the lease ran out, but even so and the lease was turned into a fee, it is unlikely that Glasgow was exacting this military service from him.

Occasionally we do find barons drawing large quotas of service from their tenants, e.g. in 1304 an inquest before the sheriff of Stirling revealed that Sir John de Calentir in addition to holding Calentir in chief of the king for the service of a knight had also held Kilsyth of the Earl of Fife for the service of ten archers.[3]

In the earldom of Lennox - which of all the large Scottish honours is best documented - there seems to have been no attempt by the earl to

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1. supra p.92.
2. Glasgow i 44, 45.
3. Bain ii 1457.

build up a private military power on a tenurial basis. The important sub-tenures only rendered fractional service, but a difficulty arises over the extent and nature of the non-feudal forinsec service. When baronial charters stipulate the duty of Scottish service or royal forinsec service, we do not know the nature or extent of military force which may have derived from it. The ten archers owed to the Earl of Fife by John de Calentir may have been forinsec rather than feudal service. It has been seen that this sort of service was probably a far more effective and deeply rooted form of organization than the more familiar Anglo-Norman organization. It seems likely too that barons as well as crown would pay more attention to it as a real source of profit and power.

BULSTON
LEARA STRONG

CHAPTER VI

Service and Return - Feuferme and Blenchferme

BULSTON
EXTRA STRONG

Feu-ferme and Blench Ferme

Feu tenure and blench tenure were important later categories of tenure, whose nature was closely defined. Feu-ferme particularly became of widespread economic importance in the XV century when conscious steps were taken to encourage the subinfeudation of land in this way. From the XVI century at least a clear distinction was made between military tenure - tenure by ward and relief - and feu or blench holdings, and all tenurial matters of incident and service and succession were decided according to the classification. The distinction had become so formalized that Craig could state an important point of law entirely dependent on the terms of the enfeoffment.

> All feus are presumed to be military holdings unless the contrary appears from the tenor of the investiture. Accordingly not only are all feus granted for the performance of service, or for the duty of suit in what are called the head courts (which is a kind of service), reckoned as military holdings; but all other feus are likewise so reckoned, even though they contain an annual prestation, unless it is expressly declared that they are granted in blench farm, or in feu-farm or in burgage.[1]

Craig discusses what he calls a "comparatively recent variety of feu" whereby a feu is called blench farm or feu-farm but is held for a service which is military - with the purpose of evading the heavier obligations of military service. In the XIII century Alexander II granted land to Ivo de Kilpatrick for the quarter of a knight's service nomine albe firme,[2] which bears at least a superficial resemblance to the cases which Craig discussed. There may be another explanation

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1. Ius Feudale 1.10.27.
2. supra p.135.

for this but the speculation is interesting. Information about these forms of tenure comes entirely from charters. Regiam Majestatem does not mention them, but an attempt will be made to investigate the existence of any principle or general rules in these grants - and the development of any evasions such as Craig indicates.

Feu-ferme tenure in its later classified form arose out of grants made in perpetuity for a money payment instead of for the personal services of classical feudalism; blench tenure was theoretically a tenure free from service, but in practice a nominal or symbolic, and often frivolous, return was demanded, and was regarded as arising out of special favour on the part of the donor - the render only signifying the feudal relationship and being neither a profit to the lord nor a burden to the tenant. Sometimes there is difficulty in distinguishing between these tenures at a point where they merge into each other. A small money payment could be regarded as tenure in blench; terms of description were rarely used in XIII century charters and its occurrences are therefore interesting. A charter of William the Lion, which only survives in a XVII century copy (which Lawrie saw in the possession of the Earl of Lindsay) and is therefore not to be regarded as entirely reliable, granted land in Fife to Venero and his heirs, reddendo duos denarios nomine albe firme;[1] and the Earl of Lennox made a grant to William Galbraith

> reddendo inde annuatim...tres denarios argenti nomine albe firme... pro wardis releviis maritagiis sectis curiis duplicatione firme et omnibus aliis servitiis secularibus etc.[2]

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1. 1165 Lawrie I.
2. Levenax p.33.

But returns of that amount were also called feu-ferme. c.1290 Sir John de Anesley granted ad feodo firmam to John of Wemyss and Amabilla his wife (Sir John's daughter) lands held of the Earl of Fife

> faciendo dicto domino comiti de Fyff servicium inde debitum... reddendo michi tres denarios...videlicet tres obolos ad Pentecostem et tres obolos ad festum sancti Martini nomine feudofirme;[1]

but again, a grant of Alexander III of the barony of Kilmauris to Henry Cunningham for a yearly return of half a mark was nomine albe firme.[2]

Some of the renders in kind are also difficult to place. A return of 1 lb. pepper or cummin sounds symbolic but would probably be regarded as a considerable burden,[3] and in some cases such tenures are described as feu-ferme in the charters, e.g. the abbot of Scone gave land in Perth to Christine of Inch burgess ad feudo firmam for a return of 1 lb. wax.[4] Renders of spurs[5] were very popular, and have every appearance of symbolism, but one English grant describes a tenure by this service as feu-ferme.[6] In another case a similar service resembles a sergeanty rather than a blench tenure - the grant of William the Lion to William the helmet-maker of

> illam platyam in burgo meo de Perth. Reddendo inde singulis annis duos capellos ferri.[7]

Sparrowhawks were a common render and can probably be regarded as blench, e.g. the land of Appeltrig was held of the regality of

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1. Wemyss ii No.2.
2. Reg.Ho.Roy.
3. e.g. Annandale 1; Reg.Ho.Misc.(App.); Kelso i 197; Arbroath Vetus i 305; Douglas iii 4; Aberdeen i pp.10,13; Dryburgh 126; Melrose i 141, 204.
4. Reg.Ho.Misc.
5. Duchy of Lancaster Cart.Miscell.II p.69, III p.3; Wigtown 2; Morton ii 6; Grandtully 69[x]; Grants III 10; APS i 102; Reg.Ho.Misc.p.19; Reg.Ho.Cart.69.
6. Coldstream 33.
7. Scone 46.

Sprouston "for a white sparrowhawk or 5 souz at the donor's pleasure".[1] The money alternative to these products, however, varies considerably and seems to have been a matter of whim rather than a fair value, e.g. "two red sparrowhawks or two shillings";[2] "1 pair of white spurs or a silver penny";[3] 3d. or a pair of spurs;[4] 1 pair of gilt spurs or 6d;[5] 1 lb. pepper or 6d;[6] 1 lb. pepper or 12d;[7] 1 lb. cummin or 3d.[8] The variations do tend to the interpretation that the return was not fixed by any consideration of value, and that the tenure was therefore blench. Altogether, however, the general trend of all these grants suggests the conclusion that the hard and fast distinction between blench and feu was not a XIII century concept.

The term blench is only found three times used to describe tenure of this kind. The cases are all noted above - grant of William, grant of Alexander II and a grant of the Earl of Lennox. In another case, the term "free ferme" is used - in a grant 1260 x 1309 of Sir John Erskine to his son John of the lands between Gogo and Kilburn

> reddendo unum par calcarium deauratorum vel duodecim denarios boni argenti nomine libere firme annuatim,[9]

and its use probably indicates that the idea of blench ferme was as yet vague. Grants of land were made with the concern of both parties for the services and incidents involved, but there was little consciousness up to the mid XIII century of the legal classifications of tenures.

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1. Bain ii 1435.
2. 1272. Douglas iii 6.
3. Morton ii 6.
4. Soltre 21.
5. Reg.Ho.Misc.
6. 1190. Annandale 1.
7. Arbroath i 305.
8. Melrose i 141.
9. Reg.Ho.Misc. p.16.

It may be inferred that both forms of grants date back to the introduction of Anglo-Norman influence and probably correspond to more ancient landholding more fully than military holdings do. Although the descriptive term was not used, the services are found in the first charters. Feu-ferme renders are more common and are found in the early church charters.[1] The earliest blench render of which there is mention is a holding of Malcolm IV for a pair of gilt spurs. The evidence is indirect and comes from a subinfeudation of the land. A memorandum in the Kelso cartulary notes that Serlo, clerk of Malcolm IV, gave to Kelso half a carucate in the vill of Sprouston, which Malcolm his lord had given him

> salvo servicio ipsius regis scilicet quibusdam calcaribus deauratis singulis annis.[2]

Apart from the grant of William the Lion, already mentioned, which uses the term blench ferme, the earliest surviving grants involving a blench render are Bruce's gift of a fishing to Ivo de Kilpatrick[3] and the grant of Adam de Lamberton to his grandson Galfridus.[4] These grants which involve a payment in cash or in kind rather than the performance of personal service would be, like the personal service tenures, subject to bargain between donor and donee. Generally, the payment would represent an economic return for the lands granted.

It seems that an important factor in the evolution of feu-ferme tenure was the figure of the firmarius - a delegate who collected the rents and dues from the land and paid them over to the lord, with a deduction for his maintenance or scope to make what he could. Several

1. infra p160 et seq.
2. Kelso i 23.
3. 1190. Annandale 1.
4. App. Reg.Ho.Misc.

references to the firmarius occur on the royal demesne which suggest a position in some respects similar to that of the later tacksman.[1] He was more than an official. He had a tenure and his name indicates the return which he made for it. Thus in 1238 Alexander II granted Kildrummy to the bishop of Moray

> per easdem rectas divisas per quas firmarii nostri tempore huius collacionis eam de nobis tenuerunt...salvo firmariis nostris tenura sua de dicta terra usque ad terminum suum completum.[2]

The grants of money payments to the bishop in the same charter are even more revealing.

> et preterea 24 marcas singulis annis percipiendas in perpetuum per manus feodifirmarum nostrarum de Moythas de feodifirma nostra eiusdem terre et preterea 16 marcas per manus feodifirmarii nostrorum de Dike et de Brothyn...de feodifirmis predictarum terrarum nostrarum.[3]

Royal firmarii occur in the same context in two other charters of Alexander II, although their tenure is not reserved.

1) the grant of Inverlunan to Anselm de Camelyne in 1247

> per easdem rectas divisas per quas firmarii nostri die huius collacionis eam de nobis tenuerunt.[4]

2) the grant of Dollar to Dunfermline.[5]

The idea of letting lands at ferme is not necessarily a feudal one. It is essentially a practical expedient in estate administration and the feudal tenure of feu-ferme is a cross between this general idea and the feudal concept of land-holding. One early XIII century document seems to illustrate the process. After a dispute between the bishop of Moray and John Bisset about certain patronage and tithes from returns

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1. infra p.214.
2. Moray 40.
3. Moray 40; see also chapter VIII
4. Carnegies ii 478 No.26. supra p.104.
5. Dunfermline 75.

> qui domino Regi debebantur de terris infra parochias predictarum ecclesiarum constitutis antequam predicte terre eidem Johanni in feodum essent donate et concesse

they agreed on a definite sum for tithe payment, which was arrived at by computing tithes on the basis of the payment by which John farmed the land of the king, viz. 20s.

> nomine decime de x libris quas idem Johannes solvit annuatim domino Regi de terris quas habet ad firmam de domino Rege.[1]

Here John's tenure is explicitly feudal, but his service is payment of the old ferme - feu-ferme tenure.

One charter is a definite example of a transition from a lease to a feu-ferme tenure and gives some insight into the way the feu duty was fixed. Henry bishop of Aberdeen recollecting the many benefits which the ancestors of Adam of Pilmure gave to Aberdeen and, considering that when his father received the land of Glak within the shire of Davyot

> ad firmam novalis fuerat nec valuit tunc temporis ultra viginti solidos sterlingorum annuos et quod ad meliorandum dictam terram sua industria multum laboravit sumptibus non modicis preter alia dona multa que de suo largiter contulit et donavit multoties ad promovendum fabricam ecclesie nostre supradicte...in recompensionem beneficiorum eorundem dedisse...to Adam the land of Glak ad feodifirmam for a return of 20s. yearly and of 2 lb. wax et faciendo commune auxilium quod alii liberi tenentes nostri pro tanta terra nobis faciunt et faciendo per annum ad curiam nostram tres sectas pro omni alio servitio...[2]

Another and different illustration of this aspect is an agreement made in 1277 between Hugh de Abernethy and Lady Ethona whereby she granted to Hugh all the lands and possessions which belonged to her de iure et assisa terre - her terce in Argyll along with her lands in Atholl. Hugh, his heirs and assigns were to have and to hold these

1. 1203 x 1224. Moray 21.
2. Aberdeen i p.30.

lands during Ethona's life-time

> reddendo...antiquam firmam quam dicte terre in ultimis diebus domini Cristini mariti dicte domine reddere consueverunt

and it was to be understood that Hugh his heirs and assigns should perform the service due to the king from these lands for as long as they held them in ferme and that they should satisfy the king about the annual ferme due to him from Ethona's land in Atholl.[1] Lady Ethona, a widow, was clearly handing over her lands to a capable man for administration so that she could secure an income while relieving herself of the running of the estates. Another arrangement of this sort is probably implied in the grant of Isabel to Simon de Lindsay ad perpetuam firmam maritagium meum of Hungerig in Molle,[2] and again, earlier in the XIII century, in the resignation by David de Brus to his brother Robert of lands in the vill of Annan instead of the compotus which as Robert's servant in Hesterville he owed but could not pay.[3]

A survival of the old conception of a delegated firmarius is probably indicated in the grant of Roger de Quincy Earl of Winchester to Nicholas of Clacmannan of all the land of the constabulary of Clacmannan. The grant was implicitly a feu-ferme one and Nicholas had paid heavily for it. The land was given for his homage and service et pro duabus marcis sterlingorum que nobis dedit in grassuma and although a personal service was required - he had to build a stable near the castle and to stable twelve of the Earl's horses as often as required, and when he received the land of Wodeleve as well he had to build at the castle a chamber 40 feet long and 20 feet wide for the

1. Douglas iii 7.
2. Melrose i 295.
3. c.1218. Annandale i 6.

Earl's use - a feu-ferme render was also stipulated and forms the true reddendo clause

> Reddendo inde annuatim nobis et heredibus nostris quattuor solidos argenti.[1]

The tidy ~~xixxix~~ nature of a feu-ferme render made it a useful method of converting older and more miscellaneous duties into a simple feudal tenure with a fixed money payment, e.g. a charter of the XIII century (surviving in a transcript of 1290) records a grant of Adam de Malkariston, provost of the church of St. Mary in St. Andrews, to John son of William son of Lanbin and his heirs the land of Lethin and Kynnuis which Adam son of Gilmur Macmartin held of his predecessors

> Reddendo nobis et successoribus suis 60s...pro veteri cano, ordei et casei et pro omnibus aliis servitiis.[2]

Used like this, feu-ferme tenure must have provided a convenient transition to a feudal system of land tenure.

The financial return was another advantage in a growing money economy and the tenure was a useful instrument for converting landed wealth into cash resources. The burghs were an important factor in this change. The burgesses paid money rents to the king and within burghs subinfeudations were simply feudal forms to cover commercial financial transactions. 1250/66 burgh land was spoken of as being held ad feodi firmam,[3] and grants like that of c.1317 by Robert, gatekeeper of Kincardine, to Duncan Kymbay, burgess of Aberdeen, of all the land of Achichdonachy ad feodo firmam for the return of 6d. salvo forinseco servicio domini regis,[4] occur.

1. Reg.Ho.Chart.54. Appendix II.
2. Laing Charters 15.
3. Soltre 37.
4. Frasers of Philorth 2.

The device of making a fixed payment to secure a grant in feu-ferme extended the commercial scope of the tenure enormously. The payment of a large sum in return for receiving land at a small fixed money rent or nominal render was a useful device for bringing purely commercial land transactions such as selling within the structure of feudal land-holding. The seller retained some interest in the land and the device of substitution did not have to be resorted to. Sometimes the privilege of holding land at feu and the prospect of profit from it - the firmarius aspect - was worth paying for, e.g. Roger de Quincy's grant with its grassum of 2 marks.[1] Sometimes, however, the grassum was more important than the subsequent yearly return and the donor was actuated by immediate need rather than desire for sound investment.[2] Thus c.1245 Hugh Malherb granted to Thomas de Ross all his land of Ross, Milnetun, Hulkysham and Balstuth, except the land which he had given to Henry de Ross in marriage with his sister, and except the lands which he had given to Lyholf for his homage and service, and except the lands which he had given to the hospital of Montrose in alms. Thomas was to hold them ad feudam firmam for the return of one mark salvo forinseco servicio domini regis. The whole grant was made because Thomas had given Hugh Malherb £40 "in his great distress".[3]

The sale of land by John de Ilveston to Adam de Baggat was similarly conducted and covered by a blench render. John granted to Adam his heirs and assigns the bovate and an acre in Ilivistun which William Pile de Bouyldene had held from him at ferme for several years.

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1. supra p.153.
2. see also chapter XII.
3. Arbroath. Carte Orig.X.

> Tenendam et habendam...de me et heredibus meis...libere...ab omni servicio.... Reddendo mihi et heredibus meis pro omnibus serviciis ...quasdam cyrotecas albas in nundinis de Rokesburg vel unum denarium. Et sciendum esset quod magister de Baggat pro concessione et donacione predicte terre ad meam magnam pauperitatem alleviandum quattuor marcas legalium sterlingorum mihi dedit.[1]

Again, Hervey son of Humphrey Ullveter of Forfar and his sister Helewise sold to Balmerino some of their land, to be held by the priory as any land in Scotland is held in a burgh of a barony, for a return of 3d. to Helewise and her heirs.[2] If the word vendidisse had not been used, this grant would bear the appearance of a normal blench or feu-ferme grant.

An interesting case occurs in a grant to Coupar at the very end of the XIII century (1299/1300) which looks like a halfway step to a sale or a groping after the sort of arrangement which became the feu. Adam de Glenbachlach gave to Coupar ad firmam for eleven years all his land of Drumy except the demesne of Glenbachlach,

> pro quadam summa pecunie quam dicti viri religiosi dicto Ade pre manibus dederint quam quidem summam pecunie dictus Adam se fatetur recepisse in denariis numeratis et in suos proprios usos ad utilitatem suam convertisse.

Adam was to do the king's service and he promised not to alienate the land without consent of the abbot, and if from waste of war the monks could not raise rents or draw issues then after their term was up they could keep the land for as many years as they got no profit from it.[3] Here the land was given to pay off a debt, but by 1300/3 Adam granted the land to Coupar in puram liberam et perpetuam elemosinam, and c.1302 Eustace de Retres gave Coupar

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1. Melrose i 260.
2. Balmerino.
3. Coupar LXVI.

> in elemosina...totam communam que ex iure hereditario seu quocunque alio modo me contigerit in terra de Drummyis in tenemento de Glenbachlach ex consensu et assensu Ade de Glenbachlach domini dicte terre.[1]

The form of these grants, and their purpose, is clearly akin to the transactions of the classical "feuing" period - XV and XVI centuries - where the main character was a heavy initial grassum with a perpetual cash annual rent. The purpose - the realizing of immediate cash - was also the same, though of course the XIII century form was less developed and less systematized. It does, however, bear the signs of origin as a feudal device to meet financial needs within the feudal structure of land tenure. Feuferme tenure was composed of varying aspects - the firmarius aspect; the simplicity of its arrangement of return with the suitability for bringing older renders within a feudal scheme; and its convenience as a financial device for adapting landed wealth to an expanding money economy.

These feu-ferme and blench ferme tenures, in effect, though not in name, occur from the time of the first records, although the form is not so developed as in the XIII century. In 1136 David I granted a toft in the vill of Ednam to Coldingham

> reddendo inde mihi unoquoque anno ii solidos et per hoc servitium libere ab omni alio servitio[2]

and although the next clause runs

> concedo etiam eis predictam terram ita de me tenere in feudo et in elemosinam

the service is a ferme one. Several royal charters creating feu-ferme

1. Coupar LXXIV.
2. Coldingham XXII. L.C. CXI.

tenures come from William the Lion's reign.

1) In 1165/71 he granted Witsdale to Andrew son of Uviet for a return of 20s.[1]

2) In 1172/8 he granted the thanery of Abernethy to Orm son of Hugh for 20 lib. with common aid, common army and common work.[2]

3) In 1199 he granted one carucate in Lessedine to Robert son of Maccus for 20s.

> et faciendo omnia servicia que ad terram illam pertinent et que illa terra facere consuevit preter arare et metere.[3]

The explicit exception of arare et metere probably reflects some distinction in status of tenure.

4) In 1200 he granted Stradhern to William Gifford for a return of 9 marks and 16 pennies.

Although land-holding by this service was relatively common by the end of the XII century among royal tenants, none of these charters describes the tenure which they record as feu-ferme. The service alone is stipulated, which seems to indicate that this form of tenure was not recognized as a separate category by the royal chancery.

The most important factor in the development of feu-ferme tenure was probably the church. Since church lands were rarely burdened with secular service, they could be run in the way most profitable to the house concerned, and a money rent was the most valuable. Feu-ferme tenure was that most common on church estates; it is in charters connected with church property that the term feu-ferme is first used to describe a tenure and it seems likely that the legal development and

1. Buccleugh 2.
2. Reg.Ho.Roy.
3. Maxwells 121; Reg.Ho.Roy.

systematization of these holdings was largely the work of church lawyers.

A survey of the alienations of two religious houses as revealed in their cartularies over two centuries produces some interesting results. Kelso and Moray have been chosen as both of them preserve a fuller record of the church's own land alienations, as opposed to its acquisitions. A large number of the Scottish cartularies are artificial productions from surviving charters, and in other cases the object of the Scottish houses seems to have been to preserve a record of endowment rather than of subinfeudation. It is probable that other records were kept, but they have not survived, and the fragments do not allow us to draw a complete picture. The fragments can, however, indicate certain general tendencies. The character of local cartulary, i.e. whether contemporary or not, determines how much we know about the house's tenures. If the cartulary was a contemporary document composed by the monks, there is more record of the monastic grants; if it has been later compiled from surviving charters it is useless, for charters of lands gifted remained with the holder and not with the donor. Melrose and Kelso illustrate the differences. Melrose reveals hardly anything of its tenants and their tenures, while Kelso cartulary records a number of grants to tenants. The Kelso grants cover the period from the mid XII to the mid XIII century, and contain some of the earliest subinfeudations of any kind. Arranged chronologically they present a general picture of the manner in which Kelso granted land to its tenants. The grants of other religious houses of which consistent record has survived follow the same general

trends as the Kelso grants and Moray offers the most effective comparison with Kelso. It is situated at the opposite end of the country and it carries on its record considerably longer. It has a fuller record of subinfeudations than any other house, except Kelso.

Kelso grants start very early - in the mid XII century - and the first is explicitly feu-ferme.

1) 1147/60. Abbot Arnald to Lambynus Assa the land of Drassane and Dardarach in liberum firmum feudum for 2 marks of silver annually, free of all service.[1]

2) 1147/60. Abbot Arnald to Theobald Flamakins the land of Dvvelglas (Douglas) in fee and heredity for a return of 2 marks yearly.[2]

3) 1160/80. Abbot John to Robert son of Warnebald and his heirs the vill of lesser Drassan in fee and heredity for a return of ½ mark each year.[3]

4) 1160/80. Abbot John to Waldeve son of Boidinus "our man" and his heirs an eighth part of Corroc in fee and heredity for ½ mark annually.

> He and his heirs shall give 2s. for heriot and shall not give merchet for their daughters.[4]

5) 1160/80. Abbot John to Gilmagus brother of Saludis and his heirs part of the land of Fincurrok for a return of 20s.[5]

6) 1160/80. Abbot John to Waldeve son of Boydinus a third part of Auchinleck in fee and heredity for a return of 2s.3d. yearly.

> He and his heirs shall give 2s. for heriot and shall be free of merchet for their daughters.[6]

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1. No.102.
2. No.107.
3. No.105.
4. No.111.
5. No.114. see also Nos.13 and 14, infra.
6. No.115.

7) 1160/80. Abbot John to Hosbern "our man" and his heirs half a carucate in Midlem

> Ipse vero homo noster legitimus deveniet et pro ipsa terra reddet nobis singulis annis 8s...et precaria sua faciet tribus diebus in autumpno unoquoque die cum duobus hominibus et ter in anno carucam suam ad arandum nobis inveniendo.[1]

8) 1180/1203. Abbot Osbert to Constantine son of Gilbert priest of Lesmahagow the vill of Dowane.

> Reddet autem nobis singulis annis pro hac terra viginti solidos. He shall mill at our mill and shall make a mill like our other men; he shall have merchet from the daughters of his men and he shall give us merchet from his daughters.[2]

9) 1180/1203. Abbot Osbert to Randolf of Lesmahagow "our servant" part of the land of Glanan in fee and heredity for a return of ½ mark yearly.[3]

10) 1180/1203. Abbot Osbert to David son of Peter dean of Stobhou "whom we received as heir" the land of Corroc which his father held of us in fee and heredity with all privileges (sed nichil inde dabunt nec vendent) and for a return of 2½ marks.[4]

11) 1208/18. Abbot Henry to Adam son of James in liberum firmum feudum terram de Drassane et de Dardarach in fee and heredity for a return of 2 marks yearly.[5]

12) 1208/18. Abbot Henry to Richard son of Solph and his heirs Folcardistune which his father and ancestors held of Kelso.

> To be held in fee and heredity as freely as Adam de Drassan and others who hold their lands in chief of us for a return of 2 marks yearly.[6]

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1. No.117.
2. No.104.
3. No.110.
4. No.112. cf.No.111.
5. No.103.
6. No.106.

13) 1208/18. Abbot Henry to Gilemor son of Gilconel and his heirs part of the land of Fincurrock for a return of 20s. yearly.

> He shall mill at our mill, he and his men and he shall make a mill like our other men. He shall have merchet from the daughters of his men.[1]

14) 1208/18. Abbot Henry to Gilbert son of Saludis and his heirs part of the land of Fincurroks

> Reddent ipse et heredes sui singulis annis pro hac terra xxs. et 16d. pro firma terre et 4d. pro fraternitate perpetua.[2]

15) 1215. Agreement between Kelso and Henry Wytwel that Kelso ad firmam dimiserunt to Henry and his assignees lands in the vill of Dunfres.

> Tenendas et habendas dicto Henrico et assignatis usque ad finem vite dicti Henrici for a yearly return of xii solidos sterlingorum.[3]

16) pre 1218. Abbot Henry to Reginald de Bosco and his heirs the land of Easter Duddingstone (which Richard son of Hugh quitclaimed to the abbey) in fee and heredity for 3 marks yearly and the forinsec service due to the king and the abbey from the third part of a vill. (Reginald and his heirs shall make no perpetual alienation and no mortgage is to be made without Kelso's consent.)[4]

17) 1219/26. Abbot Hubert to Thomas son of Reginald de Bosco and his heirs all the land of East Duddingstone in fee and heredity for a return of 10 marks at two terms of the year, 5 at each, and the performance of the king's forinsec service pertaining to one-third of a vill.[5]

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1. No.108.
2. No.109.
3. No.332.
4. No.456.
5. Nos.242, 457.

18) 1250. Abbot Robert to Adam Long de Home the land which John de Cnolles held of the abbey in the vill of Home, for a yearly return of 5s.[1]

19) 1266. Grant to Thomas Batail burgess of Berwick of land in the tenement of Bondington (a gift from David I) for a return of 3 marks.[2]

20) 1270. Abbot Henry to lord William de Duglas knight all the land of Pollenel

> pro fideli consilio et auxilio et patrocinio tenendam toto tempore vite sue

for an annual return of 2 lb. of wax to the house of Lesmahagow

> nomine firme et recognicionis pro omnibus que de dicta terra exigi poterunt seu mandari.[3]

21) 1271. In 1271 Hugh de Crawford received from abbot Henry a sealed document testifying that in 1270 he had found Hugh and his wife Alice in possession of the land of Drassane, for a yearly return of $2\frac{1}{2}$ marks

> faciendo nobis homagium fidelitatem et sectam ad curiam nostram et inveniendo unum hominem et dimidium in forinseco servicio.[4]

Although all those grants covering a whole century involve feu-ferme renders the description feu-ferme is only used in Nos.1 and 11, which both refer to the land of Drassane, and the term liberum firmum - first, in the very early mid XII century. Nearly all the grants are made in feudo et hereditate, i.e. they were feudal holdings. It is doubtful if No.7 came within the social level in which such tenures prevailed. Osbert's holding was a very minor one involving agricultural services and therefore not to be regarded as a fee. Nos.5, 13 and 14 all apply

1. No.292.
2. No. 48.
3. No.202.
4. No.474.

to the land of Fincurrocks and the last grant adds an extra payment of 16 pence pro firma terre even although a service of 20s. is exacted. A distinction is made between those grants of fee and a lease ad firmam (No.15) for the life of the donee, and the grant to Henry Wytwel is probably paralleled sixty years later by the life lease to William Douglas with a return of 2 lb. wax "as ferm and as computation for all that can be exacted from the land" (No.20). In these Kelso grants the difference between a feu-ferme tenure and a lease by ferm seemed to have been clear.

Among the endowments to Kelso is an interesting case which illustrates the difference and the development possible from one to the other. It is an example, too, of conscious church expansion after the obtaining of a foothold in a certain area.[1] The process seems to have begun when Vincent son of Robert Avenel gave Kelso a sixth of the territory of Innerwick ad feudum firmam for a yearly return of forty pennies.[2] At about the same time Kelso also acquired from another landholder of Innerwick, Robert de Kent, two parts of the territory of Innerwick ad feudum firmam for a yearly return of 1 mark.[3] Apparently the other holders were not so willing to donate their parts of the territory and an interesting arrangement was made whereby three owners jointly leased the land for 33 years, giving Kelso the option of buying if they ever wished to sell, or of feuing if they wished to feu.

Robert de Kent, Robert Hunaud and Roland son-in-law of Nicholas de Constantine ...dedisse ad firmam triginta tribus annis to Kelso

1. infra p.239.
2. Kelso i 252.
3. Kelso i 255.

their land and pasture of Innerwick for a return pro firma of 20s. at

> Si vero nos vel heredes nostri aliquo tempore ulterius predictam terram nomus et pasturam alicui vendere vel ad firmam ponere vel in elemosinam dare voluimus, nulli eam vendemus, vel ponemus ad firmam vel in elemosinam dabimus nisi predictis monachis de Kelchou si eam emere vel ad firmam habere voluerunt.[1]

At the end of the XII century (1190 x 1230) Alan Steward, lord of the fee, confirmed this agreement by his men,[2] but after the lease had run out (1236 x 1246) Walter Steward issued a charter granting Innerwick to Kelso free of all service and quitclaiming them

> viginti solidos et duo paria botarum que nomine feude firma pro pastura de Innerwick solvere solebant.[3]

Unless the terminology of the second charter is very loose, Kelso's tenure had become recognized as feu-ferme in the intervening period and in the course of its tenure on the original lease. By this means, lease tenure by ferm must have played an important part in the development of many feu-ferme tenures.

The records of the bishopric of Moray's subinfeudations begin in 1190 but are concentrated in the first half of the XIII century - the sparse period for Kelso.

1) 1190. Grant by bishop Richard to William son of Freskyn and his heirs Lodynavedal and Logyndyks for a return of 1 stone of wax.[4]

2) 1187/1203. An agreement between bishop Richard and Duncan Earl of Fife records certain holdings by the earl and his heirs of the bishop

1. Kelso i 256, 261.
2. Kelso i 246.
3. Kelso i 247.
4. Moray 119.

during the bishop's lifetime - several half davachs in Strathouen for a return of 2s. for each half davach; 2 half davachs in Inverouen for a yearly return of 4s; Adavin for a return of 40 stones of cheese yearly. The bishop agreed to remove his men who were on the land on the day of the agreement, but those whom he did not claim and who were "native" to those lands the earl was to acquire with the advice and help of the bishop for settling the above lands.

> Et predictus comes et heredes sui tenebunt plenam curiam de domino episcopo in predictis terris et forinsecum servitium domini regis de terris illis plenarie facient.[1]

3) 1225. Agreement, after litigation before papal judges delegate, whereby bishop Andrew granted half a davach of Abyrtarf to Thomas of Thirlestan

> tenendam in feodo et hereditate de se et successoribus suis omnibus in perpetuum.

For the land and for the tithes of the king's can (which were paid to Moray before Thomas was enfeoffed) a yearly return of 10s. was agreed.[2]

4) 1226. After litigation, bishop Bricius granted to Walter de Petyn all the land of Artendol (which his ancestors had held for forty years and more), the land of Lunyn and Duldavy (which he ought to hold in fee and heredity for a return of 40s.)

> ad firmam perpetuam to be held of the bishops in fee and heredity for a return of 100s. annually salvo forinseco servicio domini regis ad predictam terram pertinente quod ipse Walterus et heredes sui facient in perpetuum.[3]

5) 1229. After litigation about the lands and pastures in Walter de Moray's fee - to save further discord - bishop Andrew gave him ad

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1. Moray 16.
2. Moray 28.
3. Moray 31.

firmam the disputed lands of Butruthyn, Agynway, Artildul, Abirlouer, and Cornekynermuneth for a return of 5 marks and performance of the king's forinsec service.[1]

6) 1232. After litigation, it was agreed that David Strathbogie, son of Duncan Earl of Fife, was to hold certain lands of the bishop ad feodofirmam for a yearly return of 7 lib. 6s. and 8d., viz: for Lynyn 3 marks; for Dunbanan 2 marks; for Drumdalgyn 2 marks; for Rothevan 2 marks; for Butharrin 2 marks. It was also agreed that William parson of Edendyvy and Gyllemor vicar of Butharry should hold the lands of Drumdalgyn, Rothevan and Butharry according to the charters which they had from the bishops and that they should answer to David for the ferms and he would pay the bishop.[2]

7) 1232. Grant of bishop Andrew to Duncan son of Gillemychel Mc ath in exchange for a davach in Strathardel of the land of Dolays Mychel to be held in fee and heredity for the performance of the king's forinsec service pertaining to Dolays Mychel and suit to the bishop's court.[3] In the same year the bishop gave the Strathardel davach to Coupar Angus for a return of 3 marks et faciendo forinsecum servicium domini regis.[4]

8) 1232. Agreement that Gilbert son of Gilbert Earl of Strathearn should hold half a davach of Kycarny of the bishop ad feodifirmam for a return of 3 marks annually, and the king's forinsec service. If the lands were destroyed by war the ferme should be reduced according to the arbitration of good men

> salvis etiam predicto episcopo et successoribus suis nativis hominibus dicte terre omnibus et singulis.[5]

1. Moray 33.
2. Moray 35.
3. Moray 79.
4. Coupar XXXVIII.
5. Moray 80.

9) 1234. Agreement after litigation that Walter Cumyn Earl of Menteith and his heirs should hold half a davach at Kyncardyn of bishop Andrew and his successors ad feodifirmam for a yearly return of 34s. for tithe of cain; and 8d. for all service; and performance of the king's forinsec service.[1]

10) 1234. Agreement between the chapter of Moray and Alexander de Stirling that Alexander should hold ad feodifirmam de predicto capitulo half a davach at Deveth

> reddendo inde predicto capitulo ad communem suam singulis annis duas marcas pro omni servitio...faciendo forinsecum servitium ad predictam terram pertinens.[2]

11) 1235. Agreement that Walter de Moray and his heirs should hold the land of Ewen of bishop Andrew and his successors ad perpetuam feodifirmam for an annual return of 20s. and the king's forinsec service. Additional grant of all the land of Budist in perpetuam feodam firmam for a return of 2 marks and the king's forinsec service.[3]

12) 1224/42. Agreement between Andrew bishop of Moray and Robert Fyndoc about the land which Robert had on east Lossyn. The bishop claimed it belonged to his land of Tulibardyn and Robert claimed it belonged to his land of Kelleys which he held tanquam feodi firmarius de Domo Dei de Elgyn and which the bishop received from that house in exchange for other land

> salva tenura predicti Roberti et heredum suorum...tenenda de predicto episcopo in perpetuum.

Robert quitclaimed the land of Lossyn which the bishop sought and the bishop granted him in exchange the half davach which Archibald de

1. Moray 85.
2. Moray 86.
3. Moray 87.

Inverlocthyn held of him in the fee of Spyny. To be held iure hereditario and for a return of half a mark of legal sterling yearly,

> et inveniendo singulis annis tantum ter carucam suam et tantum ter herciam suam et ter carrum suum et semel in autumpno sex homines bene metentes et faciendo forinsecum servitium domini regis pertinens ad predictam dimidiam davacam terre et sequendo molendinum dicti episcopi.[1]

13) 1249. Grant of bishop Archibald to Reginald le Chen ad feodifirmam the land of Strathnaver in the diocese of Caithness for a return of 12 marks yearly.[2]

14) 1253/80. Bishop Archibald gave to David de Graham the land of the church of Kintarlargun and the fishing of Esse ad feodam firmam for 100s. His heir had a dispute about it with William de Fenton and bishop Archibald granted it to both for 6 marks at two terms, viz. 20s. each at two terms.[3]

15) 1294. Grant by bishop Archibald that because William de Fedreth and his wife Christina were forfeited to Moray for various reasons, he revoked the sentence of sequestration of sasine (sequestrationis saysine seu privationis) and granted to them that they should hold the land and mill of Logy as freely

> sicut per aliquam cartam seysinam vel in feodationem pro rata portionis hereditarie quam habent vel habebant in tenemento de Duffhus...[4]

16) 1299/1325. Grant by bishop David to William of Inverlochy son and heir of Thomas of Inverlochy 4 bovates in the vill of Inverlochy of which his father died vest and seized to be held for a return of one pair of white gloves from Paris or 3d.

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1. Moray 27.
2. Moray 126.
3. Moray 123/4.
4. Moray 131.

et faciendo servitium forinsecum quantum pertinet ad dictas quatuor bovatas terre etiam ad molendinum de Inverlochy sequelam et faciendo sectam ad curiam nostram quolibet anno ad tria nostra placita capitalia.[1]

The striking feature about these Moray grants is the consistent use of the term feu-ferme from the 1230's on. Previously there is a lease with a time limit (No.2) and in 1226 and 1229 two grants ad firmam in fee and heredity (Nos. 4 and 5). The introduction of the term coincides with the office of bishop Andrew and with the period of judges delegate jurisdiction,[2] but the evidence is not definite enough to allow of any conclusion more definite than a suggestion.

No.12 throws further light on the part of the firmarius in the evolution of feu-ferme tenure. Robert Fyndoc calls himself feodi-firmarius of the priory of Elgin in land which the house had apparently given to the bishop of Moray over his head and a grant of half a davach in the fee of Spyny to be held hereditarily for half a mark yearly and some other agricultural provisions was considered a fair return.

The records of other religious houses are less consistent in this respect but the evidence is of widespread feu-ferme tenure on their lands - sometimes only to be deduced from services, sometimes mentioned by name. By the XIII century Arbroath was consistently making grants in feu-ferme. XII century grants do not survive, but those which do have a money rent or render in kind, e.g. the 1199 grant to Gyllethomas of a davach in Kyncoldrum for a yearly return of 1 lb. pepper or 12d. and the king's forinsec service.[3] XIII century grants are more specific.

1. Moray 134.
2. infra p.331.
3. Arbroath No.305.

1) 1242. Agreement between Arbroath and John Wishart whereby Arbroath dimiserunt ad feodofirmam to John their lands in Conveth to be held as king William gave them to Umfridus de Berkeley and his heirs (and they to Arbroath) for an annual return of 8 marks and the king's forinsec service.[1]

2) In 1245 agreement was made between Arbroath and Alexander Cumyn Earl of Buchan whereby Arbroath granted to the earl ad feodofirmam the lands of Douenalston, Drumsleed, Kulbak, Monbodach etc.

> ita quod tenor [carte] domini Johannis Wischard quam habet de predictis abbate et conventui de Aberbrothoc super terra de Balfeth salvas sit sic ius legem et assyam terre...

saving to the abbey the right of regality in the lands - for a return of 20 marks and the king's forinsec service.

> Prestando et ipse et heredes sui predictis abbati etc. fidele consilium patrocinium ac defensionem iurium et libertatem suarum et specialiter terrarum superius nominatarum. Ipse vero dictus comes et heredes sui dictis abbati etc. successive prestabunt fidelitatis iuramentum salva fide domini regis.[2]

3) 1256. Grant of abbot Walter to Alan Dorward, then justiciar, the land of Banchorydevenech, to be held by Alan, his heirs and assigns,

> pro homagio et servicio suo...sicut eandem terram de domino rege ad feodofirmam...tenemus

for a yearly return of 3 marks and the king's forinsec service.[3] Arbroath had previously received this land from Alexander III ad firmam perpetuam for a return of 100s. and forinsec service.[4]

4) Grant of abbot Walter to Philip de Fedarg for his homage and service part of the land of Tarvays called Achathnaneve, for a return

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1. Arbroath Vetus 272. supra p.65
2. Arbroath Vetus 247. supra p.55
3. Arbroath Vetus 251.
4. Arbroath Vetus 252.

of ½ mark yearly and doing the king's forinsec service for one-sixth davach.[1]

5) 1257. An inquest provides the information that the tenant of the lands of Inverpeffir rendered annual ferm to the abbot.[2]

6) 1283. Weland de Seyelan lord of Kynblatmund held the land of Glauslat from Arbroath ad firmam of 20s.[3]

7) 1299. Grant of abbot Nicholas to Patrick de Rothen of a carucate of Kilalcmunith for a return of 1 mark (which Earl David gave Arbroath and which abbot Henry gave to William Tatenal ad firmam).[4]

Dunfermline provides evidence of a similar practice of subinfeudation of church lands at feu-ferme,[5] but only one eo nomine.[6] One of the documents provides a systematization of the practice and gives a list of lands which abbot Ralf (1275-early XIV century) dedit ad feodofirmam ad magistro Willelmo de Cramund.[7] Dunfermline also provides examples of blench renders in the form of spurs paid by the church to its superior.[8]

Between themselves religious houses used this form of transaction frequently, e.g.

1) In 1192 Alan, prior of the brothers of the knights Hospitallers

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1. Arbroath Vetus 259.
2. Arbroath Vetus 250.
3. Arbroath Vetus 318.
4. Arbroath Vetus 320.
5. Nos.150, 201, 223, 314, 315, 316, 317, 320, 322.
6. Nos.150.
7. Dunfermline 324.
8. Dunfermline 181 and 316. cf. Soltre 21.

in England, granted to Holyrood the lands of Artun and Hirtun which the Hospitallers had in Galloway for a return of 40s. yearly.[1]

2) c.1180. Hugh bishop of St. Andrews granted his land of Malar to Cambuskenneth for a yearly return of 10s.[2]

3) At the turn of the century Holyrood granted to Newbattle its land in the fee of Pittendreich ad feudofirmam for a return of 1 mark annually.[3]

A large-scale arrangement in this manner was made between Holyrood and Newbattle whereby Newbattle gave to Holyrood ad feudofirmam all the lands and saltpans which it had in the Carse of Kalentyr for a return of 65 marks and 20d., and Holyrood was also to answer for the fermes of three salt-pans given to the houses of Dunfermline, Kelso and Balantrodoch.[4] The charters to Dunfermline and Kelso survive, recording that to Dunfermline they had let one ferme for 20s. and to Kelso one for half a mark,[5] and it is also recorded that the Templars let theirs for 15s.[6] Further information about this arrangement comes from the early XIV century and it carries with it the suggestion of progressive church influence in the development of this form of tenure. William de Lamberton bishop of St. Andrews approved this agreement retrospectively, announcing that Holyrood ad feodofirmam perpetuam sive in emphyteosim cepissent from Newbattle all the lands and saltpans of the Carse of Kalentyr for 65 marks and 20 pennies. The agreement had held for 60 years and more but wars with England had

1. Holyrood 54.
2. Cambuskenneth 191.
3. Newbattle 6.
4. Newbattle 160.
5. Newbattle 168.
6. Newbattle 169.

reduced the value.[1] This is the first occurrence in Scottish record of the word emphyteosis to describe feu-ferme tenure. It was common to continental feudalism but not to English,[2] and with the continental influence on legal thinking from the XIV century it became largely used in Scotland. The date of this document where it is used is one at which it is understandable that such an influence should be manifested, and is another illustration of the way in which church influence could be applied in land law.

The church's connection with feu-ferme tenure is further carried out by the fact that religious houses themselves held much of their land by feu-ferme and that, apart from burgage, it was the only alternative to frankalmoin adopted by laymen in making their gifts to the church.

Alexander II was the only king to adopt it and he used it when making substantial grants from his demesne to religious houses. The period of uncontrolled enthusiasm for making lavish gifts to the church was over by his reign. The royal lands must have been seriously depleted by previous liberal endowment and it was probably important that he should find a means of ensuring a fair return for the donations which custom and religious ideas called upon him to make. It was at this time too that the church's claims to jurisdiction over all lands in frankalmoin were being put forward at their strongest.[3] Perhaps the secular power was trying to find a means of restricting those claims, or at least preventing their expansion. Thus:-

1) to Andrew bishop of Moray in 1232

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1. Newbattle 161.
2. Ducanges.
3. infra p.330 et seq.

totam terram prepositure nostre de Kynmyly ad feodam firmam in perpetuum.... Reddendo 10 libras annuatim...faciendo forinsecum in auxiliis et exercitibus...salvis nobis omnibus placitis et querelis que de dicta terra prepositure de Kynmyli...potuerint emergere preter ea que ad thaynum pertinent.[1]

2) to the abbot and convent of Scone

ad firmam perpetuam tradidisse abbati et conventui de Scona dominia nostra de Rath et de Kynfaunes in Goveryn.... Reddendo inde annuatim quadraginta celdras boni frumenti et saxaginta celdras boni brasei ordei solvendas in grangiis suis de dictis Rath et Kynfaunes et faciendo forinsecum servitium quod ad easdem terras pertinet.[2]

3) the grant to Holyrood c.1234

tradidisse ad feodofirmam...in perpetuum totam terram nostram de Kalentyr quam in manu nostra tenuimus die qua assignavimus Malcolmo quondam thano de Kalentyr quadraginta libratas terre in Kalentyr...reddendo octies viginti marcas...salvis dicto thano predictis quadraginta libratis terre, et salva monachis de Neubotil una carucata terre mensurata in Kalentyr...salva regni defensione.[3]

For similar economic reasons, ordinary laymen made grants in feu-ferme to the church. It was a solution if the donor could not afford to relinquish all further claim on the land - both of service and of incident. Thus Bernard Fraser demisit ad perpetuam firmam the land of Demesheles to the priory of May.[4] The earliest of these grants were not stated as feu-ferme, but neither were they frankalmoin.

