The Municipal Institutions of Scotland:

A Historical Survey

THERE seems to be no reason to doubt that, at a time anterior to any existing Scottish legislation, the little village communities which grew around Royal and Baronial Castles and Religious Houses, or on sites otherwise suitable, cultivated —with the sanction and largely for the benefit of their lords— such scanty trade as was then practicable. But their position was precarious. They were probably in a position of absolute villenage, and had no rights or privileges save such as the policy or caprice of their lords allowed. The protection they enjoyed was also burdened with heavy impositions. But in process of time the Sovereign and the more powerful nobles came to recognise it to be their interest to encourage the development of the little trading communities which had sprung up around them, and this they did by the concession of privileges in the form largely of monopolies and exclusive dealing. In the communities thus formed societies known as *hanses* or guilds were instituted, and the privileged members of these communities, in process of time, claimed the right to administer the affairs of the burgh in which they existed, to the exclusion of the humbler classes of craftsmen. But before this stage of development had been reached, it became obvious to the Sovereign and to the lords, lay and ecclesiastical, that the prosperity of the trading communities, established on their respective territories, conduced to their own advantage, and so it became customary for these communities to obtain farther concessions of privilege. In grants of these the Crown took the lead. The burghal communities established on the royal domains were specially privileged, and, in return for the advantages which they thus secured, the Crown received, in the shape of ferms or rents, tolls and customs, important financial advantages, and accessions of strength through the increase of an industrial vassalage. The

baronial superiors, lay and ecclesiastical, of the burghal communities established on their territory, seem to have followed the royal example, but the burghs of Regality and Barony which were formed under their authority, were subordinate, in rank, position, and privilege, to those burghs which held directly of the Crown.

To the ROYAL BURGHS attention will first be directed, and reference will afterwards be made to burghs of Barony and Regality, Parliamentary burghs, and the modern class of Police burghs.

In one sense all towns established on the domains of the Crown and held directly of the Sovereign were Royal Burghs. But our constitutional writers have held that the essential *criteria* of proper burghs royal are the erection of the burgesses into communities or municipal corporations, and the grant of property to the individuals and the community under a permanent feudal tenure, in return to the Crown for certain fixed rents or *maills*, and the performance of personal services for the security of the public peace. In this matured form Royal Burghs existed in the reign of Malcolm IV. (1153-1165) and his immediate successors, but the charters and grants to these burghs—the earliest of which now known is of the reign of William the Lion (1165-1214)—recognise by implication the previous existence of these burghs as communities connected by common interests.

So early as the reign of David I. (1124-1153) that monarch embodied in his "Laws of the Four Burghs" a code of burghal legislation which shows them to have been, even then, compact, well-organised bodies, and enables a distinct conception to be formed of the municipal constitution of the little trading communities of that time. That code was obviously largely based on the pre-existing constitution and laws of English boroughs. Many of its enactments were doubtless recognised and operative in Scotland before they were thus formally adopted by King David, and though it was made expressly applicable only to the four burghs of Berwick, Roxburgh, Edinburgh, and Stirling, there can be little doubt that it was speedily accepted and recognised as authoritative by the other burghal communities which then existed, or were subsequently constituted, and formed the *nuclei* around which the infantile home and foreign trade of the country became concentrated. The "four burghs" were then doubtless the principal burghs of the kingdom, and David's laws were specially addressed to them. But, as other burghs existed

in Scotland, there seems to be little reason to doubt that these laws gave legislative sanction and authority to much that was previously recognised and operative in them. This earliest extant burghal legislation was supplemented by statutes passed in the time of William the Lion, between 1165 and 1214; by the Statutes of the Guild of merchants of Berwick, enacted in or before 1249, and speedily accepted and quoted as authoritative in the Scottish burghs; by provisions in the treatise known as the *Regiam Majestatem* imported from the English work of Glanvil, and sanctioned by the Scottish Parliament; and by several other documents which throw light on the laws and practice of the early burghs of Scotland. These other documents include (1) the *Constitutiones Nove* or New Constitutions, which are identical with clauses in charters granted to burghs by William the Lion; (2) a capitular known as *Assisa de Tolloniis* regarding great and small customs levied in Scotland on goods exported and imported during the reign of Robert the Bruce; (3) a document apparently of the latter half of the reign of Robert the Bruce, known as the *Articuli inquirendi in Itinere Camerarii*, containing a list of points to be enquired into at the Eyre of the Great Chamberlain, who had cognisance in early times of all burghal matters; (4) the *Juramenta Officiariorum*—a form of oath to be taken by the officers of burghs in the reign of King Robert; (5) a capitular apparently of the end of the fourteenth century known as the *Iter Camerarii*, and containing forms of proceedings connected with the Chamberlain's Eyre; and (6) a record of certain statutes passed by the Court of Four Burghs held at Stirling in 1405. These, with the charters to the several burghs, the Statutes of the Scottish Parliament, and the Records of the Convention of Burghs—the regular series of which, however, commences only in 1552—are the most authentic materials of Scottish burghal history.

The constituent members of these early burghal communities—called *burgesses*—consisted of such persons as were owners of houses, or held, directly of the King, portions of land within their respective burghs, known as *burrowages*, and they were required on admission to swear fealty to him and to the bailies and community. Each burgess held his house or possession for payment annually to the Crown of five pence for each rood of the land occupied by him. When a burgess was made in respect of land unbuilt upon, but who possessed other land on which a house existed, he was entitled to a year within which to build.

If, however, his house was destroyed by fire or war, and he had other built-on premises in the burgh, then he might leave the land, on which his house so destroyed stood, unbuilt upon till he was able to rebuild. But in every case the King's ferme or rent had to be paid.

Burgesses were of two classes, *resident* and *non-resident*—the latter being distinguished by the name of *rustic* or *churl* burgesses,[1] who however did not occupy the same position, or possess the same rights, as did resident burgesses. In Scotland, as in other parts of Europe, the rights of burgesses might be acquired by any person—even the thrall or slave of a baron or knight—by undisputed possession for a year and a day of a burrowage which he had acquired lawfully and without challenge in the presence of twelve of his neighbours. After such possession the right of a burgess to that burrowage could only be challenged by a claimant who had subsequently attained majority, or had previously been out of the kingdom. Rustic or churl burgesses were only entitled to the privileges of burgess-ship within the burgh in which each had his burrowage.

In process of time, however, the practice grew up in burghs of admitting burgesses in respect of other qualifications than the possession of heritable property—the payment of certain specified fees, and compliance with other conditions determined from time to time by individual burghs, or imposed by law. But in every case burgess-ship was, and still is—whatsoever unauthorised and illegal practice to the contrary may have crept in in certain burghs—essential to the valid admission to guilds of merchants, or to craft incorporations, which claim any right to be regarded as proper burghal institutions, or to be represented specially in the town council of the burgh in which they exist.

It would appear that in the oldest burghs in Scotland women were admissible to burgess-ship, as well as to membership of guilds, but the practice of so admitting them has long been in desuetude, if indeed the enrolment of the Baroness Burdett Coutts as an honorary burgess of Edinburgh, and H.R.H. the Duchess of Fife as an honorary burgess of Glasgow,—following upon a report as to the ancient practice, by the writer of this paper as town clerk for the time of both burghs—is not to be regarded as an exception to the otherwise universal practice of more modern times.

