

# 'Meddle in any manner of way with the rents and you will repent it': The Collection of Rents in the Regality of Grant

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The collection of rents, debts, duties and casualties was a primary function of all feudal franchise courts in Scotland.<sup>1</sup> This article will reflect on how the early-eighteenth-century Scottish landowner might act when his tenants failed to pay. One option was, of course, to use the franchise court; but sometimes landowners went to extreme lengths, well beyond the legal powers granted to them, in an attempt to extract monies they believed they were owed. Here we will explore a complex episode on the lands of the Regality of Grant in 1710, an episode which also raises issues and questions about the tensions and even conflicts that arose when a landowner used such means to gain the money he thought his due, tensions perhaps reflecting a developing redefinition of the relationship between a Highland laird and his 'clansmen'. Some such tensions were no doubt the result of the peculiar circumstances and developments on the lands of the Grants; others will have wider implications.

The regality of Grant belonged to the most powerful class of franchise jurisdictions. Awards of regalities first appeared in charters during the reign of David I and disappeared from Scotland following their abolition in 1748. Courts of regality were able to exercise regalian rights of jurisdiction, usually reserved by the monarch to be exercised on their behalf in the royal courts; thus, in theory, regalities could hear all criminal and civil pleas bar treason alone.<sup>2</sup> However, by the eighteenth century it is often stated that many of these regality courts existed largely to service the collection of rents owed to the jurisdiction holder.<sup>3</sup> The validity of such claims are largely untested thanks to a paucity of study into the work of franchise courts during the eighteenth century.<sup>4</sup> This

<sup>1</sup> G. Gunn, *Introduction to the Records of the Baron Court of Stinchill*, Scottish History Society, Series 1, L (Edinburgh, 1905), xxiii; S. Davies, 'Law and Order in Stirlingshire 1637–1747' (PhD thesis, University of St Andrews, 1984), 252; W. C. Dickinson, *Introduction to the Court Book of the Barony of Carnwath*, Scottish History Society, Series 3, XXIX (Edinburgh 1937), xlvii.

<sup>2</sup> Julian Goodare disputes that regalities could hear the four pleas to the Crown: J. Goodare, *The Government of Scotland, 1560–1625* (Oxford, 2004), 184.

<sup>3</sup> Davies, 'Law and Order in Stirlingshire', 241.

<sup>4</sup> The most relevant work is Davies' doctoral thesis examining the wider court system in Stirlingshire in the century prior to the Heritable Jurisdictions Act: Davies, 'Law and

article will seek to redress this by examining the collection of rentals by regality courts in the context of rural society in the eighteenth century.

The regality of Grant, encompassing the Highland parishes of Abernethy, Duthil, Inverallan, Cromdale, Advie, Knockando, Kirkmichael, Mulben, Kincardine and Inveravon in Speyside, along with the parish of Glenurquhart on Loch Ness and part of the parish of Laggan in Lochaber, received parliamentary ratification in 1696. The erection of the extensive lands and baronies held by the Grant family into a single regality was a reward for the family's zealous support of the Williamite cause during the revolution.<sup>5</sup> The regality court of Grant continued to sit until it was abolished by the Heritable Jurisdictions (Scotland) Act on 23 March 1748. Five court books from the regality of Grant survive, covering the period from 1690 to 1729. This is in addition to numerous references to the work of the court contained in other documents, such as court extracts, petitions and estate papers contained within the Seafield Muniments. It is upon these sources that this article draws.