The economic background to some of these grants has already been indicated,[5] but apart from an initial payment or grassum ready money could be realized by obtaining payment of the render in advance. Thus c.1241 Constantine de Lochore makes it known that he has received from Inchcolm

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1. Moray 34.
2. Scone 75.
3. Holyrood 65.
4. May 20.
5. supra p.154 et seq.

> ad ardua negotia mea expedienda totam firmam meam quindecim annorum de terra quam eisdem dedi ad feodofirmam [i.e. hill of Clon.]

At the end of fifteen years the canons have to resume regular payments of ½ mark a year.[1]

The value of this form of tenure as being able to secure a financial render, or a render from land which was unlikely to yield any other form of service, is revealed by a Glasgow charter of 1202/8, where Bishop Florence granted Alexandro de Huntingdon homini nostro pro homagio et servicio patris sui et suo land in Lilliesleaf to be held of the church of Glasgow in fee and heredity for an annual return of 5s.

> Et sciendum quod antequam terram predictam eidem Alexandro daremus nos vel predecessores nostri nullam inde firmam nec aliquod emolumentum habuimus.[2]

It was in the nature of feu-ferme tenure that it covered a multitude of tenures of differing values and ran through the whole range of social degrees - from substantial royal tenants-in-chief and mesne lords to humble agricultural or farmers' holdings. Many of them were calculated in pennies rather than marks or pounds. Thus c.1268 William de Coningburgh gave Herbert son and heir of Eymer de Maxwell a carucate in Langholm nomine feodi firme and some other lands

> tenendas et habendas ita libere...sicut aliqua terra in regno Scottorum liberius datur...ad feodum firmam. Reddendo...nomine feodi firme duodecim denarias.[3]

Sometimes a render of this amount could more readily be termed blench and was often alternative to a true blench payment, e.g. a pair of gilt spurs or 12 pennies. Unless the value of the land is known, the difference cannot be appreciated.

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1. Inchcolm XX.
2. Glasgow i 99.
3. Morton ii 7.

Feu-fermes were, however, economic returns, but the fixing of them would be a matter of bargain between landlord and tenant. It could be reduced if the value of the land fell. Thus in 1309 John de Berclay, lord of Crawford, agreed to reduce to Malise de Menteith de octo marcis in [quibus] dictus Malisius mihi et heredibus meis hereditarie tenetur, because the lands had been destroyed by an English army.[1] Some of Moray's grants made provisions for such a contingency - e.g.

> si autem per guerram contigerit predictas terras...ita destrui vel turbari quod predicta firma inde solvi non possit, durante statu illo iuxta arbitrium boni viri vel ex toto predicta firma remittetur vel pro parte rationabili[2]

and si autem predicta terra per guerram fuerit destructa secundum arbitrium bonorum virorum de predicta firma minuetur.[3]

In the second half of the century there is a case in Moray where tenants complained that the ferme of 100s. videbatur onerosa with the result that it was reduced to 6 marks.[4] Another interesting example of the correspondence of the rents to the value of the holding refers indirectly to the sack of Berwick and its effect upon the burgh's prosperity. In 1307 Kelso granted to William Mason land in Berwick to be held in fee and heredity for a return of 3s. in the first year with a yearly increase of 12d. until it reaches ad pristinam firmam of 16s.

> faciendo omnimoda servicia dicte terre incumbencia secundum leges et consuetudines dicti burgi.[5]

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1. Menteith ii 18.
2. Moray 31. supra p.166.
3. Moray 80. supra p.167.
4. Moray 123/4.
5. Kelso i 43.

Likewise, if the tenement increased the reddendo was increased too - and the same machinery was used for arriving at a fair assessment. When Simon abbot of Dunfermline granted Bendauchin to Sir Thomas of Betheres for a return of 12 marks and forinsec service, if required, he added this provision:

> si contigat quod dicta terra de Bendauchin aliquo tempore per aliquam particulam terre circumvenacientem per recognicionem vel per deambulacionem augeatur, predictus Thomas et heredes sui predictam particulam terre ad firmam habuerunt secundum quod per estimacionem proborum virorum valere possit.[1]

Similarly when Gilbert de Dundowan gave to William of Moray all his land of Dundowan ad feodofirmam to be held as he held it of the Earl of Strathearn, for a return of 20 shillings quit of all suit of court, reliefs, wards and aids which could be exacted by Gilbert - if William or his heirs

> integrum tenementum dicte terre de Dundowan aliquo tempore per indicium requirunt, reddeant 40s.[2]

In one case the initial enfeoffment provided for a doubling of the return after the first tenant. Thomas abbot of Lindores let a toft in Dundee to Laurence de Monte Alto to be held by him and his assigns. Laurence was to pay 1 mark a year but his assigns were to pay 2 marks.[3]

Whether or not the tenure which involved money rents or renders in kind was developed to any extent as a distinctive form of land-holding, in its vaguest form it was the tenure by which the majority of people who had rights in the land held. As it developed later, it incorporated a host of miscellaneous tenures and could be used to hasten their process of feudalization. In the XIII century there are clear

1. pre 1275. Dunfermline 317.
2. Atholl Charters 6; Appendix II No 7.
3. Lindores LXXXIX. 1244/73.

indications of developments in this form of tenure - but there are also indications of a certain lack of consciousness of it. The use of the descriptive feu-ferme is relatively haphazard, following no ascertainable rule.

In their later and fully developed forms, these tenures were subject to rules of incident which differentiated them from military holdings. They were free of feudal wardship and their reliefs were assessed according to the duty paid, and were equal to twice the annual render whether the tenure were feu or blench. What indications are there in the XII and XIII centuries of relaxation for this tenure of thenormal additional burdens? The additional obligations which charters mention, by way of either assertion or quittance, are ward, relief, suit of court and forinsec service.

Forinsec service of both kinds was of course imposed or not imposed according to its general rules. Its performance had to be assured regardless of what form the intrinsec service took, and so the king's (especially) forinsec service was often reserved.[1] More specifically, the Earl of Lennox made a grant

> faciendo pro me et heredibus meis Scoticanum exercitum et commune auxilium domini regis quantum pertinet ad predictas terras Reddendo annuatim unum par cerothecarum vel unum denarium pro omni alio servitio.[2]

c.1220 Malcolm Earl of Angus granted to Nicholas son of Bricius, priest of Kirriemuir, the land of Abthein in Monifeith free of all exaction, army and custom except the king's common aid, for a return of 6s.[3]

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1. Douglas III 2, 4, 6; Lennox p.35; Morton ii 6; Reg.Ho.Misc.App. etc.
2. Reg.Ho.Misc. Grandtully 9[x].
3. Arbroath Vetus C.O. IV.

Gilbert third lord of Glenkerny gave to his son the land of Gerbothy for a pair of white spurs et faciendo Scoticanum servicium domini regis.[1] The land of Tarveht in Dau was held by William Avenel of Walter Percehay

> reddendo unum par calcarium deauratorum vel 6d. salvo forinseco servicio domini regis et domini episcopi Sancti Andree.[2]

In 1272 Gilbert de Umphraville Earl of Angus granted the land of Ballendarg and Logyn to Adam Wyschard for

> duos esparuarios sorros vel duos solidos et faciendo forinsecum servicium domini regis quantum pertinet ad duas davacas terre in feodo de Kerrymore.[3]

In 1296 John Earl of Atholl gave land in Weem and Aberfeldy to Alexander de Meyners for a return of one penny at Pentecost

> et faciendo forinsecum servicium domini regis quantum ad tantam terram pertinet...[4]

The evidence is too incomplete to allow any general conclusions to be drawn about the incidence of such additional burdens as ward, relief, marriage and suit which it was within the power of the immediate lord to exact or acquit. Many of the charters specify freedom from wardships, reliefs etc., but we cannot be sure whether they are giving expression to common practice or recording exceptions. Most of the charters which give such detailed information come from the end of the XIII century, and earlier charters are unfortunately reticent about these matters. In 1292 William de Maule lord of Panmure granted to Randolf of Dundee the lands of Banevi and Balrothi to be held

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1. Grants iii 10. 1280. See also Hist.MSS. V p.690 and Reg.Ho. Chart.69. Appendix II.
2. Reg.Ho.Misc. p.19.
3. Douglas 6.
4. Reg.Ho.Roy. Hist.MSS.Com. VI p.690. supra p. cf.also Reg.Ho. Chart.69. Appendix II.

> ad feodofirmam...sine secta ad aliquam curiam regis vel alicuius alterius, vardis, et releviis auxiliis in exercitu et aliis et forinseco domini regis vel alterius reddendo ipse et sui mihi... sex denarios ad foedofirmam pro omnibus aliis servitiis...[1]

Final agreement on this transaction was not reached until 1325, whereby John de Glasgreith tenant of these lands was to owe no service except fealty and 6d. nomine albe firme and Henry de Maule promised to acquit John and his heirs of wards, reliefs, suits of court, marriages, aids, forinsec services and other burdens on these lands due to the king and others.[2] When Muriel granted the land of Tullybarden to William of Moray in 1284 for doing forinsec Scottish service to the Earl of Strathearn, she imposed a reddendo of 12d. to the Earl and 1d. to herself and freed William from all suits of court, wards, reliefs and aids which could be exacted by her and her heirs.[3]

The wording of some of the charters sounds as if the value of these incidents was included in the feu-duty and they were therefore commuted, e.g. the charter of the Earl of Lennox to William Galbraith states that the return of 3d. nomine albe firme is pro wardis releviis maritagiis sectis curie duplicatione firme etc.[4] and the gift ad feodofirmam of the prior of St. Andrews for a return of 2 marks yearly

> pro wardis releviis et aliis serviciis que de dicta terra exigi poterunt.[5]

One charter indicates how this could be done. The commutations of ward and relief were stated separately in the charter and apart from the feu-duty (and it must have been an easy step to include them as one return) averaging the possibility of profit from them. William Comyn

1. Panmure ii 152.
2. Panmure ii 160.
3. Moray Orig. 13.
4. Lennox p.34.
5. St.Andrews p.399.

provost of the church of St. Mary in St. Andrews confirmed the charter of Adam de Malkariston his predecessor granting to John son of William son of Lanbin and his heirs the land of Lethin and Kynnius which Adam son of Gilmur Macmartin held of his predecessors

> Reddendo nobis et successoribus nostris 60s...pro veteri cano ordei et casei et pro omnibus aliis serviciis...

and doing the king's forinsec service and saving to the provost and his successors the pleas and cases which ought to pertain to the capital lord. John and his heirs were to pay to the provosts 20 marks for their ward whenever it happened that any of their heirs fell into their ward, but if they were of age they were to pay 9 marks for their relief.[1] Such arrangements were simpler and easier to administer and fell in with the general purposes and advantages of feu-ferme grants. They were probably the origin of the later rule that feu-ferme was free from these burdens. Once they were commuted, they could not be exacted.

The burdens could, however, be exacted. Sir Peter de Morthington granted a toft and croft and some land in Lamberton to Symon de Baddeby free from omni opere servicio consuetudine auxilio exaccione et demanda for 1 lb. of cummin or 2d.

> salva warda mihi et heredibus meis de dicta terra perveniente et faciendo inde forinsecum servicium domino regi et domino de Coldingham quantum pertinet ad dictas duas bovatas terre.[2]

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1. Laing charters 15; ~~Appendix~~ . Other burdens could be commuted in a similar fashion. Adam de Lamberton gave his grandson Galfridus de Hesswell lands in Lamberton 1190-1200 for a return of 1 lb.pepper with the king's forinsec service and due service to the prior of Coldingham. Dabit predictus Galfridus et heredes sui mihi et heredibus meis pro forisfactura suo 12d. et pro mercheto suo 12d. Heredes ipsius Galfridi dabit pro terre sue ½ marce argenti. (Reg.Ho. Misc. ~~p.9. App.~~) Simon de Lindsay gave land in Moll to his man Patrick for a return of 1 lb. cummin or 3d. and forinsec service et pro forisfacto suo det 4d. et pro auxilio suo 6d. (Melrose i 141).
2. Reg.Ho.Misc.~~p.17. Appendix~~

It seems, therefore, that there was no hard and fast rule applying to tenures in feu-ferme and blench as there was for English socage in matters of incident. Some feu-ferme charters state comparable terms, but there are contrary cases. As has already been said, only two references to socage occur in Scottish charters. Both occur in the first half of the XIII century. In the first, the word socage is used in a manner in which feu-ferme or blench ferme was normally used in Scottish charters. It occurs in a gift of moveables and rights of burial to Coupar Angus by Malcolm son of Eugenius of Dunkeld, who also arranged that after his death his successors in the land of Murthly which he held of the abbey should double the ferm in the first year of their tenure.

> et firmam dicte terre de Murchelauht scilicet tres marcas argenti in primo anno nomine soccagii dupplicabunt.[1]

The doubling of the render as relief was later practice in feu-ferme tenure and this instance is corroborated by the quittance amongst other burdens of dupplicatione firme in the Earl of Lennox's charter.[2] A practice like this may have been developing. Reliefs were originally fixed by bargain or with the help of some known method of assessment. As there was a move to stereotype reliefs in military holdings, it is not inconceivable that a similar move in feu-ferme tenure would produce a result like this which had the virtue of being easily ascertainable.

The other "socage" charter is that quoted by Erskine, date c.1240, recording the gift of Roger son of Philip Den to Duncan son of Edward

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1. Coupar Angus i XL.
2. Lennox p.34.

de Neveth of the whole meadow between the bounds of Kinglas in the territory of Karedene.

> Tenendum et habendum in libero sochagio sibi et heredibus suis... de me et heredibus meis in feudo et hereditate

free from all secular service, aid and army and quit

> ab omni escaeta et custodia heredum suorum vel heredum suorum assignatorum preterita presentia vel futura penes me et heredes meos

for a yearly return of one silver penny at the feast of St. Serf for all secular service, and the gift also included

> potestatem ad aedificandum hospitandum infra predictas terras prout melius et plenius ad eorum placita voluerint.[1]

The problem of the existence of socage tenure in Scotland has already been discussed,[2] but even although its official recognition is extremely doubtful, this charter, like the first, suggests its existence in fact though the name was not used. This charter records another characteristic of the tenure - freedom from wardship. But scraps of charter evidence cannot justify any general conclusion about the uniformity of regulation or practice for any tenure. In a tenure of this sort especially which covered such a wide social and economic range there must have been a great diversity of obligations. Some would fulfil all the obligations usually falling upon free tenants and must have been to some degree indistinguishable from military tenures. Some would be privileged and some would be akin to peasant holdings. It is interesting that one tenure held by three brothers of Malcolm Earl of Lennox for a yearly reddendo of unum capreolum et unam dilectam cervum ad Pascha was held absque omni seculari et servile exactione.[3]

1. Reg.Ho.Misc. ~~p.15 App.~~ Erskine: Institutes ii App.13. supra p.40.
2. Chapter III.
3. Lennox p.26.

Suit is rarely mentioned and the occurrences are contradictory. c.1260 the Earl of Strathearn made a grant to Malise de Logy for the service of Scottish army and the king's common aid and a return of one pair of spurs or 1d. sine secta curie vel curiarum michi vel heredibus meis,[1] but the Earl of Angus, granting land in Petmulin to Duncan, the king's iudex, (1262 x 1285) required sectam ad curiam meam et heredum meorum pro dicta terra in addition to the 1 lb. of pepper,[2] and the Earl of Atholl's grant to Alexander Meyners (1296) specified

> unicam sectam curie mee de Rath in Atholya pro dictis terris de Weem et Abyrfeallybeg pro omni alio servicio

in addition to 1d. and forinsec service.[3]

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1. Grandtully i No.69.
2. Douglas III 4.
3. supra p.130

CHAPTER VII

Incidents of Tenure

The importance of the XVI century distinction between military holdings and blench or feu-ferme holdings, and the XIII century English distinction between military tenure and socage, was the practical one of obligations of tenure, and these were of similar importance in XIII century Scotland. These feudal incidents of ward, relief, marriage and aid, inherent in the tenure of land, were of great real and potential profit to landlords and were probably initially the incentive for creation of dependent tenures in the late XI and early XII centuries. Even if the payments of relief and the rights to wardship and marriage were only occasional, when their occasion arose they were a much more valuable source of income than the regular payment of return or service. Conversely, they were a much more real burden to the tenants. The main problems to which they gave rise were the natural outcome of the situation - exploitation by lords and non-payment by tenants. These were the subject of much political and legal activity in England where evidence exists to show the subjects of this activity. Resistance by barons to royal exploitation and by mesne lords to baronial exploitation has formed a more popular subject of written history (since the XIII century) but the efforts of landlords to ensure their rights have been just as persistent if less publicized. Although the evidence for such pressure on both sides is lacking in Scotland the inference is that insofar as the tenurial system was similar to England's the pressures would be the same.

The only source of consistent information for the regulation of these matters comes from the Regiam, which repeats the rules of Glanvil. For the rest, evidence is slight and extremely haphazard. No information survives at all from the XII century, and in the XIII, when the incidents do crop up, they are usually mentioned by way of definition or exemption or modification, and their general principles are so taken for granted by contemporaries that explanation is rarely offered.

PART 1

Relief

According to the Regiam, a male heir of full age took his heritage even if his lord were reluctant, by tendering homage and a reasonable relief. The custom of the realm defined "reasonable relief" as 100s. for a knight's fee; a year's rent for socage; while baronies and sergeanties paid iuxta misericordiam et voluntatem domini regis, and provisions were made for a situation in which a lord refused to accept a vassal's relief.[1] Another passage deals with the payment of relief by an heiress - providing that if she had been in ward both she and her husband were free of relief, but if she were not in ward her husband must pay relief. Relief was only paid by her first husband once and no reliefs could be exacted until another succession.[2] These rules, condensings of Glanvil, are confirmed generally by the later lawyers as having taken root in the land law, but in the XII and XIII

1. Reg.Maj. II c.71, 72. S.S. pp.179-80.
2. Reg.Maj. II c.70. S.S. p.178.

centuries there is little practical evidence of their application, or of the way in which reliefs were paid or assessed.

It is a fair assumption that they were commonly exacted, and even if not paid, that the general obligation was recognized. XIII century grants often explicitly conveyed to the tenant the wards and reliefs of inferior holders, e.g. the grant of John de Vescy to Melrose of the land of William de Soulis with its inhabitants and the services of its free tenants

> unacum wardis, releviis, maritagiis, sectis curie et escaetis eorundem[1]

and the (pre 1275) confirmation by the abbot of Dunfermline of Alexander de Blar's grant to Duncan of Crambeth of the land of Balbard to be held as freely of Alexander as he himself held it of Dunfermline. The payment of half a mark is to be made yearly to the abbot

> et faciendo forinsecum servicium domini regis quantum pertinet ad dimidiam carucatam terre in schira de Nibren salvis Alexandro warda et relevio cum ceciderint.[2]

In the grant of Eva de Murthac, lady of Rothes, (1273) of Inverlochy to Moray, wards and reliefs were included in the general clause of landed privileges.

> in bosco et plano, in terris et aquis et piscariis, in pratis et pascuis, in moris et maresiis, in montibus et collibus, in stagnis et molendinis, in viis et semitis, in libera curia et placitis et escaetis, in relivio et warda, et cum omnibus aliis libertatibus.[3]

It is difficult to find any principle of assessment and there is no indication of any movement as in England to fix a reasonable relief. The 100s. per knight's fee of Glanvil can, of course, be dismissed in so far as the concept of a knight's fee was not applicable in Scotland;

1. Melrose i 347.
2. Dunfermline 315.
3. Moray 125.

and the 100 lib. of Magna Carta for a barony was a native revolutionary move, a product of circumstances which were not necessarily repeated in other countries. XII century English reliefs tended to be fairly moderate and were normally exacted at about 100 or 200 marks, although some enormously heavy reliefs were exacted, e.g. in 1166 the constable of Chester paid 1000 marks for lands his mother held in the honour of Tickhill,[1] and in 1185 Robert de Ghent offered the same amount for his barony.[2] In 1198 there is an interesting case where William de Newmarket offered a fine of 100 marks if the king would accept a reasonable relief of £100.[3] Clearly there was something to be gained from an admission of a relief of £100, other than immediate financial benefit.

In Scotland a few indications of the late XIII century seem to suggest that the original character of the relief[4] as an amount fixed by mutual bargaining and agreement between lord and vassal was retained there even at that date. In 1292 Edward I as rex et superior dominus regni Scocie wrote to the chancellor of Scotland about the relief of William de Maule of Panmure. William was due to pay £122:10:- for relief but the king had pardoned him £82:10:- and of the remaining £40 he was to pay three instalments of 20 marks to the chamberlain.[5] The original relief due was more than £100 and the final amount was arrived at by bargain. In 1294 the Earl of

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1. P.R. 12 H.II. P.R.S. IX 51.
2. P.R. 31 H.II. P.R.S. XXXIV 90. see also P.R.S. XXXIX 21, 58, 101.
3. P.R.S. XLVII 222.
4. see Stenton p.162.
5. Panmure ii 150.

Buchan was due to pay £120 to the king for his relief,[1] and c.1303 the Earl of Lennox paid 100 marks.[2]

Another document has survived from the English occupation to confirm this situation. In 1304/5

> Gilbert de Hay prays grace for his relief for his lands in Scotland which are so destroyed by the Scottish war that he will be quite ruined if he pays the extent along with that of his mother's dower and also the extent of his freeholders of whom he has taken nothing and will be obliged to sell his lands.... Wherefore he prays favour and remedy from the king as the deceased kings of Scotland always did to his ancestors of their relief without payment. End. The king has remitted to Gilbert 100 lib. of his relief and he may pay the balance by 20 marks yearly if he conducts himself in a good manner at the king's will.[3]

We are not told what had been demanded of Gilbert de Hay, but its reduction by 100 lib. was apparently satisfactory to the king which suggests that a substantial sum would be left, as in the case of William de Maule. Both of these were big reliefs by English standards, and one certainly suspects Hay's plea for remedy on the ground that "the deceased kings of Scotland always did as to his ancestors without payment"!

Further light on the method of computing relief comes from another petition of 1306/7.

> Huwe de Champane petitions King and Council for mitigation of his relief for his lands in Galloway according to their present value, not the old valuation before the Scottish war, as they have been so wasted thereby that otherwise he must sell them. End. Chamberlain and sheriff of Wygeton to receive the relief as customary in these parts either by a new extent or by the old register.[4]

The reference to the "old register" introduces continuity with pre-war practice, and suggests some systematic basis of assessment which one

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1. Stevenson i 418; Cal.Pat.Rolls 22 Edw.I m.20.
2. Bain ii 730, 884.
3. Bain ii 1738.
4. Bain ii 1984.

would expect in the XIII century. The practice of appeal against it, or request for a new extent, was probably a regular procedure. These documents are only scraps of evidence and are the records of an occupying power, but they do show a desire to follow Scottish practice and the practice they indicate is of fairly heavy reliefs, arrived at on a basis of assessment of land.

The records of the occupying power also yield some incidental material about the revenue from the lands of the Earl of Fife which were in ward for the period 1288-1308. The account has survived in Pipe Roll 24 Edw.I and covers three terms - November 20 1293; February 16 1294; and November 20 1294. Although reliefs do not form a large part of the total revenue, the amount from three from one term was not inconsiderable.

> Et de xiii l. xiiis. iiii d. de fine Ade de Ramesye pro relevio terrae suae de Clately ad quod terra illa extenditur per annum.
>
> Et de liii s. iiii d. de fine Dony pro relevio terrae suae de Balbrenny.
>
> Et de xlv s. de fine Elyae de Kymmoke pro relevio terrae suae de Kymmoke.[1]

In the second account the amounts are exactly the same but in each case the word fine is not mentioned and the sum is accounted pro relevio.[2] The relief for Clately is stated as being equal to its annual value, but the other accounts of reliefs do not state the principle of assessment. Unfortunately there is no way of following this out and discovering the form of tenure of these lands. The earldom of Fife accounts are a useful honorial equivalent to the surviving exchequer

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1. Stevenson i pp.407/12.
2. Stevenson i pp.412/15.

rolls which give royal accounts. Again the reliefs are not surprisingly large in number although they form a substantial revenue.

Between the years 1264 and 1266 the sheriff of Roxburgh twice accounted for the relief and marriage of the son of Thomas Finemund. For one term it was 6 marks;[1] for another it was worth 10 marks, with an addition - et de xxx marcis quas Robertus de Kokeburn miles finivit pro ea.[2] The same sheriff also accounted for 100 marks per relevium Ricardi Lupelli.[3] The sheriff of Perth accounted 20 marks for the relief of Walter son of Adam of Alyth. The sheriff of Ayr accounted (1265) 28 marks for the relief of Roland of Carrick and 5 marks for the relief of the wife of Robert de Montgomery. The sheriff of Traquair accounted 35s. for the relief of Robert Mappar (5s. to the bishop of Glasgow).[4] As in the case of Fife, it is impossible to work out on what basis these reliefs were assessed.

Charter evidence is so haphazard that very little can be deduced from the deeds themselves. Occasionally grants were made without ward and relief but more usually if any mention were made of relief it was an arrangement for a fixed payment. Clearly there would be considerable inducement on the part of tenants to include a fixed relief in their contract with their lords, and this is probably a parallel and more effective line of action to the political pressure to obtain fixed reliefs which can be seen in England. Before 1214 the Earl of Buchan arranged with his tenant of the lands of Fedrith, John son of

1. E.R. i 21.
2. E.R. i 29.
3. E.R. i 28.
4. E.R. i 33. This is an interesting example of ward ending and relief being paid. The account runs Item per wardam terre Roberti Mappar de illo anno xl s. iv d. Et de cetero non debet solui eo quod etas sua probata est. Item per relevium eiusdem Roberti...

Utred, who held by the free service of one archer, that

> tempore relevii predictarum terrarum dictus Johannes et heredes sui et assignati...tantum teneantur solvere mihi et heredibus meis pro relevio suo viginti libras sterlingorum...quociens casus contigerit.[1]

c.1280 Malcolm de Moray granted the lands of Lamabrid to his son William who was to pay to his father 3 marks nomine relevie cum casus warde et relevie advenerit and so be quit of all wards and reliefs for the said three marks.[2]

It is impossible to distinguish particular classes of tenure by the incidence of relief upon them. The system is seen in too fragmentary a fashion for any such distinctive category as blench ferme and feu-ferme to stand out. It is likely that there would be much diversity of practice in XIII century. Some blench tenures are free of ward and relief,[3] - c.1300 Michael Scott of Balwearie granted Burneschelis to Yvo of Burnscheles for a return of one pair of white spurs or 7d.

> absque warda relevio maritagio secta curie forinseco servicio auxilio et exercitu.[4]

but the practice allowed the making of a provision such as that in Bruce's 1294 charter to Randulf of Dundee of lands in Dundee

> Reddendo 1d. salvis tamen nobis et heredibus nostris warda et relevio cum acciderit.[5]

Feu-ferme is perhaps in a different position and there may have been a tendency to regard the ferme as covering or commuting incident such as relief as well as service, e.g. Paisley's grant c.1272 of Fulton to

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1. Coll.Aber.& Banff pp.407/8.
2. Moray Orig. 7.
3. e.g. Menteith 2 Appendix and "socage" charter.
4. Fraser's Wemyss ii No.6.
5. Highland Papers ii IV p.129.

Thomas and three of his heirs who were to pay 8 marks

> pro omni servitio et seculari demanda et pro relevio et duplicatione firme[1]

although the limited character of that fee makes it rather unique.[2]

PART 2

Wardship and Marriage

The right to the custody of the tenant's heir and of the fee until he reached full age and to the marriage of both heirs and heiresses was the other valuable incidental source of profit to lords. Of the practice of wardship and marriage in Scotland we know little. The only rules are those of the Regiam, which repeat Glanvil, and the other evidence is as unrelated and haphazard as that for relief.[3] The personal and political implications of these two incidents for Anglo-Norman-Scottish society must have been great, but very little has penetrated the surviving records. Such information as we have shows that wardship and marriage had the same commercial value both to crown and to barons as it had elsewhere, and that arrangements for their administration were similar too. Wardships were gifted in the same way and under the same conditions as in England. Thus the 1266 account roll shows that the Earl of Buchan rented the ferme of the two parts of the earldom of Carrick which were in the king's hands,[4] and the account of 1288/90 of the sheriff of Dumfries has a note that

1. Paisley p.52.
2. infra p.236
3. Reg.Maj. II cc.42-8.
4. E.R. i 5, 28.

> pro warda de Amysfield magister Thomas de Carnoto nunc cancellarius respondebit quia dictam wardam habet per custodes regni et per literam eorundem patentem ut dicit.[1]

There are, however, no royal charters or letters granting out the wardships and marriages which fell to the crown until the reign of Robert I,[2] although the brieves saysina warde directa vicecomiti,[3] and the concession warde usque ad etatem veri heredis,[4] and ad faciendum custodem warde[5] exist to give some indication of the ordinary course of government action in dealing with wards.

The English administration of Scotland in the late XIII century affords a unique glimpse into the operation of crown wardship and the Pipe Roll of 24 Edw.I contains the account by Walter of Cambo of the lands and tenements belonging to Duncan Earl of Fife, which were then in the hands of the king of England

> nomine custodie ratione Duncani filii et haeredis predicti Duncani defuncti qui de rege Scotiae tenuit in capite infra aetatem et in custodia regis Anglie existentis.[6]

In the Exchequer roll for 1264/6 there are accounts for a considerable return from crown wardships. The sheriff of Perth accounted three times for the wardship of Easter Alyth

1) for the Pentecost term 1263 25s. 5½d.[7]

2) for two terms of 1264 30s.[8]

3) for the year 1265 30s. 11d.[9]

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1. E.R. i 35.
2. see B.M. Cotton VIII 50.
3. Bute MS. No.75.
4. Bute MS. No.77 and Ayr MS. No.XXXII.
5. Bute MS. No.79 and Ayr MS. No.XXXIII.
6. printed in Stevenson i 407.
7. E.R. i 3.
8. E.R. i 27.
9. E.R. i 18.

The same sheriff accounted for 5 marks per wardam terre Eugenii de Clony de illo termino (Pentecost 1263),[1] and £6:4:4 for ward of Mallers in 1265.[2] The ferme of the wardship of two-thirds of the earldom of Carrick in 1264 was £56:6:1,[3] and in 1265 £112:12:2.[4] Under the account of the sheriff of Roxburgh for 1265 is a memorandum "that he ought to render account for two parts of the barony of Hawick for Martinmas 1264

> eo quod Ricardus Lupell dominus eiusdem baronie mortuus fuit ante festum Sancti Michaelis anno predicto"[5]

and a note that there was in Roxburgh castle 15 chalders of corn taken from the land of William de Soulis eo quod warda fuit in manu domini regis.[5] For 1263 the earldom of Angus gave £80,[6] and the ward of the land of Abernethy gave 24 marks.[7] In 1264 the sheriff of Banff accounted for the ward of Finletter £23:10:- and for the ward of Esterforthys 16s. 9d.[8] In 1266 the sheriff of Wigtown accounted £6 per wardam terre de Turfhous que fuit Constancie que fuit sponsa Hugonis de Turfhous de illo anno.[9] An account of the sheriff of Haddington includes 52s. 6d. for the ward of the land of Darkallan for Pentecost term

> qui de cetero non debent poni in receptis eo quod etas heredis est probata.[10]

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1. E.R. i 3.
2. E.R. i 18.
3. E.R. i 5.
4. E.R. i 28.
5. E.R. i 29, and the relief of Richard's heir of 100 marks is accounted for in this account. (E.R. i 28)
6. E.R. i 9.
7. E.R. i 13, 19.
8. E.R. i 15.
9. E.R. i 22.
10. E.R. i 32. cf. also lands of Robert Mappar supra p.192.

In 1288/90 the lands of Sir William de Ferrers in Dumfries were in ward and rendered £37:10:4, and those in Lauderdale 65s. 4d.[1] The Exchequer accounts contain only one reference to marriage as a source of revenue. Account of Hugh of Abernethy, sheriff of Roxburgh, for 1264 includes

> per relevium et maritagium filli Thome Finemund de illo termino vi marce.[2]

The account of Thomas Kauer, sheriff of Roxburgh, (undated) contains a note

> Memorandum quod Robertus de Cokburne miles tenetur in quindecim marcis pro maritagio filie sue que non ponuntur in hoc computo quia nihil boni habuit in ballia de Rokesburgh unde possit compelli[3]

while the 1265 account of Hugh of Abernethy brings the two sources together.

> Item per relevium et maritagium filii Thome Finmund x marcas et de xxx marcis quas Robertus de Kokeburn miles tenuit pro eo.[4]

It looks as if Robert Cockburn had acquired the marriage and married the heir to his daughter.

XIII century baronial grants of wardship are not much more numerous than royal grants. The earliest of which there is trace is a grant by Robert de Quincy to Adam de Seton (c.1246) of the marriage of the heir of Alan of Fauside, but the charter is non-existent and its foundation seems to be a series of expanding references. Seton's House of Seton quotes it in a list of Seton charters made by Cosmo Innes where it is described as

> a grant of the ward of the whole land which belonged to Adam of Fauside and the marriage of his heir and his widow,[5]

1. E.R. i 36, 45.
2. E.R. i 21.
3. E.R. i 22.
4. E.R. i 29.
5. Seton ii p.843.

and a reference is given to Maitland's House of Seytoun p. 92. Maitland only briefly quotes it and refers to Sibbald's History of Fife p. 369, where again only short mention is made. None of the four people who used the charter seem to have seen the original, except perhaps Sibbald who does not say where it is. The whole incident is an interesting example of the creation of a charter from hearsay.

The clearest grant of wardship and marriage is that of the third Earl of Dunbar (1261) to Durham of the ward of Estnesbit with the marriage of the heir, which contains the interesting provision against disparagement.[1] Quoniam Attachiamenta provides sanction against such a situation. Disparagement of an heir under fourteen years and unable to give his consent leads to forfeiture of the wardship on the complaint of friends.[2] An interesting transaction on a purely commercial basis involving wardship and marriage is Kelso's deal with the widow of Thomas de Bosco. Thomas held the land of Esterdodington in feu-ferme of Kelso for a fee of 10 marks and royal forinsec service which pertained to one-third of a vill. On his death his widow made a bargain with Kelso as overlord which is reflected in Kelso's grant to her vel suo certo assignato of

> custodiam filii sui et heredis donec ad legitimam pervenerit etatem pro viginti libris argenti quas nobis pre manibus puccavit una cum maritagio sui ipsius libero.

If her son died before his majority she was to have the ward until he would have been of age.[3] The granting of church wards was, however,

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1. Appendix
2. Q.A. c.92. S.S. p.375. cf. Magna Carta cl. which only deals with the disparagement of heiresses.
3. 1239 x 48. Kelso ii 458.

frowned upon, though it was probably used as a valuable source of revenue to the church. In 1256 Alexander IV in a letter to the abbot of Canterbury ordered that the wardships of the heirs of knights or of freemen or other vassals of the church should not be leased or in any way alienated by the abbot.[1]

There is not sufficient charter evidence of the XIII century to determine whether the rules of wardship varied with different forms of tenure as the legal works would lead one to believe. The question must therefore remain open, and the only suggestion that wardship did not always fall to the lord in a regular feudal manner is the arrangement in Ralf Noble's (largely illegible) charter to Sir David Graham and his wife Agnes in c.1245.[2] The freedom from ward and relief and the privilege of the administration of the estate and custody of the heir by two close and faithful friends of the heirs is unique in surviving deeds, but may not have been so in fact. Much of the text is missing at the interesting point but one wonders why the reservation to the friends of sumptibus racionabilibus was made.

Lord Cooper has noted a divergence of Scots law of wardship in the matter of idiots which the early XIV century English administration were apparently prepared to accept as possible.[3]

1) 1305. Gilbert Lasceles petitioned for the custody of the body of Ralf Lasceles his brother who was idiot si lex Scotiae hoc permittat, and the reply was a mandate

> custodi et camerario Scotiae quod inquiratur de legibus et consuetudinibus Scotiae in hoc casu et certificent regem.[4]

1. C.P.R. i 335.
2. supra p. and Appendix
3. Stair Society 10 p.25.
4. Memoranda de Parliamento (Rolls Series) p.225 Item 390.

2) John Earl of Buchan petitioned for the custody of Ralf de Lasceles et terre sue because he was idiot and the Earl was capital lord, and the reply was a mandate to the king's lieutenant in Scotland to inquire as above.[1] The original petition contains the claim that

> la ley e le usage de Escoce seit qe les chiefs seignurs deivent aver la garde des terres des idyotz e Rauf le fiz Sire Rauf de Lasceles qui est tenu por idyote tient del dit Counte par homage e par feaute la terre de Balmoneth e autre terres en Escoce en la counte de Fyffe, e les queus terres nostre seygnur le Rey ad baille a Sire Williame le Vavazour prie le dit counte a nostre seynur le Rey qil li pleisse graunter la garde del dit Rauf idyote, issuit qe il ordeine, e les plus prochein parents le dit Rauf a queus leritage ne porra mie descendre pur lestat le dit Rauf solum la ley e le usage avandite.[2]

3) William le Vavassour reminds the king that he gave him the lands of Sir Ralf de Lasceles in Scotland; and then it pleased him to restore them to the right heirs. But as the heir of Sir Ralf is an idiot the king has his lands; whereof the petitioner begs the ward. The lands are not worth more than £30 yearly. Endors. Coram Rege. Rex concessit quantum in ei est.[3]

4) 1306. Letter patent was issued on 23rd March.

> Licet terras et tenementa quae fuerunt Radulfi de Laseles in Scotia quorum custodiam nuper concessimus dilecto et fideli nostro Willelmo le Vavasseur, Radulfo filio et heredi ipsius Radulfi fecimus liberari, quia tamen intelleximus quod idem Radulfus idiota existet et regimini sui ipsius et terrarum et tenementorum suorum predictorum non sufficit, custodiam corporis ipsius Radulfi et omnium terrarum et tenementorum suorum praedictorum cum omnibus ad custodiam illam spectantibus, praefato Willelmo concessimus ita quod de exitibus terrarum et tenementorum eorundem praefato Radulfo in victu et vestitu competentem sustentationem inveniat.[4]

Here were three competing claims to this wardship and the winner was the man who put forward no claim beyond a previous royal grant and a plea for continuing favour. The claim of the nearest relative and of the feudal overlord were thus rejected, and we are not told why.

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1. Memoranda de Parliamento (Rolls Series) p.228 Item 397.
2. Parliamentary Petitions No.1671. Bain ii 1870.
3. Bain ii 1869 from Tower Miscellaneous Rolls No.459/112.
4. Rot.Pat. 33 Edw.I m.14.

It would be interesting to know if the inquiries which were ordered on the first two claims found that they were without substance and that the law of Scotland allowed no right of wardship either to a relative or to the overlord. There is, however, no means of knowing whether the final grant to William le Vavassour was based on legal principle, personal preference or political convenience. The passage in the Regiam which deals with the guardianship of idiots assigns it unequivocally to the king, in line with the result of this case, with the proviso

> et de quocunque feodo fuerit illa terra, post mortem eorundem [fatuorum naturalium] redeat terra rectis heredibus ita quod nullatenus per eosdem fatuos alienatur.[1]

Lord Cooper's note draws attention to the non-Glanvillian later origin of this section which is based on the Edwardian law, of which the case cited may be an example.

PART 3

Aids

The overlord's right to exact extra payments or renders in the form of aids in time of financial difficulty was universally recognized in feudal law. By the XII and XIII centuries the circumstances of these aids had become commonly defined as - on the lord's succession and on the knighting of his eldest son, for the marriage of his eldest daughter, and for the ransoming of the lord himself from captivity. In England the development was to apply the feudal definition of aid to the crown's right to levy aid or taxation as well. Jolliffe,

1. Reg.Maj. II c.46. S.S. p.155.

however, suggests that before Henry II's time the king's right as supreme lord to aid was not so closely defined

> nor was a degree of uncertainty unfavourable to the Crown. Definition, when it came, was at the hands of the feudatories.

He suggests Glanvil's definition of four was a compromise doing justice to both sides.[1] In France, the right seems too to have included a levy for Crusade,[2] but during the XIII century the aids were increasing in amount and frequency. In Scotland, Regiam Majestatem gives a general statement of the position and takes the form of an abbreviated version of Glanvil. It carries over from Glanvil the right of the lord to accept aids beyond those for knighting his eldest son and marrying his eldest daughter and speaks of those as alii casus and similia auxilia (cl.2) and leaves the occasion for the more general aids undefined (cl.1). A significant divergence from Glanvil is the omission of two other occasions - the accession of the lord and his ransom. Regiam Majestatem makes no mention of royal aids and is concerned only with the exaction of aids by feudal lords.[3]

Charters contain many references to aids paid or due to the king and very few to baronial aids, but say very little about the occasion of these aids or the basis of their exaction. Only one charter speaks of limiting circumstances. A grant of c.1210 by Walter Olifard to Alan son of Alan son of Cospatric de Swinton of the land of Collessie and Abernethy provides for a payment of 2 marks

> pro omni servicio ad me vel ad heredes meos pertinente exceptis auxiliis meis scilicet de prisona mea si ita contigerit et de

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1. Constitutional History p.220.
2. Petit-Dutaillis pp.188, 252.
3. Reg.Maj. II c.73. S.S. p.180.

> primo filio meo militem faciendo, et de prima filia mea maritanda.[1]

Such a definition does not accord with that of the Regiam in so far as it adds the occasion of ransom. It accords more with Glanvil and may reflect Glanvillian influence in the period immediately before the compilation of the Regiam. Certainly as a definition incorporated into a charter it is unique.

The only other charter definition of aid is from the late XII/early XIII century and is on a different basis altogether - the amount which is payable and not the occasion on which the aid may be exacted is stated. It is a mutilated charter of Simon de Lindesay granting to his man Patrick a holding in his land of Molle.

> Reddendo mihi et heredibus meis unam libram cumini vel tres denarios ad festum sancti Jacobi pro omnibus serviti[is]- - ad me vel ad heredes meos pertinentibus et faciendo forinsecum servitium quantum pertinet ad tantum terre in terra mea. volo itaque - - eis pro forisfacto suo det quattuor denarios et pro auxilio suo mihi et heredibus meis sex denarios...[2]

Lands were commonly granted free of aid, and other exactions, and charter phraseology to that effect is very stereotyped. An interesting turn of phrase, however, comes from a grant of Vivian de Mulmeys (1198 x 1234) to Soltre of half a carucate in free alms, free of secular service vel auxilio speciali vel generali.[3] Is this describing both the more general undefined aid of the Regiam and the definite "occasional" aids?

Baronial aids are, however, difficult to trace and even in England most information as to this incident comes from the imposition

1. printed and photographed in S.H.R. ii 174/5.
2. Melrose i 141.
3. Soltre 12.

of royal aids and of course the spot-light of Magna Carta was thrown upon them. There is one document which implies an aid levied by a superior. William the Lion issued a writ in favour of Scone

> ut ubicunque abbas de Scone aut serviens eius invenire poterint homines qui pro auxilio a terra sua fugerint postquam auxilium assisum fuerit apud Murelb. ad eum et ad terram suam redeant et cum eo sint quousque auxilium eddatur...ita tamen quod si aliquis aliquod jus in eis clamaverit post solutionem auxilii ei rectum inde teneatur.[1]

The inventory of 1292 contains a tantalizing item.

> Item in tertio sacculo Lii rotuli ceduli et memoranda videlicet rotuli de finibus factis per gentes Scocie regibus eiusdem regni tam vaccis quam denariis et quidam de lucris justicie et aliis perquisitis De auxiliis positis super barones regni et collectis eorundem...[2]

These have entirely disappeared and only scraps of information about royal aids survive.

William the Lion's ransom was the cause of a levy and this would come within normal feudal usage, but not with the specific rules of Regiam Majestatem. In this case Melrose had paid spontanea voluntate although its lands were free from the obligation to pay aid, and William issued a mandate recording the voluntary nature of the payment and ordering

> ne quod in tali conventu semel sanctum qui nec prius evenit nec in posterum deo miserante futurus est eis ullo modo consuetudine vel servitute convertatur; ut videlicet per hoc quod ipsi pro remedia regni libertate gratis fecerunt servitus ei imponatur.[3]

The Scotichronicon relates that in

> 1224 Alexander king of Scotland levied an aid of 10,000 lib. on his land for marrying his sisters. Lands in free alms which up till then were not accustomed to pay aid were exempt from this aid.[4]

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1. Scone 35.
2. APS i 114.
3. Melrose i 16. cf.Alexander II's similar writ to Arbroath in 1240 (Arbroath i 246).
4. Scotichronicon IX 43.