[1] These may correspond to the burgesses frequently alluded to in burgh records as "calsay" "(causeway) burgesses" who enjoyed only restricted rights.

In royal burghs as originally constituted, every burgess had, as has been said, to be a proprietor of a burrowage, holding immediately of the Crown for services of burgh use and wont; and it was as commissioners of the Crown that the magistrates gave him entry and sasine which were essential to the completion of his title. This relationship between the Crown and the burgess continued even after the burgh ceased to be a royal burgh, and all burgesses held their lands as Crown vassals. But by the Conveyancing (Scotland) Act, 1874, (37 and 38 Vict. cap. 94, section 25) burgage tenure has been abolished, and all persons possessed of any estate in land held burgage are declared to have the same right and interest in such subjects as would have belonged to them under that act had the tenure been feudal. Since October, 1874, therefore, there is no distinction between feu and burgage estates in land so far as title is concerned.

When burghs were first constituted on the royal domains, the rents and other revenues exigible from them were collected and accounted for to the Treasury by the bailies of the respective burghs, who were originally royal officers charged with that function, and with the general administration of the burgh. The bailies were thus under the supervision of the Great Chamberlain, who, besides having a general control of the Treasury, exercised administrative and judicial functions in the burghs, and supervised the action of the magistrates. It would seem, however, that an appeal from his decision lay to a court composed at first of representatives of the Four Burghs already referred to, and presided over by him. This body afterwards took the form and assumed the name of the 'Convention of the Royal and Free Burghs of Scotland.'

The administration of the affairs of royal burghs in the time of David I., and for some centuries afterwards, was exercised by officers known as *prepositi* or chief men. After a time pre-eminence seems to have been conferred, in some towns, on *one* of the magistrates, who, retaining the title of *prepositus*, came afterwards to be known as alderman, mayor, and latterly provost, while the subordinate magistrates were known as bailies. These were elected at first by the good men of the town—the burgesses—annually at the first moot after Michaelmas, and on election swore fealty to the Sovereign and to the burgesses, engaging to keep the customs of the burgh, and to administer justice to all without fear and without favour, according to the ordinance and doom of the good men of the town. At the same

time burgh officers, known as *sergeants*, *criers*, or *beadles*, were also elected by the burgesses, and had to swear fealty to the King, to the magistrates, and to the community. The *prepositus* of each burgh was also required, at the sight and with the counsel of the community, to choose at least five wise and discreet men to act as *liners*, who had to swear faithfully to line all lands within the burgh according to right and the old marches. The enactments as to the appointments of these officers were followed—apparently at a later date—by a law applicable to every royal burgh, requiring the chief magistrate to cause twelve of the 'lelest burgesses and wisest of the burgh' to be sworn, by their great oath, to keep and maintain all the laws and customs of the burgh. These twelve men or *dozen* were probably the origin of the town council of later times, and they retained the names of '*dusane*' even when, in many burghs, the number of the persons so selected considerably exceeded the prescribed twelve. But at first, and for a long time, they seem to have been simply a committee of advice to the magistrates, who were the practical administrators of the affairs of each burgh.

Towards the close of the reign of Alexander II., or the early part of the reign of Alexander III., reference is made in the Laws of the Guild to what, in some cases, are old offices under new names, and in others to offices which doubtless existed at a much earlier period, but were not specifically mentioned. The same document also increased the number of the *dusane* to *twenty-four*, to be elected apparently by the burgesses, who also elected the mayor and bailies; but it provided that if any dispute arose, the election of the mayor and bailies was to be made by the oaths of twenty-four good men, possibly the members of the enlarged *dusane*, who were empowered to choose one person to rule the burgh. The guild code further ordained the community—*i.e.* the burgesses—to elect *broccarii* or brokers. This code also provided that if one guild brother offended against another for a fourth time, he was to be condemned at the will of the aldermen, the '*farthing man*,' the dean of guild, and the remainder of the guild.

The titles of these officers must be noticed. The term *alderman* was originally synonymous with *Earl* in the old Saxon form of government, and the officer bearing that title exercised shrieval authority over counties. But afterwards the head officer of a guild, and still later of the ward of a county

or burgh, came to be so distinguished. The application of the term alderman, to the chief magistrate of a Scottish burgh possibly arose, therefore, from the fact that, when the merchant guild became in effect the governing body of the burgh, the *prepositus* as the head of the governing body, received the title of *alderman*. The title *farthing man* had reference, probably, to the old division of burghs, not only in Scotland but in other countries, into *quarters*, each presided over by an officer so designated. The farthing man was thus an officer of a quarter, so the term was probably equivalent to bailie—each bailie having, in early times, the special charge of a quarter or district of his burgh. The *dean of guild* is still known as the head of the guild.

Still later, and towards the close of the reign of King Robert I., the document known as the '*Articuli Inquirendi in itinere Camerarii*' refers to *ale tasters*, whose duty it was to taste all ale brewed in the burgh, and to fix the price relative to the quality; to *apprisers of flesh*, who had to see that all kinds of butcher meat sold was of sound quality, and that the prices fixed by the magistrates were not exceeded; to *gaugers of cloth and wine*, who had to see that all cloth sold was of the proper quality and measure—that all wine had paid the prescribed duty to the King, and was of the proper quality and quantity, relatively to the price exacted; to *inspectors of weights and measures*, who had to see that all weights and measures were duly tested and sealed with the seal of the burgh. There was also, obviously, a system of inspection of fish and skins, to secure that the laws and ordinances in regard to these articles of consumpt were observed; and of mills, to see that the duties imposed on millers and their servants were attended to.

It seems strange that while reference is thus made in the oldest laws to the provost, magistrates, and dusane or council, and to a number of subordinate officers in burghs, no reference is made to the office of the burgh clerk or town clerk. Such an officer, however, must have existed in the earliest times, not only as the clerk of the council, but as the adviser of the magistrates in the performance of a large part both of their judicial and administrative functions. Besides, it was common for the magistrates themselves and others appearing before them to ask for and take instruments in the hands of the clerk. This implied the intervention of a notary, who, no doubt, acted also as common clerk. Town clerks, in fact, required to be notaries till

the giving sasine became unnecessary. In Scotland papal and imperial notaries practised till 1469, when an act of a parliament of James III. required all notaries to be appointed by the Sovereign. For some time after the passing of this act two kinds of notaries appear to have existed, one *clerical* and the other *secular*—instruments attested by the latter bearing faith in civil matters. But, in 1551, sheriffs were required by statute to cause both kinds of notaries to be examined by the lords of session, and in 1555 notaries were prohibited from acting till admitted by these lords. This requirement was extended by statute in 1563, and the penalty of death was inflicted on those who acted as notaries without being previously authorised by special charters from the Sovereign, followed by examination and admission by the lords of session. That court has since exercised exclusive authority as regards the admission of notaries.

Another officer must also have existed from the earliest times, though reference to him does not appear for several centuries after the time of David I. This was the treasurer or financial officer of the burgh, who, doubtless, in respect of the peculiar functions he has to perform, now holds office, along with the chief magistrate, for a period of three years from the period of his appointment to that office at any annual period of election.

