

## I.

## ON FORESTALLING, REGRATING, AND ENGROSSING—THREE FORMS OF TRADING PROHIBITED IN THE BURGHAL LAWS. By SIR JAMES D. MARWICK, LL.D., F.S.A. Scot.

Forestalling, regrating, and engrossing represent three forms of trading against which the mediæval laws of Continental and English, as well as Scottish, burghs were directed. But the progress of society, the facilities of intercommunication, the developments of trade and commerce, and the necessities of modern times, have long since shown these laws to be unsuited to the complicated conditions of present-day life. The stringent prohibitory legislation of past times has therefore either been repealed, or allowed, without express repeal, to fall into desuetude, and to become inoperative.

Still, such legislation not only throws a flood of light upon past conditions of society, but, when contrasted with those of the present time, illustrates, and to some extent explains, progress, and in that view may make the following observations not wholly uninteresting to the sociologist of the present day.

Forestalling, according to the laws both of England and Scotland, is the buying or bargaining for corn, cattle, or other articles of merchandise, on their way to fairs or markets for sale, with a view to selling the same *again at a higher price*.

In England this was a criminal offence, and was held to apply to practices tending to enhance the price of victuals or merchandise. It extended to the circulation of false rumours, and to the buying of things in a market before the usual hour.

Regrating was also a criminal offence, and originally consisted in the buying of provisions with a view to selling them again for gain, but in later times is confined to the buying and selling again in the same market, or within four miles of it.

Engrossing is described as the getting into one's possession, or the

buying up, of large quantities of corn or victuals for the purpose of selling them again,—so enabling one or more to raise the price of provisions at their own discretion.

These three offences are fully described by Sir George Mackenzie in his *Laws and Customs of Scotland in Matters Criminal*, Sect. xxiii. ; Works, vol. ii. pp. 141–3. They were usually classed together as equally hurtful to the public, and against them in general several statutes were made. As regards several kinds of goods, prohibitory statutes were passed applicable to the particular circumstances of each. All these statutes, however, were repealed in England in 1771–2 by 12 George III. c. 71. The offences of forestalling, regrating and engrossing are, however, still punishable at common law by fine and imprisonment, and it has been held judicially that to forestall any commodity which has become a common victual and necessary of life, or is used as an ingredient in the making or preservation of any victual, though not formerly used or considered as such, is an offence at common law.<sup>1</sup>

In Scotland the old law as to forestalling and regrating seems to have been substantially the same as in England, and was designed to secure that all the members of the community should not be prevented from obtaining the necessaries of life at reasonable rates. This crime, says Erskine,<sup>2</sup> was committed under the Roman law either by landlords who refused to sell the produce of their land at a just price, or by merchants who bought up great quantities of corn in the view of again

<sup>1</sup> "Our forefathers," says Mr J. E. Thorold Rogers, "in their market regulations were always anxious to ensure what I may call natural cheapness. They did not, except in some commodities—money, labour, and certain labour processes—attempt to fix the price of articles the plenty or scarcity of which depended on the abundance or the dearth of the seasons, for the assize of bread and ale contemplated the extremes of either cheapness or dearness. But they strove to prevent the artificial enhancement of price. Hence the offences of forestalling, that is, the purchase of corn on the road to market, and of regrating, *i.e.* the re-sale of corn in the same market at an increased price. The first offence was probably a double one; it lessened the dues of the market, as well as seeming to control supply. The second was thought to be an offence against the consumer" (*Six Centuries of Work and Wages*, i. p. 143).