In the regality court of Grant, the annual call for the payment of rentals owed to the laird was an important part of the work of the court. Such citations make up roughly 14 per cent of the total business entered in the court books. Thus, the collection of rentals was one of the most common, yet by no means the main business of the court. Calls for payment of rent by tenants ordinarily took place at the Martinmas court, instigated by a petition made by the regality's chamberlain. Each of these pleas for payment conforms to a standard form, as per the example from 29 November 1728: 'Anent the petition given in be the laird of Grant's chamberlain the said judge decern and ordains the wadsetters, gentleman, tenants, possessors and others of the lands, milns etc. to make payment of their customs due.'<sup>6</sup> Proclamation was made in open court and

Order in Stirlingshire'. Dickinson's introduction to the *Court Book of the Barony of Carnwath* is considered the authoritative work on feudal franchise courts in Scotland. However, the period examined by Dickinson is much earlier than the eighteenth century and focuses largely on baron rather than regality courts. The records of two regality courts have been published: (ed.) J. M. Webster and A. A. M. Duncan, *The Regality of Dunfermline Court Book 1531–1538* (Dunfermline, 1953); (ed.) C. S. Romanes, *Selections from the Regality of Melrose*, Scottish History Society, Series 2, VI, VIII and XIII (Edinburgh, 1913, 1914 and 1917). Of these, the commentary accompanying the records from the regality of Melrose offers some useful analysis of the primary materials contained within and the time period covered is rather later than other histories, being largely concerned with the seventeenth century. The published records of *The Court Book of the Barony of Urie in Kincardineshire 1604–1747*, Scottish History Society, Series 1, XII (Edinburgh, 1892) give an insight into the work of franchise courts in their final years, although of a baron rather than regality court. As can be seen, much of the scholarship relating to franchise courts is aged and would benefit from fresh research in the light of more recent studies made in Scottish social and economic history.

<sup>5</sup> (ed.) K. M. Brown *et al.*, *The Records of the Parliaments of Scotland to 1707* (St Andrews, 2007–17), 1696/9/192.

<sup>6</sup> National Records of Scotland (henceforth NRS), RH11/34/5, Court Books of the Regality of Grant, 156.

was a final warning for tenants with debts resting to make prompt payment to the Laird or undergo process of law. It was established procedure that an identical proclamation would be made at a court held within each parish within the regality at close intervals calling the inhabitants of each district to make payment.

If payment of the debt was not received within due time, then the chamberlain of the regality would again petition the bailie of the regality court, this time craving that the individual debtors might be sued for payment in court and decreet extracted thereupon. Adjoined to the extract of the court decree was a precept of poinding enforceable against the debtor's property within the jurisdiction in which the decree was issued. Poinding was the process by which a debtor's property might be seized, valued and sold to realise funds to satisfy a creditor. Poinding was a judicial process allowed by law to proceed only under warrant from the regality court. It was usually undertaken by the parish's court officer, who would personally uplift and impound tenants' goods. The poinded goods were then valued twice by two different assessors, usually birleymen, in order to ensure a fair price for the debtor. The debtor was then offered the chance to redeem the goods before they were offered to the creditor.

Despite the use of the regality court to help collect unpaid rents and the threat of poinding hanging over many tenants' heads, rests of rents – and consequently the debts of the Grant family – increased steadily following the erection of the regality in 1696. Tenants being unable to pay their rents first became a widespread problem following the rebellion of 1689, which laid waste to many Grant tenants' holdings. The problem was worsened by the harvest failures of 1695–1700. The rendering of estate accounts during these years shows that many holdings were lying waste due to the ruin of the tenant.<sup>7</sup> The estate accounts record that difficulties did not ease as the climatic downturn continued into the first decade of the eighteenth century. For instance, in 1710 rests of rent allowed for the harvest of that year alone totalled £3,576 5s. 2d. Scots.<sup>8</sup> This was out of a total rental of some £14,000 Scots. Many tenants owed several years of rent: the 1706 accounts show that the boatman of Cromdale had not paid any rent in five years, while David Blair, the clerk to the court, was resting three years rent for his holdings.<sup>9</sup> There was clearly little chance of ever getting payment of such debts. Testamentary evidence shows that, in common with many other leading Highland families, the Grants of Freuchie had been accumulating large debts since the mid-sixteenth century, largely through local credit networks.<sup>10</sup> Ludovick Grant of Grant had inherited huge debts from his

<sup>7</sup> NRS, GD248/10/16, Seafield estate accounts, no folio numbers. The Seafield Muniments held by NRS are reproduced by kind permission of The Right Honourable, the Earl of Seafield.