It has been noticed that the period for which the magistrates of royal burghs were elected, under the provisions of the old burgh laws, was one year; but it would seem that, in course of time, these provisions became inoperative, and that injurious results followed. This condition of matters was referred to in an act touching the election of aldermen, bailies, and other officers of burghs, passed in 1469, during the reign of James III. It referred to the great trouble and contention yearly arising out of the choosing of these officers, 'through multitude and clamour of common simple persons,' and enacted that neither officers nor councillors should be continued, according to the King's laws of burghs, longer than for a year; that the choosing of the new officers should be in this way, that is to say, that the old council of the town should choose the new council, in such number as accorded to the town; that the new and the old council of the year before should choose all officers pertaining to the town, such as aldermen, bailies, dean of guild, and other officers; that each craft should choose a person of the same craft to have voice in the election of officers for that time;

and that no captain or constable of the King's castles should bear office within the town as alderman, bailie, dean of guild, treasurer, or any other office that might be chosen by the town.

This statute—which was followed in 1474 by another appointing four of the old council to be chosen annually to sit with the new council, and by a second in 1503 directing the provost and bailies of burghs to be changed yearly, and none but merchants to exercise jurisdiction within the burgh—undoubtedly effected a great change in the previous mode of electing the magistrates and councils of burghs, and facilitated the introduction and growth of a practice of admitting into town councils persons who were neither resident nor concerned in trade, and who applied the common good of these burghs to personal and other illegal uses. This practice was referred to in the reign of James V., when in 1535 an act of parliament was passed prohibiting the election to the magistracy of any save honest and substantious burgesses, merchants, and indwellers within the burgh. Notwithstanding this legislation, the uniform mode of election which it established was by no means universally adopted, and, under local influences, the constitution of burghs royal, or their *setts*, came to exhibit an endless variety in detail, although agreeing, with scarcely an exception, in their leading principle of what has been usually termed 'self-election,' to the exclusion of any near approach to popular suffrage. Into the various peculiarities of that system it would be unprofitable to enter, as the whole of it has now been completely done away with; but it may be stated that the setts of burghs have been the subject of much controversy and discussion in the courts of law, and that in their adjustment a sort of paramount authority was formerly assumed by the Convention of Burghs, as claiming to succeed to some of the functions of the ancient 'Court or Parliament of the Four Burghs.'

In the old burghs of Scotland, as in those of other countries of Europe, every burgess was under obligation not only to serve in the King's host for the defence of the realm, and the support of the Royal authority throughout the kingdom, but also to perform the duties of watch and ward within his own burgh. When a watch was appointed by the magistrates to be kept, a burghal officer known as the *Walkstaff* passed from door to door and summoned such of the residents as were required to watch. Every man of full age so summoned was bound, under a penalty,

to enter upon the duty at the ringing of the curfew, provided with two weapons, and to watch closely till day dawn. The due performance of this duty was the subject of enquiry by the Lord Chamberlain at each of his ayres, and he had specially to enquire whether the duty was imposed on the rich equally with the poor. From the duty of watching and warding widows were exempted, unless they carried on the business of buying and selling, when, according to some manuscripts of the burgh laws, they were liable to perform *all* the duties of citizenship—those of watching and warding and military service being discharged by a suitable male substitute.

In the early history of burghs, the possession of simple burgess-ship seems to have placed the whole inhabitants upon an equal footing of right and privilege as well as of obligation. But, even in the time of David I., there were doubtless gradations of social position among the burgesses, determined not only by their individual ability or worth, but by the occupations they pursued. The mercantile class—which profited most from the practical monoply of trade and commerce, foreign and domestic, which royal burghs enjoyed—seem to have organised themselves, at a very early period, into Guilds, and to have succeeded in drawing a line of separation between those burgesses who *might*, from those who *might not*, find admission into these guilds. This appears from the Burgh Laws, which excluded from such guilds litsters, or dyers, fleshers, and souters or shoemakers, unless they abjured the practice of their respective trades with their own hands, or otherwise than by their servants. As the wealth and influence of the mercantile classes extended, they became more and more exclusive in their relations with the craftsmen, and, being the richest and most important section of the community, they assumed more and more a preponderating influence in the government of the town. In the reigns of Alexander II. and Alexander III., if not even earlier, the merchants in the more important burghs formed themselves into highly organised associations or guilds, and, being thus organised, the growing power of the entire communities in which they existed practically passed into their hands. This is shown, as regards the town of Berwick, in the Laws of the Guild, enacted there in or before 1249. These state that *several* guilds had been formed in the town, with the result that there was a want of unity and concord, and that the incorporation of the whole, with their respective properties, into one guild, was intended to remedy this state of

matters. The then mayor and other good men of the town accordingly enacted a constitution for all the separate and independent guilds, which, 'if incorporated into one under one head, could in all good deeds be bound together in a fellowship sicker.' The condition described in this document doubtless applied to other Scottish towns. But, be that as it may, it is certain that the Berwick guild statutes were soon generally adopted and quoted as authoritative among them. The structure of this code is peculiar, for not only did it contain minute provisions as to the constitution of the guild, and regulate its action and that of its members in a variety of particulars, but it legislated as to matters affecting the entire burghal community, and was practically a municipal and police code, to be enforced by the governing body of the burgh. The only explanation of this fact seems to be that the guild, which in each burgh included a large number of the most influential burgesses, had by this time assumed the functions of the governing body.

But while the merchant class were thus assuming largely, if not wholly, the functions of burghal government, the craftsmen class were also growing in wealth, intelligence, and influence, and were preparing to assert their claims to participate in the administration of the affairs of the town. Forming themselves into separate crafts, and obtaining, chiefly from the magistrates, what was known as '*Seals of Cause*' officially sanctioning their special organisations, they elected their presidents or deacons and other officers, and prescribed the conditions of admission to their crafts—conditions which excluded from their organisations and their benefits all who were not formally admitted to membership,—and subjected every member to strict obligations as to the manner in which each craft was to be conducted. Thus organised, the body of craftsmen in each burgh became a power, and ere long asserted their claims to share with the mercantile guild in the administration of the town's affairs. This action aroused the jealousy of the guilds, and for a lengthened period disputes between the merchants and craftsmen were incessant. Complaints arose as to the quality of the work produced by the several crafts, as to the prices charged by them, and as to their riotous habits, and these complaints resulted in numerous statutes to secure efficient manufacture and reasonable prices, and to restrain their turbulence. Much of the municipal records of the early burghs in the fifteenth and subsequent centuries is occupied with details of the struggles

of the various orders of crafts to obtain a larger share of burghal administration than they then possessed, and ultimately their struggles succeeded in securing for them what they had so long contended for. In many of the burghs, both the merchant class and the craftsmen had a recognised representation in the town council. But such special representation was abolished by the Burgh Reform Act in all burghs save Edinburgh, Glasgow, Aberdeen, Dundee, and Perth. In the two first of these the dean of guild and deacon convener, and in the others the dean of guild only, were continued as constituent members of the town council.