<sup>2</sup> Nicolson's edition of the *Institutes of the Law of Scotland*.

selling it at a higher price, when the crop should be more scanty. The richer sort of these offenders were punished *relegatione*,<sup>1</sup> and the poorer were condemned to the public works. In Scotland the laws of the Four Burghs,<sup>2</sup> which, with the exception of some manifest additions, were sanctioned by the Legislature as early as the reign of David I. (1124–1153), provided that “hukstaris” who bought and sold again for profit should not buy anything before 9 o’clock a.m. in winter and 6 o’clock a.m. in summer; and that wool, wrought or dyed, or other than white wool, or yarn, or such like, should not be bought or taken except during the time of a fair.<sup>3</sup> Dwellers *in* King’s burghs, as well as *without*, were prohibited on market days from passing beyond the limits of the burgh to buy goods before these had entered the gates of the burgh.<sup>4</sup> During the long reign of William the Lion (1165–1214) it was enacted that the merchants of the realm should have their merchant guild, and liberty to buy and sell in all burghs, but should not usurp the liberty each of the other, under pain of punishment in the Chamberlain ayre as a forestaller.<sup>5</sup> In the Statutes of the Guild, again, which were first enacted for regulating the Guild of Merchants of Berwick in 1249, but were soon quoted as authoritative amongst the burghs of Scotland, it

<sup>1</sup> The *Relegatio* of the civil law was much similar to the punishment of transportation formerly imposed under our law on criminals. It was rarely a perpetual banishment, and did not deprive the exile of his citizenship (*civitas*) nor of his rights as one of a family (*familia*).

<sup>2</sup> The “Four Burghs” were those of Berwick, Roxburgh, Edinburgh and Stirling. But when the two first fell into English hands, Lanark and Linlithgow were, by an Act of Parliament of David II. (6th March 1368) appointed to take their place (Acts of the Parliaments of Scotland, i. 149). In 1405 these burghs extended their constitution by appointing all the royal burghs south of the Spey to send representatives to the body; and in 1487 the constitution was further enlarged, all royal burghs being required, under penalties, to send commissioners to the burghal parliament (1487, c. 17 A. P. S., 279).

<sup>3</sup> Sect. 66.

<sup>4</sup> *Ib.*, 72.

<sup>5</sup> Sect. 39. The Great Chamberlain was one of the Great Officers of the Crown, first appointed, probably, in the reign of David I. He had the general control of the Treasury, and exercised also administrative and judicial functions in regard to burghs, which received a defined constitution in the reign of David.

was enacted that if any one should buy herrings or other merchandise, such as salt, corn, beans or peas, giving arles, he should pay the merchant from whom he bought the stipulated price without "felling," *i.e.* breaking contract.<sup>1</sup> Another statute of the Guild, made in 1283, prohibited butchers going beyond the town to meet beasts coming to it to be sold, between Martimmas and Christmas; it also prohibited (1) their buying beasts in the market before dinner on any day within the same period; and (2) their fraudulently procuring beasts to be kept for themselves till after dinner. Violation of these orders involved deposition from their trade for a year and day.<sup>2</sup> The *Articuli Inquirendi* in *Itinere Camerarii*—or List of points to be enquired into by the Chamberlain in his ayre—which appears to be of the last half of the reign of Robert I., ending in 1329, appointed enquiry to be made as to whether any man forestalled the burgh by sea or land. And the document known as the *Modus Procedendi in Itinere Camerarii*—or form of proceeding in Chamberlain ayre—which is apparently of the end of the fourteenth century, referring to regraters, directed it to be ascertained (1) whether they bought goods before the lawful hour, *i.e.* "prime in summer and the third hour in winter"; and (2) whether they bought goods outside of the burgh; and (3) whether they used false measures.<sup>3</sup> Another capitular known as the *Iter Camerarii*, which is apparently of the end of the fourteenth century, and contains further Forms of Procedure connected with the Chamberlain ayre, required enquiry to be made as to whether hucksters forestalled the burgh with wool, hides and skins, meal and malt;<sup>4</sup> and whether any persons forestalled the burgh, buying or selling beasts, or any other goods.<sup>5</sup> A record of statutes which, according to Sir John Skene, were passed in the court of Four Burghs held at Stirling in 1405, but which Professor Innes, who edited the first volume of the folio edition of the Acts of the Parliaments of Scotland, observes has no other authority for its date than that of Sir John—declares that no man of whatsoever estate may re-pledge his man

<sup>1</sup> *Ibid.*, sect. 28.