<sup>8</sup> NRS, GD248/113/7, Seafield estate accounts, fol. 2.

<sup>9</sup> NRS, GD248/10/16, Seafield estate accounts.

<sup>10</sup> D. Watt "The labyrinth of thir difficulties": The Influence of Debt on the Highland Elite, c.1550–1700', *The Scottish Historical Review*, 85, no. 1 (2006), 28–51, 30. Unfortunately, there

deceased father when he succeeded to the Grant estates in 1665 and under Ludovick Grant's lairdship these debts continued to grow alarmingly.<sup>11</sup> With nearly all of the Grants' income being derived from their rentals the dire financial straits in which the Grant family found themselves are easy to appreciate.<sup>12</sup> The management of the Grant estates, which had led to the accumulation of such debts, came in for severe criticism from the tacksmen and tenants of the estate. It also led to dispute and litigation within the family. The dramatic events which unfolded provide us with the best documentary evidence of the collection of debts and poidings in Strathspey, and of how ordinary people interacted with and viewed the regality court. In turn, a greater issue is revealed concerning a conflict between changing types of authority: with the laird representative of traditional Highland society and clanship on the one hand, and the modern administration of the law on the other.<sup>13</sup>

A little before 10 a.m. on 15 May 1711, Ludovick Grant of Grant arrived at the caput of the regality at Castle Grant; his son Alexander was absent, being resident in London.<sup>14</sup> Accompanied by retainers and servants from the nearby mains, the purpose of his visit could hardly have been more dramatic. In July of the previous year, Ludovick had been forced to transfer control of the Grant estates to his eldest son Alexander.<sup>15</sup> The disposition effecting this settlement now lay within the Grant charterhouse in the castle. Along with his followers, Ludovick's intentions were plain: to seize or destroy the offending charters and burn Castle Grant to the ground. However, upon reaching the gates, he found the way barred by supporters of his son Alexander, namely Mungo Grant of Mullochard and other members of the clan gentry, including Gregor Grant of Gartenmore and the Grants of Lurg and Docharn, all armed and in possession

is no direct evidence to indicate the precise nature of much of the Grants' expenditure (beyond their overzealous participation in the revolution) to offer a comparison with the work of Watt.

<sup>11</sup> The testament of James Grant of Freuchie shows that he had liabilities totalling £72,000: W. Fraser, *The Chiefs of Grant*, III (Edinburgh, 1883), 346–51. Between 1705, when the issue of Ludovick Grant's mismanagement of the estates was first raised, and 1711, Ludovick Grant paid out £37,000 as loans and in lieu of debts. His testament further illuminates his financial malaise: CC8/8/86, Edinburgh Commissary Court.

<sup>12</sup> This situation was to continue throughout the eighteenth century, with Grant debts peaking at £123,438 in the 1780s. See A. Ross, 'Improvement on the Grant Estates in Strathspey in the Later Eighteenth Century: Theory, Practice, and Failure?', in (ed.) R. W. Hoyle, *Custom, Improvement and the Landscape in Early Modern Britain* (Farnham, 2011), 306. Other revenue streams such as forestry were still negligible at this time.

<sup>13</sup> This is an issue which has been covered extensively by Dodgshon. The conclusions of this article generally accord with those of Dodgshon, with some distinctions, however, which will be dealt with more fully at the end of this article.

<sup>14</sup> NRS, GD248/22/3/34, Alexander Grant's papers. Alexander was forced to reside in London while on parole as he waited to find out if he would have to return to France as a prisoner of war.

<sup>15</sup> W. Fraser, *The Chiefs of Grant*, I, pt II (Edinburgh, 1883), 326.

of the castle. Enraged that his plan had been foiled, Ludovick sought revenge in the courts, suing his disloyal kindred for their violent possession of his family home. In their turn, Mullochard and his allies sought exculpation for their actions, laying before the Justice Court the reasons that they argued warranted their desperate act. The primary reason for the clan's disaffection to their chief? The collection of rents and poinding of the ground.