The early royal burghs bore an important share of all public burdens, and contributed in certain fixed proportions, with the ecclesiastical and secular lords, towards all national aids and contributions. As such contributors they appear to have been first called to national conventions held for the purpose of imposing taxation, but afterwards came to be recognised as one of the Estates of the Realm. In respect of their liability thus to contribute to the national revenue, and to fulfil the other obligations incumbent on them as burghs, they got from the Crown special privileges, and among these new, or confirmations of old, exclusive privileges of trade and merchandise, foreign and domestic. These privileges were often expressed in the royal charters to individual burghs, but a general Charter of Confirmation of the privileges of burghs royal was granted by David II. (1362-63) and authoritatively summarised these privileges. By that charter he granted to his burgesses free power and faculty to buy and sell within the liberty of their own burghs, but forbade them to buy or sell within the bounds of the liberty of any other burgh unless specially licensed. He also prohibited bishops, and other ecclesiastical persons from buying or selling wool, skins, hides, or other merchandise, under whatsoever colour, but only from or to merchants of the burgh within whose liberty they remained. Such merchants were moreover commanded to present their merchandise at the market and cross of burghs that merchants might buy, and that the King's custom might be paid. The charter further forbade 'extranear merchants,' coming with ships and merchandise, from selling any kind of merchandise save to merchants of free burghs, or from buying any kind of merchandise save from merchants of the King's burghs, under pain of the royal indignation. The valuable rights thus summarised, some of which seem to have existed

in the time of David I., were carefully guarded by successive acts of parliament, and jealously asserted by the burghs themselves individually and collectively. The assertion and vindication of those privileges, and their special interests as burghs in relation to all matters of internal administration, formed a large proportion of the work of the Convention of Burghs, and much of the legislation by parliament in regard to these matters was simply the reflex of the action of the Convention, which from time to time submitted to the Estates of the Realm the results of their deliberations, and succeeded in getting them embodied in acts of parliament. It was, indeed, in consideration of the trading monopolies enjoyed by royal burghs that they had to bear so large a proportion of national taxation in early times, and this liability was subsequently pleaded as a reason why burghs of regality and barony, and other unfree towns which were exempted from it, should be excluded from trade and merchandise. The struggles on the part of the burghal convention to maintain the rights of the royal burghs in this respect were prolonged and vigorous, and they did succeed for a time in compelling the burghs of barony and regality and other unfree towns which had sprung into existence to contribute towards the relief from the burden of taxation which rested upon them. But the maintenance of exclusive privileges of trade and merchandise was impossible, and the only well-founded ground of complaint which royal and free burghs have in the present day is that, while their exclusive privileges have been swept away, they are still charged with the annual payment to the State of taxation imposed on them in respect of these privileges.

James D. Marwick.

(*To be concluded in the next number.*)

The Municipal Institutions of Scotland:

A Historical Survey

Concluded

IN early times,[1] when trade and manufactures were in their infancy, the means of communication limited, and the condition of the country unsettled, the only way by which merchandise could reach many districts was through the instrumentality of traders and pedlars, who collected periodically at fixed centres where fairs and markets were established, and supplied the needs of those who attended these gatherings. The right to hold such fairs and markets was conferred by the Sovereign, and the charters or other royal grants and acts of parliament confirming it were numerous. Every royal burgh seems to have had a right of market and fair at fixed periods, and similar rights were largely granted also to religious houses, and to noblemen and land-owners. The exclusive privileges of trading which the early burghs possessed, as well as the civil and criminal jurisdiction and powers of burghal magistrates and officers, were held in abeyance during the time of fairs, and such disputes as then arose were disposed of by a special court known as *The Court of Dusty Feet*, or *Pie-Poudre Court*.[2] The execution by burgesses of ordinary processes of law for debt, due to them by 'uplands men,' or

[1] The first portion of this Survey, dealing with the early history of Royal Burghs, appeared in the *Scottish Historical Review*, January, 1904.

[2] Market Rights and Fairs in England, Scotland, and Ireland formed the subject of investigation by Royal Commissioners, whose Reports on 9th August, 1888, and 15th January, 1891, and the voluminous evidence taken by them, fill fourteen folio volumes. A memorandum on the history of these institutions in Scotland, hurriedly prepared by the writer of this article, is incorporated in volume vii. pp. 559-674. But the subject, which is closely associated with the development of this country, deserves fuller treatment.

men from the country, was also suspended during that time, and these persons were entitled, equally with burgesses, to the privileges of *lot, cut and cavil* of all kinds of merchandise. During the continuance of a fair also, all persons frequenting it were exempted from arrestment under ordinary processes of law, unless they had broken the peace of the fair coming to it, or while at it, or when returning from it. This protection applied to all offences, save treason or crime for which the church could not give sanctuary. All offenders against the peace of the fair were, however, subject to the doom or law of the Court of the Fair. The protection thus afforded extended also to slaves who had escaped from their masters. Even if stolen goods were discovered in a fair the owner had to bring the possessors of them before the court of the fair by which his claim had to be disposed of.

In royal burghs, or in their vicinity, castles were often erected, and, arbitrary as was frequently the action of the keepers or castellans of such castles in country districts, the *Laws of the Four Burghs* imposed important restrictions upon royal officers of this class. They required that no castellan should, at his own hand, enter the house of a burgess and slay swine or poultry, but should offer to purchase them for the King's service. If, however, the burgess refused to sell, and the swine or poultry were afterwards found on the street, they might be secured and slain,—but only at Yule, Easter, and Whitsunday—the castellan paying their value as appraised by the neighbours. Burgesses were also relieved from the obligation to lend to the bailie of a royal castle goods of greater value than 40d., and for a period of forty days. If the loan was not repaid within that time, the burgess was relieved from the obligation to lend more. If any man in a castle injured a burgess, the latter had to seek redress outside the gates of the castle, and if a burgess injured a man of the castle, the latter had to seek redress in the burgh.

It is difficult to understand much connected with the administration of royal burghs in Scotland without an acquaintance with the constitution and work of the Convention of Burghs. Its records, from 1552 till 1738, have been published by the Convention, and contain information of the first importance not only in regard to the internal government of the royal and free burghs, but to the development of their trade and commerce, and to the commercial relations of Scotland with other countries. No reference even of the slightest

character to our municipal institutions can properly overlook that institution, which exercised a commanding influence over Scottish burghs till the union with England, and in a lesser degree till the Burgh Reform Act of 1833.