<sup>2</sup> Sect. 44.

<sup>3</sup> Sect. 19.

<sup>4</sup> Sect. 21.

<sup>5</sup> Sect. 23.

for forestalling from the court of the burgh, or the Chamberlain ayre, except he who had a burgh near adjacent, possessing privilege in such causes in old time.<sup>1</sup>

It thus appears that, from the earliest times in Scotland of which any record exists, regrating—comprehending apparently forestalling and engrossing—was recognised as hostile to the interests of burghal communities, and was severely punishable.

The later legislation of the Scottish Parliaments directed against these practices was equally condemnatory, and the preambles of many of these acts afford glimpses of the social condition of the times at which they were enacted. Thus, an act passed by a parliament of James III., held on 11th December 1482, proceeds on the preamble that for the common profit of the realm, and to encourage strangers from other realms to come with victuals and needful merchandise for the support of the lieges, such strangers should be treated honourably, with all favour, when they arrived at any port in the kingdom; it prohibited the king's officers and lieges from troubling such visitors, or from putting them or their ships or goods under arrest; and it gave full liberty to dispose of these goods by sale to free men, without compulsion, at prices to be fixed by the sellers; it prohibited the imposition or exaction of new customs upon their goods, and the regrating or re-sale of such goods, under pain of banishment.<sup>2</sup> In 1535 forestallers were

<sup>1</sup> *Ibid.*, sect. 1.

<sup>2</sup> 1482, c. 10 A.P.S., ii. 144. Five convictions of breaches of the law by buyers of meal, with a view to sale again at increased prices, are mentioned by Hume as on 5th June 1558, but no punishment is mentioned in the record as having followed (*Commentaries on Crimes*, i. p. 504). In anticipation also of the holding of a justice ayre in Edinburgh, on 25th November 1508, a proclamation was made, *inter alia*, to the effect that no victuals be sold of a price dearer than it was eight days before the coming of the king to the town, under pain of escheat of the victuals, and punishment of the persons of the sellers, and that victuals be brought to the market for ready money (*ibid.*).

In a record of another justice ayre, held at Edinburgh on the 8th of February 1510, eight persons were convicted of oppression by committing various offences of the same kind. They appear, however, to have compounded with the Treasurer, and to have obtained a remission *quoad ultra* (*ibid.*, p. 505).

prohibited from buying victuals, such as flesh or other stuff, until it had been presented in the market, within specified hours, under prescribed penalties,<sup>1</sup> and that act was explained, ratified, and made applicable to coupers, *i.e.* dealers or chafferers, by 1567 c. 54.<sup>2</sup> In 1540 an act of parliament for eschewing of dearth of victuals, flesh and fish, prohibited all persons from buying fish to pak or peile, save within specified hours, and all persons, merchants and others, from exporting white fish, but it empowered strangers to come and buy fish from merchants and freemen of burghs with "ready gold and silver," or by bartering their merchandise with such merchants, or the owners thereof, for the sustentation of their houses only. Such persons as had fish packed or peiled, were required to be ready at all times to sell the same to the lieges for sustaining their houses and the country, under pain of confiscation. Provosts, aldermen and bailies of burghs were required to visit the markets on every market day, and set a price on fish, and to enquire whether any persons gave arles, or money on any kind of fish that came to the market, with a view to its being sold at a higher price. Such persons as did so were appointed to be punished as coupers, forestallers and regraters.<sup>3</sup> Another act directed forestallers of any kind of merchandise, victuals, poultry or goods, to be apprehended, and their goods escheated, one half to the King's use, and the other half to the burgh.<sup>4</sup> On 26th June 1546, the privy council ordained a bailie of Edinburgh and four other persons to go to Leith, and see that victuals imported by a ship were sold to the lieges on the south side of the Forth, without regrating or selling in bulk to any persons; and that rye and wheat, so imported, were sold at a price not exceeding 25s. a boll as regarded rye, and 40s. a boll as regarded wheat (Privy Council Register, i. 30). In 1551, the previous acts against regraters and forestallers of markets were appointed to be observed.<sup>5</sup> On 23rd February 1551, the Privy Council directed a commission under

<sup>1</sup> 1535, c. 26 A.P.S., ii. 347.