The Justiciary Court minutes of the case provide the best idea of the nature and origins of the dispute embroiling Ludovick Grant, his son, his son's commissioners and the leading gentry and tenants of the area. Mungo Grant's information for the lords of Justiciary lays bare the financial woes which had befallen the Grant estates:

It appeared some years ago, that the estate of Grant was under a very considerable load of debt, which during the continuance of the panel [Ludovick Grant] and his ladies management sensibly increased, so that it was upon good grounds feared, that the affairs of the family should in a little time be past all hopes of recovery. This melancholy prospect moved the friends and relations of the family to lay the case before the panel and intreat that some alteration might be made in the management of the estate, and he was easily prevailed with in May 1710 to Grant a disposition of his lands and estate in favour of Brigadier Grant his eldest son ... and the son induced into possession in a very solemn manner by the fathers declaring to his vasell and tennents in ane open court, that he had made over the right of his estate to his son, whom they afterwards were to look upon as their master.<sup>16</sup>

Amid much ceremony Alexander Grant had been infeft in the Grant estates, while his father renounced all interest in their management. As Alexander was away pursuing his career in the military, he immediately took care to appoint commissioners to run his estate in his absence.<sup>17</sup> However, events were about to overtake Alexander. In August 1710, he set sail from the Netherlands, returning home on leave; his ship, however, was captured in the English Channel and he was taken prisoner. He was paroled, finally returning home to Castle Grant in November 1710. In an open court held on 4 November, the factor and commissioners were formally constituted in their roles, and Alexander's control of the estates could begin in earnest.<sup>18</sup> As part of the settlement on Alexander and in return for renouncing his liferent over the Strathspey estates, Ludovick Grant was to receive an annuity of £300 sterling for his upkeep, in addition to the fruits of the home farms at both Castle Grant and his new residence at Culnakyle. However, despite appearing to hand over the control of the family estates with good grace, his dissatisfaction and resentment stemming from the new management of the estates led events to take an uglier turn. Struggling to service his mounting personal debts, Ludovick sought funds from his son's

<sup>16</sup> NRS, JC7/5, High Court of Justiciary minutes, 1710–11, 209.

<sup>17</sup> Factory being registered in July 1710, NRS, RD7/3, Register of Deeds minute books – Dalrymple, no pagination.

<sup>18</sup> NRS, RH11/34/3, Court Books of the Regality of Grant, 3.

commissioners. His requests fell on deaf ears. With his financial woes mounting, Ludovick, encouraged by his wife Jean Houston, decided to resume management of his former estates, illegally, and without any of the administrative machinery of courts, chamberlains, and factors.<sup>19</sup>

In fact, Ludovick's exploitation of his position as head of the clan and the main authority figure in the area had begun as early as 1707. In 1698 he had granted the fee of the Grant estates to Alexander reserving the liferent of the said lands to himself. In 1705 he had come north from Edinburgh to reside year-round in Strathspey. As liferenter, Ludovick had continued, legally, to uplift the rentals of the estate; however, in 1706, alarmed at the mounting debts, Alexander sought to stem the flow of money from the estate straight into his father's pockets by restricting his income. With his main source of income lost, Ludovick continued to uplift some of the rentals of the estate, pointing the ground for such debts where necessary. When tenants refused to pay the debts Ludovick claimed they owed, he would point without warrant, in defiance of both local custom and due process. A tacksman on the Grant estates, James Grant of Auchnahyle, gave evidence in a precognition, recalling how two cows had been pointed by Ludovick belonging to Alister Gow the blacksmith in Clachaig. Auchnahyle was worried that, 'the goods were seized and payment made without any decret or order of law'. According to Auchnahyle the practice on the Grant's estates had always been to sue debtors for payment in court prior to pointing; however, this practice had ceased since Lady Grant (Jean Houston) had come to Strathspey.<sup>20</sup>