The Court of the Four Burghs,[1] which ultimately developed into the Convention, appears to have met at first once a year in Haddington, to dispose of such appeals as might be taken to it by Scottish burghs and burgesses. How its appellate jurisdiction originated, or how that jurisdiction was exercised, is not now known, but if a document given by Sir John Skene as the *Curia Quatuor Burgorum* is authentic, the court, at a meeting held in Stirling on 12th October, 1405, ordained two or three sufficient burgesses of each of the King's burghs on the south of the Water of Spey, duly commissioned, to attend the 'parliament of the four burghs' annually, to treat, ordain, and determine upon all things concerning the utility of the common weal of all the burghs, their liberty and court. Thirty-seven years earlier however, viz. in 1368, Lanark and Linlithgow had been substituted, as members of this court, for Berwick and Roxburgh, which had fallen into the hands of the English. In process of time the seat of the court was transferred from Haddington to Edinburgh, and King James I.—who reigned from 1406 till 1437—ordained, with consent of the Estates of the realm, that Edinburgh should continue thenceforth to be the seat of that court. His ordinance was confirmed by King James II. in 1454, and the Great Chamberlain was ordained to cause the court to be held at Edinburgh according to custom. So matters remained, apparently, till 1487, when a parliament of James III. ordained commissioners from *all* burghs, south and north, to convene on the 26th of July annually in Inverkeithing, under a penalty of £5. No record of *any* meeting in that burgh is now extant, and if conventions were held there, the practice of meeting in that burgh must have been discontinued previous to 4th April, 1552, when at a Convention held in Edinburgh, an act was passed in which the act of 1487 is referred to merely as a matter of understanding, and the burghs of the realm were required to convene annually, by their provosts or commissioners, on the last day of July, in such place as might be appointed. This requirement was, however, very irregularly

[1] Consisting, at first, of representatives of Edinburgh, Berwick, Roxburgh, and Stirling.

observed, and in 1555 the fine to be exacted from burghs which failed to send representatives was increased to £10. But this increase in the fine was not attended with the desired result. Meetings of the Convention were not regularly held, and in 1578 an act of parliament was passed at Stirling, during the reign of James VI., authorising the convention to meet at such place as the majority deemed most expedient, *four* times in the year, to deal with such matters as concerned their estate. To prevent tumult, each burgh—with the exception of Edinburgh—was appointed to be represented by *one* member, and Edinburgh by *two*. Previous to 1578, and notwithstanding the order to hold *one* annual meeting, *two* or more meetings were sometimes held in the course of the year. So, after 1578, when four annual meetings were authorised, the burghs did not exercise that power, but continued their former practice of assembling at such times and places as they thought expedient—making their meetings often coincident with the meetings of Parliament, to which the burghs also sent representatives. This practice was referred to and ratified by the act 1581, chap. 26, which required all burghs, when cited, to send a commissioner, duly instructed, to the convention under a penalty of £20, for which, on the application of Edinburgh, the Lords of Council and Session were required to issue letters of horning or poinding. The increased penalty thus authorised by statute had, two years previously (viz. in 1579), been authorised by a convention held at Stirling in that year. In conformity with the act of 1581 the burghs held their convention at such times and places as the majority determined, but in 1586 they resolved to meet in future, previous to the assembling of parliaments and conventions of the estates, so as to discuss, by themselves, such business as might be submitted to the national assembly. Several of the conventions of burghs, it may be remarked, seem to have been held in obedience to royal letters issued to the burghs, requiring them to send commissioners to a particular town at a specified time, to treat of the several matters enumerated in the letters. In other cases the commissioners of some of the burghs fixed the time and place of the annual meeting, and missives were thereupon directed to all the burghs requiring them to send their commissioners to the convention so fixed. As regards the time and place of those meetings, the burghs seem to have acted without any reference to the statute of 1487.

These meetings of burghal representatives retained, so late as 1500, the designation 'The Parliament of the Four Burghs,' and were presided over by the Great or Lord Chamberlain. How long that officer of State attended these assemblies, or how long they continued to be known by that title, does not appear, but a minute in 1529, and all the minutes subsequent to that date, referred to the acts set forth in them as having been passed by the commissioners of the burghs, and make no reference to the Great or Lord Chamberlain, whose withdrawal from attendance at the burghal conventions may have been the result of the changed relations of the burghs to the Crown. Originally, as has been seen, royal burghs belonged in property to the Crown. They were simply aggregations of separate vassals paying each his special quota of rent for the ground occupied by him within the limits of the burgh; and the quota, with the issues of the court held in the burgh, appertained to the Sovereign, and formed part of the royal revenue. But after a time, and as early as the beginning of the fourteenth century, the practice was introduced of granting to the bailies or to the community short leases of the Crown revenues of burghs, for payment into the Exchequer of a fixed rent, or *census burgalis*, for which the bailies were held accountable. This arrangement was succeeded by another, under which the Crown—while retaining its feudal rights over the individual holdings of the burgesses, and the common property of the burgh—assigned to the community a heritable right to the Crown rents and issues within the burgh, for payment into Exchequer of a fixed annual sum. Under this arrangement the burgh was granted to the community in *feu farm*, and the burghal officers were invested with the right to recover the rents and issues, which had been previously paid to the Crown. Thus Edinburgh received its feu-farm charter from Robert I. in 1329, Dundee its feu-farm charter from David II. in 1359, Stirling its feu-farm charter from Robert II. in 1386. When this arrangement was extended to the burghs generally, the relations which had previously existed between them and the Great Chamberlain as an officer of the Crown became less important financially, and his supervision seems to have been gradually discontinued.

In the reign of James I. (1406-1437) the functions of the Lord Chamberlain were to some extent superseded by those of the High Treasurer—though the control of the former

over matters of general burghal administration remained. It seems, however, not to have been vigorously exercised, and in 1491 an act was passed requiring the 'common good' of burghs to be applied strictly for the benefit of the burghs, and to be spent in their common and necessary things, by the advice of the council and deacons of crafts where such existed. At the same time the manner in which the common good was expended had to be reported annually to the Chamberlain's Eyre, and leases for a longer period than three years were prohibited. Till 1503 permanent alienations of burghal property were not referred to, but in that year, tenures in feu-farm were authorised to be substituted for short leases, as regarded the property not only of the Crown, but of lords, barons, and free holders spiritual and temporal. And though the act did not apply to royal burghs, the authority which it conferred on those to whom it did apply was speedily extended to those burghs by special licenses from the Crown. So the mischievous practice obtained for burghs to convert their common property into heritable estates to be held in feu-farm, on terms which, in later times, have become illusory. This process was accelerated by the admission into town councils of persons who did not possess the original conditions of burgess-ship, and were neither resident nor concerned in trade. To prevent this misappropriation of burghal property an act was passed in 1535, requiring the magistrates annually to lodge accounts of the common good in Exchequer, to be audited by the Lords auditors, who were appointed to hear all persons who impugned the accounts. But this salutary legislation seems to have fallen into desuetude. During the minority of James VI. and the early years of his reign, the practice of plundering the burghs under the sanction of commissions to favoured individuals was adopted. In 1593, however, an act of parliament prohibited the practice; but this statute also seems to have proved ineffectual, and under a system of favouritism on the part of magistrates and councils the process of spoliation went on. Not only so, but the Convention of Burghs, in the exercise of what appears to have been unauthorised authority,[1] sanctioned alienations of burghal property, in the form both of long leases and feu grants. The extent to which the process

[1] This was so found in 1820 by the Select Committee of Parliament on Petitions from the Royal Burghs. See *Report*, p. 13.