<sup>3</sup> 1540, c. 16; *ib.*, ii. 373.

<sup>5</sup> 1551, c. 24 A.P.S., ii. 488.

<sup>2</sup> A.P.S., iii. 41.

<sup>4</sup> 1540, c. 32; *ib.*, ii. 376.

the Great Seal to be issued to Francis Tennent, provost of Edinburgh, constituting him justice in that part for one year, with power to convene all maltmakers, etc., regraters of victuals, etc., and all other regraters of wines and stuff, dwelling within four miles of Edinburgh, to hold courts for the trial of offenders, and to bring into the Crown the escheat of persons convicted of these crimes.<sup>1</sup> On 10th June 1553, the Privy Council appointed the acts of parliament against forestallers and regraters to be put to execution, and letters to be directed to all parts of the realm requiring publication of these acts at all places needful six days before each fair. The provost, aldermen, and bailies of every burgh and town in which fairs or markets were held, were also required, six days before each fair day, to send out searchers and visitors to see if regraters attended these fairs and markets. Failure to observe this order was appointed to be punished by tinsel of the offices of provost and bailies, and a fine of £100 Scots, to be applied towards the King's use.<sup>2</sup>

On 18th September 1555 the Convention of Burghs prohibited the freighting of ships by forestallers and unfreemen, and prescribed the mode in which they should be freighted.<sup>3</sup> In 1579 an act of parliament ratified all acts against forestallers and regraters of victuals, flesh, poultry and other viviers coming to market, and constituted the provosts, aldermen and bailies of royal burghs justices for executing these acts within their respective jurisdictions.<sup>4</sup> In July 1580 the Convention of Burghs required the burgh into which a forestaller had fled to deliver him up to the burgh from which he had come,<sup>5</sup> and also appointed the acts of parliament against regraters and forestallers to be enforced.<sup>6</sup> On 5th July 1587 the Convention adopted certain articles to be submitted to the approaching Parliament, and, *inter alia*, desired the ratification of the statutes anent coupers and forestallers, and gave a special description of their offences.<sup>7</sup> The act of 1587 c. 38 ordained all acts

<sup>1</sup> P.C.R., i. 115.

<sup>2</sup> P.C.R., i. 142.

<sup>3</sup> Convention Records, i. 12.

<sup>4</sup> 1579, c. 26 A.P.S., iii. 146.

<sup>5</sup> *Ib.*, i. 99.

<sup>6</sup> Convention Records, i. 103.

<sup>7</sup> *Ib.*, i. 240.

against regraters and forestallers to be published of new, and put to due execution.<sup>1</sup> On 27th January 1587-8 the Privy Council prohibited for a year the exportation of herring, the supply of which was insufficient for the requirements of the lieges.<sup>2</sup> In order to define what was meant by forestalling and regrating, the act 1592 c. 70<sup>3</sup> ordained that whoever bought or caused to be bought any merchandise, victual or other thing, coming by land or water to any fair or market in burgh, or in landward, to be sold in the same, or whoever made any contract or promise for the having and buying of the same, or any part thereof, before it was in the fair or market place in burgh, port or roadstead, ready to be sold; or whoever made any motion by word, writing or message, for raising the prices, or dearer selling of any of the things abovementioned, or dissuaded or moved any person coming to the fair, market, or town, from bringing to it any of the things abovementioned, should be deemed a forestaller. And whoever got in his possession, in a fair or market, any corn, victual, flesh, fish, or other vivers, brought for sale, and sold the same again in any fair, or market, held in the same place, or in any other fair, or market, within four miles thereof, or who got into his hand, by purchase, contract, or promise, the growing corn on the field, should be reputed a regrater. Moreover, because so little effect had followed in the execution of previous acts by the magistrates of burghs to whom the execution thereof was committed, the Lord Treasurer or Advocate was empowered to anticipate action by the magistrates and to sue all persons suspected of forestalling and regrating. In the event of such action being taken by the Lord Treasurer or Advocate, the right of magistrates of burghs to

<sup>1</sup> 1587, c. 38 A.P.S., iii. 452.