The marriage of sisters did not come within the accepted feudal scheme of aids, and the ground for it must have been the general right to levy reasonable aids.

The problem of royal aids in the XII and XIII centuries is how far they were exacted on a feudal basis, or whether they sprang from a non-feudal and kingly privilege. Royal aids are frequently referred to as common aid and many of the charters link it specifically with forinsec service and common army. Those which do not do so specifically can usually be interpreted in this way too - as in England Danegeld, a pre-feudal tax whose organization and assessment was highly developed, was sometimes referred to as forinsec service, e.g.

> excepto quod forinsecum servicium eadem terra adquietabit scilicet Danegeldum et quantum pertinet ad dimidiam carucatam terre de feudo militis Helgeri de Chiltun quod prehend[end]um est de decem carucatis terre.[1]

William the Lion in 1200 granted Ballebothe and Ardaria to John Waleve for a service of a servant on horse with a hauberk

> et faciendo in auxilium et aliis forinsecis serviciis pro tota terra quam habet in Ardaria tantum servicium quantum pertinet ad dimidiam carucatam terre Scotticam in Kalelshire.[2]

His grant of Abernethy to Orm son of Hugh 1172/8 was for 20 pounds of silver free from all services and customs excepto communi auxilio, communi exercitu, communi operacione.[3] To Walter Scott he gave Allardice 1189/99 to be held

> per servicium unius archarii cum equo et halbergello et faciendo commune auxilium quam ad tresdecim bovatas pertinet.[4]

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1. Farrer: Yorkshire Charters ii 723.
2. ~~Stevenson i 20.~~ supra p 102.
3. Reg.Ho.Roy. cf.lands of Arbroath free and quit ab omnibus auxiliis et operationibus ad me et ad heredibus meis pertinentibus (Arbroath Vetus 1).
4. S.Hist.MSS. Com.629.

Some of the evidence from Alexander II's reign has a similar bearing. His quitclaim to the monks of Coldingham of

> auxilium et exercitum que nobis antiquitus reddi solebat de duodecima villa de Coldinghamshire scilicet de villa in qua fundata est ecclesia de Coldingham[1]

is a definite throw-back to an organization which half survived the introduction of the new Anglo-Norman feudal aspect,[2] and the link with army service is significant.

Sometimes immunities granted to the church must have been difficult to maintain. In 1229 Alexander II issued a writ to his sheriffs and bailies ordering

> quatinus dilectos nostros in Christo monachos de Aberbrothoc vel eorum homines contra libertatem eisdem monachis a bone memorie domino Willelmo patre nostro secundum tenorem cartarum suarum concessam ab eisdem tallagium vel auxilium vel aliam consuetudinem secularem exigendo iniuste vexare non presumatis. Non obstante quod homines dictorum monachorum assensu et voluntate eorundem ad coria adquietanda que in Anglia vendidimus quando usque ad doueram profecti fuimus auxilium nobis ad petitionem nostram

and in 1231 issued another mandate to his officials directing

> quatinus abbatem de Aberbrothoc nullatenus vexetis exigendo a terris suis auxilium de quibus usque in hodiernum diem dare non consuevit.[4]

His own grant of Tarvas to Arbroath carried out the privilege (1234)

> faciendo forinsecum servicium in exercitu quod pertinet ad predictas terras. De commune autem auxilio pertinente ad dictas terras eos in perpetuum quietos clamavimus[5]

but apparently was able to overcome the immunity which he himself had

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1. Raine LXVI.
2. see Jolliffe: Northumbrian Tenures in S.H.R.
3. Arbroath i 110.
4. Arbroath i 109.
5. Arbroath i 102. cf. the quittance in the grant of 5 acres of Fynlarg in Strathspey to Moray for forinsec service in the army but ita tamen quod quieti sint de auxilio faciendo de eisdem tribus davachis...ita quod de eadem terra nichil exigi potest ullo tempore preter solas orationes (Moray 37).

granted for in 1240 he recorded to Arbroath's advantage

> that that aid which their men of Tarvays nobis hac vice de gratia prestiterunt eis in perindicium vel gravamen cedere non valeat in futurum.[1]

Charters of subinfeudation also speak frequently of the king's common aid. It usually arose in grants to the church where the grantor, anxious to create as free a tenure as possible, had to make arrangements for the fulfilment of the obligations which the land already bore. It was common practice for church lands to be freed of all burdens save this one of common aid, e.g. when Thomas of Galloway Earl of Atholl granted the church of Moulin to Dunfermline along with three carucates of land he gave it freely excepto communi auxilio domini regis.[2] c.1220 Malcolm Earl of Angus gave Nicholas the land of abthanage of Monifeith in feu-ferme free

> ex omni exactione et exercitu et consuetudine seculari salvo communi auxilio domini regis.[3]

When Adam de Crebarrin gave some of his demesne to Dunfermline he made a typical arrangement dividing responsibility for burdens.

> Ego autem et heredes mei respondebimus...pro dictis sex bovatis terre in omnimodis auxiliis et serviciis que pertinent ad dominum regem et omnes regales. Et illi qui dictas vi bovatas terre nomine abbatis tenuerint quo ad communia auxilia domini regis nichil omnino respondebunt de xii averiis proportionaliter racione terre quam tenuerint se contingentibus sive in communia pastura plura averia habuerint sive pauciora.[4]

Lay subinfeudations give even more information. c.1225 Maldeve Earl of Lennox granted the land of Luss to Maldouen son of Gillemore.

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1. Arbroath i 246.
2. Dunfermline 149. cf.the first charter of earl Malcolm (Dunfermline 147).
3. Arbroath Cart.IV.
4. Dunfermline 181.

> Reddendo mihi et heredibus meis in communi exercitu domini regis duas caseos de qualibet domo in dicta terra pro omnibus serviciis tam forinsecis quam intrinsecis et consuetudinibus et exactionibus et demandis et faciendo de dictis terris de regalibus auxiliis per alias terras divisas quantum ad duos arathos in comitatu de Levenax pertineat.[1]

John of Luss held of the Earl of Lennox the homage and service of two vassals in return for supplying

> in communi exercitu domini regis duos caseos de qualibet domo in qua sit caseus et in auxiliis domini regis tantum servicium quantum pertinet ad tantas terras.[2]

The link with common army is further suggested in a feu-ferme grant of William de Maule of 1292 which, although it reaches the depths of obscurity in its wording, does produce the association of ideas from its string of words. The tenure is free from

> auxiliis in exercitu et aliis et forinseco domini regis seu alterius[3]

which makes a mild distinction between aids in army and other kinds of aids. Presumably aid in army was a food supply as suggested in the Lennox charter. A similar connection is suggested in a charter of the Earl of Angus to Duncan <u>iudex</u> of the land of Petmulin for 1 lb. of wax

> salvo forinseco domini regis [servicio] et auxilio quantum ad dictam terram pertinet.[4]

The evidence is not comprehensive or very revealing, but it does justify the conclusion that to some extent the obligation to pay common aid was parallel to the burden of army and defence and that it was not necessarily a part of the feudal organization of society. William

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1. Colquhoun 2. see also supra p.114
2. Lennox p.21.
3. Panmure ii 152.
4. 1262/85. Douglas iii 4.

the Lion's writ to Melrose[1] and Alexander II's to Arbroath[2] are directly parallel to Bruce's letter on behalf of Melrose on the matter of common army.[3] A difficulty arises, however, in distinguishing those aids which may have a feudal basis from those which have not, and the sources are too slight to enable this to be done. The Scottish kings may have exacted aids on a feudal basis (e.g. William's ransom) but if there had been no baronial pressure to restrict their more general right and interpret it in strictly feudal terms (as in England), there would have been no need to make the distinction. We do not know, either, whether there was any move to restrict or resist royal taxation on any basis at all. It certainly seems unlikely that aids and taxes were yielded any more willingly in the XII and XIII centuries than they were in the XIV and XV centuries. But there is no indication that there ever arose in Scotland the situation where the barons were able to insist upon consent of commune consilium as necessary authority for taxation beyond defined feudal aids. On the other hand, there is no indication given as to the real nature of commune auxilium and the amount of co-operation between crown and barons which was required to authorize it must remain a matter of speculation.

The methods of assessment and collection are likewise unknown. One charter of Alexander II[4] suggests that aid was assessed feudally. For all his lands in Argyle Gillascop mac Gilcrist was to do half the service of one knight in army

1. supra p.204.
2. supra p.207.
3. supra p.[illegible]
4. Argyle charter of 1240.

> et in auxilio quantum pertinet ad plenum servicium unius militis. Et faciendo servicium scoticanum...[1]

A land assessment similar to that for common army is probable, but one case suggests that livestock may have been taken into account.[2] Sheriffs were presumably responsible for collection, judging from the writs issued ordering them to respect immunities. One early royal writ, of Malcolm IV, records a grant of the privilege of collecting aid. Addressed to the Earl of Angus and the sheriffs of Scone and Forfar, it runs

> Sciatis quod concessi abbati de Scon colligere auxilia de pecuniis suis per suos proprios ministros. Quare firmiter precipio ut non veniatis in terras ad predicta auxilia colligenda.[3]

The writ is one of the earliest references to the payment of aids, and does not give any information as to their nature, but the privilege of collecting from their own lands and handing over a lump sum to royal officials must have been a desirable one. This is the only record of its being given.

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1. Highland Papers ii p.121.
2. cf. English XIII century taxation on moveables.
3. Scone 17.

CHAPTER VIII

The Royal Demesne and the Thanage

The Royal Demesne

Much land was retained in the king's own hands and regarded as his demesne. It is difficult to know how extensive these royal estates were, or what their origin. Some may have originated from early expansive policy of the rulers of Alba. Many may be older than that. Two great areas of demesne seem to have existed in the Moray Firth area and in the central focal point of Scotland, in southern Perthshire - Gowrie. Unfortunately almost our only information about the royal demesne is negative - it is only recorded in charters of alienation, especially to churches, e.g. when David I (1130) granted Holyrood Airth, he gave it all the rights which belonged to the church of the vill sicut melius habuit die illa quam illud habui in meo dominio;[1] or to Kelso (1145) Ravendenam...sicut eam melius habui in meo dominio;[2] or to Dunfermline passagium et navem de Invirkethin sicut habui in meo dominio.[3] Malcolm IV granted to Walter Steward the lands of Birkinside and Lasswade sicut rex David avus meus predictas terras in dominio suo tenuit.[4] The practice went on right through the XIII century and these charters of alienation to religious houses reflected an impoverishment and constant depletion of the royal estates.

By the end of the XIII century, however, there seems to have been some restriction on the alienation of the demesne for in 1305 there is

1. L.C. XCIII.
2. L.C. CLXXVI.
3. Dunfermline 2.
4. supra p.31.

a grant by Edward I

> considering that John Balliol, late king, granted by charter to Douenald le fiz Kan knight and his lawful heirs 10 librates of land of his demesne in the county of Ayr which the king took into his hands as being unlawfully alienated from the Crown of Scotland, he grants to the said Douenald for life £10 yearly from the Scottish exchequer, to revert to the Crown at his death.[1]

This may only be an application in Scotland of the English concept of ancient demesne,[2] but the idea is reinforced later with the mention of David II's coronation oath that he would not alienate crown lands, and with the XV century device of lands inalienably (without parliamentary consent) annexed to the crown. There is, unfortunately, nothing to indicate whether this was an indigenous Scottish idea, or whether it was introduced from England. The charters recording alienation of royal demesne also reflect something of the organization and structure of these estates. Generalization from such scattered evidence is dangerous, but some uniformity of administration must have existed even if local differences survived.

A large part of the demesne must have been regarded as forest and set aside or primarily used for the pursuit of sport. Alexander II founded the house of Pluscarden in foresto nostro de Elgyn and endowed it with

> totum forestum nostrum de Ploscardin et totum forestum nostrum et totam terram nostram de Huchtertyr sicut illa tenuimus in manu nostra et per illas divisas per quas illustris rex Willelmus pater noster eadem foresta...tenuit.[3]

King William endowed Coupar with

> Ramsy scilicet chaciam meam cum tota wastina mea que ad illam pertinet...in liberum forestum.[4]

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1. Bain ii 1664.
2. P.& M. i 383-406.
3. Pluscarden App.C p.199.
4. Coupar II.

Alexander II gave Moray land in forestis nostris.[1] No details of the regulations and position of royal forests survive and it is not known how far they were organized on lines similar to those in England.

Waste probably belonged to the same category as forest and several charters refer to the king's waste - the indications being that it is being brought into cultivation. The "desert" at Ednam which Edgar gave to Thor Longus was probably demesne and Thor had peopled it and brought it into cultivation. There is reference to the king's demesne waste of Pentland. Henry de Brade knight gave to Holyrood tithes

> tocius vasti mei et terre mee de Baneley [Bonaly?] quam teneo de domino rege in vasto suo de Penteland

which Alexander II confirmed salvo servitio nostro, while a bull of Honorius spoke of dominium regis de Pentland.[2]

It is from the alienations of the more productive parts of the demesne that most information comes, for arrangements are made for returns and for relations with existing tenants. In the north there are one or two reservations of life tenure when the demesne was alienated. In 1236 Alexander II granted Moray Fynlarg salva tenura Gyllemaked Macgyllepatric in vita sua,[3] and Thulechyn and Rothuan salva Gyllecrist Gartanach heremite tenura sua de Rothuan in vita sua;[4] and in 1240 he granted terram nostram de Mefte to Pluscarden

> salvo Anego filio Eugenii et Eugenio filio suo tenura dicte terre de Mefte in vita eorum.[5]

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1. Grants iii 4; Moray 21.
2. Holyrood 10, 57, 58.
3. Moray 37.
4. Moray 38.
5. Pluscarden App.G p.199.

Nothing is said of the terms on which these people occupied the land, but their tenure did not present any obstacle to alienation, their rights being safeguarded by a life reservation, without apparently any more prolonged claim being put forward.

Other indications are of extensive farming of demesne lands. The archdeacon of Glasgow held Partick by the bounds by which Ailsa and Tocca held it on the day on which it was in king David's demesne, so that he would pay to Glasgow what he used to pay to the king, viz. 1 mark yearly.[1] Alexander II (1236) granted land to Moray salva firmariis nostris tenura sua usque ad terminum completum,[2] and the same reservation was made in the grant of Kildrummy[3] in 1238. When he granted (1247) to Anselm de Camelyne terram nostram de Invirlunane it was to be by the same bounds by which Gilbertus Longus firmarius noster eam die huius collacionis de nobis tenuit,[4] and in 1232 he granted to Cambuskenneth viginti cowgall casei...de firma terre nostre de Tulymurthac.[5] Food rents too must have been common and even the grant to Scone of dominia nostra de Rath et de Kynfaunes in Goveryn is for a return of 4 chalders of good corn and 16 chalders of good brasei ordei.[6]

One grant - that to Coupar of the chase of Ramsy by king William (1171/8) spoke of a payment for waiting, for which the monks were to be responsible.

> Preterea concedo eis ut quieti sint in perpetuum de illo annuo redditu qui mihi...de eadem terra solvebatur, ad waitingam meam

1. Glasgow i 3.
2. Moray 38.
3. Moray 40.
4. Carnegies ii 478 No.26.
5. Cambuskenneth 224.
6. Scone 75.

> faciendo quantum ad eandem terram pertinebat die qua eis... donavi.[1]

This land had been liable for an annual rent which was abolished, but payment of waiting, also customary, was to remain. This was a payment similar to the English firma unius noctis - the equivalent of supply of board and lodging to the king. It occurs again in connection with Coupar in a note of c.1215 of

> ane discharge given by Alexander II monachis de Cupro discharging airiman (sic - annuam) waytingam quam facere solebant falconariis predecessorum meorum de terra de Adbreth[2]

and in 1232 there is a charter of quitclaim to Coldingham of 20 marks which used to be paid to Alexander II's ancestors nomine waytingge from Coldinghamshire.[3] It is probably, too, equivalent to the frithelagiis et hostiariis from which Richard de Moray was to be quit when he held Kintesak ad perpetuam firmam from Alexander II (1236).[4] These payments are mentioned only rarely and usually in connection with royal estates on which their burden fell. As the estates were usually fermed and the burden normally commuted, the two rents became merged - a process probably well advanced by the charter period.

The unit of the demesne seems to have been the manor, at least in the central part of Scotland, where the Gowrie demesnes appear to have been organized in this way. Malcolm IV (1164) gave Scone a tenth of the produce

> de hiis maneriis meis de Goverin, scilicet de Scon et de Cubert et de Forgrund et de Straderdal[5]

with community of pasture

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1. Coupar II.
2. Coupar breviate No.22; Lawrie III.
3. Raine LXVIII, LXIX, LXX.
4. Moray Orig.11.
5. Scone 5.

> cum hominibus meis ubicunque eorum terre maneriis meis affinis fuerint

and Alexander II granted Scone dominia nostra de Rath et de Kynfaunes in Goveryn.[1] In 1245 too Alexander II granted Arbroath 100s. de firmis of his manor of Forfar.[2]

Another context in which royal demesne appears and figures in social organization is the problem of the runaway serf. Royal mandates instructing that religious houses be allowed to claim fugitivi nativi are fairly common, but in some cases the privilege is limited to finding them extra dominia nostra.[3] The royal demesne in this case seems to have either a prior claim or a privilege. It may have rested with demesne officials to find these serfs and return them, as it is unlikely that the king would tolerate outside interference with the inhabitants of his own estates. In this respect the connection is suggested between royal demesne and royal burgh, where if a serf remained unclaimed for a year and a day he gained his freedom.

The royal burgh was in fact one particular institution in the demesne. Its fermes and its prepositus link it up with demesne. The word prepositura was sometimes used by Alexander II in referring to part of his estates, e.g. prepositura de Kymmyly, some of whose lands were granted to Moray in 1232,[4] or prepositura castelli de Ulerin and prepositura castelli de burgo de Elgyn.[5] The prepositus was an official used by both king and barons in estate administration. He was employed generally on the demesne, but ultimately survived exclusively

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1. Scone 75.
2. Arbroath Vetus 265.
3. Dunfermline 67; Kelso ii 7, 151, 402; Soltre 42.
4. Moray 34.
5. Moray 40.

as a burgh official - a relic of the burgh in its demesne aspect. Originally a burgh may have been a royal manor. Certainly a charter of Alexander II to Robert of London his brother granting one toft at Scone to be held as freely

> sicut alii barones mei tofta sua liberius...de me tenent in aliis maneriis meis[1]

depicts the king's manor of Scone as something similar to a burgh and by its generalization suggests that the same conditions prevailed in other manors.[2]

Thanage

Another connection emerges between the royal demesne and that long-persisting Scottish institution, the thanage, and that elusive class of people, thanes. The thanage in both northern England and Scotland has presented a problem with many solutions. In truth, the institution defies modern attempts at systematization.[3] Contemporary record never tells what a thanage was, or who thanes were, and only provides fleeting clues. They are not altogether numerous, and yet we have one decisive proof of the important part the thanage played in the XII and XIII century tenurial structure. In the early XIV century there is a long series of royal charters converting thanages into baronies and revealing an extent of the institution which could never have been deduced from XIII century record. It is one of the strongest proofs of the invalidity of argument from silence in this period.

1. Scone 68.
2. cf.1323. equation of thanage and manor in Robert I's charter to Sir Alexander Fraser of 6 acres of arable in tenemento nostro de Auchincarnie iuxta manerium nostrum de Kincardin.... Tenendas...in unum liberum hostillagium cum communi pastura thaynagii nostro de Kyncardin... (Buccleugh 3).
3. Skene's theory of a 6 davach thanage should be relegated to the same oblivion as Round's 5 hide knight's fee.

The connection between Lothian and Northumbria would explain thanes in the south-east. In 1117 Earl David addressed a charter omnibus suis fidelibus tegnis et drengis de Lodeneio et Tevegetedale[1] in the same way as Cospatrick who had been Earl of Northumberland. But although thanes are found in the south-east there are no thanages, and thanages abound in the north-east and in the central area round Scone, which had no known or close links with Northumbria. It is likely, however, that they disappeared earlier during the more intensive Anglo-Normanization of the south. In the other areas they only disappeared when David II adopted what resembles a definite policy of turning them into baronies.

Many of the clues indicate some kind of equation between thanage and the royal demesne. Royal charters speak constantly of the king's thanage. Scone provides the strongest evidence. A charter of Malcolm IV referred to Scone as among the king's manors.[2] A charter of Alexander II granted a fishing in theinagio nostro de Schon.[3] In the XIV century Robert I granted totum thanagium de Scona to the abbey of Scone,[4] and in that one case the loss of the thanage to royal ownership can be traced. Another charter of Alexander II referred to land in teinagiis nostris.[5] A writ addressed to theynis et aliis probis hominibus suis de Dul et de Forterkil announced that the king had given to Scone building material in theinagiis nostris de Dul et de Forterkil.[6] In 1236 Alexander granted to Lindores the land of Fedal in theynagio de Ouchteradur for a return of 20s.[7]

1. L.C. XXX.
2. supra p.215.
3. 1234. Scone 66.
4. Scone 131, 132.
5. Scone 35.
6. Scone 65.
7. Lindores XXII.

The gifting by kings of land as goods in thanages was common, and further suggests identity with demesne so that the thane would be an official rather than a tenant. Certainly his tenure was no obstacle to the making of gifts. David I granted to the church of Urquhart

> de dominicis hominibus eorum qui sunt in sochop rectitudinem piscis que ad thani pertinet

as if the thane's right were available for royal gift.[1] Later, in the XIV century, Robert I (1326) could grant to William Blount

> totam terram nostram dominicam in thaynagio nostro de Abirlemenach infra vicecomitatum de Forfar[2]

and in 1327 he gave Sir Alexander Fraser a gift

> pro uno parco quam fieri facient ad opus nostrum in foresta de Cragy in thaynagio de Colli.[3]

The gift was of all the forest outside the enclosure of the park - clearly royal land. John Balliol granted to John Comyn Earl of Buchan his thanage of Fermartyn and Dereleye except the burgh and castle of Fyvie.[4] Another phrase specifically identifies thanage with demesne - in dominicis vel thanagiis domini regis.[5]

Thanages too seem to have produced fermes in much the same way as those parts of the royal demesne for which there is independent information. David I granted to Aberdeen

> decimam thanagiorum redituum et escaetarum me contingentium infra vicecomitatus de Aberden et de Banff.[6]

Alexander II issued a mandate to his officers to pay to Aberdeen

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1. Dunfermline 33.
2. R.M.S. i App.1 No.80.
3. Buccleugh 4.
4. Bain ii 1541.
5. APS i 399 c.5.
6. Aberdeen i p.4.

> decimas de omnibus firmis thanagiorum nostrorum et exitibus curiarum nostrarum[1]

and another grant mentions thanages in the same phrase as burghs - confirming

> omnes illas donaciones et decimas reddituum nostrorum tam thanagiorum quam burgorum infra Dee et Spey.[2]

The outcome of these Aberdeen grants was the survival in the records of the bishopric of Aberdeen of the rentale regis Alexandri tercii vicecomitatum de Aberden et de Banff,[3] in which four thanages are listed.

In Aberdeen: De thanagio de Aberden L marcas.

In Banff: De thanagio de Glendouachy xx lib. sc. xv lib. et v celdras frumentii.
De thanagio de Buyn C et xiii lib.
De thanagio de Munbre xxxiiii lib. viii s. et viii d.
De thanagio de Nathirdole secundum antiquam extentam XLix lib. et xvi d.

A further list, the bishop's, reveals that the thanage of Aberdeen was divided in two, one part held by Mariota de Kardene and the other by John Herice.[4] It also mentions a thanage of Fermartyn and a thanage of Abirkerdor.

The accumulation of all this evidence goes far to suggest that the thanage was a unit of the royal demesne and that the thane was an official in its administration. The link with the burgh is important as the burgh was essentially an exacted royal manor and the thanage is linked with both burghs and manors in the king's hands. Alexander II's writ to the thegns of Dul and Forterkil about the building materials given to Scone reads like a writ to officials, to ministri. The

1. Aberdeen i p.18.
2. Ant.Aber & Banff p.146.
3. Aberdeen i 55.
4. cf. R.M.S. i 253.

demesne was frequently fermed and in one case is a conjunction firmarii vel thayni. The 1292 inventory includes an entry which places thanes along with other royal officials and not with barons.

> in uno sacculo...xiii rotuli de compotis vicecomitum, ballivorum, firmariorum, thanorum, burgorum et aliorum de predictis compotis reddentibus.[1]

Another piece of evidence suggests an official capacity for the thane, rather than a feudal position. When William the Lion (1187/99) confirmed the tithes to the church of Moray he made provision for their collection according to custom et adhuc est consuetudo in episcopatu Sancte Andree and according to the assize of David.

> Scilicet ut si villanus fuerit qui decimam suam vel aliam rectitudinem ecclesiasticam dare noluerit. Theynus sub quo rusticus ille sit vel dominus eius si dominum habuerit distringant illum decimam illam...reddere et suum ab eo forisfactum accipiat scilicet unam vaccam et unam ovem. Si vero theynus sub quo rusticus iste fuerit vel dominus eius si dominum habeat illum ad hoc non distrinxerit vel si propriam decimam...detinuerit vicecomes in cuius balliva hoc fuerit compellat detentorem decimam persolvere et contemptorem assise regis David et mandati mei sive theynus sive dominus rustici fuerit mihi forisfactum suum reddere...viii vaccas. Si autem vicecomes...negligens...fuerit...justicia mea compellat...et transgressorem assise regis David et precepti mei quicunque fuerit sive vicecomes sive theynus sive dominus rustici mihi forisfacturam reddere scilicet viii vaccas.[2]

Here the thane is represented as being outside the feudal structure, and contrasted to the villein's lord, but within the official structure, below the sheriff. The extract could bear the interpretation that if the villein is on the king's estate, the thane must take action, if on someone else's land, his lord is responsible.

The thane too had a certain jurisdiction in royal lands - in the prepositura of Kymmyly when Alexander took all the pleas to himself he

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1. APS i 113.
2. Moray 5.

reserved the thane's pleas - preter ea que ad thaynum pertinet[1] - and in the thane's court such matters as that cited above would be dealt with.

Although thanes could be ranked with sheriffs, justiciars and bailies, they also ranked with the aristocracy of the land - "bishops, abbots, earls, barons and thanes and all the community of the kingdom"[2] - in which list the representatives of officialdom had no part. They were expected to be present in the army and they appear along with bishops, abbots, barons and knights in the list of those to be fined for absence from the army de illis qui ab exercitu abfuerunt.[3] An account of the battle of the Standard by Richard of Hexham tells us that "king David entrusted the siege of Wark to two of his thanes - that is, of his barons - with their people."[4] An English observer thus equated thanes with barons.

Altogether it seems that the Scottish thane of the XII and XIII centuries was in the same position as his X and XI century English namesake - a halfway stage between royal official and landowner - and was largely connected with the royal demesne in some sort of administrative capacity. The names of thanes of the XII and XIII centuries were all Celtic which suggests something indigenous and outwith the sphere of Anglo-Norman influence. The truth of their position probably lies in a remark made by Maitland on the position of English thanes and drengs that "they constituted a class for which no place

1. Moray 34.
2. APS i 377 x.20.
3. APS i 398 c.2.
4. S.A. 189.

could be readily found in the new jurisprudence of tenures,"[1] and clear parallels exist to the thegns in Northumbria.

Of thegns in England Jolliffe has said

> The title of king's thegn may be applied to any official of high standing but especially of ministri below the rank of ealdorman and in constant use and active service and, above all, of those in immediate attendance on the king's person.[2]

> These were the thegns who acquired land and eventually established themselves as a landed aristocracy, but there were also thegns on every estate in the kingdom who must be distinguished from the king's great thegns and in Northumbria we find them in large numbers forming a class intermediate between reeves and the peasantry. Their status there had by the XII century fallen low and they worked as sicut villani - but after the Norman Conquest their land frequently came to be regarded as feudofirma.[3]

Jolliffe stresses that in origin thegnage was an office and even in the XI century the king laid upon thegns the primary responsibility for judgment in the shire and hundred, regarding them as on the same footing as reeves.

One charter of William the Lion seems to class thanes with nativi. He gave the bishop of Aberdeen the lands of Brass cum omnibus nativis dictarum terrarum thanis meis tantum exceptis.[4] The exception, however, was probably more significant than the association, and the arrangement would accord with a position for the thane similar to that of reeve.[5] The existence of baronial thanes is in accordance with this position, e.g. c.1199 a charter of the Earl of Strathearn was

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1. Domesday Book and Beyond p.308.
2. Constitutional History of Mediaeval England p.88.
3. Constitutional History of Mediaeval England p.93.
4. 1170. Aberdeen i 12; Ant.Aber.& Banff p.147.
5. In England when John ordered an inquest in 1205 into sergeanties, thanages and drengages of the honour of Lancaster, (P.& M. i 334) thanages were distinguished from villein tenures.

witnessed by Anechul theino meo.[1] They were probably quite common and fulfilled the same function on baronial as on royal estates.

Although thanes were to some extent outwith the feudal scheme of things in Scotland as in northern England, the institution could not remain impervious to the feudalizing influences. The concept of a "thanage" is probably an indication of their adaptation to new ideas. They seem to have preserved to some extent their original character of ministri but they could not escape the impact of Anglo-Norman feudal ideas and their official position would tend to become blurred by feudal theory. The tendency also must have existed, as in England, for the thane to acquire land for himself, and the distinction between the king's land he administered and his own land would become confused. In an atmosphere of feudal tenures, it is likely too that some idea of tenure of land, as contrasted with office, would creep into his position on the royal estates.

Something of this seems to be reflected in the case of Malcolm "quondam" thane of Calentyr. Alexander II gave the land of Calentyr to Holyrood ad feodifirmam of 160 marks and described the land in these terms:

> quam in manu nostra tenuimus die qua assignavimus Malcolmo quondam thano de Kalentyre quadraginta libratas terre in Kalentyre

and the 40 librates were saved to him. As soon as the land was given to Holyrood, it went out of demesne and Malcolm's position became quondam, although he retained the land given to him as his own. The use of the word assign in describing his endowment is also interesting.

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1. Inchaffray 4, 9, 14.

There is another charter of Alexander II of about the same date granting to Malcolm quondam theino de Calentyr

> all the land which the abbot of Melrose, Walter Olifard justiciar of Lothian and John Maxwell chamberlain and other trusty men handed over to him by royal command, in exchange for all the land which was Edgar's in Nithsdale and for the quitclaim of all right which he and his heirs had in it et similiter pro quieta clamacione tocius terre quod habuerint...in terra de Calentyr.[1]

This charter may be recording a later resignation of the 40 librates reserved to him, but if not, the quitclaim must apply to his "thanage". It is also interesting that the land of the former thanage was given to Holyrood in feu-ferme for 160 marks - perhaps a continuation of the ferme owed by the thane and probably a fair return of the issues of the land.

There is an early XIV century grant of a thanage in feu-ferme - which is clearly a continuation in feudal terms of previous practice. In 1309 Robert I granted to William thane of Cawdor ad feodifirmam... totum thanagium de Caldor for 12 marks to be paid to the Exchequer,

> prout consuetum fuit tempore bone memorie Alexandri regis ultime defuncti ita tamen quod terra quam Fergusius dictus Demester tenet ibidem respondeat eidem Willelmo de firma quam reddere consuevit tempore Alexandri.... Tenendum et habendum...hereditarie ad feodofirmam...et faciendo inde nobis servicium nostrum debitum et consuetum tempore Alexandri...[2]

An elusive document is the inquest return of whether the ancestors of Eugenius thane of Ratten held the land of Mefth hereditarily in chief (1262). The jury found they did, but the particulars of tenure may not be applicable to the thanage as Mefth may not have formed part of it.[3]

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1. Reg.Ho.Roy.
2. Cawdor p.4. cf. Moray Orig.20.
3. APS i 91. supra p.213 for Alexander II's grant.

Some XII century references are suggestive of the influence of new policies on the thanage. David I's charter granting the church of St. Mary at Haddington to St. Andrews arranged

> ad tenendam ita libere et quiete de omnibus rectitudinibus de me et Theino et de omnibus aliis qui Hadintune fuerint de me et heredibus meis.[1]

A charter of c.1170 shows the replacement of thanes by a Norman baron. Walter de Berkeley granted to the church of St. Macconoc of Inverkeldre and to Magister Henry parson of it, the king's clerk and his own,

> in perpetuum grescanum et omne servicium quod terra ecclesie et homines super terram manentes solebant facere thaino de Inverkeldi et postmodo mihi facere solebant.[2]

The process indicated by these charters was intensified by the conversion into baronies (granting them in liberam baroniam) which is found under Robert I, although he was still prepared to grant a thanage in its traditional form,[3] but which became rapid and wholesale under David II who seems to have pursued a policy of systematic feudalization. It is possible that the position of thanes and thanages had become so confused (perhaps as confusing to the XIV century lawyers as it is to XX century historians) that some clarification was essential, and that clarification most easily took the form of stressing the identity thane-baron and ignoring the thane's ministerial aspect. But, bearing in mind the XIII century association with royal demesne, it may not be far-fetched to suggest that the conversion of thanages into baronies

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1. L.C. CXXII; St.Andrews p.181. Lawrie suggests, without giving any grounds, that Theinus was not a thane but a local landlord. Without stronger foundations that cannot be accepted.
2. Arbroath Vetus 56, 57.
3. supra p.225.

may be linked with complaints by Parliament under David II that the king was infringing his coronation oath and alienating crown patrimony.[1] If every grant of a thanage in baroniam were construed as an alienation of royal demesne, complaint was justified, but it is probable that these grants were recognitions of accomplished fact. The tendency during the English wars was towards independence and initiative among local landowners. The thanes probably acted more and more as independent landowners to such an extent that it would be advantageous to the crown to have the thanage recognized as a barony.

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1. APS i 492.

CHAPTER IX

The Barony

A noticeable feature of XII and XIII century land tenure is the absence of the technical tenure in baroniam. There is no grant by any of the XIII century Scottish kings of a barony, nor is there a single instance of the (later) distinctively Scottish grant in liberam baroniam. The first grants in liberam baroniam come from the reign of Robert I, and in the XIV century it was common practice to erect lands into a barony. The XIV century had apparently a concept of barony which was lacking in the XIII.

In England by the XIII century a barony had become an essential part of the tenurial structure. It was regarded as a unit for purposes of administration both internal and external. The caput was its symbol and seisin at the caput was adequate seisin for all lands no matter how scattered they were. The unity of administration united crown and tenant. The baron answered for his tenement as a whole in aids and scutages; dealt directly with the crown in financial, military and judicial matters; and was entitled to individual, instead of general, summons to perform servicium debitum in the army where he led his retainers under his own banner. The most essential practical differentiation of the barony was, however, its relief. When Glanvil gave a defined relief for a knight's fee, he said that baronial relief was dependent on the will of the king, and Magna Carta defined baronial relief as £100. Clearly the heavier relief was the royal incentive to create baronies, while its unity was advantageous on both sides.

There is no indication of such a highly developed concept of barony in Scotland at this time. During the XII century there are frequent references to barons, but the word had not become applicable exclusively to the king's barons. They are described as barones regis or barones mei,[1] but there are signs that a certain class was becoming differentiated. They were important in government,[2] and a grant could be made with terms of tenure described "as any baron holds his fee",[3] while the class and dignity involved was suggested in those grants in frankalmoign as held de comite vel barone.[4] In the XIII century the word barony begins to be used. At first it has only a sort of geographical connotation, similar to that of feudum.[5]

Dating is difficult in many of the charters cited, but the first use of the word seems to be a reference to baronia de Renfru of before 1204[6] which recurs in 1219 and again before 1246.[7] The uses of the word are to express the position of the lands geographically and probably feudally, expressing a distinct feudal concept - the holding of a baro and perhaps even of a king's baro. It may only in its most restricted sense mean the lands themselves, the endowment which symbolizes his relationship with his lord, and it may mean and does mean the status, the feudal dignity, of these lands which arises out of that relationship. The next mention, in time, brings out the indefiniteness of the concept which this word represents. In 1225 in a contro-

1. e.g. L.C. C; CXXX; Dunfermline 4; Holyrood 18; APS i 93, 94.
2. L.C. CXXX; Dunfermline 4 etc.
3. L.C. CCXXII.
4. e.g. Melrose i 80.
5. supra p.
6. Paisley p.54.
7. Paisley 111, 88.

versy between the bishop of Moray and one Robert Hod before papal judges delegate about the manor of Lamanbrid, the king claimed (successfully)

> predictum manerium suum esse baroniam et ideo de ipsa in curia regia et non ecclesiastica debere litigari.[1]

Here the word has the force of lay fee as opposed to free alms,[2] but the use of the word suam is interesting and brings out the idea that a barony is more than just a fee - a fee-in-chief. This contrast of barony to free alms is frequently brought out in English record.

A grant by Alexander Steward to Dryburgh (1246) of the rents de tota terra pertinente ad baroniam nostrum[3] suggests the unity of the barony. A grant to Scone, a confirmation by the Earl of Winchester (later confirmed by Alexander II) of a grant by William de Len of land

> que fuit de baronia patris mei comitis Wintonie infra burgum de Perth[4]

confirms the characteristics already indicated. The land in Perth was only one part of the Earl's land, divorced from the rest, but the word barony suggests a binding connection.[5]

A reference to a caput comes from c.1260 and reinforces the other suggestions of unity. Peter of Aberdeen resigned to Walter de Rossy tanquam domino capitali baronie de Rossy the six marks annual return which he had from the mill of Rossy.[6]

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1. Moray Orig. 6.
2. infra p.332.
3. Dryburgh 211.
4. Scone 79, 81.
5. cf. the sale of Herveys son of Humphrey Wilbeter of Forfar to Balmerino of land to be held sicut aliqua terra in regno Scocie de baronia in aliquo burgo tenetur. (Balmernioch 36)
6. Arbroath i C.O. IX.

In 1248 a reference in connection with the church expresses the idea of unity more fully. John, prior of St. Andrews, with consent of chapter granted to culdees of Lochleven the island of Lochleven and

> integram baroniam de Kirknes cum connexis annexis et pendiculis eiusdem.[1]

In the same year the phrase baronia de Coldingham is used to describe the lands originally granted by Edgar and confirmed by David I in elemosinam.[2] In the second half of the century such references become more frequent, e.g. Adam de Sacrino granted to Kelso land which he had infra baroniam de Boulden.[3]

Other indications are that the barony had definitely become a unit apart from the person who held it and it acquired a position in the judicial organization.[4] In 1256 in the legal dispute between the sheriff of Perth and Dunfermline an inquest was held per plures baronias, and the result was described as the veredictum baroniarum.[5] In 1271 suitors from baronies in Roxburgh formed an assize,[6] and we can see how this system operated from the record of the inquest on the land of Polnegulan (1259) which was held per has baronias,[7] and in the inquest on the succession of Symon the janitor of Montrose (1261),[8] and in the inquest on Pandevinan which was held per baronias et burgenses.[9] In 1278 the resignation of the lands of Drumravac by William

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1. St.Andrews p.121 and also pp.177, 179.
2. Raine LXXIV; L.C. XVIII; LXV.
3. Kelso ii 353.
4. see generally Court Book of the Barony of Carnwath intro. S.H.S.
5. Dunfermline 85.
6. Soltre.
7. APS i 89.
8. APS i 90.
9. APS i 88.

de Galliston to John de Hay was done coram baroniis de Carall, Kyppoke, de Ardry et de Carnelyn and John de Hay in his grant extended the information, saying that it was resigned coram viris fidedignis de baroniis istis videlicet... and the names are given of two men from each barony and three from the burgh of Crail.[1] A more unusual case is the authorization given to Melrose during the reign of Alexander III by Alexander Steward that in certain circumstances the monks can visnetum capere per baronias quas voluerint.[2] A charter of 1315 further indicates the judicial position of the barony. In a grant of Robert I to Sir Walter Fleming of land in Ketnes it was stated that Walter was to do one-eighth service of a knight in the king's army, Scottish service used and wont

> unacum proparte unius secte ipsium contingente de baronia de Kettenes faciende ad curiam vicecomitatis de Forfar.[3]

The royal rental for the sheriffdom of Aberdeen and Banff of Alexander III's time, which survives in the register of Aberdeen, gives evidence of tenure of baronies. Only three are mentioned, but any which returned military service would not be recorded as the record is restricted to lands producing money rents or renders in kind. The services which those three returned are very miscellaneous. The barony of Sydgat renders xvi marks; the barony of Uchtrerlyss one sparrowhawk (esperuarium); and the barony of Bothymayng cxx lib.[4] An inquest (1303/4) at Roxburgh which was, of course, retrospective found that Lady Joanna de Vescy was lady of half the barony of Wilton

1. Balmerino 42, 43.
2. Melrose i 325.
3. Menteith 19.
4. Aberdeen i 55 et seq.

which she resigned to Alexander III and with which he infeft herself and Sir Thomas de Chartres jointly. The jury knew there was such an enfeoffment but knew nothing of its tenor. Sir Thomas died in Scotland beyond the mountains, an enemy to Edward I. Lady Joanna died long before the Scots wars and Sir Thomas remained seized. The half barony was held of the king in chief by the service of the fourth part of a knight's fee and was worth 10 marks yearly.[1]

At the end of the century, however, there are approaches to the XIV century tenure in baroniam. The first charter which grants a barony in so many words is of date 1299/1311, when William Earl of Ross received the whole barony of Edidoer, namely the castle with the davach called Glastulauch, another davach...a third davach...a fourth davach of Kilcoy and other fractions of davachs. He was to hold the barony of the king of Scots in chief, fee and heritage as freely as any barony held or possessed in the kingdom of Scotland in the northerly part of the mountains.[2] This phrase "as any other barony" was the significant one for the development in liberam baroniam. Similarly in 1293, a grant by John Balliol to John de Insula of land in Whytesum was to be held like any other barony for the service of half a knight's fee.[3]

From this evidence it is impossible to know how far the English concept of a barony prevailed in Scotland. The Regiam merely repeats Glanvil on the subject and cannot be taken as independent. It is

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1. Bain iii 1435.
2. Munro of Foulis 1.
3. Reg.Ho.Roy.

clear, however, that the germs of the distinctively Scottish tenure *in baroniam* were present in the XIII century before the legal technique of the early XIV century produced a classified tenure *eo nomine*.

CHAPTER X

Lease-holding

In her Social and Economic Development of Scotland, Miss I. F. Grant speaks of a lease of 1312 as "almost the earliest written lease in Scotland".[1] In fact there are written leases in some cases a century older and there is considerable evidence of land being granted and held by lease in this period. Often the grant was for life, but some definite terms were arranged for and the tenants were often men of considerable importance and the lands of some value. Most usually the leases concerned church lands and they are in accordance with the accepted view of the administration of church property,[2] but one lay life grant survives to indicate that the practice was used in lay estates also - a confirmation by Patrick Earl of Dunbar of a grant by his vassal Richard de Saunes to David de Graham of land in Melostan for life.[3] It is, however, to be expected that the records should be more informative of church grants than they are of lay grants. The earliest such grant is of 1170 of a lease from Glasgow. Richard de Moreville recorded that he had received the land of Gillemoriston ad firmam from Glasgow, to be held pro me et heredibus meis for 15 years from 1170. For this he had given 300 marks to bishop Engelram and he swore that at the end of the term, the land would be returned.[4] In spite of his oath, he proceeded to grant the land to Edulf in fee and heredity for the service of one knight.[5]

1. p.87.
2.
3. Kelso i 131.
4. Glasgow i 44.
5. Glasgow i 45.

It is not clear what the payment of 300 marks stood for - whether it represented a purchase of the lease, or whether it was advance payment of the ferm. Nothing is said about the yearly farm. The oath that the land would be returned is significant especially in the light of the later transaction. It must sometimes have been difficult to oust a tenant at the end of a lease. The problem was one which faced English religious houses in the XI century, when they found considerable pressure towards the conversion of leases into feus, especially when the leases were long, e.g. Oswald of Worcester's leases for three lives. It is likely that similar circumstances existed in Scotland and similar pressures may have produced some of the feu-ferme grants. If the problem arose in the case of a 15-year lease, it must have been more acute with leases for one or more lives. Some instances are found in Scotland, however, of grants similar to the early English ones which held for several generations. They are of late date.

1) 1272. A lease by Paisley to Thomas and three heirs of the land of Fulton explicitly states the provision that

> post dies predictorum trium heredum Thome et Fulton ad usus nostros devolvetur ita quod nullus post decessum trium heredum... nomine seu ratione ipsorum occasione huius conventionis...clamare poterit,

and the rent was fixed at 8 marks sterling for all service and secular demand et pro relevio et duplicatione firme. The lease was given to Thomas

> propter quandam pecunie summam quam in utilitatem monasterii nostri profitimur esse conversam

and Thomas and his heirs were prevented by the terms of the lease from alienating more than 6 marks without Paisley's consent. (The land

had been previously held by Antony Lumbard who resigned it for money to pay his debts.)[1] The purpose of this lease is clear - it was a means of repaying the debt, or a pledge for its repayment, and a perpetual grant would not meet the situation. It is, however, strange to have provision made for relief in a lease and the reference to duplicatio firme is reminiscent of feu-ferme grants.[2] There is no evidence as to its final fate - whether Paisley managed to assert its right at the end of the lease or whether Thomas's descendants remained in possession.