Relying on loyal, unquestioning servants to carry out his commands, or bullying and intimidating others to comply with his wishes, Ludovick Grant was able to point at least 26 Grant tenants without a court warrant.<sup>21</sup> No court officer or bailiff could refuse to answer the call of their laird and clan chief; warrant or no warrant, they did as he bade them do. John Grant was one such man; officer of the regality court in the parish of Abernethy, he also gave evidence before the Justiciary Court of the pointing of Alister Gow in similar terms to Auchnahyle, declaring 'he uplifted the goods and carried them to cullnakyle without decret or order of law and declares he used to poynd by decret for country debts'.<sup>22</sup> John Grant's deposition also makes clear that some of the pointings executed on behalf of Ludovick Grant were by no means small in scale and were not intended to go unnoticed: 'uplifted from James McAlister Dow in Riemore, 27 head of cattle, 3 horses, a parell [parcel] of sheep, ten firlotts of meal, two calves, a parell of goats and two chists containing cloathes and five pounds scots

<sup>19</sup> Jean Houston was daughter of Sir Patrick Houston of that Ilk. The family held lands in Lanarkshire and West Lothian. Ludovick Grant was Jean Houston's third husband.

<sup>20</sup> NRS, GD248/22/3/35, Papers relating to the action between Ludovick Grant of Grant and Mungo Grant of Mullochard, fol. 1.

<sup>21</sup> NRS, GD248/22/3/60, List of claims against Ludovick Grant and Jean Houston.

<sup>22</sup> NRS, GD248/22/3/35, Papers relating to the action between Ludovick Grant of Grant and Mungo Grant of Mullochard, fol. 2.

of money'.<sup>23</sup> Such was the scale of the stock uplifted that McAlister Dow was obliged to send his daughter and herd to tend the stock corralled at Culnakyle. His daughter went about the milking, making butter and cheese, and sending these back to her father at Riemore, until such point as he was able to realise the cash required to redeem his stock. McAlister Dow was evidently a farmer and tenant of some importance, but even a tenant of his stature was not safe from the activities of the old Laird Ludovick. When the regality officer was asked the nature of McAlister Dow's debt, the officer was uncertain:

Declares he does not know for what cause he brought them there save that as he was informed it was for the pryce of timber ... and declares that he uplifted the goods and cattle without any decree or order of law other than that Duncan Grant of Lettoch made shew of reading the laird of Grant's order to him uplifting as said is, which order the declarant did not understand because he can neither read write or speak English.<sup>24</sup>

There is an undoubted irony to be found in Ludovick's wasted efforts in making a pretence of legitimacy. The manipulation of the regality's officer is plain to see. Officers such as John Grant were unpopular by virtue of the work they undertook on behalf of the Laird, seizing their peers' property for debts they either disputed or were unable to pay cast them as pariahs.<sup>25</sup> Such men could hardly afford to lose the favour of those in power, regardless of the legality of the acts they were commanded to execute. In at least the majority of cases the debt seems to have existed.<sup>26</sup> In the case of James McAlister Dow, however, the basis of the supposed debt and the reason for the subsequent pointing appears to have been a grudge held by Ludovick against McAlister Dow's son. Duncan Grant of Lettoch, another tacksman questioned in the precognition, believed that the son had cut the Laird's woods without licence and thereafter had broken the prison at Castle Grant and had fled Strathspey.<sup>27</sup> This could be the Alister MakAlister who was found 'guilty of firwoods' at a court in Duthil in December 1709, although without the son's name it is not possible to trace him in the records with certainty.<sup>28</sup> Lettoch recalled how he had gone with six or seven men to point McAlister Dow at Riemore; it is easy to imagine how intimidating this must have been for the people being pointed and it emphasises the power of the Laird in the district.

<sup>23</sup> Ibid. In McAlister's own claim as part of the indictment against Ludovick Grant he claimed that 63 sheep and 27 goats had been uplifted.

<sup>24</sup> Ibid.

<sup>25</sup> C. Muldrew, *The Economy of Obligation* (Basingstoke, 1998), 276.

<sup>26</sup> In the witness statements the majority of pointed tenants acknowledge that the debt was owing.