<sup>2</sup> P.C.R., iv. 243. At this time, these acts seem not to have been rigidly enforced, for Hume states that while there were many instances of the prosecution of forestallers and regraters, few convictions were obtained; and of those on record some appeared not to have been followed by any sentence. On 15th May 1588, however, two men were convicted and fined for forestalling cattle and sheep, and keeping them up to a dearth (Commentaries on Crimes, i. p. 504).

<sup>3</sup> A.P.S., iii. 576-7. This statute, says Hume, "is a literal transcript of the English statute 5 and 6 Edward VI. c. 14" (Commentaries on Crimes, i. 503).



repledge any person so challenged was excluded. Persons convicted by an assize for common forestalling and regrating of markets were subject for the first fault to a fine of £40 Scots, and required to find surety to abstain in future under pain of one hundred merks. For the second fault, the offender and his surety were to be liable to pay one hundred merks; and for the third fault, the offender was to come under the will of the Sovereign and to forfeit all his movable goods to the Crown. For the trial of these offences justice courts or ayres were to be held twice a year. And to facilitate a conviction the statute allowed the accused to be sent to an assize, on a general charge of being habit and repute a common engrosser or regrater, without any more special challenge.<sup>1</sup> On 13th June 1592, the Convention found that the most part of the burghs were greatly hurt by, *inter alia*, forestallers, regraters, and others, unfreemen having their residence outwith free burghs, usurping the lawful trade of freemen by selling staple wares, and keeping open booths in landward towns, villages, and burghs of barony, and sailing furth of the country with staple goods, to the injury of the trade of merchandise and the decay of burghs. To remedy this condition of matters, the magistrates and inhabitants of burghs were required to report to the general agent of the Convention the names of persons who so usurped the liberties of the burghs, with a view to prosecution.<sup>2</sup>

<sup>1</sup> Four years after this statute was passed, viz., on 9th June 1596, two men were convicted of forestalling and regrating in corn; but Hume states he had not found that any punishment ensued. On the 12th of the same month, several persons were accused as regraters, on the single ground of buying corn as merchants in order to sell again; that being "according to the prosecutor's creed" unlawful for any but maltsters and dealers in meal. The panels answered ("and certainly with reason" says Hume) that corn is a lawful subject of merchandise, if trade is not carried on by forestalling and regrating; that otherwise all transportation of corn from the remote parts of the country must cease, since none but merchants will be at the trouble, or even the hazard. The Justice, however, "found the summons relevant," and some of the panels were convicted, but no sentence appears on the record. Nor is any sentence marked in the case of several others who were convicted on the 25th of the same month of forestalling and regrating in the article of corn (Commentaries on Crimes, i. 504).

<sup>2</sup> Con. Rec., i. 371.

In 1594 an act of parliament ratified all previous statutes relating to the punishment of regraters and forestallers, and ordained them to be put to full execution.<sup>1</sup>

On 30th June 1595 the Convention of Burghs, taking into account the injury done to their estate by the number of regraters, forestallers and coupers in all parts of the country, who contravened the acts both of parliament and burghs against these offences, ordained the general agent to obtain a commission from the Lords of Session to certain judges to enforce these acts, and if such a commission could not be obtained, instructed him to institute proceedings against offenders.<sup>2</sup> And on the 1st of July thereafter the Convention, considering the increasing dearth of provisions occasioned by forestalling, regrating and coupling, prohibited these practices under specified penalties, and required the magistrates of burghs to enforce the acts of convention.<sup>3</sup> On 2nd July 1596, the Convention, considering the increasing dearth and the injury occasioned by the increase, *inter alia*, of forestalling, ordered each burgh to put the acts against it and other offences into execution, and to report its proceedings to the next convention. The burghs were also ordered to report the names of offenders to the agent in order that prosecutions might be instituted against them,<sup>4</sup> and three days afterwards the Convention, understanding that the fairs and markets of free burghs, and specially those of Aberdeen, were resorted to by forestallers and regraters who falsely represented themselves to be burgesses and freemen of burghs, required all merchant burgesses of every burgh who attended free markets and fairs to produce evidence of their being burgesses of and actual residents in the respective burghs, or the servant of such burgh, and failing their doing so they were to be subject to punishment