2) Another lease, for two lives, survives. It uses an expression which has been discussed with reference to some of the early feudal endowments, and here the record is evidence of the termination of the lease at the end of the stated period. In 1284 William de Kymmonde resigned to Cambuskenneth the land of Badinath which William his grandfather held of the monastery sibi et unico tantum heredi. Because his mother died before her father, the land descended to him tanquam uni heredi et ultimo in vita sua tantummodo.[3] It is not known why William resigned as by the terms of the lease he was entitled to hold for life. Perhaps the missing out of a generation by the succession of a grandson was more than the abbey had bargained for and pressure had been applied.

3) In 1265 Alexander Comyn Earl of Buchan received the land of Elon in Buchan ad firmam from the bishop of St. Andrews

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1. Paisley p.52.
2. supra p.183
3. Cambuskenneth 49.

habendam et tenendam nobis et duobus heredibus nostris in tota vita nostra

for a return of 2 marks.[1]

An early life grant is that of William the Lion to Hugh of Roxburgh his clerk of terram abbacie de Munros to be held of Arbroath in free alms. He was to hold it

omnibus diebus vite sue...sicut Abbas et conventus de Aberbrothok terram illam de me vel alias terras et tenuras suas de me et heredibus meis...in liberam et puram elemosinam tenent

for a return of 3 stones of wax to Arbroath.[2] The insertion by the crown of a tenant on land owned by a religious house in frankalmoign is paralleled by the Coldingham case of Swinton.[3] Arbroath, however, was a very recent foundation at this date and it seems that the king was ensuring the tenure of an existing occupant of the lands - by a device similar in principle to the insertion of a new holder between himself and his previous tenant.[4] A life lease answered the purpose and in the case of a churchman was the only lawful form of tenure. A similar provision was made at about the same period for a hermit in Moray and recorded in a confirmation by the king to John the hermit of a gift which the bishop of Moray had made at his request of an island in the lake of Lunnin and half a carucate in Duldavach - precipio ut predictus Johannes quam diu vixerit...teneat.[5]

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1. Coll.Aber.& Banff p.311.
2. Arbroath Vetus 95 1178/80.
3. infra p.247.
4. cf. the similar reservation of a lay tenure in Alexander II's gift to Andrew bishop of Caithness of three davachs of Fynlarg salva tenura Gyllemaked Macgyllpatric in vita sua. (Moray 37)
5. 1171/84. Moray 3.

Another case of a life grant to a cleric is May's grant to the chaplain of Crail for life of the land in Berwick given to the priory by Gilbert of Berwick. The rent was 4s. twice a year.[1] Yet another was the grant of the prior of St. Andrews to Peter de Campania, clerk, for his service of the whole of the priory's barony of Kirkness to be held for the whole of his life for a return of 1s. to the priory annually.[2]

The life grant had more general use and was commonly used by the church as a method of exploiting their land, e.g. in 1221 abbot William of Holyrood granted to the lady Aufrica daughter of Edgar all the land which the abbey had from her father in Dalgarnok[3] for the whole of her life

> Reddendo...primis quattuor annis 1 mark, post quattuor annos in tota vita sua 20s.

but if the land were uncultivated and waste she was to pay one mark for as long as it was uncultivated and waste.[4] Here the device of a life lease was used to allow the daughter to occupy her father's lands in spite of his alienation, but the terms of the grant suggest some encouragement of clearing and cultivation.

The form could also be used to allow a donor full use of his lands for his life even when he alienated them. This was done in one case as a result of litigation. As a result of a suit in the justiciar's court in 1284, John of Aldhus resigned to Paisley all claim and right to Aldhus which his father had previously resigned. Paisley then

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1. St.Andrews pp.389/390.
2. St.Andrews p.177. pre 1248.
3. Holyrood 52, 55.
4. Holyrood 68.

granted part of the land of Aldhus ad firmum to John to be held toto tempore vite sue propter 6s. 8d. solvendos.[1]

The danger which was indicated in the earliest lease[2] - of an enfeoffment made by a leasee which, although it could not stand at law, could cause considerable inconvenience - was guarded against in a lease of 1284. The grant was between two laymen, but the land was held of Dunfermline and dispute as to possession had been heard in the abbot's court. The resulting agreement provided that Simon should hold the land (Halys) ad sustentacionem suam pro toto tempore vite sue saving to the abbey suit of court, wards, reliefs, aids etc. and to John de Lastalrick, the other party,

> feodo et recto dicti tenementi de Halys dictus Johannes dictum Symon nec aliquem alium sine licencia domini abbatis aliquo tempore inposterum infeodare possit.[3]

Often an indirect life grant was made to the wife of a tenant - if the tenant should die without heirs - e.g. in 1207/9 Richard abbot of Coupar, with the consent of his chapter, granted to Richard White of Dundee the toft in Forfar which the abbey had from the gift of Adam White of Forfar free of all service except the king's for a yearly return of 1 lb. of wax and 1 lb. of cumin. But if Richard had no heir the toft was to remain to his wife in her lifetime and after her death would revert to Coupar. [4]

There are fewer records of leases for a term of years, but those which survive stipulate periods of 10, 15 and 20 years. A shorter one - for 5 years - is only known indirectly. Coupar could not

1. Paisley p.65.
2. supra p.235. Glasgow i 45.
3. Dunfermline 230.
4. Coupar XX.

receive full sasine of a bovate in Gowrie because William de Hay held it ad firmam from Martinmas 1242 for five years, and the donor gave another bovate until the abbey could have plenariam et pacificam saysinam of the other.[1] The earliest is 1170 - the Glasgow lease.[2] In 1212 an agreement was made between Coupar and William bishop of St. Andrews whereby the bishop granted to Coupar totum abbathein de Erolyn to be held ad firmam...in xx annos completos for a return of 11 bezants, 10 stones of cheese, 12 Scottish sacks of barley iuxta quod antiquitus solvi solebant and saving the cain of Malcolm de Ketenes and his heirs. After 20 years the land was to revert to the bishop unless he consented that the monks continue to hold it.[3] In 1232 John de Crebarrin let to Dunfermline 80 acres and a croft of his demesne of Crebarrin in finem xv annorum termino incipiente 1232 for a return of 12d. yearly.[4] This was in contrast to his previous grants of feu-ferme,[5] and the arrangement has the appearance of a compromise. If he or his heirs died, the years of wardship were not to be counted within the lease. In 1255 Richard de Nicole granted to Kelso 2 acres of Molle ad firmam for 10 years free from all secular service, mentioning no rent, but containing the interesting provision that if it happened that the abbot was prevented from full enjoyment of the lease per potenciam domini Regis seu dominorum feodi vel aliquo casu the land could be held past the end of the term.[6] In 1266 Kelso leased a carucate at

1. Coupar LVII; ~~infra p.~~
2. supra p.235.
3. Coupar XXI.
4. Dunfermline 184.
5. Dunfermline 182, 183.
6. Kelso i 160.

Bondington to Thomas Batail burgess of Berwick for 20 years on condition that he should improve and keep in repair the houses and buildings.[1] An interesting instance survives of a lease granted in free alms. William de Hay granted to St. Andrews a carucate in Petmulyn

> a festo sancti martini proximo postquam rex anglie iniit Yberniam usque ad perfectum xx annorum et post xx annos. Reddendo mihi et heredibus meis singulis annis pro omni servicio dimidiam marcam...tenendam...in liberam et quietam elemosinam as they hold their other frankalmoign.[2]

This grant shows some inclination towards precision, but precision is in fact avoided and it is difficult to know what was intended, why this form of expression was used and how the length of the lease would ultimately be determined.

These survivals are too few to allow of any deduction of the rules of XIII century lease-holding, but they do give some indication of the scope of this form of tenure in the early period.

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1. Kelso i 48.
2. St.Andrews p.313.

CHAPTER XI

Frankalmoign - Grants in liberam elemosinam

Most of the surviving charters of the XII and XIII centuries take the form of grants of land, revenues and privileges to the Church. The endowment, both royal and baronial, of the church in its secular and its regular institutions was generous, it was more regularly recorded, and its records preserved so that more charters of church endowment survive than of any other form of enfeoffment.

Information about church lands is, however, slight before the period of the introduction of the Anglo-Norman charter as an instrument for recording gifts. Although there is some evidence of the extensive church ownership of land before the widespread endowment of the sons of Malcolm and Margaret, it is reticent about the way in which the estates were held. The account of Earl David's inquiry (1124) into the possessions of the see of Glasgow[1] is of doubtful authority[2] and in any case only lists the lands without indicating the source or mode of their tenure - the privileges and obligations which they may have carried. The notitiae of the Book of Deer yield the earliest evidence of all,[3] but give no information beyond the fact of the gifts and a vague "freedom from mormaer and toisech to the day of judgment". The Register of the priory of St. Andrews provides XI century evidence of a more specific nature, and the negative privileges of freedom from

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1. L.C. L.
2. infra p.261
3. L.C. I.

> omni munere et onere et exactione regis et filii regis vicecomitis et alicuius et sine refectione pontis et sine exercitu et venatione

in the notitia of Macbeth's grant[1] could be interesting and valuable if we could be sure it was recording the contemporary privilege. The reference to vicecomes[2] may, however, mean that the notitia is of David I's reign and it is difficult to be sure that the grant is then recording a genuine tradition, or how far it is expressing a genuine tradition in contemporary terms.

Some of the early royal grants to the church give indications of previous religious tenants, but in every case the tenant was a churchman apparently holding individually and nothing is said about the terms of his tenure. The most specific connection with older tenure comes from an arrangement between Holyrood and Engelram de Balliol who had had a dispute de antiqua tenura sua which Engelram ended by granting that they should hold the controversial land

> per antiquam tenuram per quam tenebunt...in puram et perpetuam elemosinam.[3]

Unfortunately there is no suggested standard of antiquity and as Holyrood was a David I foundation, it cannot go beyond that. It is understandable, however, that the old religious establishments would continue to hold their possessions and the occasion for regrant would not arise, e.g.

1) David I granted to Coldingham (c.1135)

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1. L.C. V.
2. In the absence of evidence one must remain doubtful about the vicecomes, although there is nothing to preclude the existence of this official in Macbeth's reign in, at least, the Lothians - the Anglian part of Scotland.
3. Holyrood 70.

> ...illam piscaturam quam Swain meus [presbyter] fecit et a saxis liberavit quando Fiswic tenuit[1]

and a mandate of Earl Henry records that Swain had quitclaimed and returned Fishwick and other lands to the monks and that praedicti Swen omni vexatione remota, they should hold their lands in peace.[2]

2) Charter of David I granting to Coldingham a toft and houses

> in villa de Edenham quod Gillebertus presbyter de Stitchel de me tenuit[3]

3) Grant of David I to Nicholas his clerk of the grove within the bounds of the land which Syrand the priest held of me before him in Pettinain.[4]

4) Grant of David I of the land of Perdeyc to Glasgow in perpetual alms

> ...quam Arcelinus eiusdem ecclesiae archidiaconus de me tenebat in nemore et plano...per rectas divisas sicut Ailsa et Tocca eas tenebant die quo praedicta terra fuit in meo dominio ita quod archidiaconus faciat Deo et Sancto Kentigerno de Glasgu quam modo mihi facere solebat scilicet annuatim unam marcam argenti pro omnibus servitiis et consuetudinibus quam diu vixerit. Post decessum vero archidiaconi remaneat predicta terra ecclesiae deservienda...[5]

5) This last can be compared with a charter of Malcolm IV confirming the gift which king David gave to Matthew archdeacon of St. Andrews

> in abbacia de Rossin in feudo et hereditate sibi et heredi suo tenendum de me et heredibus meis...

Malcolm then confirmed the grant of Rossinclerach to the priory of St. Andrews by Matthew the archdeacon in liberam elemosinam.[6]

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1. L.C. CVI.
2. c.1150. L.C. CCXXXVI.
3. c.1136. L.C. CXI.
4. 1147 x 1153. L.C. CCV; Dryburgh 48.
5. c.1136. Glasgow 3; L.C. CIX.
6. St.Andrews p.200.

These grants take us into the misty period of Culdees and pre-Anglo-Norman church reorganization and of land-holding by individual priests. Land was similarly held in XI century England[1] before the Norman Conquest. Whatever the arrangements which had previously held, all these cases are concerned with transferring these holdings to the corporate tenure of an institution. It looks as if there was no countenance to be given to churchmen holding land individually and independent of their churches. If more were known, these are probably important illustrations of the adaptation of the holding of old church property to new ideas.

These arrangements about land held by the archdeacons of Glasgow and St. Andrews in an apparently private capacity should be connected with the grant of Hugh Freskyn (eldest son of William Freskyn, sheriff of Invernairn 1204) to the archdeacon of Moray

> et illis heredibus de parentela sua quibus dare et concedere voluerit et heredibus eorum

of land in Sutherland, for the service of one archer and the performance of the king's forinsec service[2] - which grant William the Lion confirmed salvo servicio meo.[3] In spite of the inheritance clause in the deed of enfeoffment, the archdeacon granted the lands to the chapter of Moray,[4] which is in accordance with the actions of the other two archdeacons.

The land of Fishwick (No.1) raises an interesting point and seems to indicate some resistance from the old tenant to the passing over of

1. D.B. passim.
2. Sutherland 1.
3. Sutherland 2.
4. Moray No.119.

property to a religious foundation. The force of rededisse in the second document seems to be that Swain had regained possession between c.1135 and 1150, or that he had never relinquished ownership.. A similar case which was also connected with Coldingham occurred over the lands of Swinton,[1] where the line of previous tenants successfully retained possession for a considerable period, apparently with, at one point at least, royal connivance.

The difficulties which could arise in this way in a reorganization of land-holding, both clerical and lay, to provide for the endowment of new religious bodies, may be regarded as giving point to the stress on the liberty of disposition in some of the early Coldingham grants. Edgar's original grant of Swinton to Coldingham had used a phrase which also occurs in two of his other Coldingham grants: ad voluntatem monachorum Sancti Cuthberti disponendam.[2] Neither this phrase nor its equivalent occurs in any other charter apart from three of Edgar's five surviving grants and in Earl Henry's confirmation of Swinton. Unfortunately Edgar's grants are only known through the Coldingham deeds, so it is impossible to know whether or not the phrase was applied elsewhere or whether it was a local Coldingham arrangement. It does not habitually appear in later Coldingham grants, but its revival in Earl Henry's confirmation of Swinton at the end of the controversy and in the settlement of a dispute involving the priory's right to the free disposition of its property is probably significant.

The problem of the origin of lands granted by the crown to religious foundations in this periodhas already been discussed in relation

1. supra p.26 [illegible].
2. L.C. XX; also XIX; XXII.

to the wider problem of the origin of all the endowments of this period, both lay and clerical, and the possibility of large-scale redistribution. Some of the land given to the church was, as we have seen, originally held in some way by the church or its representatives. Much of it came from the royal demesne - to its ultimate impoverishment, e.g. Earl David's grant of totum dominium meum de Malros in the foundation of Selkirk abbey;[1] David I's grant to Kelso of

> Ravendenam cum suis rectis divisis sicut eam melius habui in meo dominio;[2]

William the Lion's grant in the foundation charter of Coupar-Angus chaciam meam cum tota wastina mea que ad illam pertinet[3] is a good example of the nature of the land which could be made available to the church, probably with the intention of clearing and cultivation and, in this case, exploitation by progressive Cistercian farming methods, although the same interpretation cannot be applied to Alexander II's grant to Melrose of totum vastum nostrum of Ettrick,[4] which remained waste and hunting ground, with no possibility of cultivation. In some grants the phrase sicut eas ego habui in mea propria manu indicates a demesne origin.[5] Whereas the phrase is used in David I's endowment of Cambuskenneth it is dropped in Malcolm IV's and William's charters confirming the same lands, being probably considered as irrelevant by then. Alexander II founded Pluscarden in foresto nostro de Elgin and endowed it with

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1. L.C. XXXV.
2. Kelso 372; L.C. CLXXVI.
3. Coupar II.
4. Melrose 264.
5. L.C. XVIII; XXI; CLXXIX.

> totum forestum nostrum de Pluscarden et totum forestum nostrum et totam terram nostram de Huchtertyr sicut illa tenuimus in manu nostra et per illas divisas per quas illustris rex Willelmus pater noster eadem foresta...tenuit.

He also gave

> terram nostram de Mefte...salva Anego filio Eugenii et Eugenio filio suo tenura dicte terre de Meft in vita eorum[1]

which provides another interesting example of the reservation of the tenure of existing tenants - in this case for two lives which may indicate one of those restricted grants which have already been met. A grant of David I's similarly reserved the rights of an existing tenant when he granted to Dunfermline a ploughgate in Craigmillar

> et domos in quibus habitabat uxor Rogeri Cassi...et quamdiu predicta uxor vixerit teneat hanc terram et domos de eadem ecclesia si voluerit...[2]

It is uncertain how these tenants held and therefore how far the royal demesne had already been alienated so that these further endowments might simply involve the replacement of lay tenants by the church.

Sometimes, however, the lands donated were resigned by laymen - under pressure or otherwise - e.g. the lands of Cultrach and Balmerino to endow Alexander II's new abbey of Balmerino

> quas eciam Adam de Stawel frater et heres Ricardi Revel nobis ad opus domine Ermengarde regine in plena curia nostra apud Forfar quietas clamavit.[3]

On a reduced scale, these considerations would apply to baronial grants as well and within their fees barons met the same problems in

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1. Pluscarden App.G. p.199. An interesting repercussion of this endowment was another hole in the royal demesne in the form of a grant to Andrew bishop of Moray of terras nostras of Tulychen in Strathspey and Rothuan in Stratheren in Moray (Moray 38) as quittance for 48s. which the bishop used to get from other royal lands which Alexander gave to Pluscarden.
2. Dunfermline 12; L.C. XCI.
3. Balmerino I.

endowment as the crown, e.g. when Maldouen Earl of Lennox granted the lands of Drumthocher and Drumthecglunen, which Ralf the king's chaplain held at one time, to Paisley he provided salvo tenemento predicti Radulfi...in vita sua so long as he paid to Paisley the render of 3 marks, one chalder of flour and one of meal which the Earl used to draw from Ralf from these lands.[1]

A more permanent reservation could be made, involving that an existing mesne tenancy became a sub-tenancy, e.g. Galfridus Cocus de Wittun granted to the hospital of Jerusalem one bovate in alms

> condicione tali quod Isabella sponsa Willelmi de Ridale et heredes sui vel cui ipsa assignare voluerit in feudo et hereditate teneant predictam terram de prenominata domo Reddendo hospitali 1 lb. cumini.[2]

Most of the grants, particularly the early grants, start from scratch, revealing nothing of those problems and saying nothing of previous tenure of the lands. Although lands were granted to the church in feu-ferme and by other secular tenures, the distinctive tenure for church property was tenure in elemosinam. Of those grants which are not specifically in elemosinam, the majority make no mention of any alternative tenure. Some are clearly of a completely different tenure, but the problem arises over those which are not - does the omission of the phrase in elemosinam or its equivalent in a gift to the church imply a differentiation of that grant from one in elemosinam? The problem is only one of the early period, for by the end of the XII century church gifts are clearly of two categories, those given in

1. Paisley pp.158/9.
2. Melrose i 161.

secular tenure and those given in elemosinam. In the XII century, however, the number of undefined grants leads one to ask if any legal distinction was involved or if the omissions of the descriptive in elemosinam only reflect a groping of phraseology to describe the nature of these gifts to the church.

The charters of the early kings to Coldingham illustrate the problem. Duncan II's charter (1094) records dedi in elemosinam sancto Cuthberto...[1] but it was composed under strong English influence and if its initial wording was an imitation of the charters of William of England, the form of grant cannot be regarded as independent either. The gifting of lands to the church in elemosinam was common and almost uniform practice in XII century England. Edgar's charters cannot be so dismissed.

1) His first (c.1098) was not in elemosinam. It granted Coldingham and other lands in Lothian to God, St. Cuthbert and his monks for the souls of the donor, his father, mother, brothers and sisters - free and quit of all customs sicut ego ipse habui in mea propria manu.[2]

2) (c.1100) A grant of the mansio of Coldingham and others with their lands, woods etc. and all customs which his father had - free and quit secundum voluntatem illorum in perpetuum libere disponendas - given in elemosinam for the souls of his father and mother, his ancestors and successors and for the safety of his own body and soul and those of his brothers and sisters.[3]

3) (c.1100) A grant of Swinton on the occasion of the rededication

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1. L.C. XII.
2. L.C. XVIII.
3. L.C. XIX.

of the church of St. Mary at Coldingham is recorded in this form

> ...et ego eadem ecclesiae super altare obtuli in dotem et donavi ...liberam et quietam in perpetuum habendam ab omni calumnia et ad voluntatem monachorum sancti Cuthberti disponendam.[1]

4) (c.1100) A gift of Paxton to St. Cuthbert and his monks ita sicut ego eam habui to be held as free and quit as Coldingham ad voluntatem suam.[2]

5) (c.1100) A gift in elemosinam to God and St. Cuthbert and his monks of Fishwick free and quit et ad voluntatem monachorum sancti Cuthberti domini mei disponendam.[3]

Only two of these five charters (Nos.2 and 5) use the expression in elemosinam and yet the others are clearly not secular grants. No.4, which does not use the term, says Paxton is to be held as free and quit as Coldingham (No.2) which was held in alms. Swinton (No.3) was not granted as alms and yet when Alexander I confirmed Coldingham's ownership sicut breve fratris mei Eadgari regis vobis testatur he spoke of it as Edgar's alms

> Quia ego et frater meus David elemosinam fratris nostri Eadgari et nostram similiter Sancto predicto et vobis monachis acquietabimus.[3]

When David I finally gave Coldingham a general confirmation he included both Swinton and Paxton in the general description in elemosinam.[4]

Although the Swinton grant is not given in elemosinam the charter uses a phrase super altare obtuli in eadem which is used all through this period to express a special sort of church endowment. c.1150 king David granted Nithbren and Ballecristin in perpetuam elemosinam

1. L.C. XX.
2. L.C. XXI.
3. L.C. XXII.
4. L.C. LXV.

to Dunfermline sicut datae fuerunt praedictae ecclesiae in dotem die qua dedicata fuit.[1] Malcolm IV granted in dotem to the church of Forgrund half a carucate in the shire of Forgrund in perpetuam elemosinam,[2] and Alexander II gave in dotem ecclesie sue de Aberbrothoc the land of Nig in liberam puram et perpetuam elemosinam.[3] Another grant of Alexander II's has the same import as David I's to Dunfermline and Edgar's to Coldingham. To Coupar in 1233 he gave

> in dotem eiusdem ecclesia quam dedicari fecimus terras subscriptas...in liberam puram et perpetuam elemosinam.[4]

The granting in those later charters of the same piece of land both in dotem and in elemosinam shows that this kind of grant was not a substitute for in elemosinam. Its use by Alexander II shows it was not an early way of expressing the nature of church endowment. Its gift on the dedication day does indicate its special character - and the connotation of the secular idea of dos indicates it further. There is, however, no way of telling whether a grant like this was subject to any special rules, e.g. as to its alienability. It seems, however, that its nature was appreciated by Edgar's reign.

Doubt, however, continues about grants in alms. Alexander I did not describe Coldingham's holding of Paxton as tenure in elemosinam, but he referred to it as an elemosina. His other two land grants do not use the phrase,[5] but his grant to Scone of the can and custom of a ship is in elemosinam.[6] Earl David used the expression consistently

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1. L.C. CCXXIV.
2. St.Andrews p.205.
3. Arbroath Vetus 101.
4. Coupar XLI.
5. L.C.
6. L.C.

in his English charters and in some of his Scottish grants. The foundation charter of the abbey of Selkirk (1120) records

> Hujus vero ecclesiae monachis in elemosinam perpetue donavi terram de Selechirche...[1]

In 1123 a gift of 100s. to Glasgow for the guilding and restoration of a church was in elemosinam[2] and yet none of his charters to Coldingham use the phrase.[3]

By the time David became king its use was becoming uniform, but there are a few significant omissions. The gifts to Dunfermline are the best illustration. All through the reign gifts of land, tithes, tofts, fishings, churches and rents were being made to the abbey in elemosinam.[4] From this one might deduce that the form of church tenure and its expression in the deed of gift had become stereotyped as in elemosinam, but the two general confirmations which David granted to Dunfermline create further difficulties. The first, issued about 1128, is unusual both in form and in phraseology. The second, issued about 1150, preserves the unusual form and phraseology but introduces one or two differences.[5] The first striking point is that in the first there is no mention at all of the word elemosina and no descriptive tenurial phrase such as in elemosinam appears. There is no specification of a definite mode of tenure nor is it given pro salute anime. The first part is a short confirmation of gifts of previous members of the royal family, leading on to a confirmation of David's own gifts - and culminating in the important tenurial clause

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1. L.C. XXXV.
2. L.C. XLVI.
3. L.C. XXIX; XXV; XXXIII; XXXIV.
4. L.C. XI; LXII; LXIX; LXXVIII; LXXIX; CVIII; CCIII; LXXVII; LXXXVI; XCI; XCIV; CCXXIV.
5. Dunfermline 1 and 2. L.C. LXXIV; CCIX.

> Omnia autem dona praedicta ita liberaliter et quiete praefatae ecclesiae concedo sicut ego terras meas proprias possideo defensione regni mei excepta et justicia regali si abbas in curia sua aliqua negligentia de justicia deciderit.

It is interesting that the word propono is used in connection with those gifts. The king does not confirmo or concedo as is the usual form, and propono has a much less concrete connotation.

The second confirmation is in effect the same as the first in so far as the confirmations of predecessor's grants, the omission of elemosina, the use of propono and the absence of any suggestion of pro salute animarum. Then there is introduced a reference to the grant by David and Earl Henry of Nithbren and Ballecristin

> sicut datae fuerunt praedictae ecclesiae in dotem die qua dedicata fuit,

which was recorded individually in another charter,[1] and which is definitely specified as in perpetuam elemosinam. Similarly the grant of the tractum de Aldeston is transferred to the confirmation charter in elemosinam.

Both these charters are unique in form and it seems likely that the survival of the old in nomine form is connected with the unusual form of grant. It is possible that Dunfermline possessed documents in this form recording these gifts and that David I was induced to confirm them without alteration. The second confirmation has more normal appendages of more recent grants by David, but the older form of confirmation persists. Malcolm IV's confirmation[2] is substantially the same as David's. The gifts of predecessors are confirmed, with no

1. L.C. CCXXIV. supra p.253.
2. Dunfermline 35.

indication of the mode of tenure or the spiritual purpose of the grants (e.g. pro salute animarum). On Malcolm's own account were added certain other lands (which had in fact already been donated by David I) pro salute mei and the manner of the grant was summed up in the phrase of David's confirmation - sicut ego terras meas proprias possideo. Yet Malcolm's other charters to Dunfermline all state tenure in elemosinam, and many give the impression of a stereotyped elemosinary tenure dating from before Malcolm's time, e.g.

> in perpetuam elemosinam sicuti aliqua ecclesia in tota terra mea tenet elemosinas quas predecessores mei pro salute animarum suarum ei dederunt.[1]

By William's reign in liberam et perpetuam elemosinam had become the almost invariable form for church grants, yet the confirmations of both William and Alexander II to Dunfermline continue the same form and manner as their predecessors' grants - with the omission of the sicut ego terras meas proprias possideo clause.[2] The persistence of this Dunfermline formula of confirmation is remarkable, and into the XIII century Dunfermline stands apart from the general tenure of religious houses in not having its original property regarded, or at least stated, as tenure in elemosinam.[3] Something of the same persistence is found in St. Andrews confirmations, though it is neither so pronounced nor so prolonged. Again the form of the confirmation is unusual, the language and expression are highly complicated though neither in form nor in language are they the same as the Dunfermline

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1. Dunfermline 39, 47.
2. Dunfermline 50, 74.
3. but cf. William the Lion's charter to Jedburgh, confirming gifts of David I and others and making no mention of free alms. (Buccleugh)

confirmations. For instance David I's confirmation[1] does not adopt the in nomine form which was usual in the church's own charters and which was adopted in the Dunfermline confirmations, but otherwise the charters seem more likely to have emanated from a religious writing department than from the royal chancery. As in the Dunfermline confirmations, there is no description of the tenure as in elemosinam, although the use of that phrase had appeared in individual new grants.[2] Only two of the individual gifts are not in elemosinam - one of a fishing and toft in Berwick and the other of a toft in Clacmannan.[3] Instead, the gifts were to be held as freely as any elemosina in the kingdom. Malcolm IV's confirmation was different again in form, but its expression of this point was the same.[4] His second confirmation however took the usual form and was in liberam elemosinam.[5]

Both these cases concern institutions well established and presumably well endowed before David's reign and the confirmations are of lands granted in the dark period. It was to be expected that the church would be anxious to continue its tenure of these lands on the terms on which they had been given and would deny any right of the crown to change them. The persistent reluctance on their part to have their lands and possessions reduced to the general descriptive in elemosinam is in marked contrast to the immediate application of the phrase in the foundation of new houses under David's own influence

1. St.Andrews p.190; L.C. CLXIII.
2. L.C. CLXX; CCXXV; CCXXVI; CCL.
3. St.Andrews p.182; L.C. CCXLIX.
4. St.Andrews p.205.
5. St.Andrews p.230.

where he could dictate the terms of the grant.[1] Cambuskenneth is an exception.[2] Its original endowment was not in elemosinam,[3] but Malcolm IV confirmed

> donationes regis David avi mei quas prefate ecclesie in elemosinam dedit[4]

and William confirmed donaciones quas antecessores mei eis in elemosinam dederunt.[5]

The resistance to the use of the phrase in the cases of both Dunfermline and St. Andrews and the hesitation with which it was used in the earliest charters, to Goldingham and to Scone, suggests that concepts of tenure in alms were not akin to the terms of pre-XII century church land-holding. Not much definite evidence as to those terms is available, but some of the clues suggest that broadly it was allodial. That would accord with the situation on the continent - outwith the Norman sphere. In Hainault, for instance, so close to Scotland in position, during the XI and first half of the XII centuries, the church acquired most of its property in the form of allod, but in the second half of the XII and in the XIII centuries, without any decrease, the number of fiefs increased and allodial property declined,[6] the pressure being presumably the donors' interests. It seems likely that a similar situation of allodial church endowment faced those kings of Scotland who had imbibed Anglo-Norman ideas and were interested in asserting their position as lords of the land as a means of more effective control of their kingdom.

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1. supra p.254 for Selkirk; L.C. CXLI; CXLIV; CLIII; CLV; CLXXXIX; CCXLII.
2. cf. Jedburgh.
3. L.C. CLXXIX.
4. Cambuskenneth 50.
5. Cambuskenneth 52.
6. Didier: Droit de Fiefs X.

The only tenurial description given in the Dunfermline confirmations - sicut ego terras meas proprias possideo - suggests a form of tenure directly opposed to the whole feudal concept. In a feudal society no one could possess his lands as the king possessed his - and this Dunfermline privilege is repeated in no other charter. Although a number of other early grants have phrases with a similar ring, their content is smaller and entirely different.

1) Edgar granted to Coldingham the lands which they had in Lothian as free and quit with all customs sicut eas ego habui in mea propria manu.[1]

2) He granted Paxton ita sicut ego eam habui.[2]

3) David I granted lands to Cambuskenneth in 1147:

> Volo itaque ut quaecunque predicta ecclesia in praesenti possidet vel in futuro possessura est ita quiete et libere sicut ego praefatas terras possideo, possideant salva defensione regni et justicia regali si praelatus aliquo impulso a justicia exorbitaverit.[3]

There is a distinction between a clause which confers privileges of royal ownership to its lands and one which hands on land as it was previously held by the king. The second case need only cover boundaries and its material state, its rights and profits,[4] and is a natural product of the great endowment period when lands were given to the church directly from the royal demesne. Thus the case of Cambuskenneth

1. L.C. XVIII.
2. L.C. XXI.
3. Cambuskenneth 51. L.C. CLXXIX.
4. cf. Alexander II's endowment of Pluscarden with totum forestum nostrum de Ploscardin et totum forestum nostrum et totam terram nostram de Huchtertyr sicut illa tenuimus in manu nostra et per illas divisas per quas illustris Rex Willelmus pater noster eadem foresta latius plenius et diffusius tenuit... (Pluscarden App.G. p.199)

whose property was not given in elemosinam cannot be regarded as parallel to Dunfermline's case as sicut ego praefatas terras (donated) possideo has not the same force as sicut ego terras meas possideo.

This wide "allodial" phrase was dropped out of William the Lion's confirmation to Dunfermline. Although the form and phraseology of David I's charter was retained and any reference to elemosina avoided, the charter omitted the significant phrase giving the only indication of the manner of tenure. If the phrase is taken to imply allodial tenure, then its omission would represent a whittling down of this privilege and a further step towards feudalization of tenure. The abbey may have been strong enough to resist a positive statement of the new attitude to tenure, but not the omission of the recognition of the older one. On the other hand, when William came to found a new abbey himself at Arbroath, although he granted all the property in liberam elemosinam in conformity with general practice, he concluded his impressive charter with the Dunfermline phrase

> omnia dona predicta...concedo sic ego terras meas proprias possideo defensione regni excepta et regali justicia.[1]

Can it be that William, conscious of the phrase from its omission from the Dunfermline confirmation (and the omission seems too important to be unconscious), considered it as a pleasing descriptive for his new foundation?

Glasgow is another important religious landowner of whose property in the early XII century there is record, but the evidence of its

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1. Arbroath Vetus 1.

pre-David tenure is inconclusive. Whether the record of Earl David's inquest is genuine or not, the account gives a bare list of the lands, without saying how they were held, by whom they were given, or how acquired, and few are mentioned in subsequent record. One place, Conclud, was the subject later in the XII century of a new grant by Malcolm IV to God, the church of St. Kentigern and Engelramus bishop of Glasgow in perpetuam elemosinam for the soul of himself, Earl David and all his ancestors

> et pro remissione et absolucione mihi et eis habenda a predicta ecclesia de omnibus transgressionibus quas ego et ipsi in praedictam ecclesiam et in eius pastores et ministros gessimus si in aliquo erga eos transgressionem fecimus et nominatim pro terris quas ego baronibus et militibus meis dedi usque ad diem qua baculum peregrinacionis sancti Jacobi suscepi de quibus videlicet terris prefata Glasguensis ecclesia redditus et canum percipere consueverat.[1]

William confirmed Conclud along with Cader and Badermonoc as the lands which his brother Malcolm gave to the bishopric in elemosinam perpetuam.[2] Malcolm's grant reads like a new gift - which casts suspicion on the inquest record - and as a new gift it is given in alms. All the other new grants to Glasgow are unequivocally in elemosinam and Glasgow's evidence on this point belongs to the same group as that of the new foundations.

What then was the import of tenure in elemosinam, which could not be applied to some of the older pre-feudal endowments of the church? Its primary characteristic was the concepts implied in a gift to God, to a saint or to a church and expressed in the word elemosina. Its

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1. Glasgow i 15.
2. Glasgow i 29.

purpose was often expressed in the grant as the salvation of the donor's soul, the souls of his relations and sometimes the soul of his lord or the king. Sometimes the motive was recorded more generally as divine pietate. David I's charter to Urquhart was made ad domus Dei dilatationem et ad sanctae religionis propagationem.[1] Walter son of Thomas of Derchester granted land to Coldstream for the souls of his relations et pro participacione beneficiorum que in prefata abbacie fiunt vel fient.[2] A nice coincidence of spiritual motive and material compensation occurred in Malcolm IV's grant to Conclud.[3] The word elemosina summed up this idea of a gift to the church. It had two aspects - its general religious purpose in furthering the church's aims and prestige and its individual connection with the donor, as a means to his salvation, e.g. the use of the word in a writ of William the Lion to the justices and the sheriff of Berwick forbidding that his servants in the sheriffdom of Berwick

> alias habeant custodines aut alias faciant exacciones in elemosina mea de Goldingham et Goldinghamshire de placitis et querelis quas ipsi movent quas servientes mei aliorum vicecomitum meorum habent in aliis elemosinis meis in terra mea.[4]

The use of the word in this sense is general both before and after tenure of church lands became described as tenure in elemosinam and most of its occurrences indicate a movement towards this final expression, e.g. Alexander I confirmed Edgar's gift of Swinton to Coldingham with the clause

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1. Dunfermline 33. Moray 254. L.C. CCLV.
2. Coldstream 21.
3. supra p.261.
4. Coldingham XXXVII.

> Quia ego et frater meus David elemosinam fratris nostri Eadgari et nostram similiter Sancto predicto et vobis monachis acquietabimus;[1]

1150/2 Earl Henry granted to Dryburgh a toft outside the wall of Roxburgh sicut meam liberam elemosinam;[2] and David I, granting a toft in Haddington to St. Andrews, stipulated it was to be held like any toft de elemosina mea in burgis meis.[3] The inhabitants of a St. Andrews toft in Berwick were to be free from customs and tolls sicut alii burgenses sunt de aliis elemosinis meis.[4] Robert de Quincy gave Holyrood the church of Tranent to hold sicut alias suas habent et tenent elemosinas et possessiones,[5] and William Masculus granted a chapel to St. Andrews as they hold ceteras elemosinas in Scocia.[6] The description of church property as elemosina was so widespread that one finds expressions like that in Malcolm IV's grant of Lesmacdunegil to Dunfermline

> in perpetuam elemosinam...sicuti aliqua ecclesia...in tota terra mea tenet elemosinas quas predecessores mei pro salute animarum suarum ei dederunt.[7]

Occasionally there are expressions which convey the force of a grant to the church more fully, e.g. a grant of land was made in the early XIII century to Dryburgh to be held as

> aliqua terra ecclesie vel alia elemosina ab aliquo in ecclesiasticum beneficium...potest conferri[8]

or even more fully, the grant by William bishop of St. Andrews to Holyrood "in pure and perpetual alms" of a half tithe of corn belonging

1. L.C. XXXI. supra p.26
2. L.C. CCXL.
3. L.C. CCXXVII.
4. L.C. CCXXVI. St.Andrews p.184.
5. Holyrood 36.
6. St.Andrews p.265.
7. Dunfermline 39.
8. Dryburgh 176, 218.

to the church of Kingor

> teneant...nomine simplicis beneficii adeo libere...sicut aliquod simplex beneficium in toto regno Scotie.[1]

Similarly William de Veteri Pontis granted to Holyrood the church of Bolton Tenendam...in omni ecclesiastica libertate;[2] and in the agreement(1224-33) between the bishop of Moray and Walter Cumyn, Walter granted two davachs to the bishop

> cum omnibus pertinenciis suis omnibus juribus et libertatibus tam ecclesiasticis quam forinsecis vel forensibus.[3]

Some means, however, had to be found of bringing these gifts of alms to the church within the feudal framework of land-holding, and the answer was a form of tenure described as in elemosinam. Some of the stages in the development of this concept and its application to church land-holding in Scotland can be observed. One indication occurs in the cases where the land granted was described as geographically situated in a fief, e.g. Alexander II granted Dunfermline the land of Dollar in feudo de Clacmannan.[4] Another similar case implies the grant of a fee to Scone. Alexander II granted to Scone lands of great Blair and small Blair

> exceptis duabus carucatis terre et dimidia mensuratis in feudo de magna Blar quas dedimus monachis de Cupyr.[5]

Here the feudum de magna Blar was apparently what had been granted to Scone.

Sometimes the church was said to hold its land in fee as well as in alms. The first instance is in a charter where David I (c.1136)

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1. Holyrood 47.
2. Holyrood 33.
3. Moray 76.
4. Dunfermline 75.
5. Scone 67.

granted to God, St. Cuthbert and the monks of Coldingham a toft in the vill of Ednam for a return of 2s. yearly for all service.

> Concedo etiam eis predictam terram ita de me tenere in feudo et in elemosinam.[1]

Were it not for the final in elemosinam this grant would be regarded as a clear feu-ferme grant. It is a clear instance of the assimilation of church endowment to the new feudal ideas, and since Coldingham was the southern outpost of Anglo-Norman influence it is not surprising to find such a practice there. The other interesting example also comes from the south - a grant to the abbot of Kelso of a toft in Berwick by Earl Henry in 1147/52

> ...ad tenendum de me in feudo. Volo itaque...ita libere et quiete istam toftam de me teneat in feudo sicut possessiones ecclesiae suae liberius et quiecius tenet in elemosinam.[2]

King William later confirmed the charter in the same terms.[3]

In addition to those two isolated examples where a church endowment was regarded as a fee, a much clearer indication of the application of feudal concepts to church property is found in the idea that the church definitely held its land of the king; that, whether stated or not, the land was a fief. During the reign of David I there was a gradual introduction of a clause in the charters ad tenendum de me et heredibus meis - a definition of the tenurial relationship between giver and receiver, over and above the religious relationship implied in the word elemosina. The first instance is a charter of David I c.1135 granting a fishing at Fishwick to Coldingham

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1. Coldingham XXII. L.C. CXI.
2. L.C. CXCIII.
3. Kelso i 32.

> ad tenendum de me et de heredibus meis sicut tenent alias elemosinas ad eandem ecclesiam pertinentes melius et liberius.[1]

Again, in 1150, David granted land to the priory of May

> ad tenendum de me et de heredibus meis sicut ulla elemosina in terra mea tenetur.[2]

In this case tenure in elemosina is only implied, but a more explicit phrase occurs in the confirmation of a grant by the Percies to Whitby of land in Hetun and Oxnam (1152/3)

> ad tenendum...de me et heredibus meis in perpetuam elemosinam.[3]

English influence may be traced here as in the Coldingham grant, but by the reign of Malcolm IV the phrase had become common form, and in the records of several houses the first instance of the phrase occurs in Malcolm's charters.[4] By the XIII century the phrase had settled down to the

> tenendum et habendum de nobis et heredibus nostris in puram et perpetuam elemosinam[5]

of all church charters both royal and baronial.

There is therefore during the XII century a gradual application to church property of the principles commonly accepted as governing lay land-holding in a feudal society. The description of elemosina to church property stressed the religious relationship, but the development to in elemosinam represents a definition of tenure, and occurs simultaneously with the tendency to regard church property as fee.[6]

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1. L.C. CVI. cf. Earl David's grant to the priory of Daventre (England) of quicquid tenent de meo feudo in terris et decimis et in aliis rebus scilicet in elemosina.
2. L.C. CCVII.
3. L.C. CCLIV.
4. Dunfermline 40; Kelso 27; St.Andrews 196.
5. e.g. Melrose 203, Newbattle 41.
6. The tenurial force of in elemosinam must not, however, be accepted as unqualified. It was applied to other grants and privileges

It is therefore understandable that some difficulty would be met in imposing the concept of tenure in elemosinam on lands which had been acquired as allod, and certainly not as fief. There is a wide difference between holding lands sicut ego terras meas proprias possideo and tenure ita de me tenere in feudo et in elemosinam...[1] or ad tenendum de me et de heredibus meis sicut ulla elemosina in terra mea tenetur.[2]

By the XIII century and with the reigns of Alexander II and III, divergences such as the charters of Dunfermline and St. Andrews had become distinctly abnormal. Church grants had become stereotyped. Subinfeudations to the church were still prolific but fewer new grants originated from the crown, and confirmations of existing possessions and of new subinfeudations were the principal outlet for royal piety.[3] Church estates had settled down, and tenure in elemosinam had become accepted and well understood, except in so far as pressure for greater width of interpretation came from the church itself. Generally speaking, by the XIII century adequate charter phraseology had been evolved to express what was required by both benefactors and the church in ecclesiastical endowment.

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which were outwith any tenurial structure and could not be called feudal. A good instance of this is a charter of Stephen to Crowland Abbey which grants in perpetuam elemosinam quietanciam de Danegeld et de hidagio et de murdro et de omni seculari consuetudine et exactione tresdecim hidarum et dimidie hide terre in Cantebruggesira. (Crowland p.160)

1. Coldingham XXII.
2. May 3.
3. In the XIII century crown donations were less of lands and more of rights and privileges. An interesting comparison lies between the royal endowment of Arbroath with a large number of churches rather than lands, in contrast to the earlier XII century foundations where land was the principal endowment.

No particular point in time can be fixed at which one can say that tenure in elemosina became accepted as having a definite meaning. It seems that it had received it by the XIII century and there are some interesting XII century indications of the process of development, suggesting an acute regional awareness, if not variation. Several charters grant churches to Holyrood specifying as the terms of their tenure sicut aliqua ecclesia in toto Laodonia.[1] Two of the churches, Kinel and Bolton, were in Lothian but the third, Colmanele, was in Galloway, and the grant was probably a conscious attempt to define the tenure by the example of the south-east region. Uctred son of Fergus, who made the grant, also granted another church of Torpenneth to be held sicut aliqua ecclesia in toto episcopatu karlolensi tenetur.[2] It cannot be known how long these gropings continued, but there are contemporary suggestions of a more general standard.[3] A further stage is a very feudal delimitation of the nature of the tenure, e.g. in two cases subtenants of the Earl of Dunbar made free alms gifts to the church

> sicut aliqua elemosina libere quiete et honorifice infra comitatum de Dunbar ab aliquo tenetur[4]

and Adam de Seton gave Guisebro' land in the vill of Eden in free alms

> sicut aliqua elemosina liberius et quietius tenetur in feudo Roberti de Brus in Hertenes.[5]

A wider application, but still containing a suggestion of regional difference, occurs in a charter of William son of Patrick to Coldstream,

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1. Holyrood 14, 23, 33.
2. Holyrood 24.
3. supra p.263. Dunfermline 39, 47.
4. Coldstream 22, 34.
5. Gyseburn ii 329.

granting them in elemosinam the land which they held in his fee of Hersill

> sicut aliqua perpetua elemosina in regione Scotorum quiecius tenetur et possidetur.[1]

The culmination of the development which has been discussed and the success of the influence towards uniformity are probably best expressed in a charter (1250) granting Kelso land in the vill of Neuton to be held as freely as they held any elemosina in England or Scotland.[2]

The establishment of church endowment within a feudal structure of land-holding; the evolution from elemosina to in elemosinam; the acceptance of a relationship which was both religious and tenurial were the main XII century achievements in the sphere of church ownership of land. More was involved in in elemosinam than simply feudal tenure and it seems that the religious aspect required stressing. Almost from the introduction of the term, it became qualified or emphasized by a series of adjectives, all reinforcing the religious characteristics of the gift.