<sup>27</sup> NRS, GD248/22/3/35, Papers relating to the action between Ludovick Grant of Grant and Mungo Grant of Mullochard, fol. 4.

<sup>28</sup> NRS, RH11/34/2, Court Books of the Regality of Grant, 131.

While the ordinary people of Strathspey were at first clearly in no position to question the legitimacy of Ludovick's actions, upon his public renunciation of the headship of the clan in July 1710, perceptions changed. With the clan gentry moving against him, the people began to accept the authority of Alexander's new commissioners rather than of the old laird now residing in the family's summer lodge at Culnakyle near Nethy Bridge. Once Ludovick had tried to make his actions appear legitimate; when questioned in the precognition, he had argued that it had long been customary to poind summarily in Strathspey, without decret of the regality court and by inference that he had acted legally. Whether poinding of the ground upon rents could proceed without court decret was disputed by the institutional writers. Stair wrote that poinding of the ground upon annual rents may proceed summarily without declaring the right in a petitionary judgement.<sup>29</sup> However, this was qualified by Erskine, who wrote that summary poinding could not take place where the debts in question fell to be paid at either Whitsun or Martinmas, such as was the case with the type of debts poinded for by Ludovick.<sup>30</sup> The longstanding clerk to the regality court, David Blair, who had been clerk to the Grants' courts since at least 1690, spoke of local custom in regard to poindings and to which Ludovick was clearly paying no regard:

he never saw any of the tenants pursuers in the recrimination convened or decerned in any court of the country for the pryce of rears but declares that the tenants were decreeted for their rents and that poyndings without tryall or sentence usually proceeded as the declarant heard only for small services and customs.<sup>31</sup>

The 27 cows taken from McAlister Dow clearly didn't correspond to 'small services' or 'customs'.

After July 1710, Ludovick continued to argue that he had a right of management in the Grant estates thanks to his annuity, which entitled him to act as a manager issuing tacks and adjusting conversion rates on his son's behalf. However, his actions were wholly at odds with these claims, with coercion becoming a key tactic in his power struggle to exert control over the estate. The witness statements from the Justiciary Court case record how he took to wearing a shable or sabre to intimidate the tenants and indeed the commissioners themselves.<sup>32</sup> Alexander Grant of Lethendrie, chamberlain to Alexander Grant of Grant was one of those Ludovick sought to intimidate:

Alexander Grant in Lethendrie, chamberlain to young Grant, declares that the Laird of Grant [Ludovick Grant] upon severall occasions and particularly a little

<sup>29</sup> J. D. Stair, *Institutions of the Law of Scotland* (Edinburgh, 1681), 436.

<sup>30</sup> J. Erskine, *An Institute of the Law of Scotland* (Edinburgh, 1871), 514.

<sup>31</sup> NRS, GD248/22/3/35, Papers relating to the action between Ludovick Grant of Grant and Mungo Grant of Mullochard, fol. 8.

<sup>32</sup> NRS, GD248/22/3/60, Mullochard's questions for Ludovick Grant.



after mertimass last discharge the declarant to medle any manner of way with the rents as chamberlain for young Grant otherwayes he would make hime repent it.<sup>33</sup>

In autumn 1710 the new commissioners called together the inhabitants of the regality to answer to a head court to pay their rents as was the custom. However, on the appointed day the people were forcibly prevented from attending; every action possible was being taken to ensure no rents were uplifted, or possession poinded other than by Ludovick himself:

In September last the declarant as officer [Donald Roy officer for Cromdale parish] did convene the country to answer to a court holden by young Grant's factors, but he was threatened and boasted to dismiss the tenants and discharge there attendants and that accordingly he did dismiss and discharge them.<sup>34</sup>