<sup>1</sup> 1594, c. 76 A.P.S., iv. 86.

<sup>2</sup> Con. Rec. i., 462.

<sup>3</sup> *Ibid.*, p. 467. On 11th November 1595-6, Hew Campbell of Lowdon, Sheriff of Ayr, represented to the Privy Council that two commissions of justiciary had been granted—one to Lord Ochiltree and the other to Wallace of Craigy—against regraters and forestallers in Ayrshire, and that, in the execution of these, disorder had arisen. These commissions were therefore discharged (P.C.R., v. 281-283).

<sup>4</sup> Con. Rec., p. 476.

as regraters or forestallers.<sup>1</sup> This act was ratified at the following Conventions held on 5th July 1597<sup>2</sup> and 1st July 1598.<sup>3</sup> On 2nd January 1598-99 the Privy Council passed an act providing a remedy for the dearth of poultry and other vivers in Edinburgh and sundry parts of the realm, and requiring one or two bailies of every burgh to visit the market and establish measures for punishing transgressors, having for their pains one half of the penalties recovered.<sup>4</sup> At the Convention held on 3rd July 1599 the acts of 1597 and 1598 were re-affirmed, and Peebles was fined £20 Scots for failure in doing diligence to enforce them.<sup>5</sup> At the Convention held on 13th June 1600<sup>6</sup> and 5th July 1602 these acts were re-affirmed.<sup>7</sup> The Convention held on 5th July 1603 fined the burghs of Wigtown and Kirkcudbright for failure to enforce this act;<sup>8</sup> and the following Convention, held on 3rd July 1604, modified the fine previously imposed on Kirkcudbright, and imposed modified fines on Dumfries and Lauder for similar failures.<sup>9</sup> The Convention held on 1st July 1605 re-affirmed the previous acts, and on the following day ordered Wigtown to follow out proceedings which it had commenced against regraters, etc.<sup>10</sup> These acts were renewed by the Convention on 7th July 1606.<sup>11</sup> On 6th January 1607 the Privy Council passed an act for abating the fictitious scarcity and exorbitant prices of fowls, wild and tame, in Edinburgh, by fixing the prices of these for the

<sup>1</sup> Con. Rec., pp. 486-7. On 18th March 1596-7, on a complaint by Ludovick Duke of Lennox, Sheriff Principal of Dumbarton, the Privy Council suspended a commission of justiciary against regraters and forestallers in Dumbartonshire granted to John Buchanan of Couston (P.C.R., v. 373).

<sup>2</sup> Con. Rec., ii. 5.

<sup>3</sup> *Ib.*, p. 25.

<sup>4</sup> P.C.R., 511, 512.

<sup>5</sup> Con. Rec., ii. 44. On 19th February 1600 a commission of justiciary against regraters and forestallers, granted to John Robertson and Robert Arnote, on 21st December 1599, was annulled (P.C.R., vi. 82, 83).

<sup>6</sup> Sundry commissions of justiciary procured against forestallers and regraters of markets having been used for the benefit of the grantees, and not for the public benefit, all commissions of that nature were, by act of the Privy Council, dated 2nd October 1601, discharged, and publication of the discharge was ordered to be made at the market crosses of the head burghs (P.C.R., vi. 291).

<sup>7</sup> Con. Rec., ii. pp. 74, 128.

<sup>8</sup> *Ib.*, 155.

<sup>9</sup> *Ib.*, pp. 173, 174.