The characteristics commonly attributed to this particular tenure during the course of the formative XII century were freedom (libera elemosina), perpetuity (perpetua elemosina) and purity (pura elemosina). Perpetuity and freedom were present from the outset. The church was an eternal institution and endowment to the church allowed of no reversion. As David I's charter to Melrose says

> Volo itaque ut ipsi omnes has praedictas terras et res suas ita libere et quiete teneant et possideant sicut aliqua elemosina liberius et quiecius perpetuo tenore teneri potest et possideri.[3]

1. Coldstream 24.
2. Kelso ii 351.
3. L.C. CXLI.

c.1134 David I granted Govan to Glasgow perpetuo in elemosinam.[1] Many other early charters state that the property is to be held in perpetuum or perpetue and the constant practice of confirmation by successors does not seem to imply, as it does in early lay tenements, that the grant must be renewed by the successor. It seems merely an emphasis and a device for the inclusion of the successor in the spiritual benefits accruing to the donor.

The concept of freedom is also expressed from the first, but purity seems to be a later concept. Only two instances of it occur in the first three-quarters of the XII century, and one of them is of doubtful authority. Although we are dependent upon the charters which have survived, it is probably true that the survivals represent a fair sample and that the two uses of pura are proportional, and indicative of its rare use prior to the end of the XII century. The record of David I's charter to Aberdeen (c.1137) seems to be of too highly developed a form to be genuine.

> Tenendas et habendas dicto episcopo Nectano et eius successoribus in puram et liberam elemosinam ita libere sicut aliqua elemosina in regno meo tenetur.[2]

The use of pura here is probably connected with the later form - tenendas et habendas. Malcolm IV's charters preserved by Aberdeen also show an undue use of the word: in puram et perpetuam elemosinam;[3] or in puram et liberam elemosinam.[4] There is, however, no ground for doubting Earl Henry's confirmation of David I's big charter to Melrose

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1. L.C. CIV.
2. L.C. CXVI.
3. Aberdeen pp.1, 4, 7.
4. cf. the in liberam baroniam form (Aberdeen p.1).

which is noted in David's own charter

> annuente et concedente Henrico filio meo et herede et per cartam suam confirmante

and

/which has survived independently. David's charter is in perpetuam elemosinam. Earl Henry's is in puram et perpetuam elemosinam.[1] Apart from these two cases the use of pura does not normally occur until the reign of William, e.g. the first uses in Kelso and Melrose records.[2] It was used long before this in England and charters of Earl Henry of lands in England use it.[3]

The question involved in the use of the word is whether the delay in its incorporation in Scottish charter form is to be explained by the customary time-lag before Scotland adopted practices common to England and the rest of Europe. Were there perhaps a few progressive individuals like Earl Henry and someone perhaps in the Aberdeen chancery who used fashionable terms? This is quite possible, but it is unusual that religious houses more in touch with Anglo-Norman influence should not follow more quickly than, for instance, Aberdeen. Also, is it likely that David I of all people would allow the royal chancery to lag behind that of his son? Another alternative finds the explanation not in phraseology but in reality. The use of pura is a further definition of elemosina, to a certain extent reinforcing libera. Is it perhaps possible that in Scotland the situation which necessitated a redefinition in the form of pura had not occurred until William's reign?[4]

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1. L.C. CXLI; CXLII.
2. Kelso 14; Melrose 25.
3. L.C. LII.
4. infra chapter XIII.

Land could be granted to the church in other ways than by sub-infeudation which involved all these arrangements about services. One charter survives where land was given by substitution and the donor appointed the house of Coldstream his assigns.

> Alexander de Synton...dedisse...pro me et heredibus meis...totam terram de Totheryg...et totum jus quod habui in eadem...et ipsos priorissam et conventus in omnibus premissis meos assignatos fuisse.[1]

Another donation survives which is neither substitution nor sub-infeudation but something more akin to a legacy. At the turn of the XII century David Ruffus of Forfar held the land of Kyncres from Adam son of Abraham de Lur. The charter recording his tenure survives in a document of 1270 and records that Adam gave the land to David et heredibus suis quos de uxore susciperit sibi desponsata for a return of 2½ marks

> et faciendo forinsecum servicium domini regis quantum pertinet ad unam davach de Kyncrey et quantum pertinet ad decimam partem duarum davacharum in Lur

and for this annual payment of 2½ marks and performance of the king's forinsec service he should be free from all service and aid which could be exacted from him by Adam aliquo iure communi vel privato.[2] In 1201 when David was about to go on crusade to Jerusalem (as a later abbey document tells us) and apparently since he had no heirs he constituted the abbot and convent of Coupar his heirs. They were to hold the land in free alms

> Reddendo...prefato Ade et heredibus suis duas marcas et dimidii salvo forinseco servicio domini regis quantum pertinet ad unam davach de Kincres...et decimam partem duarum davacarum in Lur prout

1. Coldstream 25.
2. Coupar X.

> in carta prefati Ade continentur quam de ipso Ada de prefato tenemento habui et prenominatis monachis de Cupre sicut heredibus meis iterum ierusalem una cum prenominata terre de Kincres... donavi.[1]

It is extremely doubtful whether David had in fact power to do this as the terms of his grant were to himself and heirs of his wife. It is perhaps to comply with this restriction that the grant was made in this unusual form, but if Coupar were to be regarded as David's heirs, how could David himself alter the tenure from a secular form to frankalmoign? Whatever the legal position, Henry son of Adam de Lur apparently complied with David's wishes and in a document of 1270/1 Nicholas abbot of Scone cited an instrument of Henry son of Adam of Lur who, apparently after the death of David Ruffus, granted Kyncres to Coupar as in the charters of Adam and David (qui iturus ierusalem ipsas terras predictis monachis in perpetuam elemosinam donavit), and with liberties, as in the charter of Adam,

> qui specialem mentionem facit quomodo forinsecum servicium domini regis facere debeant quando exercitum militarem et scotticanum communiter vel per se servicio domini regis laborare contigerit.[2]

The tenure crops up again in 1257 when Henry granted to Roger de Clony, for a sum of money to relieve his necessity, the annual return of two and a half marks which he received from Coupar from the land of Kyncres[3] - a service not mentioned in either of the grants.

Tenure in elemosinam was less rigidly tied to feudal concepts than other tenures of the XII and XIII centuries. It seems, as it were, to mark a compromise between the religious allod and the fief, but it

1. Coupar XI.
2. Coupar LX.
3. Coupar LIX.

is difficult to find out in greater detail how the relationship between church vassals and their superiors was worked out on this basis. It does seem that there were no restrictions upon alienation of lands held in free alms - even the ultimate survival of the principle in the right of the lord to recognosce land if the vassal alienated it without permission so that the amount in his actual possession was insufficient to support the burden of service. Since the tenure was ideally free, the argument against unrestricted alienation on the grounds of insurance of service could not be very weighty. There is no evidence of a superior's confirmation of a church subinfeudation. In this aspect the grant to God was complete.

One charter speaks of the lord's right (rectum) in a free alms tenure. Henry Lupellus granted land to St. Andrews in these terms.

> Henricus Lupellus omnibus probis hominibus suis francis et anglicis salutem. Notum sit omnibus vobis me canonicis sancte Andree dedisse duos bovinos terre in Brancheulla scilicet dimidiam terram quam Walterus de Santo Michaele tenuit in perpetuam elemosinam ita libere et quiete plenarie et honorifice ut ego liberius de omni seculari servicio illam dare possum tenendam de me et de heredibus meis perpetue cum communi pastura, et si aliquis eorum at aliquis quem in predictam terram ponent in feudo meo michi forisfacit in curia eorum rectum michi faciant ut domino et cum elemosina et sciatis quod eis concedo tantum de communi pasture quantum ad tantum terre pertinet. Hiis testibus subscriptis Edwardo sacerdotem Willelmo capellano Algaro capellano Utredo filio Osolsi Rogero filio Johannis Waltero de Sancto Michaelo Henrico persona et rectum quod michi facere debent in eodem feudo michi faciant.[1]

Henry later gave them in exchange for this land another two bovates free from secular service

> sicut aliqui canonici vel alii viri religiosi in toto regno Scocie constituti aliquam elemosinam de aliquo alio barone... tenent.... Si vero contigerit quod aliquis feodarius vel firmarius predictorum canonicorum in predicta terra degens michi vel

1. St. Andrews p.261

> meis forisfecerit in curia predictorum canonicorum infra predictum feodum de Hauwic michi secundum quod iustum fuerit emendabit.[1]

The "right" involved can only be deduced, but it was apparently connected with forfeitures in matters over which jurisdiction belonged to the church. It cannot be known whether this vague right was generally accorded to superiors or if it remained with Henry by the terms of his grant.

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1. St. Andrews p.262.

CHAPTER XII

Services from Frankalmoign

One aspect of the feudal character of frankalmoign tenure was the stipulation of a specific religious return as a reddendo for the lands. It seems that this was a rather self-conscious adaptation of frankalmoign to the concepts of feudal tenure, but it was a natural one in the period of conscious feudalization. More normally, spiritual benefit was implied, or stated more generally in the purpose of the grant (pro salute...). The stipulation of a more definite return is a stronger assertion of the "land in return for services" principle. The first suggestion of it comes from the grant of Macbeth and Gruoch to the Culdees of Lochleven of the land of Kyrkenes

> without any gift, burden and exaction, of the king, the king's son, vicecomitis and anyone and without repair of bridge, army and hunting sed pietatis intuitu et orationum suffragiis,[1]

but the record may not be contemporary and there may have been a temptation to the canons to stress their immunity as they made their own record. The earliest occurrence in direct record is in David I's grant to Kelso of Lesmahagow (c.1144)

> sicut ego ipse eas unquam liberius et quiecius obtinui et possedi solas orationes ad salutem animarum exsolvendo.[2]

David's general confirmation to Kelso states the service again.

> ...confirmavi ut mihi succedentium nullus nichil omnino nisi solas orationes ad animae salutem de supradicta ecclesia exigere praesumat,[3]

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1. L.C. V.
2. L.C. CLXXII.
3. L.C. CXCIV.

and William the Lion, confirming, again uses similar wording (1165/1214):

> ...ut nemo...neque de possessionibus eius neque de ulla que ad illam pertinet aliquid presumat exiger nisi solas oraciones ad salutem animarum.[1]

The grant of Alexander II of the forest of Ettrick to Melrose (1236) in free, pure and perpetual alms put the return in a more feudal form.

> ...nichil inde preter solas oraciones nobis aut heredibus nostris in perpetuum faciendo.[2]

Again in his grant to Newbattle, when making provision for tomb and burial, of the valley of Lethan (Leith?)

> tenendam et habendam...sicut aliqua alia elemosina...ita quod nichil omnino occasione alicuius servicii forensis exigi possit ab eadem preter solas oraciones.[3]

A charter of William brings out implicitly the attitude to the monks as serving a useful purpose by praying in their monastery.

> volo...quod dicti abbas et conventus habeant dictas domum, terram et servitia in liberam et puram elemosinam in perpetuum nichil inde facientes temporibus pacis vel guerrarum preter orationes et elemosinas infra monasterium suum.[4]

Sometimes special prayers were asked, but often charter wording made it clear that this was not so and that all that was required was for the house to continue its normal religious activities. Thus in a charter to Dryburgh, granting a church in Lanark and a ploughgate in free and perpetual alms (c.1150), David I stipulated tenure

> sicut aliqua ecclesia terrae meae elemosinas melius et quietius tenet et possidet ita tamen quod in ecclesiis illis officium divinum honeste fiat.[5]

A charter to Paisley of c.1260 gave land, not <u>in elemosina</u>, but demanding general prayers.

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1. Kelso 4 and 12.
2. Melrose i 264.
3. Newbattle 120; cf.Lindores XV; XXIV; Kelso i 71.
4. Melrose i 23.
5. Dryburgh 43, 209. L.C. CCXVIII.

> Nihil nobis inde faciendo preter communes orationes tanquam pro quolibet de populo.[1]

Occasionally the spiritual return involved the incorporation of the donor into a vague fraternity. Huctred gave land to Melrose in free alms

> Hanc donationem fecimus eis pro fraternitate et orationibus et participatione omnium bonorum eiusdem ecclesie in sempiternum,[2]

and Galfridus Ridel, confirming a grant which Kelso made to Melrose of land which he had previously given it, reserved the spiritual benefit

> salva mihi et heredibus meis in perpetuum gratia et fraternitate qua domini de Kelchoensi coniunctus sum in beneficiis et oracionibus suis.[3]

Both these charters come from the reign of William. Walter of Derchester gave land to Coldstream for the souls of himself and his kin

> et pro participatione beneficiorum que in prefata abbacie fiunt vel fient.[4]

Probably the most complete expression of the religious nature of the tenure comes from Alexander II's foundation charter of Pluscarden, which survives in a transcript by Andrew bishop of Moray in 1240.

> in liberam puram et perpetuam elemosinam...ita quod predicti fratres nobis vel successoribus nostris nullo nuncquam tempore pacis vel guerre infra regnum nostrum vel extra aliquod servitium seculare faciant pro eisdem terris et forestis set...divinis vacent obsequiis et oracionibus pro salute nostra et statu regni nostri.... Volumus...ut...habeant...in liberam puram et perpetuam elemosinam ab Eo solo per quem regnes regnant...[5]

but the perfection of the final phrase in expressing the church's view of the matter is open to suspicion in an episcopal transcript.

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1. Paisley p.58.
2. Melrose i 119.
3. Melrose i 147.
4. Coldstream 21.
5. Pluscarden App.G. p.199.

All the other grants, however, express well the feudal-religious nature of elemosina. Its essence was its spiritual motive and the hope of spiritual benefit, but the connection between the donor and the church was symbolized in a concrete form and had to be expressed in a concrete way and in legal form. Although a gift of land to the church invested the tenure with certain spiritual attributes, it retained some of its secular character. It was granted in feudal form and the requirements of a secular fief had to be reconciled and adapted to the new religious character. Ideally, the spiritual motive dictated the freeing of the land of all burdens which would normally fall upon it while it remained in secular circulation, and frequently a general quittance of all services was given.

The question then arose of whether free alms tenure was not, from its nature, free of all secular burden, if a grant in free alms did not imply such freedom whether or not a quittance were given. Something of this feeling must have been strong, for in England Bracton on the basis of at least one judgment construed a general rule that land granted in pure alms was free from service, while land in free alms was not. In 1219 a judgment in the king's court produced the ruling that

> cum quidem plures terre date sint in elemosinam ecclesiis quarum quedam date sunt in liberam puram et perpetuam elemosinam, ille scilicet que nullum faciunt servicium quod ad terram pertinet[1]

and Bracton stated the maxim

> Poterit etiam fieri donatio in liberam elemosinam scilicet ecclesiis cathedralibus, conventualibus, parochialibus, viris religiosis et quandoque in liberam elemosinam et perpetuam; et quo casu non exusatur ille qui accipit a praestatione servitii. Si autem fiat donatio in liberam puram et perpetuam elemosinam excusatur.[2]

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1. Bracton's Notebook pl.21.
2. De Legibus Fo.27b.

Although this should have meant that courts would uphold the immunity of lands granted in free alms, that a gift in pure alms demanding a service would be invalid and that even without a quittance no burdens could be exacted, Bracton himself admitted the contradictory and unsatisfactory legal position -

> Et quid si donator contrarius sit sibi in donatione? Ut si dicat, Do tali talem rem in liberam puram et perpetuam elemosinam, faciendo inde tale servitium. Et quo casu libera et pura non potuit esse elemosina cum sit servitio obligata. Videtur, igitur sine praeindicio melioris sententiae quod contra donatorium debeat interpretari ex quo scienter in carta sua voluit ad servitium obligari.[1]

i.e. that if service were imposed upon a grant in free pure and perpetual alms, the grant is contradictory in terms, but nevertheless the service must be performed.

It is not, therefore, surprising that Miss Elizabeth Kimball who analysed the incidence of secular service upon frankalmoign in England[2] found that in practice the immunity of "pure alms" was not observed; that intrinsec service was

> exacted from lands granted in "pure alms" just as it was from those granted in "free alms" so frequently as to make it unlikely that such cases are isolated instances which are exceptions to the general rule.

It is, however, doubtful if she is right in her conclusion that

> It is probable that gifts made in "free alms" were more often charged with intrinsec service than were gifts in "pure alms" and that consequently there developed the legal theory that gifts made in "pure alms" were quit of secular service in contrast to gifts in "free alms" which were not.

It is more likely that the application of the word pura to this form of tenure was aimed at securing some form of privilege - perhaps a

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1. De Legibus Fo.48.
2. EHR 1928.

reinforcement of the general immunity of frankalmoign which was not being effective in its extant form. It would be interesting to know if the word was used in response to a failure of freedom of tenure in liberam elemosinam in the courts. Certainly in Scotland the word is not used in the early period of feudal influence.[1] In view of Bracton's remarks, it is unnecessary to prove the incidence of secular service on tenure in free alms. Miss Kimball has investigated the forms it took, but it is doubtful if its incidence was quite so widespread as she maintained. She found that frankalmoign lands often had to do forinsec service unless the donor undertook responsibility for it or the superior lords quitclaimed it. Intrinsec service was exacted too - usually taking the form of a money rent or a payment of pepper, cumin or a rose. Only one charter provided for the performance of military service as intrinsec service from frankalmoign land, being thus almost equivalent to a grant by military tenure in spite of the wording of the charter. This is a royal charter - a grant of Henry III to the abbey of Tarent of his manor of Hussetun in free and perpetual alms

> Faciendo inde nobis et heredibus nostris servicium medietatis feodi unius militis pro omni servicio.[2]

It was not, however, unique for in 1241 was confirmed a charter of Henry I granting the hundred of Blakehurste to Evesham in perpetual alms

> liberas et quietas de schiris et hundredis et placitis et querellis et geldis et danegeldis et hidagiis et tallagiis et de operatione castellorum et vivariorum et pontium et de muraro et de cariagio et pannagio et de omni seculari servicio et opere servili et de

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1. supra p270
2. Dugdale: Monasticon 620 No.1.

> scutagio, salvo tamen et retento servicio quatuor militum et dimidii in expeditione, me presente.[1]

A number of the grants which she cites to illustrate the incidence of intrinsec service clearly involve, not intrinsec, but forinsec service, and others are open to the interpretation that it is forinsec service which is involved, e.g. a charter whereby Robert son of Henry the clerk of Wyckale gave to the said canons (of St. John the Evangelist of the Park - Berwick-on-Tweed)

> in frank almoin with his body a toft and croft with all his land of Wyckale which he had of the gift of his father for his service; to be held by yearly rendering to the heirs of his father a half pound of cumin at Christmas and for scutage when it comes 1d.[2]

and a grant to the hospital of St. John without the east gate, Oxford, in frankalmoign of all land in Neweton which William, formerly the king's tailor, gave to them by his charter and which the said William had of the king's gift, to hold by rendering yearly at Christmas the scissors due from William.[1] Altogether, the evidence provided is not completely conclusive and the situation in England remains obscure, with admitted confusion over the legal position of tenure in pure alms.

Bracton's remark about the contradiction of a grant in pure alms which imposed a service does, however, suggest a clue. It seems likely that the importance of the concept of the immunity of free alms tenure was only applicable outwith the terms of the grant - that if the grant made no statement about services, the immunity would be presumed and that any attempt to enforce services could be challenged legally. It seems clear that by Bracton's time and before, a simple

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1. Cal.Charter Rolls i 257.
2. (1310) Cal.Charter Rolls iii 25.

grant in libera elemosina did not achieve this and perhaps the introduction of pura can be explained in these terms. It is probable, in view of Bracton's statement, that unless the charter made stipulation about services the land would be presumed to be immune, but if a service were imposed by charter, the recorded terms of the grant would overrule the effect of "pure". This would explain the frequency with which services were arranged in spite of the wording in "pure alms". Since the law could not carry out the theory of immunity of such tenure and must enforce service imposed upon it, without the necessary legal sanction, the term became part of a meaningless formula. It could only operate spontaneously, if the donor wished it to have a meaning, and there are some cases where it can be deduced as operating in this manner, e.g. from a charter of Alexander II to Moray. In one charter he granted (1) three davachs in Fynlarg "in free and perpetual alms for forinsec army service" (2) Logynfythenach "in free, pure and perpetual alms for no service except prayers".[1] Several of his other grants to Moray indicate a recognition of the distinction: the grant in 1228 for the maintenance of a bridge on Spey free of all forinsec service, aid, custom and secular exaction,[2] and the grant in 1236 of lands in Strathspey.[3] A grant to Arbroath was similarly free and quit of all army, aids and other demands.[4] On the other hand, one grant of William the Lion blatantly ignored it. In 1171/8 he granted Coupar land for the site of an abbey and other land in pure and perpetual alms.

1. Moray 37.
2. Moray 109.
3. Moray 36.
4. Arbroath Vetus 101.

> Preterea concedo eis ut quieti sint in perpetuum de illo annuo redditu qui mihi de eadem terra solvebatur ad waitingam meam faciendo quantum ad eandem terram pertinebat die qua eis...in puram et perpetuam elemosinam donavi.[1]

Even in the case of simple free alms, there was a strong tendency to leave grants as unburdened as possible. It is, however, difficult to disentangle the implications of charter phraseology expressing immunity from service. Large numbers of grants aim at complete freedom from burden and, particularly in the XII century, give a complete quittance. The crown was in the strongest position for doing this, but quittances are common in subinfeudations too. The grants of Macbeth have this characteristic,[2] and David I made general quittance a consistent practice: liberam et quietam ab omni consuetudine et servicio seculari;[3] solutas ab omni terreno servicio et exactione seculari;[4] or more specifically libere et quiete de omnibus rectitudinibus de me et theino et omnibus qui Haddingtona tenuerunt de me et heredibus meis post me;[5] and the grant to Dunfermline that its men should be liberi ab omni operacione castellorum et poncium et omnium aliorum operum (which Malcolm IV confirmed with the addition that these services were not to be exacted nisi abbas et monachi spontanea voluntate illud facere voluerint).[6] David I's charter to Holyrood forbade anyone aliquas operaciones sive auxilia sive consuetudines seculares injuste ab eis exigant.[7] The practice continued in the reigns of

1. Coupar II.
2. L.C. V.
3. e.g. St.Andrews p.182; Coldingham LXV, LXVI.
4. L.C. CXLI; CXLII.
5. St.Andrews p.182.
6. Dunfermline 31, 49.
7. L.C. CLIII.

William and Alexander II. In his foundation charter of Arbroath William granted that all tofts which he gave the abbey in burghs and manors

> libera sint et quieta ab omnibus auxiliis et operacionibus ad me et heredibus meis pertinentibus

and confirmed all gifts as free

> ab omni excercitu et expeditione et operacione et auxilio et ab omnibus consuetudinibus et omni servicio et exaccione[1]

but specific quittances must have reached their peak in his confirmation to Soltre (1189-99):

> in omnibus rebus liberas et quietas de placitis et querelis et scutagio auxilio asisis et de operacione castellorum et poncium et de blodwyte et de featwyte et quietas de omni tolloneo et passagio et pontagio et lestagio et estalagio et de omni seculari servicio et opere servili et exaccione et de omnibus aliis consuetudinibus secularibus excepta sola justicia mortis et membrorum et exceptis quatuor querelis que ad coronam meam pertinent scilicet de roberia de murthir de combustione et de femina efforciata.[2]

Alexander II's foundation charter to Balmerino granting the lands of Cultrach and Balmerino in Fife was

> in free, pure, quit and perpetual alms, free from aids, armies, tallages, tolls and all secular custom so that nothing could be exacted from them throughout the whole realm of Scotland except prayers.[3]

Quittances as general were given in subinfeudations, e.g. Richard de Frivil to Arbroath of lands in Moneithe

> libere et quiete ab omni equitatu et exercitu et ab omni seculari exaccione et ab omni operacione;[4]

Osulf to Melrose of Ringwood, free and quit

> ab omni terreno servicio et assisis et geldis et auxiliis et omni seculari exaccione et consuetudine in perpetuam elemosinam;[5]

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1. Arbroath Vetus 1.
2. Soltre 7.
3. Balmerino I. cf.Moray 109 and Pluscarden charter supra p.278.
4. ? 1178. Arbroath Vetus 91 cf.143.
5. 1153 x 65. Melrose i 9.

and William de Windlesoure to Melrose

> in elemosinam liberam et quietam et solutam ab omnibus auxiliis placitis interrogatis geldis assisis scutagiis cornagiis et ab omni servicio etc.[1]

A series of grants to Arbroath at the beginning of the XIII century were in free alms

> libere et quiete ab omni exercitu et expedicione et ab omnibus auxiliis et geldis et ab omnibus operacionibus et wardis et ab omnibus placitis et querelis et ab omnibus consuetudinibus serviciis et secularibus exactionibus[2]

suggesting a form of wording popular locally and perhaps a single drafter. A grant was made to Kelso of land near Gordon, as free and quit ab omni servicio intrinseco et extrinseco et exaccione et honore.[3] Roger de Quincy gave Newbattle a grange in Tranent in perpetual alms free

> ab omnibus consuetudinibus et serviciis et exaccionibus secularibus scilicet a placitis a molendinis a forefactis et auxiliis et omnibus aliis rebus que vel Regi vel michi vel alicui alteri seculari pertinent.[4]

In 1251 Eugenius's charter of fourteen pennylands in Lismore to the bishop of Argyll in free alms "as free of cain, conveth feact slogad et ich and all secular service as any frankalmoign" is probably a Gaelic form of the usual quittance.[5] Lindores received several grants with quittances.[6] Glasgow received a grant from Isabel de Valoniis sine omni servicio intrinseco et extrinseco, confirmed by John de

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1. Melrose i 116. cf.166, 169, 170.
2. Arbroath Vetus 67, 70, 89.
3. c.1250. Kelso i 121.
4. Newbattle 64, and cf. grant of Hugh Gifford (ibid.81) while nevertheless William confirmed salvo servitio meo (ibid.67) and cf. Newbattle 130.
5. Reg.Ho.Misc.
6. Lindores XXIV, XXVI; cf.II, III, CXX, CXXI.

Balliol and Alexander III;[1] and Malcolm Earl of Lennox granted lands of Kilpatrick to Paisley in 1272 in free, pure and perpetual alms

> sine omnimodis servitiis, auxiliis, exercitibus, captionibus, sectis curie, consuetudinibus, exactionibus et secularibus demandis in posterum aliquo casu vel judicio exigendis de premissis...[2]

Such illustrations could be multiplied greatly and are found in all the records of religious houses. They illustrate a general desire to leave church lands free of burden to correspond closely to their religious purpose, but they raise a problem of whether they were entirely necessary. Did a grant in free alms or in free pure and perpetual alms need to be reinforced by these quittances? Are these quittances in fact reinforcements? If service were demanded, would a plea of free alms tenure be sufficient proof of immunity without definite expression of quittance? Bracton dealt with a situation where services were demanded, but not with one where services were neither demanded nor specifically acquitted.

The position was particularly difficult in the case of subinfeudations. Royal grants were in a more favourable position as being unburdened with services and obligations higher in the feudal scale. Perhaps this was reflected in a charter of Alexander III granting to Newbattle the land of Estircraig of Gorgum which Patrick de Graham resigned to him. It is to be held of the king and his heirs

> in puram et perpetuam elemosinam ita libere sicut aliqua elemosina de nobis concessa in regno nostro possidetur extra regale.[3]

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1. Glasgow i 199, 200, 201.
2. Levenax p.15.
3. Newbattle 41.

No alienation could operate to the detriment of a superior lord and the donor was faced with the alternative of passing the service on to the church or assuming it himself.

> alienum autem servitum per talem donationem tollere non potuit nec minuere nisi hoc specialiter in se susciperit alterius domini voluntate cum warantia et de defensione.[1]

Some charters express one or other of the two alternatives clearly. Ideally, it was better to maintain the free charter of the grant and many charters contain a promise on the part of the donor to do the service. When Ralf Masculus gave Newbattle land he promised that he and his heirs de omni servicio versus superiores dominos defendemus.[2] Adam Fraser granted a carucate in Suythale to Newbattle in free alms, free of all service, custom and suit of court et ab omni servicio seculari versus superiores dominos defendemus - which his overlord Earl Patrick confirmed salvo servitio meo de dicto Ada et heredibus suis.[3]

Sometimes the donor was unable, or unwilling, economically to assume the burden and the service was passed on to the church. 1237/41. William de Hay gave Coupar in pure and perpetual alms land in the Carse of Gowrie which he held of his brother David[4] to be held

> adeo libere ab omni servicio demanda et exactione sicut aliqua elemosina ab aliquo milite vel barone alicui domino religiose datur in proprios usus in toto regno Scocie. Faciendo servicium quod continetur in carta prenominata[5] necnon et servicium domini cuus mentionem facit,[6]

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1. De Legibus Fo.27b.
2. Newbattle 31.
3. Newbattle 77, 79.
4. supra p.
5. charter of his brother David granting the land to him.
6. Coupar XLII.

and Alexander II confirmed it salvo servitio nostro.[1] John Avenel granted to Melrose land which William Glayston gave him - for a return of 1 lb. pepper to the lord of the fee and the king's forinsec service.[2] In c.1266, to pay his debts to Kelso, Thomas Batail gave the abbey his land in Berwick for a yearly return of 12d. to the heirs of Lucy Blake.[3] In 1271 Bricius of Ardrossan granted to Inchaffray land in Petlandy which he held of Luca ad feodam firmam to be held of him for a series of complicated returns (a) 1 mark to the chaplain celebrating divine service in the alms house of Inchaffray (b) 12 pennies to Luca and his heirs - presumably Bricius's ferme - (c) 3d. for every aid and army levied by the king.[4]

A rather confused case of forinsec service comes from Newbattle.

a) William Nobilis de Garmylte granted Newbattle a toft and croft in Eststenton to be held of him and his heirs in free alms

> free and quit of all service and secular custom reddendo thirteen pennies for all service and demand which he and his heirs owe to the brothers Templar of Balantrodoch while he and his heirs will answer against all superior lords for all service.[5]

b) William de Valoniis confirmed William Noble's gift and granted that the monks were to be free from all service as the original charter provided

> salvo annuo redditu tresdecim denariorum qui per manus Willelmi Nobilis et heredum suorum solvi debentur fratribus templi de Balentrodoch.[6]

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1. Coupar XLVI.
2. Melrose i 204.
3. Kelso i 47.
4. ~~supra p. 363~~ Inchaffray C.
5. Newbattle No.116.
6. Newbattle No.117.

c) A perambulation of the lands took place to end the controversy between Newbattle and William de Valoniis over the land of Eststenton and this note was added to the monastic record of the proceedings:

> Notandum quod carta Willelmi Nobilis de infeodacione nostra supradicta duplatur et ex habundanti habentur due carta, una scilicet Willelmi de Vallibus qui ipsum Willelmum Nobilem prius de eodem tenemento infeodavit et altera Magistri Milicie templi pro eodem Willelmo Nobili de confirmatione sive ratihabicione quarum neutra agit directe pro nobis. Tercia littera est ipsius Willelmi Nobilis suplicatoria certis personis qui velent testes esse in carta sua quarum tenorem non scripsi quod parvum facient ad rem.[1]

The Templars were obviously overlords of this land (altera magistri milicie templi pro eodem Willelmo Nobile de confirmatione) which William de Valoniis held of them. His charter of confirmation mentioned the return to be paid per manus Willelmi Nobilis, not the return of William Noble, and he had probably passed this share of 13d. on to his subtenant. When the subtenant gave the land to Newbattle he had to pass it on too. Another interesting example of the way in which services descending through the feudal ladder finally came to be the responsibility of the church comes from the Normanville charters to Melrose,[2] when finally Thomas, the last brother to whom the lands were passed, gave the lands to Melrose in free alms reddendo annually to him and his heirs one pair of gilded spurs et capitali domini feodi ad eundem terminum unum tercellum vel tres solidos sterlingorum. Finally Guy and Waleran confirmed Thomas's gift and gave warranty remitting the service

> ita quod nec vir nec mulier eos occasione trium solidorum vel unius tercelli domino feodi temporibus transactis non solutorum

1. Newbattle No.119.
2. supra p.65. Melrose i Nos.338-341.

> nec et super premissis sive ratione premissorum in parte vel in toto nomine dotis sive alio modo quacunque occasione vexare poterit vel inquietare.[1]

The action of these overlords in quitclaiming the service due to them was not uncommon, the superior quitclaiming after the gift was made and thus clearing the tenure, e.g. Petronilla Hareng confirmed to Melrose 2½ acres in Borthwick which she had given to Robert Poyndras and added in her gift

> et in super illum redditum quem idem Robertus michi reddere annuatim consueverat scilicet unum par cerotecarum albarum eidem Roberto condonavi.[2]

One royal tenant arranged for the payment to him of the ferme he owed to the king but left open the possibility of remission by the king. Thomas de Coleville (cognomento Scoto) issued 3 charters of his gift to Valle Dei of land of Keresban in Galloway. The first asked for a return of six marks to him, his heirs and assigns, with the provision

> et si contigerit quod dominus rex Scotie hanc predictam firmam prefatis monachis relaxare et condonare voluerit pro salute anime sue et antecessorum suorum ego et heredes mei liberanter illud concedimus ita quod nichil umquam de eadem firma exigemus de eisdem monachis.[3]

The second specified a return of 5 marks with the same provision for remission.[4] The third also had 5 marks, and although the wording of the provision is slightly different the import is the same.[5] The king did not apparently co-operate, and with the burden of 5 marks the land passed into the hands of Melrose in 1223 in rather intriguing circumstances. The two houses made an agreement

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1. Melrose i No.343.
2. Melrose i 267.
3. Melrose i 192.
4. Melrose i 193.
5. Melrose i 194.

> quod cum terra de Keresban in Galeweia data esset...monachis de Valle Dei a...Thoma de Coleville secundum tenorem carte ipsius Thome...in liberam et perpetuam elemosinam, idem monachi de Valle Dei sentientes possessionem eiusdem terre tum propter defectum discipline tum propter barbice gentis insideas sibi minus esse utilem et in aliquo periculosam ipsam terram cum omnibus libertatibus...concesserunt et tradiderunt abbati et conventui de Malros ad perpetuam firmam Ita quod monachi de Malros adquietabunt predictam terram erga dominum regem Scotie loco et nomine domus de Valle Dei de quinque marcis.[1]

Perhaps Melrose found the land of as little use for not much later they gave it to Alan son of Roland the constable in exchange for his waste of Lammermuir to consolidate their property in that district.[2] These alternative arrangements in subinfeudations are clearly expressed in all these instances, but the wording of some charters is more equivocal. They only reserve the service to the lord, without making it clear whether the responsibility passed to the church with the land, or was assumed by the donor. Probably the most curtly worded subinfeudation to the church was the grant by Walter of Lundin of ten acres of St. Andrews in perpetual alms free from all exaction and secular service quantum ad me pertinet et ad heredes meos,[3] which was all a subinfeudation could do, but which did not say whether or not the church was to be responsible for other burdens.

There are a number of charters to Melrose by Robert de Bernoseb and Gaufridus Cocus of land in Wittun which they held of Patrick de Riddale. Patrick's heir, Walter, issued a general confirmation salvo servitio de eodem Roberto et Gaufrido Coco,[4] or as expressed in an individual confirmation of Ravenessan

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1. Melrose i 195.
2. Melrose i 227.
3. St.Andrews p.263.
4. Melrose i 167.

> salvo servitio meo quod mihi et heredibus meis ipse Robertus et heredes sui pro eadem terra facient.[1]

William Comyn Earl of Buchan confirmed the grant made to St.Andrews by Merleswan son of Colban of the land of Kenmucheveth

> salvo nobis et heredibus nostris reddendo et servicio que Merleswain filius Waldevi et heredes sui nobis et heredibus nostris debent de eadem terra[2]

while Merleswan's charter granting the land free from all service and secular exaction quantum ad me spectat[3] indicates that Merleswan intended to do the service, leaving the frankalmoign pure.[4] John de Methkill held the land of Pannechules of John son of Waldeve who held it of Patrick Earl of Dunbar. In c.1227 John granted it to Melrose. Not only did his overlord John son of Waldeve confirm it 1230/1

> salvo servitio michi et heredibus meis de dicto Johanne de Methkill et heredibus suis contento in carta mea...quas dictus Johannes habet de eadem terra,

but Patrick Earl of Dunbar also confirmed it salvo servicio nostro de Johanne filio Wallevi.[5] In 1242/7 Roger son of Baudricus granted Coupar a bovate in the Carse of Gowrie

> salvo forinseco servicio domini regis et salvo servicio quod domino Gilberto de Haya et heredibus suis de eadem terra debetur.[6]

One very early grant, pre 1165, that of Serlo clerk of the king of Scots to Kelso giving it half a carucate in Sprouston which he held of king Malcolm, stated that the land was to be held free and quit

> salvo servicio regis scilicet quibusdam calcaribus deauratis singulis annis.[7]

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1. Melrose i 153, 155.
2. St.Andrews p.251.
3. St.Andrews p.258.
4. It is an interesting indication of how vagueness develops and how so many charters tell so little, that Merleswan's son only says "free from all service as in his father's charter" (St.Andrews p.259).
5. Wemyss IV, VII, VIII.
6. Coupar LVII.
7. Kelso i 216.

c.1200 Inchcolm received land in Edinburgh

> in pura et perpetua elemosina salva camere domini regis una libra cumini...reddenda de dicta terra.[1]

About the same period Grim of Roxburgh gave Melrose a toft in Berwick in free alms

> salvo servicio domini Willelmi de Sumervil et heredum eius quod illis de me et heredibus meis debetur pro eadem terra.[2]

William de Lindsay gave Newbattle part of his lands of Crawford which he held of Swan son of Thor

> salvo servicio domini regis et servicio ad Swanum Thore filium et ad heredes illius pertinente quae servicia ego et heredes acquietare debemus.[3]

His grandson, David, however, granting more of his lands in Crawford, promised

> defendemus erga dominum regem de omni servicio forinseco et privato.[4]

Duncan Earl of Carrick confirmed to Melrose early in the XIII century the grant by his knight Roger de Scallebrok

> salvo servicio domini regis de me et rogero de Scallebrok milite meo et heredibus nostris.[5]

A good example of the service due at several degrees is St. Andrews' tenure of the land of Cunveth from Roger Wyrsant who held of Rychend de Berkeley who held of Arbroath. With Arbroath's consent, Rychend granted it to Roger.[6] Roger then granted it to St.Andrews

> in puram liberam et perpetuam elemosinam...salvo forinseco

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1. Inchcolm VIII.
2. Melrose i 28.
3. Newbattle 135.
4. Newbattle 138.
5. Melrose i 32.
6. St.Andrews p.285. Alexander II confirmed the grant salvo servitio nostro (St.Andrews p.334).

> [servicio] domini regis...reddendo inde predicte Rychende... unam libram piperis pro omni servicio[1]

and in 1241 the abbot of Arbroath confirmed Roger's gift

> salvo servicio domini regis reddendo inde nobis annuatim unam libram piperis.[2]

Apparently Rychend held the land by this service to Arbroath, but it is interesting that although her own charter to Roger says nothing about it, Roger's charter reserves it to her.

Another example shows how an insertion of a vassal could affect the service. c.1219 Warinus son of Robertus Anglicus gave Inchcolm half a carucate in Duddingstone in return for 1 lb. cumin and the doing of forinsec service.[3] About 30 years later, 1236/49, John Avenel granted Inchcolm

> medietatem terre mee quam ego de Warino filio Roberti Anglici tenui in territorio de Dodingstone...salvo servicio forinseco domini regis et salva dimidia libra cumin dicto Warino et heredibus.[4]

Sometimes the land was burdened with a payment to a religious institution - a previous gift or a debt previously contracted - and this was passed on. William de Soulis granted to his nephew Thomas, a clerk, his church of Soulis in liberam elemosinam with some land. Thomas was to have it free of secular service

> Reddendo annuatim unam marcam canonicis sancte Andree ad festum sancte martine.[5]

Hugh de Kilmauyn gave to Balmerino in free alms land in the vill of Kynner for a reddendo of 2d. to the hospital of St. John of Jerusalem.[6]

1. St.Andrews p.335.
2. St.Andrews p.286.
3. Inchcolm XI.
4. Inchcolm XVII.
5. Soulis
6. Balmerino 18.

All these grants follow the English pattern of arrangement for lands burdened with secular services in degrees of tenure before it reached the church, but the position in Scotland was complicated by the further obligation of royal forinsec service - army and aid.[1] The peculiarly Scottish military organization placed this service in the first rank of importance, and arrangements for its performance figure largely in charters in free alms. Often when the church was freed from all other services, this obligation was reserved. It was all the more important because the church was not endowed at all with military tenures and no church lands were called upon to return a substantial force of knights or armed men for the military purposes of the crown on a feudal basis as in England.[2]

From the beginning, in the royal charters of the big period of endowment, these services were reserved. David I reserved the defence of the realm or common army,[3] and Malcolm IV granted Conclud to Glasgow salvis tamen exercitibus meis.[4] In William's confirmations of his tenants' grants a new phrase - salvo servicio meo - creeps in[5] and remains in the confirmation charters of Alexander II and III. By the reign of Alexander II, reservations of service in royal endowment are obvious and specific, even although the phrases of general immunity are retained. Thus Andrew bishop of Caithness in c.1236 received three davachs of Fynlarg in Strathspey

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1. see chapter V.
2. H.Chew: English Ecclesiastical Tenants-in-chief especially tables pp.4, 5.
3. supra p.118
4. Glasgow i 15.
5. supra p.66

> in liberam et perpetuam elemosinam faciendo forinsecum servitium in exercitu quod pertinet ad dictas tres davachas. Ita tamen quod quieti sint de auxilio faciendo de eisdem tribus davachis.[1]

When he granted Blair to Scone, reserving two and a half davachs to Coupar, he stipulated that Scone must do forinsec service for five davachs, while he remitted service from the sixth for the land he had given to Coupar.[2] Arbroath had to perform forinsec service in the army for the land it received, although it was acquitted of aid,[3] and the bishop of Moray was responsible for forinsec service from the land of Kildrummy.[4]

As has already been seen, this "forinsec service" reserved in royal charters of both lay and clerical endowment was in a special position. It was imposed over and above or without a feudal service. If it was reserved in so many royal charters, it presented a problem in subinfeudations, for the responsibility for the service rested with the donor who could either pass it on or secure immunity for his free alms grant by undertaking to perform the service himself. Free alms subinfeudations were thus complicated by this responsibility of general military service due to the king, and further by the services with which the land was already burdened as a result of previous feudal bargains. Thus a charter of subinfeudation to the church had to make arrangements for these prior obligations - and a wide variety of solutions was practised. Frequently, as in the case of other forinsec services, if the donor could afford to do so, he undertook performance of this service himself. This is sometimes stated specifically;

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1. Moray 37.
2. Scone 67.
3. Arbroath Vetus 102.
4. Moray 40.

otherwise it must have been implied in the general quittances already discussed, e.g. Huctred of Gruhened gave Melrose land in Elstaneshalche in free alms free from all terreno servicio with the promise

> et adquietabimus versus dominum regem et omnes dominos nostros de forensi servicio et omni terreno servicio.[1]

A grant to St. Andrews of four acres in Kathlac in puram et perpetuam elemosinam was made free of all secular services with a clause

> Ego autem...de forinsecis et omnibus aliis serviciis secularibus et demandis pro eis respondebimus[2]

and Alexander II confirmed salvo servicio nostro.[3] Earl Patrick confirmed Sorrelsfield to Melrose accquietabimus de omni terreno forensi et seculari servicio with a confirmation by king William salvo servitio meo.[4] Thomas son of Thancard, giving Arbroath land, would quit it de omni forinseco domini regis.[5] Gaufridus giving Melrose three bovates in Wittun given to him by Patrick de Riddale

> adquietabimus de omni forensi servicio erga dominos nostros et de omnibus aliis rebus que pro aliqua terra exigi poterunt.[6]

In 1210/18 Gilbert Earl of Strathearn granted to Inchaffray Balmakgillonan

> in liberam puram et perpetuam elemosinam. Ego et heredes mei totum forinsecum servicium domini regis quod ad terram illam pertinet...adquietabimus.[7]

Richard Cumin granted to Holyrood in liberam et perpetuam elemosinam for the souls of king David etc. land round Lynewater near Biggar

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1. Melrose i 119.
2. St.Andrews p.292.
3. St.Andrews p.294.
4. Melrose i 104, 105.
5. 1204-11. Arbroath Vetus 99.
6. Melrose i 156.
7. Inchaffray XXXIII.

> Ita quod ego et heredes mei terram prenominatam et canonicos prefatos erga nos de omni servitio et consuetudine quietos clamavimus et erga regem et ballivos suos adquietabimus de omni servicio et seculari exactione ad tantam terre pertinenti.