It was for this reason that no court for the collection of rents in autumn 1710 is to be found in the court records. In fact, following Alexander Grant's return to the army in July 1710, the commissioners were unable to hold any courts in the face of Ludovick's threats. With the most essential part of the management of the estate – the collection of rents – unable to take place, the commissioners were useless. Alexander returned briefly in November 1710 and convened a regality court, the first since July, to formally establish the commissioners, bailies and officers in their roles, and to make a public show of doing so. Thereafter, it was not until 24 April 1711, a gap of some eight months, that the commissioners were finally able to re-establish the system of regality courts in Strathspey. The absence of courts was greeted with growing dismay. Without regality courts, poindings could continue to be executed without decree or indeed without the debt even existing. In turn, without the local system of courts the people of Strathspey lost their most convenient means of challenging the seizure of their goods and gaining some redress. This raises the point of why the victims of summary poindings hadn't simply complained to the regality court in the months before it had ceased to sit. The answer was quite simply that Ludovick Grant was both sheriff principal of the shire and competent to sit as a bailie in the regality court. Although Ludovick seldom availed himself of his right to sit as judge in his court, it is clear that the possibility of him doing so was enough to deter the people of the regality from going to court against him.<sup>35</sup> Thus we find that there was a desire and need for courts which were capable of upholding due process, but at the same time there was an acceptance that the Grant courts in Strathspey were neither independent nor unbiased.

It was these grievances relating to poindings and a lack of courts which were the main motivations leading to the gentry and tenants garrisoning Castle Grant in May 1711, and in turn raising criminal proceedings against their former

<sup>33</sup> NRS, GD248/22/3/35, Papers relating to the action between Ludovick Grant of Grant and Mungo Grant of Mullochard, fol. 1.

<sup>34</sup> Ibid., fol. 7.

<sup>35</sup> NRS, JC7/5/195, High Court of Justiciary minutes, 246.

laird and master. However, the spiralling debts of the family, and the improper manner in which Ludovick Grant had conducted himself, reveal that notions of clanship and honour also motivated the armed resistance to the former clan chief. His intimidation of his former tenants, disregard for due process and dire mismanagement of the estate were regarded as deeply damaging to the honour and good name of the Grants, and thus it was perhaps this notion of a threat to the clan, rather than personal injustices that caused the men of Strathspey to act. This sentiment is clear in a letter written to ‘the garrison of Castle Grant’ from John Grant of Dalrachney on behalf of Alexander’s commissioners: ‘I would have you consider that the ruine or standing of the family depends on you and that you may expect your reward’.<sup>36</sup> There is also a clear sense in the charges brought by Mullochard against Ludovick Grant that Mullochard was a reluctant litigant, unwilling to take any kind of action which might bring the name of Grant into disrepute. On the other hand, he and his fellow co-defendants clearly abhorred the behaviour of their former chief, especially regarding the collection of rents and his pretensions as lord and master of Strathspey. The information on the case for the Lords of Justiciary show how far Ludovick Grant had fallen in the estimations of his clan:

To this [the argument of Mullochard] the pursuers [Ludovick Grant and Lady Jean Houston] answer, that he is of an ancient and noble family and clan ... as chief, superior, head of the clan, master, benefactor, Lord etc. who had maintained the dignity and reputation of the whole clan, but these are bombasts and words of vanity.<sup>37</sup>

While Ludovick Grant was undoubtedly a figure of increasing unpopularity, by and large the hatred of the people was reserved for his second wife Jean Houston. She was regarded as a bad influence, who could not be redeemed in the eyes of the clan by ties of kinship, ‘being obliged to pay the lady who seems to be the chief actor and manager in these exactions, certain sums of money when they were not owing a farthing’.<sup>38</sup> The resentment felt towards Houston was made worse by the fact she was a lowlander, an incomer and her marriage to Ludovick was already her third. For the men of the clan it was undoubtedly easier to lay most of the blame for events in Strathspey at the feet of the troublesome second wife, who was upsetting established authority by undermining the role of her husband and the clan chief in a very patriarchal society.

With both Mullochard’s party and Ludovick Grant remitted to pass before an assize by the Lords of Justiciary, it was perhaps inevitable, given both sides’ concerns about the good name of the clan, that an out-of-court settlement

<sup>36</sup> NRS, GD248/22/3/34, Ludovick Grant’s statement and a letter to the garrison of Castle Grant.