<sup>10</sup> *Ib.*, pp. 196, 199.

<sup>11</sup> *Ib.*; p. 250.

future, and providing for the punishment of forestallers of the poultry market and other offenders.<sup>1</sup> On 5th July 1608 the Convention ordained Renfrew to follow out certain proceedings against regraters and forestallers,<sup>2</sup> and on 4th July 1609 not only renewed these acts, but dealt specially with Perth, Dysart, Inverkeithing and Cupar in relation to them. The Convention held on 3rd July 1610, "having examined the diligence of the most part of the burghs" who had regraters and forestallers within their bounds, renewed their former acts in relation to these offences.<sup>4</sup> A similar course was followed on 2nd July 1611, 7th July 1612, and 6th July 1614, and various burghs were ordered to produce their diligences against offenders.<sup>5</sup> At the Conventions held on 4th July 1615, 2nd July 1616, 1st July 1617, and 7th July 1618, all the burghs were ordered to produce in writing at the next Convention exact diligence in punishing and restraining, *inter alios*, regraters and forestallers.<sup>6</sup> In 1617 also Parliament passed an act defining the duties of Justices of the Peace and their constables, who by sect. 10 were required to inform the Privy Council and the treasurer and advocate, at least once a year, as to forestallers and regratters of markets that order might be taken with them.<sup>7</sup> The Convention held on 7th July 1618, 8th July 1619, and 4th July 1620, renewed its acts of 1613 and 1617 against regraters, etc.<sup>8</sup> At its meeting on 4th July 1621 the Convention passed an act in which, referring to the great injury sustained by the free burghs by the great number of forestallers forestalling their goods before these were presented to the market, it ordered every burgh to punish such of its inhabitants as forestalled any market.<sup>9</sup> On 8th August 1628 commis-

<sup>1</sup> P.C.R., vii. 293.    <sup>2</sup> Con. Rec., ii. 250.    <sup>3</sup> *Ib.*, pp. 273-274.    <sup>4</sup> *Ib.*, p. 288.

<sup>5</sup> *Ib.*, pp. 310, 342, 447. On 23rd April 1615 the Privy Council issued an order against forestalling the market of wild and tame fowl, etc., during the King's stay in Edinburgh and for giving the first choice in the market to the King's caterer (P.C.R., xi. 107).

<sup>6</sup> Con. Rec., iii. 3, 18, 36, 54.

<sup>7</sup> 1617, c. 8 s. 10 A.P.S., iv. 537.

<sup>8</sup> Con. Rec., iii. 54, 85, 99.

<sup>9</sup> Con. Rec., iii. 117. On 22nd November 1623 the Justices of Peace of Dumfriesshire found that the greatest grievance the country had was from forestallers, regraters and maltmakers (P.C.R., xiii. 831).

sions of revived justice ayres were nominated by the Privy Council, and the times and places for holding the ayres were fixed. Instructions were at the same time given to the commissioners as to, *inter alia*, the crimes to be dealt with, and among these were forestalling and regrating.<sup>1</sup> On 28th September 1639 an act against regraters and forestallers was passed in the Articles.<sup>2</sup> On 5th July 1655 a complaint was presented to the Convention, setting forth that several burgesses of free burghs, frequenting free markets and public fairs in these burghs, not only bought their goods there, but sent them to the country, never suffering them to go to the public market towns, thus not only greatly injuring the burgh in which the market was, in its custom and charge, but also raising prices to the loss of those who frequented the market. Such practices were therefore prohibited, and burgesses of free burghs, and all others, were required not to buy commodities at any time elsewhere than in the towns in which markets were held, and in the market place of free burghs, under penalties.<sup>3</sup> In instructions to Justices of the Peace issued by the Scottish Council of the Lord Protector on 12th November 1655, these justices were directed to put in execution the acts of parliament in regard to forestallers and regraters of markets.<sup>4</sup> The act of 5th July 1655 was referred to in the Convention held on 4th July 1656, and was appointed to be put into execution by the whole burghs, "that such forestalling" might be prevented.<sup>5</sup> An Act of Parliament, passed in 1661 for erecting of manufactories, discharged all regraters and forestallers of markets of wool, and enacted that no merchant or person should buy and keep up wool to a dearth, but should buy it to be sold in open market, under the pains set forth in the statutes against forestallers.<sup>6</sup> In a commission and instructions to justices of the peace and constables, issued in 1661, they were required, as in 1617, to report at least once a

<sup>1</sup> P.C.R., ii., 2nd series, p. 437.