His superior lord acquiesced in this arrangement and his confirmation freed the land and the canons of all service due to him

> ita quod ego et heredes mei terram prenominatam et canonicos prefatos erga nos de omni servicio et consuetudine quietos et liberos clamavimus et erga dominum regem et ballivos eius de omni servicio...sicut in cartis Ricardi Cumin...continetur.[1]

Fergus, granting Beny and Concrag in free alms to Lindores, undertook that he and his heirs would quit the land de omnibus demandis in mundo.[2] Malise Earl of Strathearn granted Lindores Ratengoten and other lands promising that he and his heirs would quit the monks of all services to the king and to other men,[3] and his promise figured in litigation between Lindores and Dunblane over the lands of Eglesmagril in 1211/14. By the decision, Dunblane was to pay 10 marks annually to Lindores, and for six of them the vill of Eglesmagril was to be free and quit

> ab auxiliis et exercitibus et canis et convetibus et omni servicio et exaccione et consuetudine seculari ita quod Gilbertus comes de Strathern pro se et heredibus suis in perpetuum suscepit omnes exercitus et episcopi...omnia alia onera sustinebant.

Earl Malise then issued a charter promising to do this service.[4]

It must sometimes have been difficult to enforce fulfilment of such promises. The salvo servitio meo of a royal confirmation left the question open and the chances were that the first penalties for non-performance would fall upon the occupier of the land, regardless of the promises of the donor. The situation must have been a fruitful

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1. Holyrood: Appendix II Nos.5 and 6.
2. Lindores XXVI.
3. Lindores XXIX; XL.
4. Lindores XLII; see also CXXXIII.

source of litigation but no records of it survive. Some charter clues are given. Alexander II's general confirmation to Newbattle has a clause which sounds like official recognition of a confused situation.

> salvo forinseco nostro de predictis terris de quibus et per quos servicium nobis debetur.[1]

Some charters of confirmation, however, were specific in fixing the responsibility. Malcolm IV in one case used his power of confirmation to ensure the service due from the tenant. He confirmed the gift of Philip de Evermele to Holyrood of a carucate in the fief of Rothmaneic

> tenendam ipsius sicut testatur carta ipsius Philippi. Salvo mihi servitio meo in eadem terram quantum mihi pertinet de tanta terre si Philippus de servicio quod mihi debuerit facere defecerit.[2]

William the Lion, confirming Philip's gift to Newbattle of land in Romanno pure, free and quit from all secular exaction and custom, specified

> salvo servicio meo de eodem Philippo et heredibus suis quod ipsi pro monachis michi perfecient,

although Philip's charter contained no promises of performance.[3] Similarly William's confirmation (1203) of a gift to Holyrood by William de Veteri Ponte of land of Torphichen which his father gave in free, pure and perpetual alms salvo servitio domini regis de me et heredibus meis. The royal confirmation stated the right to this and other things

> salvo servitio nostro de terra illa et in auxiliis et in aliis de heredibus prefati Willelmi.[4]

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1. Newbattle 122.
2. Holyrood 22.
3. Newbattle 125 and 126.
4. Holyrood 44 and 45.

These promises must, however, have been implied in a clause of general quittance, e.g. when Forleth countess of Atholl confirmed the grant to Coupar made by Ness the king's doctor in free alms with the clause

> volo quod...teneant...libere ab omni onere et servitio domini regis et comitis atholie, et a quibuscunque oneribus que de dicta terra ab aliquo quovis modo exigi potuit vel requiri,

she must have implied an assumption of responsibility for the king's service at least, by herself or by Ness.[1] Similarly with the grant to May by John son of Michael of the land of Calverburne free ab exercitu et expedicione[2] and many others.[3]

The wording of some charters suggests the full implication of a quittance. Thus when Gillecrist Earl of Angus confirmed the gift of his father of certain lands to the abbey of Arbroath, he granted the lands to be held

> libere et quiete ab exercitu et expedicione et exaccione multure et ab omnibus auxiliis et geldis et omnibus serviciis et secularibus exaccionibus, ita quod ego et heredes mei post me adquietabimus in perpetuum et respondebimus de omnibus serviciis et accidenciis que spectant vel spectare potuerunt versus prenominatam terram...[4]

and in 1250 Alan Durward gave lands to the hospital of Kincardine O'Neill, adding

> nos vero et heredes nostri forinsecum servicium domini regis quantum ad dictas terras pertinet in perpetuum faciemus pro quo volumus quod residuum terre nostre de Onele in perpetuum respondeat et ab eodem residuo terre nostre de Onele dictum servitium forinsecum exigatur.[5]

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1. Coupar LII.
2. May 24.
3. supra p____ and Lindores CXVI; CXVIII; Scone 22, 25, 42; Kelso i 90, 91, 93.
4. Arbroath Vetus 50.
5. Aberdeen ii 275.

Similarly the grant of Duncan son of Michael to St.Andrews of the land of Kernes

> volo eciam quod alie terre mee quas habeo ex dono dicti comitis (Malcolm Earl of Fife)...faciant forinsecum servicium domini regis pro predicta terra de Kernes.[1]

A mandate of Robert I (1310) indicates specifically what was involved in the assumption (implied or explicit) of these burdens and suggests the difficulty of fixing responsibility for it. It applies specifically to the lands of Brechin but has more general significance. It should, however, be read in conjunction with a grant of William of Brechin, grandson of Earl David, to Brechin in alms, that the bishop and chapter should pay nothing for his gift

> nisi tantum preces et oraciones debitas et devotas et ego Willelmus et heredes mei predictam terram...defendemus tam in forinsecis quam in aliis.[2]

Robert I's writ to his officers runs

> nolentes sicuti nec debemus quod terre ecclesie Brechinensis que episcopo decano canonicis aut capellanis eiusdem ecclesie communiter aut divisam in puram et perpetuam elemosinam sunt collate a diversis fundatoribus et infeodatoribus suis quibuscunque qui servicium nostrum facere tenetur pro eisdem ad predictum servicium per quoscunque ballivos seu ministros de cetero compellantur. Vobis...mandamus quatinus quotienscunque servicium nostrum de terris suis predictis debitum exigere vos contigerit ipsum servicium a fundatoribus et infeodatoribus suis qui ad illud servicium tenentur totaliter exigatis et eorum feoda capitalia si necesse fuerit pro dicto servicio debite distringatis, ita quod terre dictorum episcopi decani etc...et eorum possessionibus ab huiusmodi oneribus et exactionibus libere sint penitus atque quiete.[3]

It is not clear whether this mandate was based upon a general assumption of church immunity and donors' responsibility for services, or whether it happened that all the lands of Brechin were granted on those terms. There is no means of knowing whether the assumption on this

1. St.Andrews p.309.
2. Brechin i 3.
3. Brechin ii II.

matter would favour church or donor - whether the church was regarded as immune unless the donor proved that the terms of the grant were otherwise, or whether it was regarded as responsible until it proved immunity and the donor's responsibility. Charters could be interpreted either way and no definite conclusion is possible.

The number of charters making a vague salvo outnumbers those stating donor's responsibility, but some charters are equally specific on the church's responsibility. One arrangement is for a payment commuting the services - when in 1271 Bricius of Ardrossan granted to Inchaffray land which he held in feu-ferme, not only was Inchaffray to pay the ferme to Bricius' overlords but

> preterea tres denarios tantummodo pro quolibet Regis auxilio seu exercitu quociens dominus rex communem exercitum vel commune auxilium exigere contigerit a toto suo regno.[1]

John Avenel gave land to Melrose almsgate in pure and perpetual alms

> reddendo domino feodi pro omni servicio unam liberam piperis et faciendo forinsecum servitium domini regis quantum pertinet ad dimidiam carucatam.[2]

Another charter stipulated a definite amount of military service on such occasions. In the reign of Alexander III when William de Alwentus gave Melrose land in the vill of Halsington which he held of Robert de Muscamp, he gave it in free pure and perpetual alms for no other service

> nisi tantum orationum suffragia excepto quod dicti monachi facient pro ipsa terra domino feodi vicesimam partem servicii unius militis quando commune servicium exigetur per totum regnum Scocie.[3]

The donor here was himself a mesne tenant, probably a small man without the resources to perform the burden unless he passed it on with the land.

1. Inchaffray C.
2. Melrose i 204.
3. Melrose i 330.

Sometimes one service would be handed on and another acquitted. In 1223/4 Robert Earl of Strathearn, making a gift to Inchaffray, compromised on forinsec service. Giving Rath in free alms he arranged that it was to be held free of all service

> excepto solummodo auxilio domini regis quando scilicet ipse dominus rex commune auxilium super totum regnum posuerit. Ego vero et heredes mei totum reliquum forinsecum servicium domini regis quod ad illam terram pertinet pro eis perpetuo faciemus.[1]

One early grant fixed all the services on the church. David I confirmed to Coldingham the gift which Gospatrick brother of Dalsinus made of Ederham and Nisbet free and quit of all service and custom

> excepto 30 solidos quos prefati monachi dabunt Gospatrico et heredibus suis pro conredo regis et excepto exercitu regis unde monachi erunt attendentes ipsi regi et ipse Gospatricus de exercitu erit quietus in perpetuum.[2]

It was not inconsistent with the principles of free alms tenure that direct service should be exacted. The infrequency of the examples of this practice suggests that it was not common, but the survivals are such as to indicate that it was widespread. David I, granting a toft in Ednam to Coldingham in feudo et elemosinam, specified

> reddendo inde mihi unoquoque anno ii solidos et per hoc servitium liberum ab omni alio servitio.[3]

Malcolm IV granted to Newbattle land in Kalentyr

> liberam et quietam in perpetuam elemosinam reddendo inde bondis meis annuatim quatuor solidos[4]

- not perhaps entirely an out-and-out return for land so much as

1. Inchaffray LII.
2. 1147. L.C. CLXXVIII.
3. L.C. CXI.
4. Newbattle 163.

insurance of fulfilment of present responsibilities. In 1236 Alexander II gave to Lindores in exchange for other lands the land of Fedal in the thanage of Auchterarder, in free, pure and perpetual alms for a return of xx s. salvis elemosinis meis.[1] John of Orm granted Hunedun to Melrose as freely as any elemosina was possessed by the Cistercians free from aids, pleas, gelds and assizes Reddendo michi xx solidos de eadem elemosina.[2] Richard de Walais gave land in Galloway to Melrose in elemosina for 2 marks,[3] and c.1249 Warin son of Robert Anglicus gave Inchcolm land in Duddingston for 1 lb. cumin and as much forinsec service as pertained to half a carucate.[4] Patrick Earl of Dunbar went out of his way to acquit the priory of May of a render in kind which it had previously paid for land held of the earls.

> quietam clamasse...unam vaccam quam antecessores mei receperunt et ego recipere consuevi annuatim pro terra quam de me tenent in Lambermor.[5]

In another case, a return was later imposed although originally the tenure had been free. Randulf Masculus lord of Lochogou gave Newbattle part of his land in pure and perpetual alms, free from demand. His superior lord Thomas of Galloway confirmed it, but when Thomas Masculus his grandson came to confirm it he managed to impose a return - reddendo mihi 5s.[6] The converse was more common - where a return originally imposed was later remitted, e.g. David de Lyne gave

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1. Lindores XXII.
2. Melrose i 127, 128, 130.
3. Melrose i 71.
4. Inchcolm XI.
5. May 22.
6. Newbattle 31, 32, 33.

Holyrood a peaterie of Logweruard free of all service and exaction reddentibus michi et heredibus meis unam liberam piperis.[1] The grant was confirmed by Robert, David's heir, and by king William (salvo servitio meo) but when William de Hay succeeded them as lord of Lochgweruard he confirmed the gift of David and Robert

> quondam domini de Lochgwerward...et ob specialem amorem quem gero erga Neubotle...remisi eis...unam libram piperis...

previously demanded.[2] Another tenant made the odd arrangement in a grant to Dunfermline that although he undertook to

> respondebimus in perpetuum pro sex bovatis terre in omnibus auxiliis et servitium que pertinent ad dominum regem et omnes regales et illi qui dictas sex bovatas nomine abbatis tenuerunt quo ad communa auxilia domini regis nichil omnino respondebunt xx^{c} averiis proporcionaliter ratione terre quam tenuerint se contingentibus

and yet he exacted a service of one pair of iron spurs from the abbey.[3]

Grants to the church could, therefore, assume an infinite variety of form and the arrangements for service seem to have been just as much a matter of individual preference and convenience as lay enfeoffments. No general principle emerges from the charters, beyond a general desire to leave church lands as little burdened as possible. Although it is difficult to give a just assessment of the practical as well as the legal relation of services to free alms tenure and although it seems that Scottish practice conformed to a theory as little as did the English, the general tendency to retain as far as possible the immunity of such tenures from secular burdens stands out clearly.

1. Newbattle 13.
2. Newbattle 14, 15, 16.
3. Dunfermline 181.

Direct services are surprisingly few compared with the vast mass of quittances of services both intrinsec and forinsec. Royal charters show this most clearly of all and, as kings were more suitably placed for magnanimity in such matters than ordinary lay lords, it is possible that royal charters in both England and Scotland reflect the purest concept of free alms tenure. It is remarkable that Miss Kimball's only example of a royal alms grant exacting intrinsec service is military.[1] The principal reservations in Scottish royal charters are military arrangements for defence of the realm, and the financial burden of royal aid, which was exacted from the English church lands differently, but exacted all the same. A strong stress on the spiritual purpose of the grant, coupled with a keen eye to military strength, and the exclusion of other secular considerations are the characteristics of the arrangements of services in free alms tenure in chief of the crown.

Homage and Fealty

The Regiam makes two statements, both from Glanvil, about the incidence of homage and fealty upon lands in free alms.

> Consecrated bishops are not obliged to do homage to the king for baronies held in free alms (de baroniis suis eleemosynatis) but only fealty [2]

and it includes lands held in free alms among the list of lands from which homage is not due[3] nec de feudo in liberam elemosinam. On the bishop level, the question of homage caused widespread dispute in various parts of Europe and although there is some evidence of the

1. supra p.281.
2. Reg.Maj.II c.64. S.S. p.174.
3. Reg.Maj.II c.64. S.S. p.175.

victory of crown claims in this matter in Scotland,[1] there is no evidence whether the matter was decided on grounds of law or expediency. If the church view of "no homage" were backed up by the lay legal view expressed in the Regiam, it seems unlikely that the average lay superior was able to exact homage from a powerful religious house to which he had given a few acres. The only piece of evidence we have on the subject is of a successful resistance by May to an attempt by a superior to exact fealty, de fidelitate et fidelitatis iuramento. In 1285 the bishop of St. Andrews, arbitrating, pronounced that the priory was not bound to do fealty to Henry de Dundemore for the land of Turbech,[2] but the basis of the decision is not recorded. There had been previous dispute about the ownership of the land, settled in 1260 by a grant by John de Dundemore, Henry's father, to May.[3] This fealty case may have been a backwash of the earlier controversy - John and Henry may have been reluctant landlords and Henry may have used the claim of fealty and the right of distraint as a haggling counter, an irritant or as a means of acquiring effective possession.

Suit

Suit at the lord's court was another duty involved in the feudal relationship. For the king's tenants-in-chief it meant attendance when summoned to council, or later Parliament, and without summons at the head courts of the sheriff or at the ayre of the Justiciar; for mesne tenants at the courts of the lord as arranged. Frequently lay

1. Dowden: Mediaeval Church p.191.
2. supra p.57. May 30.
3. May 28, 29.

lords quit their church tenants of suit by the terms of the grant - usually in the general quittance.[1] One grant is more specific - Alexander Steward, describing the liberties Melrose is to have in the lands of Kyle, quitclaimed it of rectitudines et sequelam curie mee.[2] If one can argue from a quittance, it seems that the church would be bound to do suit unless immunity were expressed in the terms of the grant.

Royal grants do not give quittance of suit, and it seems probable that the church had to provide suitors to the sheriff courts, but the only piece of evidence on the subject is of a successful church claim for immunity. In 1255 an inquest was held as to whether the lands held by Dunfermline in the sheriffdom of Perth owed suit to the sheriff court of Perth. The sheriff had apparently thought so and (presumably on the judgment of the court) claimed four marks pro defectu sequele. The case went before the justiciar and the resulting inquest found that, although men from the abbey's lands had come to the court, they had not come as suitors. The king recognized the exemption and issued a quitclaim de prefata sequela facienda.[3] If there had been a general immunity from suit to the sheriff court an inquiry along these lines would not have been necessary. We can only assume that Dunfermline had acquired a special immunity in this case.

Suit to the sheriff court must have been a matter for arrangement when lords subinfeudated land to the church, in the same way as other burdens were arranged for. One case in the early XIV century shows

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1. supra p.237
2. Melrose i 325.
3. Dunfermline 85. Cooper: Select Cases No.51 n.

Kelso making an arrangement of this kind. Adam de Dowan resigned his land of Greneryg in his barony of Lesmahagow to Kelso, for which Kelso was to find for Adam in its house of Lesmahagow sustentation of one servant in victuals, a robe and one mark yearly while Adam would do suit for Kelso in the sheriffdom of Lanark as long as he was able in mind and body. When he could not do the suit he would not receive the robe or the money.[1] Adam may have been taking on all the suit Kelso owed in Lanark or he may only have been arranging to continue doing suit for his own lands which he had resigned to Kelso.

A complaint of the Council of Canterbury in 1257 suggests that in England it was common for a donor to become responsible for suit owed from land in free alms.

> Si aliquis laicus consueverit facere sectam in curia domini sui ratione possessionis quam tenet ab eo et partem possessionis dederit ecclesiae vel religiosis in liberam et puram et perpetuam eleemosynam et partem sibi retinuerit in domino, vel servitio eam alio dando, capitales domini faciunt districtiones suas in possessionibus datis in eleemosynam pro secta curiae vel aliis servitiis sibi debitis, omissa possessione quam dator retinuerit vel alii dederint in feudum sibi servitium debitum faciendo vel domino capitali. Et haec videntur in fraudum fieri et contra ecclesiae libertatem.[2]

In that case, suit occupies exactly the same position as other services falling upon the land, and would involve the same problems of whether a general quittance implied assumption by the lord of the responsibility of performance, and whether a lack of quittance implied imposition of the service on the church.

The biggest problem was the duty to attend the highest royal courts - Council and Parliament. There is almost no evidence as to the way

1. 1311. Kelso i 196.
2. Wilkins i 729.

in which this operated. Certainly as soon as we begin to have evidence of the composition of Parliament, prelates are present, but whether in their capacity as ecclesiastical tenants-in-chief or as religious leaders of powerful influence, it is difficult to tell.

The English parallel is probably relevant in this matter as at the centre of government Anglo-Norman influence was almost unchecked. Miss Kimball found that the duty of attendance at Parliament and Council was imposed both on tenants-in-chief and on sub-tenants of the king who held in frankalmoign.[1] Exemptions when given were not based purely upon tenure and

> attendance at parliament had (by the XIV century) become a matter of position rather than tenure. A tenant in frankalmoign might claim exemption from attendance on the basis of his tenure, but all tenants-in-chief in frankalmoign were not exempt from attendance at parliament because they so held.

The position seems to have been that in the early Norman period all church vassals were liable to suit of court, but the development of the Hildebrandine conception of the relation between regnum and sacerdotium which gained ground in Stephen's reign encouraged the clergy to evade or repudiate such secular obligations.[2]

In England, however, it is difficult to disentangle the obligations involved in land held by secular tenure and those involved in frankalmoign tenure, and although there is evidence of some difficulty in enforcing the obligation upon the church's secular tenures, its baronies, it is hard to know how the question of free alms was dealt with or what was the attitude towards it. The Constitutions of Clarendon dealt only with recalcitrance over secular holdings.

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1. EHR lxiii.
2. cf. chapter XIII.

> Archiepiscopi, episcopi et universae personae regni qui de rege tenent in capite et habent possessiones suas de domino rege sicut baroniam et inde respondent justiciis et ministris regis et sequuntur et faciunt omnes rectitudines regias et consuetudines et sicut barones ceteri debent interesse judiciis curiae domini regis cum baronibus usque perveniatur in judicio ad diminutionem membrorum vel mortem.[1]

There is some evidence, however, that from the mid XII century clerical presence in councils and parliaments became less and less dependent upon tenure and that the criterion was rather political and social importance.

It is likely that the attendance of the clergy at Scottish royal councils would follow this criterion too. The presence of the representatives and heads of established institutions whose tenures were not feudal would be necessary and desirable, and could not be systematized on a feudal basis. It is interesting that the exaction of suit was included with secular jurisdiction over lands held in free alms as an infringement of the privileges of the tenure.[2]

Financial Transactions

Since a religious body was a perpetual corporation, it was able to expand and consolidate its property more consistently than lay land-holders, and in every region where a wealthy religious house acquired property this process of expansion and consolidation can be observed. This is especially true of Cistercian settlements where an advanced farming technique on a large scale was the characteristic of estate administration. Melrose's acquisition of a series of properties in the Lammermuir area where the land was particularly suited to

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1. S.C. p.166 cap.XI.
2. infra p.324.

sheep-farming could not be the result of sheer accident. The order's keen interest in the area is testified by a long series of litigations over it and that interest was not a passive one but active and acquisitive. A charter of Arbroath bears witness to this acquisitive incentive.

> quod cum terra de Othirlony que ad Walterum filium Turpini et antecessores suos iure hereditario pertinebat usibus nostris perutilis esset et necessaria propter multimoda ayseamenta proveniencia de eo quod terre domini nostri de Dunmethyne conjuncta sit et contigua idem Walterus ad instanciam nostram de communi consilio amicorum suorum nobis eandem terram concessit...

in exchange for the land of Kenny in the shire of Kyngoldrum.[1] Pressures and inducements of various kinds could be brought to bear upon the owners of land which the house was anxious to acquire and in these cases the church had to make the best bargain it could, without relying too much upon its religious advantages. The transaction was conducted entirely on a commercial level - the render of the land was a cash payment. In these cases a gift in free alms could give good feudal cover for an outright sale as future immunity from service would be common practice. In his confirmation to Coupar Angus (1214/38) Alexander II included

> the two perches of land in the vill of Perth which the monks bought from William son of Lene.[2]

Adam of Durham sold to Melrose for 20s. all his land in West Lilliesleaf which he held of William de Riddale.[3] Adam de Hetun sold to Melrose for £10 the land of Hungerig which he held of Isabel daughter of Robert Croc with the burden of paying 10s. a year to Isabel as

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1. 1226 x 1239. Arbroath Vetus 306.
2. Coupar XXV.
3. Melrose i 290.

overlord.[1] In a grant of 1247 of the Earl of Dunbar to Melrose, we can perceive the pressure of Melrose expansion in Lauderdale. He sold to the abbey totum equicium meum quod habui in feodo de Lawedir for 100 marks to himself and 20 marks to his son for confirmation.[2] In 1273, after a controversy between Simon de Balran and Inchcolm, Simon quitclaimed to the abbey any right he had in the land of Leys and promised not to molest the abbot in his possession

> et venditionem illam quam avus meus et pater meus de predicta terra eisdem fecerunt...confirmavi Recipiendo pro toto iure meo competente et imposterum competituro propter bonum pacis a dictis abbate et conventu 40 marcas.[3]

The best example of fitting a sale into the terms of a grant in alms is the grant of Stephen de Kinncardesley (1218/22) where he made it known that

> de voluntate et assensu et consilio domini patris mei et in presencia sua vendidisse...deo et Gregorio episcopo Brechinensi ...totam terram meam de Drumsleed...liberam et quietam ab omni exactione et consuetudine preter forinsecum servitium domini regis.[4]

For this he received three marks in cash and the rest in pledge.[5] Again, c.1260, Adam Carpentarius sold to Paisley his land of Ingliston to pay his debts and relieve the poverty of his family

> Tenendam et habendam abbati et conventui de Passelet libere quiete pacifice et hereditarie de me et heredibus meis nichil nobis faciendo preter communes orationes.[6]

Frequently, however, the sale took the form rather of a grant in feu-ferme with a cash payment for the gift, and the reservation of an

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1. Melrose i 292/5.
2. Melrose i 230.
3. Inchcolm XXIX.
4. Brechin ii CCXXIV.
5. Arbroath Vetus 245.
6. Paisley p.58. supra p.278.

annual return. In 1246 Alexander II confirmed the sale by John son of Aylbrith of Roxburgh to Gaufridus the gatekeeper of Melrose and all succeeding gatekeepers of land in the vill of Edenham and two burgages in Roxburgh for £33:6:8 saving to himself 10s. annually from these properties.[1] In 1251 Nicholas Textor burgess of Berwick made known that although he gave half his land of Briggate in Berwick to Melrose in alms, and sold them the other half for 100 marks, they had increased the payment to 10 bolls of corn, one chalder ordei and half a mark each year, i.e. the original arrangement had taken the form of a feu-ferme grant.[2]

There are signs that many religious houses were prepared to buy up land from people in financial difficulties, or to advance money on a security of land, e.g. in 1257 agreement was made between Robert abbot of Kelso and Roger Lawird of Berwick, his wife and son, that Kelso should have 12s. yearly from the return of Roger's land in Waldesgat in Berwick for twelve years for a sum of money which the convent gave to Roger and his heir in their great necessity. If they were prevented from having this 12s. because of war, Kelso was to hold the whole return until they recouped their money.[3]

More usually the land was sold outright. There is no record of this being done in the XII century, but toward the middle of the XIII there is a spate of such transactions and, allowing for the limitations of record, they are fairly widespread, e.g. in 1238 Robert and Richard granted in liberam et perpetuam elemosinam to Arbroath

1. Melrose i 239.
2. Melrose i 312.
3. Kelso i 35.

propter invenire nobis estoveria nostra in supprema egestate nostra

all their fee in the parish of Fordun in the Mearnes, to be held freely

salvo forinseco domini regis in exercitu et communi auxilio de quibus dicti monachi respondebunt.[1]

c.1266 Thomas Batail, in order to pay his debts to Kelso gave them his land in Berwick with the burden of paying the reddendo of 2 marks yearly to the heirs of Lucy Blake.[2] In 1252 Richard Burnard lord of Faringdun pro mea magna necessitate sold to Melrose the meadow of 8 acres called Eastmeadow for 35 marks, and Alexander III confirmed.[3]

Sometimes a house was prepared in these circumstances to buy back land from its own tenants. In 1272 Antony Lumbard knight quitclaimed to Paisley all his right in the land of Fulton which he held of the abbey and four marks which he used to draw from the monastery exchequer, and he gave up the charter which he held from them for a sum of money which Paisley gave him ad exonerationem debitorum meorum. This is an unusual case of buying out a tenant and Paisley proceeded to make a further profit by selling a limited right in the land to another tenant..[4] c.1280 Adam de Brun and his wife in great poverty sold back to Paisley land in Neuton near Ayr which they held of Paisley, except 5 marks.[5] In 1290 Thomas de Ravinsher was pressed by debt and compelled iudicaliter per ballivos domini regis et eciam domini abbatis de Kalchou...to sell his land back to his lord the abbot

1. Arbroath Vetus 261.
2. Kelso i 47.
3. Melrose i 335/6.
4. Paisley p.72.
5. Paisley p.71.

> in curia ad exoneracionem huiusmodi debitorum dictis abbati et conventui tanquam capitalibus dominis eiusdem feodi vendidi... hanc terram.[1]

The debts which Thomas had contracted were oblations to the church - which reveals another aspect of the economic forces making for the extension of religious landed property.[2]

While the feudal form was transferred to these commercial transactions feudal obligations had perforce to be met, and an arrangement made about the performance of service to a superior lord, e.g. c.1230 Laurence son of Guy

> de bona voluntate et assensu Henrici filii mei et heredis et omnium librorum meorum

sold to Balmerino land in Perth which he held of the bishop of Dunkeld, namely the land which Gilbert Parvus gave to him with his daughter in matrimony. Reddendo...episcopo Dunkeldense unam libram piperis. In 1231 the bishop of Dunkeld confirmed. Then, about fifty years later, in 1289, there is a charter of John de Moravia which quitclaims to Balmerino all claim which he had on the land which Laurence son of Guy sold to Balmerino

> ita quod nec ego aut heredes mei aut aliquis nomine meo aut heredum meorum in dicta terra hostillagium aut aliquid alius jus poterimus vendicare.[3]

Here Dunkeld was the feudal superior while Gilbert Parvus held from the bishop. John de Moray was probably the heir or successor of Gilbert Parvus, still presumably holding of Dunkeld.

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1. Kelso i 44.
2. see also Glasgow i 236/7.
3. Balmerino 25, 26, 27.

The sale of land in fact did nothing to affect the tenure and the tenurial obligations laid upon the land. The form of conveyance was a feudal one, and the money which also changed hands could be regarded as an inducement to subinfeudate on the same lines as faithful service or spiritual benefit, or it could be regarded as a reddendo. The essential difference was, however, that the service once paid could not be exacted later. It was a service of the present or the past, but not of the future. When it was a matter of selling land to the church the difficulty did not arise as it was customary and usual to receive no services from free alms tenure and that tenure could cover many straightforward commercial transactions. It did, however, raise difficulties with laymen - land sold, still held of the seller who was therefore responsible to his superior, and producing no return. We can see how and why the device of feuing developed in a land where subinfeudation was as unrestricted as financial pressure. Many of these so-called sales do resemble a feu-ferme grant, with a grassum,[1] e.g. Hervey son of Humphrey Ullveter of Forfar and his sister Helewise sold to Balmerino some of their land to be held of them as any land in the kingdom of Scotland is held of a barony in any burgh - for a return to Helewise and her heirs of 3d. Without the word vendidisse we should regard this as an ordinary blench or feu-ferme grant.[2]

There is record of a series of sales of land in Berwick which Robert abbot of Kelso finally granted to Melrose. It is described as the land which the abbot and convent bought from William de Doway and

1. cf. Reg.Ho.Cart. Appendix II
2. Balmerino 36.

which William bought from the heirs of Salmon of Norham. Melrose was to hold it

> in liberum burgagium reddendo Rogero Laudland et heredibus suis tres solidos quos antea eadem terra solvere consuevit.[1]

It is noticeable that in many of these and the countless other similar records, there is connection with a burgh - the other important force in regarding land in terms of money. Sales and mortgages must have been common in burghs from the earliest times. Can one trace the pride of the successful in the statement of Roger Nurys, burgess of Berwick, when he gave Coldstream

> illam terram in Corsgate infra villam de Berewyk quamquidem terram legaliter emi ex propriis perquisitis meis...?[2]

Land in burghs had a cash value and in many cases the church was in the burgh on a purely secular and commercial basis, e.g. Kelso and Melrose in Berwick for the wool trade and the connection between the two is not accidental. Both tended to assess wealth in terms of money and both were therefore important forces in the spread of this attitude amongst ordinary laymen, and we find these financial land transactions taking place between laymen especially in the south, even early in the XIII century.[3] We do not know precisely to what extent these were influenced by the proximity of a wealthy religious house and a market for saleable land - for without a connection with such a religious house the record would have perished.

A clear example of one form of the church's influence in this respect is the foundation of Balmerino. It was a late foundation and

1. Dunfermline 120.
2. Coldstream 49.
3. e.g. Melrose i 260,269,181; Dunfermline 204; Panmure ii p.82; Morton ii 15, 31.

queen Ermengard used financial inducements to acquire the necessary land. Thus Laurence de Habrenith in presence of king Alexander resigned to Balmerino the lands of Cultrach, Balnedean, Balnedark, Cortiby and Balmerino in which the monastery was founded and acknowledged that

> pro hac resignacione...Ermegardis regina...mihi duo centum marcas persolvi mandavit.[1]

In 1225, in the king's court at Forfar, Adam de Strawele, brother and heir of Richard Revel (who held the lands from king Alexander II),[2] resigned to Ermengard the lands of Cultrach and Balmerino and subsequently there was an agreement between the queen and Adam

> super mille marcas quas Ermegarde debuit predicto Ade de Strawel pro quieta clamancia et resignacione...terrarum de Cultrach et Balmerinach factis in curia apud Forfar.[3]

It looks as if the queen had had to buy out both the superior lord and the occupying tenant.

But although this money force affected profoundly the attitude to land and changed the substance of feudal organization, it did so within a feudal structure - and gradually, so that ultimately Scotland could produce that contradiction and paradox, the XV century feu. In the XIII century the beginnings of the development are there - the land-money connection obvious to all, spoken of in royal confirmations, but finding its effective form of conveyancing in a discreet disguise of feudal form.

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1. May 7.
2. Balmerino III.
3. Balmerino IV, V.

CHAPTER XIII

The Judicial Position of Frankalmoign

The judicial position of free alms land is a direct consequence of its tenurial position as partly secular and partly religious. It is given to God, but it is held of the lord. To whose jurisdiction is it subject - the church's or the lord's? Since so much of the conception of church tenure and the practice of its tenurial relations came full-blown from England with the religious personnel in the XII century, the position in England is important.

In the XI century, and before, it seems that all church lands had been justiciable in lay courts. Bigelow cites many cases which he considers as decisive proof that lay courts, royal and otherwise, had jurisdiction over church property before the reign of Stephen, both before and after the Conquest, and "from the Conquest to Stephen this jurisdiction was substantially exclusive."

> Even in the reign of Stephen the king's court did not lose its jurisdiction: the ecclesiastical court merely assumed jurisdiction alongside of it, for the better protection, doubtless, of the secular interests of the church.

The first trials in ecclesiastical courts of questions relating to church property occur in Stephen's reign and continue in Henry II's.[1] In 1136 Stephen gave official recognition and sanction to the practice adopted by the church for the protection of its property and granted the privilege

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1. Bigelow: History of Procedure pp.44/48.

> ecclesiasticarum personarum et omnium clericorum et rerum omnium justiciam et potestatem et distributionem honorum ecclesiasticorum in manu episcoporum esse perhibeo et confirmo.[1]

Once the distinction between church property and lay property had been thus accepted in the eyes of the law the further problem arose of how to determine which was church property. Further definition was necessary from the point of view of both parties - to protect church interests on the one hand and on the other to curb any aggressive tendencies of church courts. The problem was solved in the Constitutions of Clarendon in a form acceptable to lay and canon lawyers alike.

> If a dispute shall arise between a cleric and a layman or between a layman and a cleric concerning any tenement which the cleric asserts to be elemosina and the layman asserts to be lay fee (laicum feudum) it shall be determined by a recognition of twelve lawful free men through the judgment of the king's chief justice whether (utrum) the tenement belongs to elemosina or feudum laicum. And if it be found to pertain to elemosina the plea shall be in the ecclesiastical court, but if it be a lay fee, unless both parties hold of the same bishop or baron, the plea shall be in the royal court. But, if both claim to hold of the same bishop or baron the plea shall be in his court.[2]

In Normandy a similar solution was found and a comparable brieve de feudo et elemosina was developed. If it were established that the church had possessed the land as alms for thirty years in peace, jurisdiction belonged to the church court.[3]

Canon law recognized this division - the separate claims of spirituality and temporality - and central policy was to disclaim any jurisdiction over lay tenure.

> si quaestio feudalis est inter clericum et laicum cognoscet dominus feudi; sed eo negligente cognoscet delegatus papae; etiam ante negligentiam datus

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1. S.C. p.143.
2. S.C. p.165 cl.9.
3. Haskins: Norman Institutions p.173.

and a case of Alexander III's is provided to illustrate the general statement.[1] Innocent III, writing of the dispute between John and Philip, said non enim intendimus indicare de feudo.[2] Therefore, although in the many papal decrees and letters showing the papacy dealing with pleas involving church lands no mention is made of how the church held these lands,[3] we can be sure that they would not be lay fee; and if not lay fee, therefore alms. Even if they were not, it may be maintained as a general principle that if ecclesiastical jurisdiction over them were challenged on a clear basis, it is doubtful if the church court could have stood its ground.

Although Henry II's utrum arrangement was denounced by Becket, it accorded well with the more general clerical view of the situation, and Henry, writing to Alexander III in 1172, stated the position thus:

> quod clericus de caetero non trahatur ante judicem saecularem in persona sua de aliquo criminali neque de aliquo forisfacto excepto forisfacto forestae meae et excepto laico feodo unde mihi vel alii domino saeculari laicum debetur servitium.[4]

But the acknowledgement of two spheres of jurisdiction left the way open for expansion of one at the expense of the other and, as Becket may have seen when the royal courts acquired the initial utrum jurisdiction, the way was open for an exclusively lay interpretation of what constituted alms.[5] Conflict developed between the extreme lay view which restricted it to consecrated soil and the clerical which

1. Corpus Iuris Canonici X ii 2, 6.
2. Corpus Iuris Canonici X ii 1, 13.
3. Corpus Iuris Canonici X ii 15, 3; X ii 16, 3, 4; X ii 20, 36; X ii 25, 6.
4. Annales Monastici III. Prioratus de Dunstaple p.22.
5. It is doubtful if such an extreme interpretation of lay fee as that which prevailed later was originally intended. Was Henry II defining lay fee in his letter as "from which lay service is owed to me or other secular lord"? (supra).

upheld the general position of all alms.[1] By the XIII century the use of the assize had effected the resumption of secular jurisdiction over alms, and Bracton expressed the legal view that the contrast to lay fee was not pura elemosina but consecrated soil.

This extension of the constitution of lay fee to include land in elemosina was accompanied from the mid-century by protests of the English church that churchmen were being forced to litigate in secular courts on matters connected with land in free, pure and perpetual alms. 1257. In the Council of Canterbury among articuli pro quibus episcopi Angliae fuerant pugnaturi are

> c.34. licet aliqua possessio vel libertas data sit a regibus et principis vel aliis fidelibus qui eas libertates poterant donare ecclesiis in liberam et puram et perpetuam elemosinam, nullo retento servicio vel onere imposito; tamen si super eis quaestio moveatur inter ecclesiasticas personas vel laicas et ecclesiasticas compelluntur possessores earum in foro litigare seculari. Idem sit, si libertas ecclesiae data per laicos revocetur in dubium, cum secundum jura, huiusmodi cognitio ad forum ecclesiasticum pertineat.
>
> c.35. ratione huiusmodi possessionum rex et alii magnates nituntur compellere episcopos praelatos et religiosos et rectores ecclesiarum facere sectam ad curiam laicalem.[2]

In 1258 the Privileges of the Clergy, drawn up on the instigation of Grosseteste, state

> qui in libera eleemosyna data ecclesiae et sic consecrata Deo aliquid injuriae intulerit sacrilegium committit; quia res sacra intelligitur, deo scilicet data et a saeculari potestate exempta, foro ecclesiastico subjecta et canonicis legibus ecclesiae tuenda.[3]

In 1260 the Council of Lambeth also spoke:

> Quod ecclesiastici viri non teneantur facere sectam ad curiam laicorum pro ecclesiae libertate.

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1. see Lunt: Valuation of Norwich pp.68-79, where the church classification as spirituality of allland held as pure and perpetual alms.
2. Wilkins Concilia i 729.
3. Annales de Burton p.427.

> Licet autem dominus rex et magnates aliique fideles terras et possessiones in liberam puram et perpetuam elemosinam ecclesiis et viris ecclesiasticis perduxerint conferendas, nichilominus ipsi et ballivi sui compellunt huiusmodi personas ecclesiasticas pro praedictis possessionibus et terris sectam facere ad curiam suam laicalem, contra donationis formam et officium pietatis et jura ecclesiarum...ordinamus quod si districtio fiat pro huiusmodo sectis a donatoribus fundatoribus..,per praemissas censuras ecclesiasticas penitus reprimantur.[1]

In 1290 Nicholas IV complained to Edward I that clerks were being forced to answer before lay judges for non-feudal lands and possessions belonging to their churches.[2] Neither local church nor Papacy could do much and in the XIII century the basis of the ultimate victory of lay courts was laid.

As in other matters, an attempt to determine the equivalent position in Scotland is hindered by lack of evidence. Records of secular courts in the XII and XIII centuries are almost non-existent and the bias of survivals is clearly in favour of church court activity. From an analysis of the few XII century cases of which record has survived, Lord Cooper has shown that all but one were conducted in the royal court, although the pursuers were churchmen and the subject was church property - as in England before Stephen's reign. In the XIII century these cases would have been dealt with by papal judges delegate.

> It seems reasonably clear that the king's court began by handling a substantial volume of business and was successfully discharging its functions during the last quarter of the XII century; that during the first half of the XIII century papal judges delegate encroached very heavily on the province of the king's court; that later in the century the pendulum was swinging back towards its original position.[3]

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1. Wilkins Concilia i 753.
2. C.P.R. i 527.
3. Select Cases p.xlviii.

The relevant passage in the Regiam Majestatem is taken from Glanvil and naturally repeats English principle and that accepted in canon law.

> If the action is between two churchmen and relates to land held in libera eleemosyna or if the defender in an action is a churchman and holds the fee in free alms, then whoever the pursuer may be the proceedings should be before the ecclesiastical court.[1]

Regiam Majestatem does not, however, make any mention of a method for determining whether the lands were held in free alms and there is no indication that Scotland ever copied the English utrum or evolved an alternative. Yet the question must have frequently arisen in one or other of its two possible forms - lay objection to church jurisdiction in matters of lay fee or ecclesiastical objection to secular jurisdiction over frankalmoign. Of the first form of the problem only one case survives - the 1206/8 litigation between Melrose abbey and Patrick Earl of Dunbar. Disputes over the land between the Gala and Leader had arisen in XII century and had been dealt with in the royal court.[2] But in 1206 Melrose claimed against Earl Patrick over rights of pasture in this area and had papal judges delegate appointed to deal with the matter. A papal mandate of 1207 instructing Bricius bishop of Moray to bring the case to an end recites the difficulties which had arisen in getting the Earl to appear. After the compulsion of interdict brought him into court, he had objected to the proceedings on the ground that the court had no jurisdiction

> foro excepto...scilicet quia laicus respectu rei quia erat laicum tenementum iuris communis beneficio eo quod actor sequi debeat forum rei

1. Reg.Maj.II 25 c.2.
2. APS i 387, 388.

i.e. he apparently claimed the land to be lay fee, and the church seemingly answered with a claim of frankalmoign and the argument

> generalis consuetudo sit in partibus illis hactenus observata ut clericus laicum in foro possit ecclesiastico convenire presertim de rebus in puram elemosinam piis locis collatis.

Patrick then presented objections to the person of the judges, but these were likewise dismissed and the papal mandate ordered the case to continue before the bishop of Moray nec obstante fori exceptione.[1] The interesting point is that we are not given the detailed arguments for lay fee or frankalmoign. The mandate states the two sides in the most general principle for which they stood, but does not say - as must be implied - that one side claimed lay fee and the other frankalmoign. Nor does it say why Earl Patrick's claim of laicum tenementum was dismissed. In some way the church lawyers must have proved that Sorrelfield was free alms, for Patrick's was a valid claim and brought into play all the canon law pronouncements disclaiming jurisdiction over feodalia. Subsequent proceedings are unrecorded, but the dispute was ended by an intriguing compromise - "amicable composition" made in the royal court in the presence of William the Lion and his council, with William as first witness and the application of the delegates' seal.

> Ad majorem etiam securitatem dominus episcopus Moravie qui postremus in hac causa fuit a summo pontifice judex delegatus et Henricus abbas de Kelchou in testimonium pacis et concordie facte sua sigilla utrique parti huius cirographi apposuerunt. Hec composicio facta fuit in plena curia domini regis apud Selechirche anno domini m cc octavo in octavis apostolorum Petri et Pauli Hiis testibus domino nostro Willelmo rege, Alexandro filio regis, Radulfo Dunelmensi episcopo, Bricio episcopo Moraviensi etc.[2]

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1. Melrose i 101.
2. Melrose i 102.

A royal confirmation of the composition was issued at the same time and Patrick issued a charter granting the lands to Melrose in liberam puram et perpetuam elemosinam, which was the subject of a royal confirmation as well.[1]

The case arouses endless speculation that it does seem that the separate judicial positions of lay fee and frankalmoign were recognized in Scottish courts, and one might suggest that in this case, where doubt was cast on the frankalmoign, the church was unable to maintain its jurisdiction although the outcome of the case was in its favour.

Another much contested property over which the church failed to maintain jurisdiction was the estate of Stobo. Stobo was recognized as belonging to the bishopric of Glasgow in Earl David's inquest of c.1124.[2] In 1170 it was cited in a papal confirmation of Glasgow's landed possessions and a perambulation of its bounds is recorded c.1200,[3] but there is no indication of the manner in which it was held. In 1208/14 the first indication of trouble occurs - a restitution of Stobo to Glasgow by William son of Geoffrey lord of Orde, who had got it from his lord Robert de Londoneis who had illicite occupasse et diu iniuste detinuisse.[4] In 1223 there was litigation over the property between Glasgow and Jordan de Kurrok. The case was brought before William de Bosco, archdeacon of Lothian and royal chancellor, and Laurence, archdeacon of St. Andrews, as papal judges delegate. The case reached the litis contestacio but was settled out of court by Jordan's resignation of the land in return for a payment of 100 lib. The interesting

1. Melrose i 103, 104, 105.
2. Glasgow i 1.
3. Glasgow i 26, 104.
4. Glasgow i 105; Appendix III No. 1

point is the intervention of Walter Olifard, justiciar of Lothian, in the formation of the settlement. He may have been acting in his official capacity or only as a private intermediary. His charter recording the agreement and giving receipt for the money on Jordan's behalf states that he acts de consensu ipsius Jordani et de consilio amicorum nostrorum and the confirmation of Alexander II gives no further information. His part in the settling of a case which had proceeded in an ecclesiastical court to a fairly advanced point invites speculation.[1]

Finally, at some later period, probably about 1233, Stobo came into court again. This time Glasgow was defendant and the pursuer, Mariota daughter of Samuel, brought Glasgow per litteras regias into the sheriff court at Traquair. Mariota must have been able to establish that the land fell within the court's jurisdiction for the case was completed and she was compelled to resign her claim in return for a payment to her of 10 marks annually from the ferme of the bishop's manor of Eddleston. Even so, bishop William's charter recording the arrangement sounds somewhat querulous. Mariota per litteras regias... coram seculari judice nos traxisset in causam and the contract includes an arrangement whereby if Mariota brought the bishop or his successors before a judge, secular or ecclesiastical, she would lose the rent promised to her.[2]

If Stobo went before judges delegate in 1223 because it was frank-almoign, how did it go before the sheriff ten years later? It seems more than coincidence that the notes of bishop William's charter are

1. Glasgow i 127, 126, 128; Appendix III Nos 2,3,4.
2. Glasgow i 172, 130, 131; Appendix III Nos 5,6.

taken up and developed in two letters of Pope Gregory IX in 1231. The first was addressed to the bishop himself on 2nd April.