<sup>37</sup> NRS, JC7/5/195, High Court of Justiciary minutes, 234.

<sup>38</sup> *Ibid.*, 212.

should be reached. Mullochard and Dalrachney along with two commissioners, Captain John Grant of Easter Elchies and Joseph Brodie of Milntoun, paid £50 each in reparations to Ludovick, all other charges being dropped in return for the commissioners being allowed to resume full management of the estate. Meanwhile, Alexander and Ludovick also reached through arbitration an amicable resolution of their dispute over the settlement of the estate. Ludovick's annuity was reduced in return for Alexander taking over liability for all of Ludovick's personal debts.<sup>39</sup>

The case of Ludovick Grant v. Mullochard clearly demonstrates how feudal franchises continued to play a major role in the rural communities of Scotland. There was a clearly a desire for local courts capable of upholding due process and independent of the machinations of the local landowner. However, it is clear that there was a risk of partiality in the franchise courts and that the power of the laird or clan chief was capable of bypassing legal procedure. As a result, the people of Strathspey were forced to search for legality in the justice court. In turn, this is indicative of a wider dispute between traditional notions of chieftainship and the modern administration of the law as a jurisdiction holder.

The conflict between Mullochard and Grant reveals how notions of clanship pervaded society and justice in Strathspey in the early years of the eighteenth century, leading to the oppression of the tenants of the Grants, but also inspiring them to retaliation and revolt, notionally for the good of the clan rather than personal redress, in the face of the illegal seizure of their possessions. Clearly some landowners such as Ludovick Grant were increasingly distancing themselves from the type of patriarchal behaviour still expected by the clan gentry and tenants, instead choosing to pursue profit from the land regardless of the damage they were wreaking upon traditional bonds of kinship. This behaviour is demonstrative of wider trends in Scottish society in the eighteenth century, whereby chiefs increasingly sought to increase the income they derived from their land often at the expense of the traditional paternalistic model of estate management.<sup>40</sup> Such actions included: expansion into alternative land usage in industries such as forestry (a revenue stream increasingly exploited by the Grants during the eighteenth century); the reduction of the relationship between landlord and tenant to a purely commercial basis by refusing to offer rests of rent for arrears; or by introducing bidding processes for lands which might previously have been considered as part of the sitting tenant's family's

<sup>39</sup> NRS, GD248/22/3/39, Papers relating to the settlement of the dispute between Alexander Grant of Grant and Ludovick Grant of Grant.

<sup>40</sup> See for instance, T. M. Devine, *Clanship to Crofters' War: The Social Transformation of the Scottish Highlands* (Manchester, 1994), 43–4; T. M. Devine, *The Transformation of Rural Scotland: Social Change and the Agrarian Economy 1660–1815* (Edinburgh, 1994), 47–50; R. A. Dodgshon, *From Chiefs to Landlords: Social and Economic Change in the Western Highlands and Islands, c.1493–1820* (Edinburgh, 1998), 102–17. Dodgshon cites various examples of how landlords increasingly sought to increase their rental income, although none are quite as drastic as Ludovick Grant's actions.

*duthchas*. On the other hand, Ludovick's son Alexander displayed rather more sympathy when exercising the social and political roles expected of a landowner. In addition, the gentry of the clan Grant, the majority of whom were wadsetters and thus quasi-landowners themselves, were vehement in their support of the traditional clan model in Strathspey. This suggests that it is important not to overstate the process of transition from paternalistic to commercial management of land in the Highlands in the early eighteenth century.

The statements of the many men interviewed for the case make clear that, thanks to contact with the regality court, there was a great familiarity with the legal system. Debt and credit were central aspects of rural life in seventeenth- and eighteenth-century Scotland. As a result, the pursuit of debt actions in the regality court, especially those made by the regality chamberlain, was a central part of the work of the court. When such litigation is taken together with actions for the collection of rentals made by the chamberlain through the court, it is clear that the forum of debt was one of the main ways that people came into contact with the regality court and the legal system.<sup>41</sup>

<sup>41</sup> Muldrew, *Economy of Obligation*, 243.