had gone towards the close of the seventeenth century excited alarm, in so far especially as it pointed to the rapid approach of general burghal insolvency, and in 1682 and 1684 public enquiry was ordered into the financial conditions of the burghs. The terms of the commission issued in the latter of these years indicates a condition of corruption and maladministration of the most deplorable kind. The King—Charles II.—died, however, about six months after the commission was issued, and nothing followed upon it. After the Revolution of 1688, the condition of the royal burghs led to farther applications being made to the Convention of Burghs to authorise the sale of lands forming part of the common good of burghs, and this was usually granted. Among the applicants for such authority was Glasgow, and its story of decay and poverty is remarkable, but seems to have had a powerful effect in inducing the Convention to order an enquiry into the financial condition of *all* the royal burghs. The results of that enquiry are recorded in the books of the Convention, and were published in 1881 in a volume of the Burgh Records Series. Probably the results of that enquiry had something to do with the act passed by parliament in 1693 'anent the common good of royal burghs.' That act authorised extraordinary commissioners to make the necessary enquiries, and a commission was issued in 1694; but nothing seems to have resulted from it, and no supervision of the financial administration of these burghs seems to have taken place on the part of the officers of Exchequer beyond seeing that the quit rent payable by each burgh annually was duly rendered. The authority given in 1535 to burgesses interested to challenge the accounts of burghs was held, in 1683, by the Court of Exchequer, to mean little more than a right in such persons to inspect the accounts, and this decision was practically confirmed by the Court of Session in 1748. Subsequently, in 1820, it was held by that court that burgesses had no title to complain of acts of mismanagement on the part of magistrates which do not affect the private and patrimonial rights of the complainers. This decision practically necessitated legislation to regulate the administration of the common good of burghs, and to create a tribunal to enforce it, and in 1822 the act, well known as 'Sir William Rae's Act,' was passed to effect that object. It applied to all royal burghs, both in their strictly municipal character and as trustees of public charities. But even that act left the administration of the

common good of burghs very much to town councils,[1] some of whom are not, in Scotland, subject to such a system of financial and general supervision as applies to the boroughs of England.[2] The powers of the English Local Government Board to check illegal administration by these boroughs are far-reaching and salutary.

It is impossible to refer here to the many departments of municipal enterprise, or to the details of the burghal code which regulated the relations of burgesses to each other; which secured monoplies to burgesses as a class; and which determined the succession to property.

Allusion has been made to the original constitution of burghs, and the rights of burgesses to select those who were to administer its affairs, to the gradual assumption by the mercantile class of the substantial powers of municipal administration, and to the struggles and ultimate success of the craftsmen to share in

[1] Sir William Rae's Act has, however, been repealed by the Town Councils (Scotland) Act, 1900 (63 and 64 Victoria, c. 49), which requires a yearly account of all property heritable and moveable vested in the town council, and of all rates and assessments levied, and of all money received and expended by or on account of the council, to be submitted for audit to an auditor to be annually appointed by the Secretary for Scotland. This auditor is appointed to audit the account, making a special report thereon in any case where it appears to him expedient so to do, and the account with the report must be submitted to the council. Every person assessed, and every elector, is entitled to examine the account and report, without payment of any fee or reward, and a copy of the account, or an abstract of it, with the report must be forthwith transmitted to the Secretary for Scotland, and also delivered to such person or elector on demand. Any ratepayer or elector dissatisfied with the account, or any item thereof, may, within three months after the meeting of council, complain to the sheriff, whose decision is subject to appeal as in ordinary actions. Any of the burghs of Edinburgh, Glasgow, Aberdeen, Dundee, and Greenock, however, may, by a resolution passed prior to 9th August, 1901, declare that any sections or subsections of the act relating *inter alia* to accounts and corporate property and other specified subjects shall not be applicable to such burgh, and that, in lieu thereof, the sections or subsections of the act or acts applying to such burgh, repealed by the act of 1900 and specified in the resolution, shall, notwithstanding such repeal, remain in force or revive within the burgh. Such resolution is thereupon appointed to be transmitted to the Secretary for Scotland and published in the *Edinburgh Gazette*,—after which it has effect as if enacted in the statute.

[2] The Local Authorities (Scotland) Act, 1891 (54 and 55 Victoria, c. 37, s. 4 (3)), empowered any burgh in which there is a common good to apply to the Secretary for Scotland to determine, after due enquiry, the amount which the town council may borrow on the security of such common good, having regard to its value and all other circumstances affecting it.

that administration. But in process of time a desire manifested itself on the part of a large number of inhabitants of towns to obtain a greater share in what may be termed local government, and numerous petitions were transmitted to parliament by the royal burghs themselves, towards the close of the eighteenth and the early part of the nineteenth century, praying to have such enquiries made as would lead to an improved system of burghal administration. In consequence of these petitions, and the general dissatisfaction which prevailed, the House of Commons in 1793 appointed a committee of enquiry which made a full report. In 1818 again, the royal burghs petitioned parliament to be relieved of the expense of erecting proper jails, and these petitions were referred to a committee of the Commons, which reported to the House in that year. In the following year, a select committee of the same house reported on petitions which had been presented during the then, and two previous, sessions, and also on the report of 1793. That report, with its appendix—extending over 549 folio pages—summarised the several grounds of complaint as to the system of burghal administration then prevalent, and was submitted to parliament in the same year. Subsequent reports were made in 1820 and 1821—the latter offering a variety of suggestions with a view to improved administration. In 1823 and 1825 further documents were submitted to parliament relative to the royal burghs. A mass of information was thus collected which prepared the country for municipal reform. A first step in this direction was made in 1832, when, on 17th July, the Representation of the People (Scotland) Act was passed to remedy the inconveniences and abuses which previously prevailed in the election of members to serve in parliament. This was followed, on 14th August, 1833, by an act to enable royal burghs and burghs of regality and barony to establish a general system of police; and on 28th August two acts were passed, one to amend the laws for the election of the magistrates and councils of royal burghs (3 and 4 William IV., c. 76), and the other to provide for the appointment and election of magistrates and councillors for the several burghs and towns which, by the Representation of the People (Scotland) Act, were empowered to return or contribute to return members to parliament, and were not royal burghs (3 and 4 William IV., c. 77).[1]

[1] Both of these acts were repealed, but were substantially re-enacted, by the Town Councils (Scotland) Act, 1900 (63 and 64 Victoria, c. 49).

By the former of these acts, the right of electing the town councillors of each royal burgh was vested in all persons—owners and occupiers—who were entitled to elect the member for parliament for such burgh; and where any burgh did not return a member to parliament, in such owners and occupiers as were enrolled in a list or roll made up in terms of the statute. It provided for the election of councillors, who were to retire triennially, and of magistrates and other office-bearers, and it declared that only burgesses should be councillors.[1] It abolished, save in specified cases, the offices and titles of deacon and convener and dean of guild, and of old provost and old bailie as official and constituent members of town councils, but reserved the rights of crafts, trades, and guildries to elect their own officers; and it provided for the annual making up of a State of the affairs of each burgh. The system thus introduced, improved and amended by subsequent legislation, still obtains, though on 15th July, 1833—a month previous to the Municipal Elections Act becoming law—a royal commission was issued to enquire as to the state of municipal corporations then existing in Scotland, and these commissioners issued General and Particular Reports in which they recommended various changes to be made, to some of which, however, effect has not yet been given.

BURGHS OF BARONY AND REGALITY.