> Gregorius episcopus servus servorum dei venerabili fratri Glasguensi episcopo salutem et apostolicam benedictionem. Cum ecclesia Glasguensis ad sedem apostolicam nullo pertineat mediante speciali nos decet eam in suo jure favore fovere ac in libertate debita contra turbatorum molestiam praemunire. Eapropter venerabilis in christo frater tuis supplicationibus annuentes auctoritate tibi praesentium indulgemus ut nullus te vel homines ecclesie tue super tenementis vel aliis spectantibus ad ecclesiam Glasguensem nisi forte sint talia quae tanquam feodalia non tanquam in puram elemosinam sint collata in foro valeat convenire seculari, prohibentes expresse ne super hiis coram iudice seculari vel ipse reddeas aut homines tuos reddere permittas...[1]

The second was addressed the following day to Alexander II, and after a general injunction to protect the church it becomes more specific.

> Et specialiter ad revocanda ea que de bonis ecclesie eiusdem alienata sunt illicite et distracta venerabili fratre nostro Glasguensi episcopo impendas auxilium opportunum nec eundem episcopum vel homines suos super possessionibus et rebus aliis ecclesie sue illis dumtaxat exceptis quas tanquam feudales non tanquam in puram elemosinam collatas possident trahi permittas ad iudicium seculare.[2]

A few years earlier than these Glasgow documents, a letter from Gregory IX to Alexander II, dated December 23 1228, survives in the Liber de Scon. It does not deal specifically with the Glasgow trouble, but it is a strongly worded injunction that he should protect the church's liberty and not permit churchmen to answer in secular judgment for lands and possessions given to the church of Christ in free alms and for advowsons contra sanctiones canonicas.[3]

Whether or not the litigation over Stobo was the cause of the issue of these documents, there was clearly a first-rate conflict of

1. Glasgow i 158.
2. Glasgow i 161.
3. Scone 120 Appendix. III No 2.

jurisdictions. There are two interpretations. Either the royal courts were on the offensive, asserting claim over cases which had previously gone to the church courts, or church courts were on the offensive, asserting canon law on the matter of free alms property. In view of what seems to have been the XII century situation, the offensive probably lay with the church in spite of the earlier Stobo cases.

In the 1220's, while the case of Stobo was being fought in the diocese of Glasgow, an entirely different situation prevailed in the northern diocese of Moray. There a series of disputed claims to landed property, between the bishop and various land-holders, were decided before papal judges delegate and subdelegates.[1] The records of some of these cases specifically state that they were heard before papal judges delegate,[2] and in one[3] the mandate appointing the delegates survives. One can only be deduced because the seals of subdelegates are appended to the final agreement.[4] At the same period as the settlement of these cases, two exactly similar were settled under secular auspices and the king's seal was appended to the final agreement.[5] The outcome of one of these latter cases is of a form which suggests a conflict. The final agreement to which the royal seal was affixed was a resignation by the bishop to the defendant, David son of Duncan Earl of Fife, of the four and a half davachs in

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1. 1224. Moray 73; 1226. Moray 75; 1225. Moray 28; Orig.No.vi; 1226. Moray 74.
2. Moray 28, 73, 75; Orig.No.vi.
3. Moray 73.
4. Moray 74.
5. 1226. Moray 30, 31.

dispute tanquam laycale feodum suum.[1] Another of the Moray records gives direct evidence of a dispute based on the issue with which the Glasgow bulls were dealing. A controversy between the bishop of Moray and Robert Hood over the manor of Lamanbrid was taken before papal judges delegate in 1225,

> illustri rege Scotorum Alexandro prohibente et asserente predictum manerium suam esse baroniam et ideo de ipsa in curia regia et non in ecclesiastica debere litigare.[2]

Royal jurisdiction won in this matter, for the land remained lay fee until 1280 when Malcolm of Moray granted to the bishop his land of Lamabrid which he held of the king.[3]

There are no more obvious signs or specific statements of conflict until the 1250's which brought a renewal of papal pronouncements on the subject of jurisdiction over free alms. In 1253 letters were sent to the bishop of Glasgow and to the bishops of Dunkeld and Brechin asserting that since laymen had no power de rebus ecclesiasticis disponendi Glasgow should not be held to answer in a lay court for lands given to its church in elemosinam.[4] These were followed up by a very strong letter in 1260 to the bishops of Aberdeen and St. Andrews and the archdeacon of Lothian to call the king of Scots to his duty to protect the church and particularly the church of Glasgow.[5] At the same time the abbot and prior of Inchaffray received a mandate to prevent Scone abbey from being called to litigate in a secular court contra fori clericalis privilegium.[6]

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1. Moray 30.
2. Moray Orig.6.
3. Moray Orig.7.
4. Glasgow i 197, 198; Appendix III Nos 3,4.
5. Glasgow i 106; Appendix III No 1
6. Scone 105, 112; Appendix. III No 5

No indication is given of the background to the resurgence of this matter, but in the case of Scone it looks as if some litigation in a secular court was impending and the mandate was sought as a protection. Perhaps the earlier general letter was included in the cartulary to bolster the privilege.

In the 1250's too Moray received a bull from Innocent IV which is more specific about the cause of trouble and suggests that the minority of AlexanderIII apparently brought many inroads upon ecclesiastical privileges and possessions and that all these letters were an attempt to remedy the situation.

> et super possessionibus quoque seu rebus quas in jus divinum pia contulit largitas devotorum clerici per regia trahuntur edicta contra cleri (sic) privilegium ad judicum seculare nec adiuntur jus pupplicum allegantes sicque per judicis incompetentis injuriam non nunquam ecclesie suis possessionibus spoliantur. et preterea cum aliquibus possessionibus ecclesiis in elemosinam a laycis perpetuam donatis in quibus nichil sibi preter exercitum ad defensionem regni et communem auxilium retinent donatores iidem ministri et alii layci eorum favore suffulti per adjectionem huusmodi predictas possessiones laicantes fore censentes eas in omnibus pacis conditionis efficiunt cum possessionibus laycorum et in divine juris dispendium interpretatione perversa donatorum munificentiam restringentes layce subicient servituti - non attendentes quoque quod laycis quantumlibet religiosis de rebus ecclesiasticas nulla est possibilitas distribuendi attributa ecclesiastica predia invitis et contradicentibus dominis limitare propria temeritate et de ipsorum finibus in quorum possessione pacifica ecclesie fuisse noscuntur per tempora longiora, sequentes interdum perjuria laycorum qui clericis opido sunt intesti, proferunt pro laycis contra clericos iniqua judicia qui tandem per spoliationis violentiam exsequuntur.[1]

The gist of this is very similar to the 1260 Glasgow bull, and in the 1253 letter to Glasgow there is even an approximate repetition of phrase: Cum de rebus ecclesiasticis disponendi nulla sit laicis attributa potestas. In 1265 Paisley had apparently petitioned for a

1. Moray 260.

similar statement of clerical privilege from Clement IV - issued at Perusium 28th March 1265.

> Clemens episcopus.... Hinc est quod nos vestris supplicationibus inclinati ut nullus super terris, possessionibus et aliis bonis vobis et monasterio vestro in liberam et perpetuam elemosinam collatis contra sanctiones canonicas vos coram seculari judice convenire presumat vobis auctoritate presentium indulgemus.[1]

Unfortunately there is no means of knowing how far the inroads of the 1250's were lawless deprivations, but the wording of the Moray bull and the consensus of the other letters does suggest that there had been a fairly systematic extension of secular jurisdiction over church property. The complaints voiced by the church are similar to those made in England at a slightly later date, where the circumstances were clearly those of expansive lay jurisdiction.

The problem was not confined to the jurisdiction of royal courts. It arose over the Earl of Lennox's attempt to determine in his court a case involving Kilpatrick which Paisley claimed. In this case the mandates are episcopal and not papal. In 1294 Robert bishop of Glasgow addressed <u>dilectis in Christo filiis de Curmannon, de Cathkert, de Pollog, de Kylmacolme et de Kylberchan vicariis</u>

> Meminimus nos alias mandatum nostram contra nobilem virum dominum Malcolmum comitem de Levenax eius vices gerentes, Walterum Spreuwl senescallum suum de ceteros curiam secum tenentes, direxisse, quod ipsi a cognitione causarum super quibus trahi fecerunt, auctoritate regia, religiosos viros abbatem et conventum de Passelet super eorum terris elemosinatis et possessionibus ex donatione diversorum comitum de Levenax eorum ecclesie de Kylpatrik collatis et in puram et perpetuam elemosinam concessis et obtentis prout in instrumentis super hoc confectis plenius vidimus contineri, et hoc sit publicum et notorium in comitatu de Levenax ubi terre supradicte sunt site in cura sua laicali omnino cessarent. Et contra Robertum Reddehow et Johannam uxorem suam quod ipsi a prosecutione causarum earundem super eisdem terris elemosinatis in

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1. Paisley p.418.

cura predicti comitis contra eosdem religiosos penitus desisterent et cessarent sub pena majoris excommunicationis per nos in eosdem late si contra tenorem mandati nostri supradicti temere processissent. Qui quidem dominus Comes, Walterus Spreuwl ballivi sui ac ceteri secum curiam tenentes contra mandatum nostrum et inhibitionem nostram ac monitiones eis legittime factas de causis predictis super eisdem terris cognoverunt seu in eisdem causis et querelis processerunt contra Deum et justiciam, in ecclesiastice libertatis quamplurimum prejudicium et gravamen et binas districtiones pro duobus merciamentis de bonis eorundem religiosorum capi fecerunt et captas detinent injuste contra libertates ecclesie pro eo quod dicti religiosi in curia sua laycali super eisdem terris elemosinatis minime respondere voluerunt prout de jure non tenebantur...

They have to take six or seven of their order, go into court,

...et comitem...ad hec iterato et legittime nominatim moneatis quod a cognitione causarum predictarum super terris supradictis penitus desistant nec de eisdem aliqualiter in foro laycali se intromittant, cognoscant vel curiam teneant et dictas districtiones pro dictis merciamentis contra libertates ecclesie captas eisdem religiosis deliberent suis difficultate seu liberari faciant desicut cognitio dictarum causarum et querelarum super predictis terris in puram et perpetuam elemosinam ut dictum est collatis ad forum ecclesiasticum de jure pertineant nec curia ecclesiastica eis super hoc directo defecit...
Datum apud Castellaris dominica proxima ante festum beati apostoli Bartholomei anno gratie millesimi ducentesimi nonogesimi quarti.[1]

Two years later another mandate to the dean of Christianity in the earldom of Lennox dealt with the same matter.

Robertus miseratione divina Glasgwensis ecclesie humilis minister dilecto filio in Christo decano cristianitatis de Levenax salutem gratiam et benedictionem Vobis mandamus sub pena canonice districtionis quatinus legittime moneatis nobilem virum Malcolmum comitem de Levenax et ballivos ac sectatores curie sue, assumptis vobiscum quatuor vel quinque sociis vestre ordinis ne religiosos viros abbatem et conventum de Passelet, super eorum terris elemosinatis ad ecclesiam eorundem de Kylpatrik spectantibus, ad forum vetitum seu seculare trahere vel fatigare presumant; desicut querele talium terrarum elemosinatarum ad forum ecclesiasticum secundum libertates ecclesie Scoticane hucusque usitatas et [per] dominum nostrum regem concessas, spectare dignoscuntur et nos parati sumus prout debemus super hiis et aliis cuilibet conquerenti justitie exhibere complimentum. Datum apud Parthech

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1. Paisley p.201.

> die Veneris proxima post festum sancti Yllarii episcopi anno gratie millesimo ducentesimo nonagesimo sexto.[1]

It is unfortunate that the outcome of this dispute is not recorded, but it is interesting that the second mandate refers to the jurisdiction of church courts in these matters as "according to the liberties of the Scottish church hitherto practised and granted by the king". It is possible that a concession on this matter may have been extracted as a result of previous conflict, but more likely that the church claimed this privilege as part of the general liberties of the church - which was the point at issue.

The evidence is difficult to interpret in all its implications, but the conflict between the civil and ecclesiastical jurisdictions emerges clearly - waged at the top level with papal and crown exchanges as well as on the lower levels of bishops' courts. It cannot be said with which party the initiative lay in the controversy. The volubility of church protests suggests that the advance was a lay one - probably parallel to the advance of lay over ecclesiastical jurisdiction in England at the same time and perhaps connected with the increasing activity of papal judges delegate.[2]

The peak achievement of papal interference is probably the case of 1204, the dispute between Melrose and Kelso about the boundaries of Bowden, with which William the Lion dealt in person,

> acting in substance, though not in form, as a Papal judge delegate and allowing his decision to be confirmed by the church hierarchy as if it possessed no inherent authority of its own.[3]

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1. Paisley p.204.
2. see Select Cases 3, 7.
3. Select Cases 2.

In 1227, in a similar boundary dispute concerning Arbroath, a perambulation was conducted under royal presidence and civil custom

> secundum legalem assissam regis David usitatem et probatum in regno Scocie usque ad illum diem.[1]

The incidence of two important disputed jurisdiction cases in the first decade of the XIII century[2] where victory lay with the ecclesiastical court is perhaps significant. They must be connected with the Melrose-Kelso boundary dispute and the 1206 case where a layman accepted the jurisdiction of the diocesan synod in a matter of both property and possession.[3]

Another case revealing conflict between the two jurisdictions in this period is the disputed succession to the earldom of Menteith (1204). The king adjudged possession of the earldom to Walter Bailloch and Mary countess of Menteith his wife, reserving the question of ownership as between them and the other party, John Russell and Isabella his wife. John and Isabella were compelled to renounce their right to John Cumin, and the Pope was asked to intervene between John Cumin and Walter, but his delegate went beyond his instructions, cited king, prelates, barons and earls beyond the realm and adjudged the earldom to John Russell and Isabella.

> The king has prayed the Pope to revoke this but he orders as above, directing bishops and abbots to allow no appeal and cause

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1. S.C. 13; Arbroath i 229. cf. S.C. 45, Arbroath i 294; S.C. 47, Arbroath i 366; and cf. the opposite extreme of jurisdiction in a late XII century boundary dispute which involved church property - the 1181 dispute between Melrose and Huctred of Grubesheued was decided by the archdeacon of Glasgow and the boundaries of the land of Halkaks granted by Huctred were perambulated by archdeacon Simon and others. (Kelso i 118)
2. Select Cases 4, 6.
3. Select Cases 5; cf.Nos.3 and 7.

the sentence to be observed, civil jurisdiction of the realm being respected.[1]

Altogether, the legal survivals of this decade seem to indicate some weakness on the part of the civil courts but an increasing legal armoury to dispute the claims of church jurisdiction. This seems to have begun to take effect in the 1220's and provoked considerable reaction on the church's part. The Stobo case is an interesting illustration. The full details of the conflict cannot be worked out in detail from the survivals, but its existence and general basis do emerge. Comparison with England is useless as XII century Scottish legal development was even and continuous with no great breakdown like Stephen's reign and no need for reassertion and redefinition like Henry II's. There was no great retreat of royal jurisdiction and no impressive advance. In both secular and ecclesiastical courts there was a steady activity and the interplay of equal and constant partners. The peak period of ecclesiastical jurisprudence - most strongly symbolized by Innocent III - coincided with a period of strong secular legal consolidation. Conflict was inevitable from the historical background and the nature of the problems involved.

The importance of the conflict may be gauged from the extent of lands held in free alms. The nature of church endowment would make the conflict in Scotland different from that in England from the start, for the Scottish church owned hardly any lay fee (cf. post-Conquest English church endowments) and to question whether a tenure was free alms would, in Scotland, be almost equivalent to challenging the

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1. C.P.R. i 408; see Scots Peerage VI 129-130.

church's ownership - which would be the heart of proposed litigation. There was, therefore, less difficulty in Scotland in determining whether land was free alms or whether it was lay fee. The answer would in most cases be fairly obvious and the attention of both sides in the conflict would be occupied in asserting their acknowledged jurisdiction. The papal pronouncements on the subject with Scottish relevance show that there was a strong determination to maintain the continental feudal principle

> la franche aumône...un franc alleu échappant à toute juridiction civile.[1]

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1. Viollet p.702.

APPENDIX I

Charters of William the Lion and Alexander II to lay tenants-in-chief

I Land Grants of William the Lion

Date	Lands	Tenant	Service	Source
1) 1165	Wormiston (Fife)	Venero and heirs	2d. nomine albe firme	XVII cent.copy (Lawrie I)
2) 1165/70	Granton	Gregory de Melville	1 archer with a horse in the army	Melvilles III
3) 1165/71	Witsdale	Andrew son of Uviet	20s.	Buccleugh 2
4) 1165/71[1]	Strathboc, Roseile, Inchekell & Duffus	William son of William de Freskyn	2 knights	14 H.M.C.pl.3.p.97
5) 1165/73	Annandale	Robert de Bruce & heirs	10 knights	N.MSS. i
6) 1166/71	Inverarichthin	Orm son of Hugh	---	H.M.C.13 pl.2.p.1.
7) 1171/8	Cultrach	Henry Revel & heirs	½ knight	Balmerino 2
8) 1171/84	isle in lake of Lunin & ½ carucate in Duldewach	John the hermit	lifeholding	Moray 3
9) 1172/8	abthanery of Abernethy	Orm son of Hugh	20 lib.silver	Reg.Ho.Roy.
10) 1172/7	Purin, Oggalvin & Kymmanethan	Gilbert son of Earl of Angus	1 knight	Douglas iii 349 (XVI cent.transcript)
11) 1172/8	Muthill, Tulliedale, Kincardin & Rossi	Malise son of Forteth, Earl of Strathearn, & heirs	1 knight	Inchaffray p.153
12) 1172/84	Ardos	Merleswan	1 knight	Reg.Ho.Roy.
13) 1178/82	Earldom of Lennox, Lindores & Dundee	Earl David	10 knights	Lindores I
14) pre 1177	Rossin	Henry son of Gregory, clerk	1 knight	Original (Lawrie I)
15) 1180/2	Errol	William de Hay	2 knights	Reg.Ho.Roy.
16) c.1180	Cousland, Pentland & Gogger	Randolf de Graham	1½ knights	Montrose charters (Lawrie I)

1. original missing and only known from H.M.C. reference.

Date	Lands	Tenant	Service	Source
17) 1180/9	Seton, Wintune & Wincelburh	Philip de Seton	1 knight	Reg.Ho.Roy.
18) 1180/2	Newton	Walter de Berkeley	½ knight	Oliphants 1
19) 1185	Maddyrnin (forfeited from Gilcolm)	Earl Gilbert of Strathearn	1 knight	Inchaffray App.II
20) 1189/92	Gasgingrei (Fife)	Robert son of Henry Pincerne	forinsec service for ½ carucate	H.M.C.5.p.623
21) 1189/96	Kergill	Richard de Montfichet	1 knight	Reg.Ho.Roy.
22) 1189/96	Binne	Hugh, brother of Helias	½ knight	Reg.Ho.Roy.
23) 1189/99	Allardyce	Walter, son of Walter Scot	1 archer with horse & hauberk & common aid for 13 bovates	H.M.C.5.p.629
24) 1196/9	Frande in Glendevon	Roger de Haden	1 knight	Reg.Ho.Roy.
25) 1195/9	Gifford, Tealing & Polganthin	William de Giffard	1 knight	(Yester 6) (Carlaverock 2)
26) c.1198	Bannevin & Panmure	William de Valoniis	½ knight	Panmure ii 132
27) 1199	1 carucate in Lessedwine	Robert son of Maccus	20s. & services of the land preter arare et metare	Reg.Ho.Roy. Maxwells 121
28) 1200	Stradhekhn	William Gifford	9 marks & 60 pennies	
29) 1200	land near Crail	John Walter	1 servant with horse & hauberk & forinsec service of ½ carucate	B.M.Campbell Charters L.F.C.xxx 5
30) 1200/4	Inverpefir	Walkelyn, king's armsbearer	as charter given to him attests	Arbroath i 233

Date	Lands	Tenant	Service	Source
31) 1202/7	Yester	William Giffard	1 knight	Yester 8
32) 1202/7	Gutherin	Walter de la Kernelle	½ knight	Reg.Ho.Roy.
33) pre 1203	Foulis	Roger de Mortuomari	1 knight	Panmure ii 80
34) 1204/7	Caledouer (?Cawdor) & Strathleven	Malcolm Earl of Fife	2 knights	Balfour MSS.
35) 1211/14	Lethendine & Ure	Gilbert Earl of Strathearn	1 knight	Ins.Miss. App.4
36)	land near Lanark (exchange for land in Edenham given by Malcolm IV)	Jordan son of William son of Nigel	½ stone wax	Reg.MS.i 97 p.476
37)	Inverleith	Ailsius, king's "pistor"	service of his body	Newbattle III & IV
38)	land in Perth	William Galeator	2 helmets yearly	Scone 46
39) [1]	Kynnaber, Charlton & Borrowfield (?near the north Esk)	David de Graham	1 archer & 1 suit	Montrose Muniments 1 (Lawrie 1)
40)	Hownam	William son of John	in forest	Antiq.MSS. p.328

1. in baroniam - doubtful form for this period.

II Land Grants of Alexander II

Date	Lands	Tenant	Service	Source
1) 1216/8	20 marks "waiting"	Robert Aubeine	---	Raine App.LXI
2) 1218/20	Lenzie	William Comyne	1 knight	Wigtown 1 Carlaverock ii 3
3) 1216/8	Errol	David, son of William de Hay	2 knights	Spalding Misc. ii 305
4) 1221	2000 librates in Fife & Borders	Joanna his wife	in dotarium	Pat.H III
5) 1222	Dunloppyn	Laurence, son of Orm	as charter of Malcolm IV & William	Adv.MS. 34/4/120
6) 1223	Cruiks	burgesses of Inverkeithing	½ mark ex parte nostra to the man who holds demesne of Inverkeithing	Lawrie MS. IV
7) 1223	Glenduke & Balmeadon	Laurence, son of Orm	as king William's charter	Lawrie MS. IV
8) 1224	Brunschaitt etc.	Thomas de Alnot	¼ knight	Melrose i 206
9) 1225	Lunlethan	Alexander de Lamberton	¼ knight	Adv.Lib.
10) 1225	earldom of Fife	Malcolm, son of Earl Duncan	service "used and wont"	Nat.MSS. i L
11) c.1225	Inch of Scone	Galfridus,king's clerk	1 stone wax	Scone 62
12) 1232	Bamff etc., Alyth & lands of Foyle	Ness, king's doctor	¼ knight & forinsec service	Bamff 1

Date	Lands	Tenant	Service	Source
13) 1232/3	Glengeith	Patrick son of William son of Orm	½ knight & forinsec service	Atholl 5
14) 1232	Nevithbarre etc.	Gillanres Maclod	1 knight & forinsec service	Brechin i 2
15) 1232	Closeburn	Ivo de Kilpatrick	¼ knight nomine albe firme	Lawrie MS. V
16) 1233	unspecified	Malcolm former thane of Calentyr	1 knight	Pollock 3 Reg.Ho.Roy.
17) 1233	30 acres moor of Crail	Walter, queen's messenger	6d.	Balmerino 42, 43
18) 1233	land in castle of Roxburgh	Laurence of Aberneth	unspecified in surviving note	Lawrie MS. V
19) 1235	waste of Dundaff, & Strathkewan	Patrick Earl of Dunbar	⅓ knight	Morton i App.3
20) 1236	Both & Banchory in ballia of Invernarn	Gilbert Dorward	1/10 knight & forinsec service	Cawdor 2 Reg.Ho.Roy.
21) 1236	Kintesak	Richard of Moray	ad perpetuam firmam	Moray C.O.II
22) 1236	Great Kyncoreche & lesser Kyntessocke (near Forres)	Richard of Moray	ad perpetuam firmam 1) 4 chalders cabbage & 4d. 2) the same	Moray App.11
23)1236	Merkink	burgesses of Inverness	1 lb. pepper	R.M.S. ii 804
24) 1237	lands in Perthshire	Alan & Margaret de Lain	service "used & wont"	

Date	Lands	Tenant	Service	Source
25) 1238	earldom of Lennox	Maldouen	forinsec service pertaining ad plenarias villas in aids & armies	Levenax p.1
26) 1240	lands in Argyle	Gillascop MacGilcrist	½ knight in army; 1 knight in aid; Scottish service	Highland Papers ii 240
27) 1240	fishing	Randulf de Hawille & assignees	to be ordained when Randulf assigns	Melrose i 177
28) 1241	Glengeith etc. (supra No.13)	Patrick son of William son of Orm	---	7 Hist.MSS.p.704
29) 1242	Corencrare (near Banff)	Waleran de Normanville	⅕ knight	Ant.Aber.& Banff ii 109
30) 1245	Roskelyn & Cattenkon (Roslin)	William de St. Clair	½ knight	Newbattle VI
31) 1247	Tulinaeboy	Robert Wauchop	⅓ knight & forinsec Scottish service	Archaeologia i 366/7
32) 1247	Lechelyin	Norin son of Norman	unspecified	Reg.Ho.Roy.
33) 1247	Invirlunane	Anselm de Camelyne	½ knight, Scottish service & 12 lib.	Carnegies ii 487

APPENDIX II

Miscellaneous Charters

Bannatyne Board MADE IN SCOTLAND

No. 1

Willelmus dei gratia Rex Scottorum Episcopis abbatibus Comitibus Justiciis vicecomitibus ministris et omnibus probis hominibus tocius terre sue salutem. Sciant presentes et futuri me dedisse 7 concessisse 7 hac carta mea confirmasse comiti Gileberto de Stradhern kinbethach per suas rectas divisas 7 cum omnibus iustis pertinenciis suis tenendum sibi et heredibus suis de me et heredibus meis ita libere et quiete sicut tenet comitatum de Stradhern Testibus Hugone episcopo Sancti Andree David fratre meo comite dunecano, comite G de Anegus, Waltero deberkeley camerario, Johanne de Lundoniis, Roberto deberkeley Malcolm mac Gillis, Gillechristo mac imensanniel, Gillemich mac Dunec (ani?), Gillecolm marescaldo.

c.1178-1180 (Atholl Charters No.1)

The lands of Kinbethach may be identified as Kinbattoch in the parish of Towle in West Aberdeenshire (Ant.Aber.& Banff i 612/3). The Berkeleys held an estate in that parish and the appearance of Walter and Robert de Berkeley on the witness list reinforces this identification.

Gilbert Earl of Strathearn 1171-1223. Scots Peerage VIII p.241.

Hugh, bishop of St. Andrews 1177/8-1188. His coincidence with Walter de Berkeley as chamberlain means he was witnessing as bishop before his claims were allowed by the Pope. Dowden: Bishops p.9.

Earl Duncan of Fife. 1154-1204. see Coupar Angus i p.2; Scots Peerage IV p.6.

Earl G. of Angus. In this case, Earl Gilbert who appears in documents 1150-1187. Earl Gilchrist, his successor, is alsofrequently referred to as "Earl G." but the first mention of him is c.1198, i.e. later than Walter de Berkeley's chamberlainship. Scots Peerage I pp.161-2.

Walter de Berkeley chamberlain c.1172-1180. Easson suggests contra A. O. Anderson that he preceded Philip de Valence as chamberlain. Coupar Angus i p.6.

Gillecolm marescallo was forfeited for treason and his lands of Maddernyn (see Coupar Angus, Appendix II) given by king William to the Earl of Strathearn. He was killed 1185. He appears as witness to a charter of William granting Ardross (Fife) to Merleswan. (1172-8. Inchcolm p.126)

No. 2

.....Scottorum omnibus probis hominibus tocius terre sue clericis et laicis salutem sciant.....concessisse et hac carta mea confirmasse comiti Gilleberti de Stradhern Vre per.....et lethendin per illas divisas per quas Nessus filius Willelmi et Galfridus de malleville et gillechrist.....eam perambulaverant malisio fratri ipsius comitis Gilleberti. Tenendas sibi et heredibus suis de me et heredibus meis in feodo et hereditate in boscho et plano in pratis et pascuis in aquis et stagnis in molendinis et moris et cum omnibus iustis pertinenciis suis cum furca et fossa cum tol et them et infangenethef libere et quiete plenarie et honorifice per servicium unius militis sicut carta predicti malisii testatur. Testibus Willelmo de boscho cancellario meo Philippo de Moubray, ffulcon de sules, henrico filio comitis David, Alexandro vicecomite de Strivelin, Allano marescallo, Ricardo Revel, Johanne de Moravia Johanne de Haya. Apud Strivelin xxv die Novembris

1211-1214 (Atholl Charters No.2)

Although the MS is damaged this is a charter of William the Lion and is one of a series granting additional lands to Gilbert Earl of Strathearn.

The lands of Ure and Lethendin are difficult to identify, but may be part of Lethendy in Perthshire.

Ness son of William may be identical with Ness the king's doctor. (Banff Charters p.4 et seq.)

Galfridus de Melville. see Fraser: Melvilles i p.3. He is a frequent witness of charters of Malcolm IV and William, and Justiciar of Scotland.

Willelmo de Boscho cancellario meo. William de Bois was appointed chancellor on June 28 1211 (Chron.Melrose) and held the position until 1226 with a gap between 1220 and 1225. see Inchcolm p.110.

Philip de Moubray, father of Roger and Nigel de Moubray. (see Inchcolm pp.124-5) Granted a charter to Dunfermline c.1202-14. (Dunfermline 166)

Henry son of Earl David. Earl David had two illegitimate sons, Henry of Stirling and Henry of Brechin, who appear on record between

1200/7 and 1234 (Lindores V; XV; XVI; XVII; XVIII; XIX; LX; Arbroath Vetus 57; Balmerino 5, 18, 31)

Alexander sheriff of Stirling c.1195-1223 is a frequent witness of William's charters and was at one time justiciar of Lothian. see Inchaffray p.268.

John de Moravia. There were several contemporaries of this name. see Coupar Angus p.145.

John de Haya, third son of William de Hay to whom William gave Errol.

Ricardo Revel, nephew of Henry Revel who acquired the lands of Cultrach and the site of Balmerino abbey which queen Ermengard later acquired from him to found the abbey. (Chapter XII)

No. 3

Willelmus dei gracia rex Scottorum episcopis abbatibus comitibus baronibus justiciis vicecomitibus prepositis et omnibus probis hominibus tocius terre sue clericis et laicis salutem. Sciant presentes et futuri me dedisse et concessisse et hac carta mea confirmasse Johanni Waler' pro homagio et servicio suo totam terram illam quam Willelmus Carpentarius tenuit in Ballebotle scilicet quantam reiam tocius medietatis de Ballebotle et in campis et Dremin illam terram quam Hugo Giffard et Alexander de Sancto Martino et Godefridus Marescallus et Winemeus et alii probi homines precepto Ade comitisse matris mee Rogero de Camero perambulaverunt et preterea totam terram in Ardarie quam Willelmus de Beausco tenuit scilicet terram illam que est ex orientale parte rivuli que currit iuxta terram Galfridi capellani usque ad fontem illum versus Karel que scottice Tolan nuncupatur et totam terram illam per easdem divisas quas Galfridus de Maleville et Hugo Giffard et Godefridus Marescallus et Winemeus et alii probi homines predicto Willelmo ec omni parte versus moram et alibi perambulaverunt et communem pasturam de Karel et unum toftum in Karel, illum scilicet quem Ada comitissa mater mea predicto Willelmo dedit. Quare volo et firmiter precipio ut predictus Johannes et heredes sui omnes prescriptas tenuras habeant et teneant de me et heredibus meis in feudo et hereditate in pratis et pascuis in moris et maresiis et in omnibus aliis aisiamentis que ad predictas terras iuste pertinent libere et quiete plenarie honorifice per servicium unius servientis in equo cum halbergello et faciendo in auxiliis et aliis forinsecis serviciis pro tota terra quam habet in Ardaria tantum servicium quantum pertinet ad dimidiam carucatam

terre scotticam in Karelischire. Concessi etiam predicto Johanni et heredibus suis ut quieti sint de multura de propria domo sua ad molendinum meum set homines sui dent multuram et quod bladum ipsius Johannis et heredum suorum molatur ad molendinum meum primo post bladum que in tremello fuit nisi bladus meus ibi sit aut superveniat. Testibus Philippo de Valoniis camerario meo, Willelmo capellano meo, Willelmo Cumyn, Hugone et Willelmo et Ada clericis meis, magistro Nicholao et magistro Martino clericis meis, Alexandro vicecomite de Striveline, Willelmo de Valoniis, Alexandro filio Thore, Johanne de Strivelin, Roberto Querantel (?). Apud ? xiii die Octobris.

c.1200-1214. B.M. Campbell Charters LFC XXX 5

This charter is particularly suggestive of administrative arrangements - the writ from countess Ada to an official of the Camera, and the list of royal clerks as witnesses, who include two magistri.

The lands which are the subject of the charter are situated in Lothian and in Fife. Countess Ada apparently had property near Drem as well as near Crail and the presence of Alexander de St. Martin as a perambulator provides a link with David I's grant to him in that area. (L.C. CLXXXIII. supra chapter III)

No. 4

Alexander dei gratia rex scottorum Omnibus probis hominibus tocius terre sue clericis et laicis salutem. Sciant presentes et futuri nos concessisse et hac carta nostra confirmasse donacionem illam quam Maldoven comes de levenax fecit Simoni filio Simonis filii Bertolfi pro homagio et servicio suo de Lettehtwerling que est dimidia carrucata terre. Tenendam eidem Simoni et heredibus suis de predicto comiti de Levenax et heredibus suis in feodo et hereditate per rectas divisas suas et cum iustis pertinenciis suis. Ita libere et quiete plenarie et honorifice sicut carta predicti comitis inde facta predicto Simoni iuste testatur salvo servicio nostro. Testibus Thoma de Striveling cancellario, Waltero Olifard justiciario Laodonie, Willelmo filio comitis Patricii, Johanne de Maccuswell, Bernard Fraser, Ricard de Coulter vicecomite de Lanarc, apud Cadehou tercio die Augusti anno regni nostri duodecimo.

1226 (Atholl Charters No.4)

During the reign of Alexander II royal charters begin to be dated with the regnal year, a practice which may be connected with Thomas of Stirling's chancellorship or at least his previous activities in the chancery.

There is no trace of a charter of Maldouen (c.1225-pre 1270 - Scots Peerage V p.331) to Simon although Simon appears as witness to a charter of the Earl's c.1225. (Fraser's Lennox ii No.204 p.402.)

Lettehtwerling may be Letterwald in Lennox (Fraser's Lennox i 242, 244.)

Walter Olifard justiciar of Lothian from 1220.

William son of Earl Patrick son of the 5th Earl. Scots Peerage III p.254.

Bernard Fraser of Fortune and Linton. Sheriff of Stirling 1234. (Frasers of Philorth i 18.)

No. 5

Alexander dei gracia rex Scottorum omnibus probis hominibus tocius terre sue salutem. Sciant presentes et futuri nos dedisse concessisse et hac presenti carta confirmasse Patricio filio Willelmi filii Orm pro homagio et servicio suo Glengeyth, Ardauch, Hauchennacreve, Syfenes beg et Syffenes mor. Tenendas et habendas eidem Patricio et heredibus suis de nobis et heredibus nostris in feudo et hereditate per rectas divisas suas in bosco et plano, in terris et aquis, in pratis et pascuis in moris et maresiis, in stagnis et molendinis cum socco et sacca cum furca et fossa cum tol et them et infangandthef et cum omnibus aliis ad easdem terras juste pertinentibus, libere, quiete, plenarie et honorifice per servitium dimidii militis; et faciendo forinsecum servicium quod pertinet ad easdem terras. Salvis elemosinis nostris si que de eisdem terris debentur. Testibus W. de Bondington, cancellario, Roberto de Ros, Bernardo Fraser, Radulfo de Campania, Rogero filio Glay, Aymiro de Maccuswel, Willelmo de Haudene, Roberto Biseth. Apud Striveline sexto decimo die Martii anno regni nostri nonodecimo.

From a copy among Methven papers, from original in Atholl Charter chest in Lawrie Collection. Nat.Lib.

1233

No.6

Alexander dei gratia rex Scottorum omnibus probis hominibus tocius terre sue salutem. Sciatis quod concessimus Patricio filio W(illelmi) filii Orm ut terras suas quas habet deultra Moneth scilicet Glengeyth, Ardauch, Achennacrei, Syffenes Beg et Syffenes Mor: ipse et heredes sui habeant in liberum forestum. Qr fi..nit (Quare firmiter) prohibemus ne quis sine eorum licentia in dictis terris secet aut venet super nostram plenariam forisfacturam decem librarum. Testibus Galfrido episcopo Dunkeldense, Waltero Cumyn comite de Menteth, Henrico de Bayll camerario, Ricardo de Moravia. Apud Pcho (Perth?) 18 Jul. anno regni domini regis vicesimo septimo.

1241
(Atholl Charters No.5)

These two charters should be dealt with together, but the transcript which came into Lawrie's hands had become separated from its companion and no longer exists in the Atholl collection. No. 6 contains the phrase deultra Moneth which helps to identify the lands concerned. The clue to their identity comes from a XVI century charter of the lands of "Litill Ardach et Auchincrieff in baronia de Scheves. (Ant.Aber.& Banff iii 558) Syffenes is therefore Scheves in the parish of Fyvie. Balfour described "Auchincrieff" as in the Garioch and as having a castle. (Ant. Aber.& Banff i 90) Glengeyth may be either Gleney or Glencoiche. (Ant. Aber.& Banff i 78)

William son of Orm received several grants from William the Lion in the southern part of Scotland. (Table in Appendix I; Coupar p.39.)

William de Bondington was appointed chancellor in 1231, was elected to Glasgow 1232/3 and consecrated September 11 1233.

Ralf de Campania. According to Easson (Coupar p.96) he witnesses Alexander II charters from April 22 1231 to February 7 1232/3. This charter extends the period to March 16.

Roger son of Glay witnesses Alexander II charters from October 9 1232 to June 1 1235. (Coupar p.96.)

Aymer de Maxwell became chamberlain March 18 1257/8. He is first found witnessing an Alexander II charter on February 4 of the year of this charter, when John de Maxwell was chamberlain. (Melrose i 248.)

Geoffrey, bishop of Dunkeld. Dowden p.54. 1236-1249.

Walter Comyn Earl of Menteith. Scots Peerage VI p.127. Later Earl of Buchan. Scots Peerage i 505.

Omnibus hoc scriptum visuris vel audituris Gilbertus de Dundowan filius quondam Gilberti filii Dovinaldi eternam in domino salutem. Noveritis universitas vestra me dedisse concessisse et hac presenti carta mea confirmasse Willelmo de Moravia filio domini Malcolmi de Moravia totam terram meam de Dundowan ad feudofirmam intūs et extūs cum omnibus libertatibus et aysiamentis dicte terre pertinentibus vel alique tempore pertinere valentibus. Tenendam et habendam dicto Willelmo de Moravia et heredibus suis vel assignatis de me et heredibus meis imperpetuum adeo libere quiete integre plenarie et honorifice sicut ego vel aliquis antecessorum meorum liberius quietius integrius plenarius et honorificius predictam terram de Dundowan de domino comite de Strathern tenemus et tenuimus vel aliquo tempore tenere poterimus. Reddendo inde annuatim predictus Willelmus et heredes sui vel assignati michi et heredibus meis viginti solidos sterlingorum medietatem scilicet ad Pentecost et aliam medietatem ~~xxxxxxx~~ ad festum S. Martini in hyeme pro omni seculari servicio consuetudine exaccione et demanda. Ita quod dictus Willelmus et heredes sui vel assignati liberi erunt et quieti ab omnibus sectis curie releviis wardis et auxiliis quae a me et heredibus meis aliquo tempore exigi poterunt pro predictis viginti solidis terminis prenominatis persolvendis. Et si contigit quod dictus Willelmus vel heredes sui vel assignati integrum tenementum dicte terre de Dundowan aliquo tempore per iudicium requirunt predictus Willelmus et heredes sui vel assignati extunc michi et heredibus meis quadraginta solidos sterlingorum annuatim reddent 20 solidos ad Pentecost scilicet et alios 20 solidos ad festum S Martini in hyeme. Et si contingat me vel heredes

meos aliquo tempore contra presens scriptum in dicto vel facto quod absit evenire subicio me et heredes meos iurisdictione decani Dunblanense et loci eiusdem officiali qui pro tempore fuerint ut ipsi vel unus eorum qui super hoc requisitus fuerit possint vel posset in nos sententiam excommunicationis de die in diem fulminare quousque eidem Willelmo et heredibus suis vel assignatis de dicto vel facto satisfecerimus. Ego vero Gilbertus et heredes mei totam predictam prout prescriptum est saepedicto Willelmo et heredibus suis vel assignatis contra omnes homines et feminas inperpetuum warrantizabimus acquietabimus et defendemus. Et quia sigillum meum non est auctenticum ideo in huius rei testimonium sigilla dominorum Cristini de insula burgensis de Perth et tunc tempore loci eiusdem vicecomitis magistri Thome tunc decani Dunblanensis, Nicholai tunc rectore ecclesie de Cref, Willelmi de Fordal tunc iudicis domini regis de Perth unacum sigillo meo presenti scripto ad instanciam meam sunt appensa. Hiis testibus Ada filio Abraham judici de Strathern, Monauch Macalpy, Malcolmo de Houctirardor, Colino Gilglas, Thome Maro, Hugone Clerico et multis aliis.

(Tags for 5 seals which appear to have been cut off)

(Atholl Charters No.6)

This charter must be linked with the charter c.1284 of Malise Earl of Strathearn granting to the same William of Moray terras meas de Dundovan et de Pethuer for a return of 4 marks for all service except the king's forinsec service and suit to the Earl's court. (Moray: Cart. Orig.No.9.) Presumably this fuller grant by the capital lord of the fee covers both Gilbert de Dundowan's recorded donation and the land which could be acquired per iudicium. (Nicholas rector of Crieff also witnessed to the Earl's charter.)

Malcolm of Moray and his family are discussed in the Registrum Episcopatus Moraviensis p.xl et seq. William married Ada daughter of Malise steward of Strathearn and thereby established the family in

Perthshire within the earldom. (Cart.Orig.13, 14, 16.) He also held lands in Moray from his father (Lamabrid:Cart.Orig.7) and from his elder brother John.

The charters printed in the Moray Appendix came from the Atholl charter chest but this one was missed by the editors.

The lands granted do not survive in modern form, but appear to have been situated in Glendevon.

An important diplomatic question is raised by the statement that the donor's sigillum non est auctenticum. The phrase has a more specific connotation than the moreusual position in Andrew of Dalreach's charter to William of Moray - sigillum meum non est satis notum - with authentication of the document by the seal of the bishop of Dunblane, (Cart.Orig.16) and suggests some form of necessary official recognition.

No. 8

Omnibus has litteras visuris vel audituris Nesius de Lundon salutem. Sciatis me dedisse 7 concessisse 7 hac presenti carta mea confirmasse Alano consangeneo meo pro homagio 7 servicio suo medietatem ville de Smithetun cum rectis divisis suis et omnibus aisiamentis ad predictam villam pertinentibus. Tenendum sibi 7 heredibus suis de me 7 heredibus meis in feodo 7 hereditate pro omni servicio consuetudine exaccione 7 demanda adeo libere quiete plenarie 7 honorifice ut aliquis liberius aliquam terram de me tenet 7 possidet. Faciendo inde mihi et heredibus meis ipse et heredes sui forinsecum servicium quantum pertinet ad dimidiam carucatam terre 7 reddendo annuatim unam liberam piperis ad festum sancti michaelis. Hiis testibus David de Haya, Ada filio Hudardi, Waltero de Cungelton, Alano de Crahoc, Willelmo de Cogeshale, Gilberto Capellano de Hamer, Ricardo persona de Daliel, Simone de Sireis, Waltero de Bridinhal, Johanne de Moravie, Alexandro filio Oliveri, et multis aliis.

c. 1214

Reg.Ho.Cart. No.21

Nesius de Lundon may perhaps be Nesius the king's doctor (Banff Charters). Smithetun may be Smithtun in Cumbernauld parish of Dumbartonshire, and the witness of the parson of Dalziel confirms this location.

David de Hay. see Scots Peerage III p.556.