<sup>2</sup> Con. Rec., iii. 405.

<sup>3</sup> *Ib.*, iii. 420.

<sup>4</sup> A.P.S., v. 604.

<sup>5</sup> A.P.S., vi., ii. 834, s. 12.

<sup>6</sup> 1661, c. 280 A.P.S., vii. 261, 262.

year as to forestallers and regraters of markets, with a view to punishment.<sup>1</sup>

These statutes, however, are now, and have long been, in desuetude, and were held to be so in the case of *Leishman v. the Magistrates of Ayr*, 8th March 1800.<sup>2</sup> In that case a warrant granted by a sheriff, authorising magistrates, in a period of scarcity, to seize and sell, at the market price, oatmeal purchased from farmers by a dealer, and meant by him to be carried out of the county, was held to be illegal, and the court expressed strong disapprobation of every interference of magistrates and judges with the free circulation of the necessaries of life, as such interference, instead of diminishing, would increase scarcity, and produce a famine in large towns. It is not easy, it was said, to figure a case of such urgency as to justify a warrant of the nature complained of. When anything of the kind is apprehended, application should be made, not to the judge ordinary, but to Parliament or the Privy Council. At the same time it was held that the purchases complained of had no connection with forestalling and regrating, which, it was added, are well defined by Mr Hume on Crimes, ii. 403.<sup>3</sup>

Professor Thorold Rogers thus summarises the criticism of these obsolete statutes. To forbid traffic in articles of prime necessity, he says, is to encourage waste when plenty prevails, to induce famine when dearth is near. The corn dealer equalises supply, and if by withholding

<sup>1</sup> 1661, 338 ; A.P.S., vii. 306, 308. Besides the laws against forestalling and regrating, says Hume, the policy of former times shackled the commerce of the lieges with many other and more vexatious restraints, which were enforced by fines and confiscations, and in some instances by more severe penalties. Accordingly, there are instances in the record, from time to time, of prosecutions for such offences as these : the transporting of tallow furth of the kingdom ; the selling of linen, cattle, etc., to the English ; and the enhancing of the price of malt. But, says Hume, writing in 1819, it would serve no purpose to enlarge on these points of dittay, which were long ago thrown out of the criminal code by the great change which has taken place in the condition of the country, and the habits and opinions of our people on subjects of this sort (*Commentaries on Crimes*, i. p. 505).

<sup>2</sup> Faculty Decisions, xii. 391.

<sup>3</sup> See footnotes, pp. 149, n. 2 ; 152, n. 2 ; 153, n. 1 ; 158, n. 1.

his corn from market he makes it dearer, he also makes it cheaper than it would be by bringing it out when it otherwise would be scarce. Now this, he continues, is certainly true. But though our forefathers doubtlessly erred in making these practices an offence, they did not compel sales, and I find that producers were very acute during the Middle Ages, and for the matter of that, buyers, too, in doling out their supplies to the market, or in making purchases, according to their interpretation of the amount in hand or available for sale. The most critical sales of the year are those effected in early summer, when the amount of the last year's produce is known pretty correctly, and the prospects of the ensuing harvest can be fairly guessed. The Englishman of the Middle Ages disliked intermediaries in trade, and strove to dispense with them as far as possible. He did his best to buy all his goods at first hand.<sup>1</sup> In this respect there seems no reason to doubt that Scotsmen followed a similar course.

<sup>1</sup> *Six Centuries of Work and Wages*, i. 143-4.