Analogous in many respects to Royal burghs, but of a subordinate class, numerous burghs came into existence at a very early period within the territories of secular and ecclesiastical lords and great land owners, and, according to the nature and

[1] In 1860 an act was passed (23 and 24 Vic. c. 47) entitling every person elected a councillor to become a burgess to the effect of complying with this requirement of the Burgh Reform Act, on payment of a sum to be fixed by the council not exceeding twenty shillings. But such admission did not carry with it the full privileges which attach to burgess-ship acquired in the ordinary way, and persons elected councillors were almost invariably indisposed to take advantage of that act. In 1876 another act was passed (39 and 40 Vic. c. 12) relative to the admission of burgesses. Its object was to give to ratepayers of burghs, in which institutions existed for behoof of decayed burgesses and their children, the means of acquiring benefit from such charitable institutions, and it is to be regretted that some better devised means of attaining that object was not adopted. Both acts were repealed in 1900, but have been substantially re-enacted by the Town Councils (Scotland) Act, 1900 (63 and 64 Vic. c. 49).

extent of the jurisdiction with which they were invested, these burghs were known as 'burghs of barony' or 'burghs of regality'—the former being erected within the lands of a barony, and the latter within the lands of a regality. Such burghs are referred to in the Laws of the Four Burghs, which provide that the burgess of a King's burgh might have battle of the burgesses of Abbots, Priors, Earls, and Barons, 'but not the converse.'

Burghs of this class were sometimes erected directly by the Sovereign, who, in the charter of erection, set forth their constitution, and the nature of the jurisdiction to be exercised by the magistrates and community. Sometimes the authority to erect was delegated by the Crown to the lords, ecclesiastical or secular, on whose territory the burgh was authorised to be formed; and the charters granted by the superior thus authorised specified the conditions under which the burgh was to be governed, by magistrates appointed either by the superior or by the inhabitant burgesses. But in all cases burghs of this class were held of a subject superior.

Of such burghs—and these among the most important and most ancient—were burghs, some of barony and some of regality, held of ecclesiastical superiors—St. Andrews, the seat of the Primate of Scotland, Glasgow, the seat of a bishop, and afterwards of an Archbishop, and many others the seats of ecclesiastical dignitaries of lower rank, including Old Aberdeen, Brechin, Arbroath, Fortrose, Dunfermline, Paisley, Spynie, and Queensferry. But the great ecclesiastical change effected by the Reformation altered the position of these church burghs, and in 1587 an act was passed for annexing the temporalities of benefices to the Crown. That act set forth that

'Forsameikle as there is divers burrowis in regalitie and barronie, within this realme, quhilkis were before haldin immediately of the saidis prelatis, and have been in use to exerce the trade and traffique of merchandise, to mak burgesses, and to elect provestis, baillies, and utheris officiaris meete and necessar for the government of their communities, our said Sovereign Lord and his three estates in Parliament, nawayes willing that they sall be hurt therein, declaris, decernis, and ordainis, that they sall remain in the samin freedome and libertie quhilk they had before the said annexation, to be haldin always of our said Sovereign Lord, in the samin manner and condition be the quhilk thai held thair saidis liberties of the saidis ecclesiastical personis befoir, and nawyse hurt in thair rightis and priviledgis, and that the ane sort and the uther be not confoundit be this present act, but remane alwayes distinct, as thay wer in tyme by past, notwithstanding the said annexation, it is alwayes provided, statute, and ordained, that the provest,

baillies, counsall, and utheris officieris, within the saidis burrowis, in regalitie and baronie, quhair thair were provest and baillies of before, sall be yeirly elected, chosen, deposit, and alterit, according to the forme and tenour of the acts of parliament maid in the daies of our Sovereign Lordis maist noble predecessouris, and ratified in divers Parliamentis sen his Hieness Coronatioun.'

The Crown was thus substituted for the old ecclesiastical superiors, and many of the church burghs were afterwards raised to the rank of royal burghs. Among the burghs so elevated were St. Andrews, Glasgow, Dunfermline, Brechin, and Arbroath.

The burghs of barony and regality which were held of lay superiors, or invested by charter with the practical power of self-government on prescribed lines, were numerous. Among those were Abernethy held under the Earls of Angus, and later under Lord Douglas; Alloa held under the Earl of Mar; Bathgate held of Thomas Hamilton; Dalkeith successively of the families of Keith, Morton, and Buccleuch; Dunblane of Lord Kinnoul; Dunkeld of the Duke of Atholl; Duns of Hume of Aytoun, and afterwards of Cockburn of Cockburn; Eyemouth of Hume of Wedderburn; Faithlie, or Fraserburgh, of Fraser of Philorth; Galashiels of Pringle of Torwoodlee and others; Girvan first of Muir of Thornton, afterwards of Hamilton of Bargany; Hawick of Douglas of Drumlanrig; Huntly of the Duke of Gordon; Kelso of the Duke of Roxburgh; Kilmaurs of the Earl of Glencairn; Kirkintilloch of the family of Fleming (Earl of Wigtown); Langholm of the Duke of Buccleuch; Maybole of the Earl of Cassilis; Melrose successively of the Earl of Haddington, the Earl of Melrose and the Duke of Buccleuch; Portsoy of the Earl of Seafield; Rosehearty of Lord Forbes of Pitsligo; Stonehaven first of the Earl Marischall, afterwards of Lord Keith; Stornoway of Mr. Stewart Mackenzie; Strathaven of the Duke of Hamilton; and Thurso of the heirs of John Morton of Berrydale.

These and such other burghs of barony and regality, holding of subject superiors, as were erected prior to 1746-7, were dealt with in that year by the act abolishing Heritable Jurisdictions (20 George II., c. 43) which drew a distinction between burghs in which the magistrates were appointed by the superior, and those which had constitutions independent of the lord of barony or regality. The jurisdiction of the former was practically abolished, while that of the latter was reserved, but the

jurisdiction of the superior was declared to be cumulative with that of the magistrates.

Since 1746-7 several burghs of barony have been constituted. Among those are Castle Douglas, Gatehouse of Fleet, Kilsyth, Laurencekirk, and Lerwick.

Originally, the burgesses of burghs of barony and regality possessed privileges of trade and manufacture within the bounds of their respective burghs only. These privileges were subsequently extended by an act in 1672, which empowered such burghs to export goods of their own manufacture. But in 1681 this extension was limited to the effect that the goods referred to in the act of 1672 might be sold for the use of the inhabitants of regality and barony only. In 1690, the inhabitants of these burghs were empowered to trade freely in native commodities, and in foreign commodities purchased from freemen of royal burghs. Three years later, viz. in 1693, parliament sanctioned an arrangement for communication of the rights of trade by royal burghs to burghs of regality and barony, on the latter consenting to pay a share of the taxation imposed on the royal burghs. In 1698, the inhabitants of burghs of barony and regality were empowered to trade in native and foreign commodities, if they bought the foreign commodities from freemen who paid scot and lot within a royal burgh. And between 1699 and 1701 a commission of parliament settled the terms on which there was to be communication of trade between royal burghs and burghs of regality and barony. But all exclusive privileges of trade were abolished in 1846, by the statute 9 and 10 Victoria, chapter 17.