No. 9

Omnibus hoc scriptum visuris et audituris Malcolmus filius comitis de Levenax salutem. Sciant presentes 7 futuri me dedisse concessisse 7 hac carta mea confirmasse Hugoni filio Simonis pro homagio et servicio suo terras de Dallenotar et de Blarmor que site sunt inter Candoueran et Lentressocem. Tenendas ei 7 heredibus suis de me et heredibus meis in feudo 7 hereditate per rectas divisas suas in bosco 7 plano in pratis 7 paschuis in mores 7 maresiis in stagnis 7 molendinis 7 cum omnibus aliis iustis pertinentiis suis libere 7 quiete 7 plenarie 7 honorife. ffaciendo inde servicium duodecime partis unius militis pro omni servicio consuetudine et exactione. Testibus domino Willelmo abbati de Passelet, domino Waltero filio Alani seneschallo Justiciario Scotie, domino Maldoveni comite de Levenax, Amlec fratre eius, Alano de Insula, Simone Flandrense, Johanne persona, Absalone senescallo, Mauris filio Galbrath, Sumerled persona, Dunecano 7 Malcolmo fratribus comitis, Ada filio Edolfi, Fergus filio Cunig, Malcolmo Beg, et multis aliis.

c. 1233

Reg.Ho.Cart. No.32

No. 10

Omnibus has litteras visuris vel audituris Rogerus de Mubraye eternam in domino salutem. Noverit universitas vestra me dedisse concessisse et hac carta mea confirmasse Philippo le Brun pro homagio et servicio suo Ekelyn integraliter cum omnibus pertinenciis suis duas bovatas terre in villa de Dunmanyn cum toftis et croftis earundem scilicet illam bovatam terre cum tofto et crofto quam Arkyl quondam tenuit et illam bovatam terre quam Reginaldus Ruffus tenuit et quattuor acras terre scilicet tres acras quas Robertus capellanus quondam tenuit ad firmam de domino Philippo de Mubraye iacentes inter domum persone de Dunmanyn et Cardinum quod fuit quondam et unam acram que quondam pratum fuit quam Thomas Passator tenuit cum commune pastura pertinente ad dictam villam de Dunmanyn et cum libero introitu et exitu Tenendas et habendas sibi et heredibus quos de corpore suo habuerit in feodo et hereditate de me et heredibus meis libere et quiete in bosco et plano in pratis et pascuis in moris et marissis in viis et semitis in stannis (sic) et molendinis in vivariis et piscariis et cum omnibus libertatibus et aysiamentis et liberis consuetudinis ad predictas terras de Ekelyn et de Dunmanyn spectantibus ita libere et quiete plene et honorifice sicut aliquis miles in regno Scocie aliquam terram de aliquo barone liberius quietius et honorificentius tenet aut possidet ita quod ipse et heredes sui de corpore suo exeuntes faciant mihi et heredibus meis pro predictis terris servicium quantum pertinet ad tricesimam partem unius militis Quare volo quod dictus Philippus et heredes de corpore suo (exeuntes) servicio consuetudine auxilio exactione et demanda que de dictis terris aliqua occasione vel ratione exigi poterunt pro servicio supradicto et

Ego Rogerus de Mubray et heredes mei omnes predictas terras cum omnibus libertatibus et aysiamentis ad predictas terras pertinentibus predicto Philippo et heredibus suis ut supradictum est contra omnes homines et feminas inperpetuum warantizabimus Superius rei testimonium presenti carte sigillum nostrum apposuimus Hiis testibus Magistro Willelmo de Grenlaw, domino David de Graam, domino Gilberto Frasser, domino Nasone de Fraser, domino Johanne de Petkery, Laurencio capellano, Willelmo de Hormistoun, Thoma de Leskewyn, Willelmo filio Ricardi filii Michaelis et multis aliis.

Seal bears legend Sigillum Secreti

Sigillum Roger (de) Mubraie

c.1250 Nat.Lib. - Dundas of Dundas Coll. MAC. XV.I.

The lands which are the subject of this charter probably lay within the earldom of Dunbar.

William de Greenlaw resigned the land of Halsington to Melrose c. 1248 in the court of the Earl of Dunbar. (Melrose i 232-6; supra p.11)

Gilbert de Fraser is likely to be the Gilbert de Fraser who was sheriff of Traquair and Peebles 1233-1242 and who died c.1263. (Frasers of Philorth p.xiii.)

No. 11

Omnibus hoc scriptum visuris vel audituris Roger de Quency Comes Wyntoni constabularius Scotie eternam in domino salutem. Noveritis nos pro nobis 7 heredibus nostris dedisse concessisse et hac presenti carta nostra confirmasse Nicholao de Clacmanan bracratori domini regis Scotie pro homagio 7 servicio suo et pro duabus marcis sterlingorum que nobis dedit in grassuma totam terram de constabularia nostra in Clacmanan cum omnibus suis pertinentiis tam in tofto quam in crofto. Tenendam 7 habendam de nobis et heredibus nostris vel nostris assignatis sibi et heredibus suis vel suis assignatis in perpetuum vel cuicunque eam dare vendere vel legare velint ita fideliter quod predictus Nicholas edificabit in illa terra propinquiore castrum unum stabulum ad hospitandum duodecim equos nostros vel heredum nostrorum quotienscunque nos vel heredes nostros ibidem hospitare contigitur 7 cum eidem Nicholao habere fecimus Wodeleve edificabit ad castrum nostrum super predictam terram unam cameram de longitudine quadraginta pedum et de latitudine viginti quattuor pedum cum garderoba et cameram privatam omnibus ad opus nostrum cum ibidem venerimus hospitatum. Reddendo inde annuatim nobis 7 heredibus nostris quattuor solides argenti scilicet ad festum pentecostem duos solidos 7 ad festum sancti martini duos solidos. Et nos 7 heredes nostri vel nostri assignati 7 eorum heredes dictum tenementum cum suis pertinentiis dicto Nicholao 7 heredibus suis vel suis assignatis 7 eorum heredibus contra omnes homines 7 feminas warrentizabimus acquietabimus 7 defendimus in perpetuum. Hiis testibus dominis de , Roberto de Hereford, Philippo de Chetewind (?) militibus, Johanne de Kindeloch, Saero de Seton, Willelmo de Fassinton, Roberto 7 Rogero de Trafford clericis meis, et aliis.

ante 1264

Reg.Ho.Cart. No.54

No. 12

Omnibus hoc scriptum visuris vel audituris Patricius comes de Dumbarr salutem eternam in domino. Noverit universitas vestra nos dedisse concessisse 7 hoc presenti scripto confirmasse Galfrido de Caldercote et Margarete sponse sue homagia 7 servicia Walteri de Greydene et eciam Petri de Greydene et Willelmi filii sui de omnibus terris et tenementis que de nobis tenet in villa de Greydene. Tenenda et habenda predictis Galfrido 7 Margarete et eorum heredibus dicta homagia et servicia dictorum Walteri Petri 7 Willelmi et heredum suorum cum eorum redditibus wardis releviis maritagiis 7 escaetis quibuscunque et eciam omnibus aliis libertatibus 7 pertinentiis ad terras eorum et tenementa pertinentibus de nobis 7 heredibus nostris libere quiete 7 hereditarie in perpetuum. Reddendo inde annuatim nobis 7 heredibus nostris eosdem redditus et faciendo inde eoram nobis 7 heredibus nostris eadem servicia quos 7 que predicti Walterus, Petrus 7 Willelmus reddere facere nobis consueverunt. Et nos 7 heredes nostri predicta homagia 7 servicia ut predictum est predictis Galfrido 7 Margarete 7 eorum heredibus contra omnes gentes inperpetuum warantizabimus aquietabimus 7 defendemus. In cuius rei testimonium presenti scripto sigillum nostrum apposimus. Hiis testibus dominis Patricio, Johanni, Alexandro filiis meis, Nicholao de Rutherford, Waltero de Horndene militibus, Waltero de Rameseye, Edwardo de Letham, et aliis.

c. 1286-1289

Reg.Ho.Cart. No.60

No. 13

Omnibus hanc cartam visuris vel audituris Johannes de Strathbolgie comes Atholie salutem in domino. Noveritis me dedisse, concessisse et hac presenti carta mea confirmasse domino Johanni de Inchemartyn militi et heredibus suis pro eius homagio et servicio a me et heredibus meis in perpetuum totam terram de Kelbrothay quaquid terra quondam erat Malcolmo mac Cunig et quam quadam terram dictus Malcolmus mac Cunyg mihi et heredibus meis resignavit cum fusto et baculo a se et heredibus suis in perpetuum ad feofeffandem dictum dominum Johannem de Inchemartyn et heredes suos et totam terram meam de Dysend Lytyl et totam terram meam de Buthrocheny cum forti quod vocatur Carryc Et totam terram meam de Bothnasked quod quondam erat Willelmo de Ferendrach et quam quidem terram de Bothnasked dictus Willelmus de Ferendrach mihi et heredibus meis resignavit cum fusto et baculo a se et heredibus suis in perpetuum ad feofeffandem predictum dominum Johannem de Inchemartyn et heredes suos. Tenendas 7 habendas omnes terras predictas dicto domino Johanni de Inchmartyn 7 heredibus suis de me 7 heredibus meis in perpetuum libere quiete bene 7 in pace in moris marasiis, planis rupibus, pratis pascuis, aquis stangnis molendinis vivariis piscariis venationibus omni claustura parcarum et in omnibus aliis libertatibus pertinentiis 7 aysiamentis que ad dictas terras pertinet seu de aliquo iure pertinere poterit tam in tenentiis quam in propetatibus Salva mihi 7 heredibus meis terra de Strugarych quam Kenet mac Makerd de me tenet. Reddendo inde annuatim mihi 7 heredibus meis ad festum pentecostem unum par albarum cerotecarum 7 faciendo inde forinsecum servicium quantum ad dictas terras pertinet et tres sectas tribus curiis meis capitalibus in Atholia per annum pro

omnibus terris prenotatis pro omni servicio seculari exactione et demanda. Ego vero predictus Johannes de Strathbolgy 7 heredes mei omnes terras predictas predicto domino Johanni de Inchemartyn 7 heredibus suis contra omnes homines et feminas warantizabimus adquietabimus et di~~ff~~efendemus in perpetuum pro eorum homagio et servicio prenotatis et quod volo quod istud donum meum sit ratum et roboratum in perpetuum huic presenti carte sigillum meum apposui Hiis testibus dominis Roberto de Keth, formario de Leslyn, Laurentio de Stawelay militibus, magistris Johanni de Hathinton tunc camerario dicti domini Johannis de Strabolgie, comitis Atholie.

post 1270 Reg.Ho.Cart. No.67

John de Strathbolgy was Earl of Atholl from 1270. (Scots Peerage i 426.)

John de Inchmartin is known in a charter to Dunfermline (Dunfermline 227). Inchmartin is in the parish of Errol. The lands granted seem to be in the heart of the Atholl earldom - Bothnasked being Bonskeid near Pitlochry.

William de Ferendrach is not otherwise known, but the estate of Frendraught is in N.W. Aberdeenshire and he may have been a connection of John de Strathbolgy's before he acquired the earldom of Atholl.

No. 14

Omnibus hoc scriptum visuris vel audituris Jacobus senescallus Scotie filius nobilis viri domini Alexandri senescalli Scotie salutem eternam in domino. Noverit universitas vestra nos dedisse concessisse 7 hac presenti carta nostra confirmasse Willelmo de Prestun filio Johannis de Prestun pro homagio 7 servicio suo totam terram nostram in villa de Travyrnent quam dominus Alexander pater noster cepit in escambium pro terra de Mvrtheley de domino Alexandro Cumyn comite de Buchan cum nativis 7 eorum sequela et cum omnibus libertatibus 7 asyamentis ad predictam terram pertinentibus sine aliquo retinemento scilicet quam dominus Symon Flandrensis quodam (sic) de nobis tenuit 7 quam idem dominus Simon nobis resignavit 7 quietam clamavit 7 per fustum 7 baculum in manu nostra totum ius suum 7 clameum pro se 7 heredibus suis in perpetuum sursum reddidit in aula castelli de Edinburg ad colloquium domini regis die veneris proxima post commisionem sancti Pauli apostoli anno gracie m cc octogessimo quarto in presentia domini Willelmi Besete 7 domini Walteri de Lindesay 7 domini Reginaldi de Cravforde 7 aliorum plurimorum virorum fidedignorum. Tenendam 7 habendam predicto Willelmo 7 heredibus suis de nobis 7 heredibus nostris in feodo 7 hereditate libere quiete plenarie 7 honorifice in bosco 7 in plano in pratis 7 in pascuis in viis 7 in semitis in stagnis 7 molendinis in moris 7 maresiis in petariis 7 carbonariis 7 omnibus aliis libertatibus et asyamentis ad predictam terram pertinentibus vel aliquo tempore de iure pertinere valentibus nominatis 7 non nominatis. reddendo nobis 7 heredibus nostris ipse et heredes sui annuatim unum denarium argenti ad pentecostem 7 faciendo wardam ad castrum de Berwyc quantum pertinet ad predictam terram pro omni forinseco

servicio 7 secta curie 7 omni modo secularis exaccionis 7 demandi salvis nobis 7 heredibus nostris ab eodem Willelmo et heredibus suis wardis 7 releviis de predicta terra. Nos vero 7 heredes nostri dictam terram cum omnibus libertatibus 7 aisyamentis ut prescriptum est contra omnes homines 7 feminas in perpetuum warentizabimus acquietabimus et defendimus et ut nec nostra donacio et concessio perpetue firmitatis robui (?) optineat presenti scripto sigillum nostrum apposuimus. Hiis testibus fratre Steffano dei gracia abbate de Passellet, domino Willelmo de Soulis tunc iusticiario Loudonie, domino Johanne de Soulis, domino Symone Fraser, domino Waltero Senescallo comite de Meneteht, domino Radulpho, capellano Lamberto clerico, et aliis.

1285

Reg.Ho.Cart. No.59

James Steward born c.1243 was appointed one of the six guardians of the realm on the death of Alexander III and died in 1309.

The witness of the abbot of Paisley is interesting as Paisley was a Stewart foundation. The family link is also extended in the witness of Walter Steward who had become Earl of Menteith through his marriage with the countess. (Scots Peerage VI p.130.)

Murthly is most probably Murthly in Mar, because of its connection with the Earl of Buchan, and not Murthly in Perthshire.

Note:- the resignation in the hall of Edinburgh castle at the king's colloquium 1284.

The inclusion of ward to the castle of Berwick is interesting in view of the other evidence of such arrangements for Berwick castle, but it is surprising that ward was omitted from subsequent charters. (supra p. 137 et seq.)

No. 15

...Radulphus Nobilis miles filius Willelmi Nobilis...domino (David de Graham et Agneti sponse sue) pro homagio et servicio suo, quamdam terram in territorio de Kenpunt, scilicet, totam medietatem dominici mei de Kenpunt sine aliquo retinemento scilicet illam terram quam Patricius senescallus...et...de Kenpunt et Adam Brun de Kenpunt et Hugo prepositus de Eliston et Willelmus Beste et Johannes frater eius de Kenpunt et Henricus prepositus de Hilifiston me...ex parte mea cum omnibus libertatibus suis et aisiamentis. Tenendam et habendam dicto David et Agneta...si dictus David...in fata decedat dicta Agneta illam terram toto tempore vite sue pacifice possidebit et in pacifica possessione sine aliqua contradictione quamdiu vixerit remanebit et post eorum...assignati eis iure hereditario in dicta terra succedent Quare volo et concedo pro me et heredibus meis quod dictus David et Agneta uxor sua et eorum heredes vel assignati habeant et possideant predictam medietatem dominici de Kenpunt ut prescriptum est cum suis pertinenciis libertatibus et aisiamentis et cum omnibus aliis aisiamentis et communibus tam in defensis aisiamentis quam...aisiamentis... integre...in terris cultis et non cultis in pratis et pascuis in stangis et molendinis in boscis et aquis in vivariis et petariis et in omnibus aliis aisiamentis ad villam de Kenpunt.... Preterea volo et concedo et hac presenti carta mea confirmo pro me et heredibus meis quod heredes dicti David vel assignati omnino quieti sint in perpetuum de omni warda et relevio et...ad legitimam etatem non pervenerint duo de propinquioribus amicis et fidelioribus dictorum heredum vel assignatorum dictam terram cum fructibus suis et exitibus...fiant...ice

possunt...sine aliqua contradictione mea vel heredum meorum ad custodiendum ad opus dictorum heredum vel assignatorum...facientes... annos...quod omnia bona exitus et fructus dicte terre salve custodientur ad opus...ad ea...contradictione. Salvis custodibus sumptibus racionabilibus quibus inde fecerunt ad commodum et honorem...meis in perpetuum dicto David et heredibus suis vel suis assignatis pro araturis et omnibus...que...ma...mea...re...in Flat tres acras in Wecherig et in Schoterig tres acras et in Brockf...tres acras et in Hadrig... unam...heredes sui vel assignati te[nebunt] et habebunt iure hereditario inperpetuum de me et heredibus meis per servicium predictum et cum omnibus l[ibertatibus]...David et heredes sui vel sui assignati homagium facient mihi et heredibus meis pro dicta terra et servicium quantum pertinet ad sextam decimam [partem unius militis]...aliis que de dicta terra...poterint et servicium predictum facient [in dicta terra prout].... Ego vero Radulphus...predictam medietatem dominici de Kenpunt...dictis...sex decima...is in omnibus...David et Agneti... et heredibus...acquietabimus et defendemus in perpetuum.

(Menteith 2)

APPENDIX III

Jurisdiction over Frankalmoign

(documents referred to in chapter XIII)

The Stobo Case

No. 1

Omnibus sancte matris ecclesie filiis presentibus et futuris Willelmus filius Galfridi dominus de Orde salutem in domino. Noverit universitas vestra quod nobilis vir dominus Robertus de Londoniis filius regis Scocie aliquando conventus a venerabili patre nostro domino Waltero Glasguensi episcopo de terra illa que dicitur Stobhope mihi ad se pluries vocato coram fidelibus et servientibus suis apud Cadiho protestatus est se terram de Stobhope tempore Florentii electi Glasguensis illicite occupasse et diu iniuste detenuisse scilicet usque ad tempora domini Walteri Glasguensis episcopi Diligenter me monens et exhortans et mihi precipiens ut predictam terram taliter occupatam et detentam deo et ecclesie Glasguensi restituerem ad anime sue et mee liberationem ne pro tali pacto quod absit dampnaremus. Ego vero hoc audito et intellecto et habito bonorum virorum consilio nolens animas nostras pro tanta terra perpetue tradi supplicio predictam terram scilicet Stobhope sicut cilium montis proportat deo et sancto Kentigerno et ecclesie Glasguensi restitui et episcopo Waltero et eandem quietam clammavi et hac presenti carta mea confirmavi sibi et successoribus suis perpetue pacifice possidendam Et quia predictam terram liberaliter ad peticionem et preceptum domini mei Roberti de Londoniis sic restitui episcopus predictus communem pasturam in vita mea mihi concessit in terra memorata sine aliqua manuum operatione In huius autem concessionis restitutionis et confirmationis mee et quiete clamantie testimonium presenti scripto sigillum meum apposui Hiis testibus Thoma filio Willelmi milite, magistro Johanne Albigense, Beniamin clerico, Gaufrido Mauleverer, Waltero Maleverer familiaribus et domesticis ipsius Roberti de Londoniis, Willelmo de Kilconewath, Ricardo

de prebenda, Magistro Radulpo de Brade, A capellano, Roberto cancellario, Warino senescaldo domini episcopi, Waltero clerico et multis aliis.

1208 x 1214 (Glasgow i 105)

BULSTON
EXTRA STRONG

Omnibus sancte matris ecclesie filiis presentibus et futuris dominus Walterus Olifard Junior Justiciarius Laodonie eternam in domino salutem universitati vestre notum facimus quod cum controversia mota fuisset inter venerabilem patrem nostrum Walterum dei gratia Glasguensem episcopum ex una parte et Jordanum de Currokes ex altera super terra de Stobhou Lis tali fine conquievit videlicet quod prefatus episcopus daret memorato J centum libras sterlingorum pro bono pacis et dictus J restitueret prefato episcopo omnia instrumenta que habebat super terra memorata ita quod si aliqua reperirent postmodo non restituta invalida censerentur Abiuraret eciam dictus J terram eandem pro se et omnibus suis inperpetuum renunciando omni iuri quod in terra illa se vel omnes suos credebat et dicebat habere vel quod aliquo modo sibi vel omnibus suis potuit in ea competere sicque facta restitutione instrumentorum a dicto J et abiurata terra memorata pro se et omnibus suis inperpetuum per sacramentum corporaliter prestitum conpletum sub hac forma resedit negocium. Nos vero qui de consensu ipsius Jordani et de consilio amicorum suorum dati fuimus ad recipiendum pecuniam numeratam illas centum libras recepimus a dicto episcopo plene et integre et absque omni contradictione de quibus prefatum episcopum quietum reddemus et immune et a tanta debito terminis statutis persoluto penes ipsum J et omnes suos penitus absolutum contra omnes homines et feminas ipsium episcopum et successores suos franca solucione nobis facta perpetuo warantizaturi. Et in rei geste et plenarie solucionis facte testimonium presens scriptum sigilli nostri munimine duxus roborandum Hiis testibus David Olifard, Roberto de Parc, Roberto de Malevyn militibus nostris, Philippo de Perthec clerico domini regis, David clerico nostro, Osberto magno, Osberto Scoto, Waltero pistore servientibus nostris et multis aliis

(Glasgow i 126)

No. 3

Alexander dei gracia rex Scottorum omnibus probis hominibus tocius terre sue clericis et laicis salutem. Sciant presentes et futuri nos concessisse et hac carta nostra confirmasse amicabilem composicionem factam inter Walterum episcopum Glasguensem et Jordanum de Corrokes super terra de Stobohowe et quibusdam rebus aliis et resignacionem et quietam clamanciam quam idem Jordanus pro se et heredibus suis inperpetuum fecit beato Kentigerno et ecclesie Glasguensi et predicto Waltero episcopo Glasguensi super dicta terra de Stobhowe cum omnibus pertinenciis suis quam Jordanus predicto Waltero episcopo per fustum et baculum resignavit et quietam clamavit cum omni iure quod dicebat se habere in terra illa Quare volumus et precipimus ut illa amicabilis compositio et resignatio et quieta clamancia inter eosdem episcopum Glasguensem et Jordanum ita libere quiete et pacifice teneantur sicut in scripto iudicum delegatorum scilicet Willelmi episcopi sancti Andree, et Willelmi de Bosco archidiaconi Laodonie cancellarii et magistri Laurentii archidiaconi sancti Andree inter partes inde confecto plenius continetur salvo servicio nostro Testibus Willelmo episcopo sancti Andree, Ricardo et Alexandro et Willelmo de Newebotle et de Cupre et de sancte Cruce abbatibus, Willelmo de Bosco archidiacono Laodonie cancellario, Ingelramo de Baillol, Henrico de Baillol camerario, Alexandro vicecomite de Strivelin, Henrico de Strivelin filio comitis David Apud Nevbotle nonodecimo die Maii anno regni nostri nono.

19th May 1223 (Glasgow i 128)

No. 4

Willelmus permissione divina Sancti Andree minister humilis, Willelmus de Bosco archidiaconus Laodonie et domini regis cancellarius et magister Laurentius archidiaconus Sancti Andree omnibus Christi fidelibus salutem vite presentis et future Cum cause cognicio que vertebatur inter venerabilem patrem Walterum episcopum Glasguensem et Jordanum de Kurrok super terra de Stobbo et rebus aliis a summo pontifice nobis fuisse delegata et in ea usque ad litis contestationem canonice fuisse processum tandem ad instantiam utriusque partis amicorum lis finaliter sub hac forma conquievit Videlicet quod dictus Jordanus per fustum et baculum in manibus nostris resignavit pro se et heredibus suis totum ius quod dicebat se habere in terra de Sthobbo cum omnibus suis pertinenciis ipsamque quietam clamavit beato Kentigerno et ecclesie Glasguensi et prefato episcopo suisque successoribus in perpetuum Nos vero auctoritate apostolica per dictum fustum et baculum nomine Glasguensis ecclesie sepe fatum episcopum investivimus terra memorata sibi suisque successoribus libere quiete ac pacifice perpetuo possidenda. Pro hac quidem resignacione et quieta clamacione dedit sepe dictus episcopus prenominato Jordano centum libras sterlingorum. Idem vero Jordanus iuramento corporaliter prestito fideliter promisit quod omnia instrumenta super eadem terra confecta episcoporum scilicet et capituli Glasguensis et romanorum pontificum et eorum legatorum et regum episcopo restitueret ita scilicet quod si qua alia instrumenta postea fuerint inde regia vel alia relevata cassa remaneant et inutilia. Ut autem presens composicio perpetuam optineat firmitatem et ne in recidive contencionis scrupulum aliquorum machinacionibus incidat predictus Jordanus eandem firmiter et in perpetuam observandum sub debito sacramenti

prestiti pro se et heredibus suis in nostra presentia firmiter promisit et nos ad securitatem ampliorem presens scriptum sigillis nostris duximus roborandum Anno gracie m cc xx iii xii Kalendas Junii aput Muxleburc in ecclesia parochiali. Hiis testibus R and W abbatibus de Neubotle et de Sancta Cruce, domino Waltero Olifard justiciario domini regis.

21st May 1223 (Glasgow i 127)

No. 5

Omnibus Christi fidelibus presentes litteras visuris vel audituris Mariota filia Samueli salutem in domino. Noverit universitas vestra quod cum venerabilem patrem dominum Willelmum episcopum Glasguensem per litteras regias coram domino Gilberto Fraser tunc vicecomite de Treuquer super terra de Stobbou cum pertinenciis traxissem in causam ego in viduitate mea constituta attendens me dictum dominum episcopum indebite et iniuste vexasse dictam terram de Stobbou in qua nullus ius habui ab eodem episcopo exigendo, totum ius quod ad dictam terram habere potui vel potero infuturum pro me et heredibus meis vel assignatis eidem domino episcopo et successoribus suis pro quodam annuo redditu secundum quod in carta dicti domini episcopi inde mihi confecta continetur quietum clamavi in perpetuum et in curia vicecomitis de Trauquer mea voluntate spontanea resignavi, renuncians quoad hoc omnibus litteris impetratis et impetrandis et omni iuris auxilio ecclesiastici et civilis et omnibus aliis que mihi et heredibus meis vel assignatis prodesse et dicto domino episcopo et successoribus suis obesse poteruit in hoc facto. Et si contingat quod aliquis vel aliqua quocunque casu dictum episcopum vel successores suos super dicta terra vexare voluerit aut coram quocunque iudice seculari vel ecclesiastico convenire ego et filius meus vel assignatus a toto predicto annuo redditu cademus nisi dictum episcopum et successores suos quantum ad predictam terram defendere possimus et indempnes in omnibus conservare. In cuius rei testimonium sigillum meum apposui huic scripto. Testibus magistro Waltero decano, domino Roberto thesaurario, domino Ricardo cancellario Glasguensi, magistro Roberto de Edenberg canonico Glasguensi, domino Nicholai de Gleynwim rectore ecclesie de Jetham, dominis Johanne et Ricardo capellanis dicti domini episcopi, Johanne et Willelmi clericis eiusdem domini episcopi et aliis. (Glasgow i 130)

Register of Glasgow dates this document as forte 1233

Tempore William bishop.

Eugenius son of Amabilla, daughter of Samuel, presumably Mariota's nephew, issued a charter recognizing Glasgow's right in manerium de Stobbou. (Glasgow i 133)

No. 6

Omnibus Christi fidelibus presentes litteras visuris vel audituris Willelmus miseracione divina Glasguensis ecclesie minister salutem in domino Noverit universitas vestra quod cum Mariota filia Samuelis per litteras regias super terra de Stobou cum pertinenciis coram seculari iudice nos traxisset in causam nos pro nobis et successoribus nostris pacem et quietem affectantes eidem Mariote in vita sua et heredi suo vel assignato post vitam suam de consensu capituli Glasguensis damus et concedimus et hac carta nostra confirmamus decem marcas annuas singulis annis quamdiu vixerint de firma manerii nostri de Edulveston percipiendas per manum camerarii nostri qui pro tempore fuerit scilicet medietatem ad festum sancti martini et aliam medietatem ad Pentecost ita videlicet quod si aliquis vel aliqua nos vel successores nostros supra dicta terra vexare voluerit aut coram quocunque iudice seculari vel ecclesiastico convenire dicta Mariota et heres suus vel assignatus a totali redditu cadat supradicto nisi nos et successores nostros quantum ad predictam terram defendere possit et indempnes in omnibus conservare. In cuius rei testimonium sigillum nostrum una cum sigillo dicti capituli Glasguensis apponi fecimus huic scripto Testibus magistro Waltero decano, domino Roberto thesaurario, domino Ricardo cancellario Glasguensi, magistro Roberto de Edenberg canonico Glasguensi, domino Nicholao de Glenwin rectore ecclesie de Jetham, dominis Johanne et Ricardo capellanis nostris et aliis.

(Glasgow i 172)

Papal Statements

No. 1

Innocentius episcopus servus servorum dei venerabilibus fratribus Sancti Andree, Aberdonensi episcopis et dilecto filio W archidiacono Laudonie salutem et apostolicam benedictionem Karissimum in Christo filium nostrum/illustrem regem Scotie considerare volumus diligenter qualiter in conspectu altissimi de commisso sibi regni regimine respondebit si sponsam eius electam dominam et matrem suam sacrosanctam ecclesiam in terra ubi gladii potestatem accepit patitur ancillari Porro cum in excusacione sua nulla supersit coactionis presumptio satis ex facto colligitur voluntatis spontanee argumentum sicque idem tacite videtur inferre molestias quas cum valeat excludere negligit quia non caret scrupulo societatis occulte qui manifesto facinori definit obviare sed quis in partibus bius jugum non debet metuere servitutis si statum ecclesiastice libertatis patitur interverti? Cujus extranei jura defendet si matris sue que ipsum regeneravit ad vitam injurias non repellit? An ad titulum regie dignitatis accedit si celestis regis et utique domini sui sponsa subjectorum suorum molestijis opprimatur Ne igitur hec in districti examinis die de suis manibus requirantur eundem monendum duximus et hortandum ut tam Glasguensi quam aliis ecclesijs sui regni et subtracta per quosdam laicos sue jurisdictioni subjectos faciat sibi tradita potestate restitui et plena libertate gaudere sollicite provisurus ut offerre domino vespertinum sacrificium non omittat qui matutinum dicitur obtulisse ac sic clarum mane vespere sereno concludat quod brevi transitu luci perpetue diem continuat temporalem et in successores devotionis hereditate translate memoriale suum ad posteros propagetur. Quocirca discretioni vestra per apostolica scripta mandamus quatenus dictum regem ad hoc moneatis attentius et efficaciter inducere

procuretis Quod si non omnes hijs exequendis potueritis interesse duo vestrum ea nihilominus exequantur. Vos denique fratres episcopi super vobis ipsis et creditis vobis gregibus taliter vigilètis extirpando vitia et plantando virtutes ut in novissimo districti examinis die coram tremendo judice qui reddet uniquique secundum opera sua dignam possitis reddere rationem. Datum Laterani vi Kalendas Novembris pontificatus nostri anno septimo decimo.

(Cod.Univ.Glasg. f.139 (ex autographo). Cod.Bibl.Sterl. f.287)

27th October 1214

(Glasgow i 106)
(Pott.i p.431 [4939])

No. 2

Gregorius episcopus servus servorum dei carissimo in Christo filio illustri regi Scocie salutem et apostolicam benedictionem. Quanto majorem tibi dominus contulit potestatem tanto sub potenti manu eius humiliorem te convenit exhibere diligenter ac sollicite precavendo ne regni tui ecclesias et ecclesiasticas personas ipse graves in aliquo vel gravari ab aliis patiaris. Sane ad nostram noveris audientiam pervenisse quod tu ad ecclesiastica jura quod te non decet regias manus extendens viros ecclesiasticos gaudere libertate debita non permittis ipsos super terris possessionibus et aliis in puram elemosinam ecclesie christi collatis necnon super causis dotalicii et ecclesiarum advocationibus respondere in seculari judicio contra sanctiones canonicas compellendo, ut igitur conscientie et fame tue salubriter consulas serenitatem regiam, rogamus monemus et hortamur attente quatenus si est ita removens a te que sunt reprehensionis note subjecta super premissis de cetero ab ecclesiarum et clericorum injuriis abstineas reverenter. Ita quod abolita offensa preterita diem gratie tu captes et nos mansuetudinem tuam debeamus in domino commendare Datum Perusii x Kalendas Januarii pontificatus nostri anno secundo.

23rd December 1228 (Scone 120)
(Pott.i 715 [8303])

The printed edition of the Liber de Scon wrongly ascribes this bull to Gregory X.

Innocentius episcopus servus servorum dei venerabili fratri... episcopo Glasguensi salutem et apostolicam benedictionem. Cum de rebus ecclesiasticis disponendi nulla sit laicis attributa potestas presencium tibi auctoritate concedimus ut super terras quae Glasguensi ecclesiae pia liberalitate fidelium in elemosinam sunt collate seculare sequi forum vel in eo respondere quibuslibet conventus nullatenus tenearis quin pocius id tamquam ecclesiastice libertati contrarium tibi noveris interdictum. Datum Assisii idus Maii pontificatus nostri anno decimo.

15th May 1253 (Glasgow i 197)

BULSTON
EXTRA STRONG

No. 4

Innocentius episcopus servus servorum dei venerabilibus fratribus Brechinensi et Dunkeldensi episcopis salutem et apostolicam benedictionem. Cum de rebus ecclesiasticis disponendi nulla sit laicis attributa potestas uenerabili fratri nostro Glasguensi episcopo auctoritate litterarum nostrarum duximus concedendo ut super terris que Glasguensi ecclesie pia liberalitate fidelium in elemosinam sunt collate seculare sequi forum vel in eo respondere quibuslibet conventus nullatenus teneatur quin pocius id tamquam ecclesiastice libertati contrarium sibi noverit interdictum Quocirca fraternitati vestre per apostolica scripta mandamus quatinus dictum episcopum non permittatis super hiis contra concessionis et inhibicionis nostre tenorem ab aliquibus indebite molestari, molestatores huius per censuram ecclesiasticam appellacione postposita compescendo non obstante si aliquibus a sede apostolica sit indultum quod interdici suspendi vel excommunicari non possint per litteras dicte sedis que de indulto huius plenam et expressam ac de verbo ad verbum non fecerint mencionem. Datum Asisii idus Maii pontificatus nostri anno decimo.

15th May 1253

(Glasgow i 198)
(Pott.i 1233 [14974])

No. 5

Innocentius episcopus servus servorum dei dilectis filiis abbati et priori de Insula missarum dumblanensis diocesis salutem et apostolicam benedictionem Devotionis dilectorum filiorum abbatis et conventui de Scona ordinis sancti Augustini sancti Andree diocesis precibus benignum impertientes assensum eis auctoritate litterarum nostrarum duximus indulgendum ut super terris et aliis bonis ecclesie ipsorum que ad forum ecclesiasticum pertinere noscuntur ad respondendum vel litigandum in curia seculari contra fori clericalis privilegium aliquatenus compelli non possint Quocirca discretioni vestre per apostolica scripta mandamus quatenus non permittatis dictos abbatem et conventum contra concessionis nostre tenorem super hiis ab aliquibus indebite molestari molestatores huiusmodi per censuram ecclesiasticam appellatione postposita compescendo, non obstante si aliquibus a sede apostolica sit indultum quod excommunicari suspendi vel interdici non possint per litteras apostolicas non facientes plenam et expressam ac de verbo ad verbum de indulto huiusmodi mentionem. Datum Laterani iii Nonum Novembris pontificatus nostri anno undecimo.

1254 (Scone 105 & 112)
(Pott.i 1248 [15164])

This bull exists both in original (No.105) and in cartulary transcript (No.112). The latter is headed Bulla Innocentii Pape de fori clericalis privilegio.

Bibliography and Abbreviations

Bibliography and Abbreviations

To avoid repetition, the table of abbreviations has been made to serve the purpose of a bibliography. The secondary material which is not abbreviated in references forms a separate list.

The original charter material is fully listed in the Stair Society's Sources and Literature of Scots Law vol.I chapter 22, but the following additions must be made.

British Museum	: Harleian Charters Campbell Charters Additional Charters
Public Record Office	: Duchy of Lancaster Miscellaneous Deeds
National Library	: Haddington Transcript Transcripts by Sir James Balfour of Denmylne Lawrie Charter Collection (which contains transcripts of a number of original charters in private hands - several supplied by Maitland Thomson)
Register House	: Transcripts of Charters a) Royal b) Miscellaneous (cited as Reg.Ho.Roy. and Reg.Ho.Misc.)

Table of Abbreviations and Bibliography of Primary Sources

A.P.S.	Acts of the Parliaments of Scotland 1124-1707. Record edition by Thomas Thomson and Cosmo Innes.
Aberdeen.	Registrum Episcopatus Aberdonensis (Maitland and Spalding Clubs 1845)
Anderson's Annals.	A. O. Anderson: Scottish Annals from English Chroniclers 500-1286 (London 1908)
Anderson: Diplomata.	James Anderson: Selectus Diplomatum et numismatum Scotiae thesaurus (Edinburgh 1739)
Annandale.	The Annandale Family Book of the Johnstones, Earls and Marquises of Annandale. ed.W.Fraser (1894)
Ant.Aber.& Banff.	Antiquities of the shires of Aberdeen and Banff (Spalding Club 1847, 1857, 1862, 1869)
Arbroath.	Liber S. Thome de Aberbrothoc: Registrum Vetus et Nigrum (Bannatyne Club 1848, 1856)
Bain.	Calendar of Documents relating to Scotland. ed. Joseph Bain (Edinburgh 1881-8)
Balfour.	Practicks or a system of the more ancient law of Scotland, by Sir James Balfour (Edinburgh 1754)
Balmerino.	Liber S. Marie de Balmorinach (Abbotsford Club 1841)
Bamff Charters.	ed. by Sir James H. Ramsay of Bamff (London 1915)
Beauly.	Charters of the Priory of Beauly (Grampian Club 1877)
Bigelow.	M. M. Bigelow: History of Procedure in England (London 1880)
Book of Deer.	(Spalding Club 1869)
Bracton.	Bracton: De Legibus et Consuetudinibus Angliae ed. Woodbine (Yale. London 1915)
Bracton's Notebook.	ed. F. W. Maitland (London 1887)

Brechin.	Registrum Episcopatus Brechinensis (Bannatyne Club 1856)
C.P.R.	Calendar of Papal Registers Relating to Great Britain and Ireland (Stationery Office)
Cambuskenneth.	Registrum monasterii S. Marie de Cambuskenneth (Grampian Club 1872)
Carlaverock.	Book of Carlaverock. ed. W. Fraser (1873)
Carnegies.	History of the Carnegies, Earls of Southesk (1867)
Cawdor.	The Book of the thanes of Cawdor (Spalding Club 1859)
Coldstream.	Chartulary of the Cistercian Priory of Coldstream (Grampian Club 1879)
Coll.Aber.& Banff.	Collections for a History of the shires of Aberdeen and Banff (Spalding Club 1843)
Colquhoun.	Cartulary of Colquhoun and Luss. ed. W. Fraser (1873)
Corp.Iur.Can.	Corpus Iuris Canonici. ed. A. Friedberg (Leipzig 1879-80)
Coupar Angus.	Charters of the Abbey of Coupar Angus (S.H.S. 1947,8)
Craig.	Ius Feudale, by Sir Thomas Craig of Riccarton translated by Lord Clyde (Edinburgh and London 1934)
D.B.	Domesday Book.
Douglas Book.	The Douglas Book. ed. W. Fraser (1885)
Dryburgh.	Liber S. Marie de Dryburgh (Bannatyne Club 1847)
Dunfermline.	Registrum de Dunfermlyn (Bannatyne Club 1842)
E.H.R.	English Historical Review.
E.S.	A. O. Anderson: Early Sources of Scottish History 500-1286 (Edinburgh 1922)

Elphinstones.	The Elphinstone Family Book of the Lords Elphinstone, Balmerino and Coupar. ed. W. Fraser (1897)
Erskine's Institute.	J. Erskine of Carnock: An Institute of the Law of Scotland. ed. Nicolson (Edinburgh 1871)
Fraser's Lennox.	The Lennox. ed. W. Fraser (1874)
Frasers.	The Frasers of Philorth, by Lord Saltoun (1879)
Glanvil.	Tractatus de Legibus et Consuetudinibus Angliae, by Ranulf de Glanvil. ed. Woodbine (Yale 1932)
Glasgow.	Registrum Episcopatus Glasguensis (Bannatyne and Maitland Clubs 1843)
Grants.	The Chiefs of Grant. ed. W. Fraser (1883)
Grandtully.	The Red Book of Grandtully. ed. W. Fraser (1868)
Gyseburn.	Cartularium Prioratus de Gyseburn (Surtees Society 1891)
Haddington.	Memorials of the Earls of Haddington. ed. W. Fraser (1889)
Highland Papers.	S.H.S. ed. J.R.N.Macphail (1911, 1915, 1919, 1933)
Hist.MSS.Com^{n}.	Historical Manuscripts Commission
Holyrood.	Liber Cartarum S. Crucis (Bannatyne Club 1840)
Inchaffray.	Charters of Inchaffray Abbey (S.H.S. 1907)
Inchcolm.	Charters of the Abbey of Inchcolm (S.H.S. 1938)
Innes.	Ane Account of the Familie of Innes (Spalding Club 1864)
Inq.p.m.	Calendar of Inquisitions post mortem
Kelso.	Liber S. Marie de Calchou (Bannatyne Club 1846)
L.C.	Archibald C. Lawrie: Early Scottish Charters (Glasgow 1905)
Lamont.	Inventory of Lamont Papers (Scottish Record Society 1914, 1918)

Lawrie's Annals.	Archibald C. Lawrie: Annals of the Reigns of Malcolm and William (Glasgow 1910)
Levenax.	Cartularium de Levenax (Maitland Club 1833)
Lib.Ins.Miss.	Liber Insule Missarum (Bannatyne Club 1847)
Lindores.	Chartulary of the Abbey of Lindores (S.H.S. 1903)
Maxwells.	The Cartulary of Pollok Maxwell. ed. W. Fraser (1875) Inventories of the Muniments of the Families of Maxwell, Herries and Nithsdale. ed. W. Fraser (1865)
May.	Records of the Priory of the Isle of May (Society of Antiquaries of Scotland 1868)
Melrose.	Liber S. Marie de Melros (Bannatyne Club 1837)
Melvilles.	The Melvilles, Earls of Melville, and the Leslies, Earls of Leven. ed. W. Fraser (1890)
Menteith.	The Red Book of Menteith. ed. W. Fraser (1880)
Montgomeries.	Memorials of the Montgomeries, Earls of Eglinton. ed. W. Fraser (1859)
Moray.	Registrum Episcopatus Moraviensis (Bannatyne Club 1837)
Morton.	Registrum Honoris de Morton (Bannatyne Club 1853)
Nat.MSS.	Facsimiles of National Manuscripts of Scotland 900-1706 (Southampton 1867-72)
Newbattle.	Registrum S. Marie de Neubotle (Bannatyne Club 1849)
Northberwick.	Carte Monialium de Northberwic (Bannatyne Club 1847)
Oliphants.	The Oliphants in Scotland (1879)
P. & M.	F. Pollock and F. W. Maitland: History of English Law before the time of Edward I (C.U.P. 1898)
Paisley.	Registrum Monasterii de Passelet (Maitland Club 1832)

Panmure.	Registrum de Panmure (1874)
Pluscarden.	History of the Religious House of Pluscardyn. ed. S. R. Macphail (1881)
R.M.S.	Registrum Magni Sigilli Regum Scotorum. ed. J. Maitland Thomson. Record Commission (Edinburgh 1912)
Raine.	James Raine: History and Antiquities of North Durham - Appendix of Coldingham Charters (London 1852)
Reg.of Brieves.	Register of Brieves. ed. Lord Cooper. Stair Society X (Edinburgh 1946)
Reg.Maj.	Regiam Majestatem. ed. Lord Cooper. Stair Society IX (Edinburgh 1947)
Rot.Scot.	Rotuli Scotiae in Turri Londiniensi et in Domo Capitulari Westmonasteriensi asservati (Record Commission 1814-18)
S.C.	Stubbs: Charters and Documents illustrative of English Constitutional History. ed. Davies (9th ed. 1944)
S.H.R.	Scottish Historical Review.
S.H.S.	Scottish History Society
S.H.S. Misc.	S.H.S. Miscellany Volume
S.S.	Stair Society
St. Andrews.	Liber Cartarum Prioratus Sancti Andree in Scotia (Bannatyne Club 1841)
Scone.	Liber Ecclesie de Scon (Bannatyne and Maitland Clubs 1843)
Scotts.	The Scotts of Buccleugh. ed. W. Fraser (1878)
Select Cases.	Select Scottish Cases of the XIII century. ed. Lord Cooper (Edinburgh 1944)
Soltre.	Registrum Domus de Soltre necnon Ecclesie Collegiate S. Trinitatis prope Edinburgh: Collegiate Churches of Midlothian (Bannatyne Club 1861)

Stevenson's Documents.	Documents Illustrative of the History of Scotland. ed. J. Stevenson (1870)
Sutherland.	The Sutherland Book. ed. W. Fraser (1892)
Wemyss.	Memorials of the Family of Wemyss of Wemyss. ed. W. Fraser (1888)

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"Censor":	Blench Holding (Juridical Review xli [1929]; xlii [1930])
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