In their respective constitutions, burghs of barony and regality presented numerous varieties. Some, by the charters of erection or by subsequent charters, had a modified right to elect their magistrates conferred on their burgesses or feuars, subject to the approval of their superiors. In some, unqualified dependence on the superior existed, and the magistrates were appointed by him. Others enjoyed an elective constitution, differing in the qualification of the electors—such qualification being in some cases restricted to resident burgess-ship, in others to resident proprietorship, within the burgh, and in others to the ownership or occupancy of houses of the value of £10 and upwards. One of the beneficial effects of the Burgh Police (Scotland) Act, 1892 (55 and 56 Vic., c. 55), amending the general Police Act of 1850, was to simplify the election of the governing

bodies of many of these burghs, several of whom possessed and exercised the right, under their charters, to erect incorporations of craftsmen within their respective bounds, similar to that enjoyed by royal burghs. When such a power was conferred on burghs of this class, it was exercised by the magistrates and council with the consent usually of the superior or lord of the burgh, or by the superior himself, in accordance with the provisions of the charter of erection. The document constituting such subordinate craft incorporations was usually designated, as in royal burghs, a 'Seal of cause,' and set forth the objects of the incorporation, and the particular privileges conferred upon it, including usually a right to hold property; to enact bye-laws for the government of the craft, subject to confirmation by the magistrates, or by the magistrates and superior, or by the superior himself, as the case might be; and a course of succession. They also not infrequently granted a monopoly of trade and manufacture within the burgh to the craft so constituted. The jurisdiction conferred on the burgh was usually cumulative with that of the superior, for, as Erskine observes, 'the territory granted to the body corporate continues as truly a parcel of the barony as if it were the property of a single vassal, differing only in this, that the jurisdiction is in the first case exercised by a community, and in the other by one person.'

PARLIAMENTARY BURGHS.

Reference has been made to the act of 1832, passed to amend the Representation of the People in Scotland, and to the foundation which it laid for amending the constitution of royal burghs. It did more than this, however. It provided for the cities, burghs, and towns of the country being represented by twenty-three members, in the proportion therein specified. Of these fourteen were allocated to groups of burghs and towns, —some of which were royal burghs, and some burghs of barony and regality. It assigned to each of the burghs entitled to representation distinct, and in most cases extended, boundaries, so as not only to include the suburban populations which had grown up around the more prosperous burghs, but also outside areas to meet increase of population; and it enacted that the parliamentary representatives of burghs should no longer be elected by the town council, but directly by the parliamentary electors created in virtue of the act. Among the burghs thus entitled

to elect members to parliament were several burghs of barony and regality, and some towns which were not burghs of either class, but whose population and importance led to their having parliamentary representation conferred on them. All the burghs to which such representation was given came thus to be known as 'parliamentary burghs,' and the act 3 and 4 William IV. cap. 77, passed on 28th August, 1833, provided a constitution for them similar in many respects to that which the act 3 and 4 William IV. cap. 76 provided, with reference to most of the royal burghs. Parliamentary burghs were empowered to have councils, elected by the parliamentary electors—the number being either specified in the act, or fixed by commissioners appointed by the Crown, and these councillors were empowered to choose a specified number of magistrates and office-bearers. In burghs in which there were burgesses no one could be inducted into office as a councillor without producing evidence of his being a burgess; the right of crafts, trades, and guilds, where such existed, to elect their own officers, was reserved; the magistrates and councillors were declared to have powers and jurisdiction similar to those possessed by royal burghs; and states of the affairs of each burgh were appointed to be annually published.

This act, like that relating to royal burghs, was subsequently amended by various statutes, public and local, culminating in the Town Councils (Scotland) Act, 1890, but to these it is not necessary to refer here.

POLICE BURGHS.

In 1850 the desirability of enabling 'populous places' to obtain the benefit, by general statute, of legislation enabling the inhabitants to pave, drain, cleanse, light, and improve these places was recognised and provided for by the Police and Improvement (Scotland) Act (13 and 14 Victoria, c. 33). Defining 'populous place' to mean any town, village, place, or locality—not being a royal burgh, a burgh of regality or barony, or a parliamentary burgh—containing a population of twelve hundred inhabitants or upwards, it provided for the fixing of the boundaries of these places, the qualifications of the persons who should be entitled to vote in the determination of the question as to whether the provisions of the act should or should not be adopted, and the holding of a meeting of the voters to determine that question.

It also provided for the election of commissioners and magistrates of police to carry the act into effect if adopted, and prescribed the manner in which this was to be done. Various populous places took advantage of this act which, however, was repealed by the General Police and Improvement Act, 1862 (25 and 26 Victoria, c. 101), except only as regarded any burgh in which its provisions had been adopted or incorporated, in whole or in part, with any local or special act relating to such burgh—the word 'burgh' being declared to include 'populous places.' The act of 1862 contained provisions as to its adoption in burghs which in the act of 1850 were styled 'populous places,' and it consisted of 449 clauses embodying provisions as to lighting, cleansing, paving, draining, supplying water, effecting improvements, and promoting public health. It, again, was amended in several particulars by the General Police and Improvement (Scotland) Act, 1862, Amendment Act, 1868 (31 and 32 Victoria, c. 102), by the General Police and Improvement (Scotland) Amendment Act, 1877 (40 and 41 Victoria, c. 22), by the General Police and Improvement (Scotland) Amendment Act, 1878 (41 and 42 Victoria, c. 30), by the General Police and Improvement (Scotland) Act, 1882 (45 and 46 Victoria, c. 6), and by the General Police and Improvement Act, 1862, Amendment Act, 1889 (52 and 53 Victoria, c. 51). So matters remained till 1892 when the Burgh Police (Scotland) Act of that year was passed and came into operation on 15th May, 1893. It applied to every burgh which then existed—save Edinburgh, Glasgow, Aberdeen, Dundee, and Greenock—and to every burgh which might thereafter be erected under it, but might be adopted in whole or in part by any of the excepted burghs. It superseded and repealed under specific exceptions as regarded twenty-three burghs all general or local police acts, and especially the police act above referred to, save in so far as they are incorporated by reference in portions of police acts not thereby repealed. Subject to these exceptions the act of 1892, consisting of 518 clauses, forms a comprehensive code of police and sanitary legislation for the Burghs of Scotland.

ALL CLASSES OF BURGHS.

On 8th August, 1900, the Town Councils (Scotland) Act, 1890 (63 and 64 Victoria, c. 49), was passed to consolidate and amend the law relating to the election and proceedings of town

councils of burghs in Scotland, and it defined 'burghs' as including royal burghs, parliamentary burghs, burghs incorporated by act of parliament, police burghs, and any other burgh within the meaning of the Burgh Police (Scotland) Act, 1892. It declared, however, that nothing which it contained should supersede, prejudice, or affect the provisions of any local act applicable to any burgh, or the forms of prosecution and procedure in use therein under such act.[1]

JAMES D. MARWICK.

[1] With reference to the last paragraph on p. 126 the writer is reminded that since Edinburgh and Glasgow made the appointments referred to in the text, Dumfries has elected a lady an Honorary Burgess. The practice thus introduced affords burghs a befitting means of doing honour to ladies whose position or public services make such recognition appropriate.