

# Barons Courts of Prestoungrange & Dolphinstoun

Trinity Session: Elizabeth II. 53. 2004. July – November

## JUDGEMENT AND DECLARATOR

[E II. 53. 2004 P&D. 13] Future style and timing of proper remembrance of those witches pardoned by these Courts July 27th 2004 [E II. 53. 2004 P&D. 02] for their offences of witchcraft before the passage of the *Witchcraft Act 1735*; the Response to the Opinions Received from Officers of the Crown in respect of the Petition to Her Majesty that such as were also found guilty of treason should also receive Her Pardon; Response to the Minister of Prestongrange Church The Rev. Robert Simpson concerning the precise day upon which proper remembrance should be given; and Observations on comments made in and to the media.

*UPON THE PETITION OF OUR COMMON MONTJOYE TOGETHER WITH THE PRESTOUNGRANGE ARTS FESTIVAL* for the issuance of Orders in respect of the future style and timing of proper remembrance of those 81 individuals executed in Prestonpans for the offence of witchcraft prior to the passage of the *Witchcraft Act 1735* whom these Courts have pardoned on July 27th 2004; determination of the cost benefit of any additional comfort to the surviving families of those thus pardoned if their pardon for the offence of treason be taken further with Her Majesty The Queen; and determination of the date on which remembrance shall properly be given following proposal from the Rev. Robert Simpson that All Saints' Day rather than Hallowe'en would be more appropriate.

1. That the Courts had determined [E II. 53. 2004 P&D. 02/ Held 3] that “this most unfortunate miscarriage of justice ... be remembered: (i) in murals to be painted in the baronies depicting their plight; (ii) by an historical record being published that both recounts their alleged crimes and punishments and records such Absolute Pardon; and that (iii) the tragic events involved be re-enacted each year on Hallowe'en and from time to time as a living reminder of this earlier process of justice in Scotland.
2. That implementation of all these Orders has been set in hand. The first occasion for remembrance was held at The Prestoungrange Gothenburg on October 31st 2004 when 15 named descendants of those who have been pardoned attended and received formal facsimile certificates recording the Absolute Pardons granted by these Courts from Roy Pugh, the distinguished research historian on witchcraft in East Lothian whose work has done so much to draw attention to the injustices done.
3. That after one minutes silence the named descendants laid posies of rosemary, thyme, lavender and rose hips beneath the Declarator which now hangs permanently at The Prestoungrange Gothenburg.
4. The particular and discrete historical research study for Prestonpans is currently being prepared by Annemarie Allan for publication by the Prestoungrange University Press before Hallowe'en 2005, and this research is providing the basis for the creation of several murals that will give public record through art. At the August 2006 Global Conference of the Mural Arts and Cultural Tourism Association a re-enactment of the story told in the murals will also be presented.

5. Following the Judgement and Declarator of these Courts in respect of witchcraft on July 27th 2004 the Barons together further determined that they should present a Petition to Her Majesty The Queen asking that she should give her Pardon for those whose crimes of witchcraft were also considered crimes of treason, over which these Courts hold no jurisdiction. The Baron of Prestoungrange submitted such a Petition to Buckingham Palace which forwarded it to Her Scottish Ministers who, since treason is not a devolved matter, in turn forwarded it to the Criminal Justice Reform Group at the Home Office in London.
6. The advice of the Criminal Justice Reform Group is that to obtain such a pardon posthumously was extremely unlikely but if the Courts wished to pursue the matter it would be necessary to assemble all the particulars of each individual case and successfully make the case either that the offence was not committed or that the individuals concerned could not have committed it.
7. Since the basis for conviction was that several of the accused had been responsible for creating storms at sea in 1589 and 1590 there was a reasonable likelihood that it could be successfully argued that the individuals concerned “could not have committed such an offence”. However to assemble and argue the case in such a manner can clearly be seen to involve most considerable expense and be likely to take several years. As such it is uncertain whether there is scope for any cost beneficial added comfort for the descendant families arising from such a further pardon in respect of treason by HM The Queen if it could be achieved. Indeed it might occasion negative effects from its drawn out consideration and any unsuccessful outcome.
8. Accordingly it is not deemed appropriate at this time to take matters any further forward in respect of a petition to Her Majesty The Queen for Her Pardon for their treason on behalf of the witches of Prestonpans.
9. The Reverend Robert Simpson, Minister of Prestongrange Church, having become aware of the Pardons granted and actions taken by the Barons Courts arising from their Judgements on July 27th 2004 as cited above has written to the Courts asking that most careful thought be given to whether it will serve good purpose to hold remembrance *each and every year* into the future; and if there is to be an annual remembrance whether it remains the best considered view that Hallowe’en is appropriate for that rather than All Saints Day being November 1st.
10. It was the view of the Fiscal in making the original Petition to these Courts and of the Court’s Suitor Roy Pugh, that each and every year in the community of Prestonpans there is a ‘celebration’ of Hallowe’en which takes figures of comedy from the folklore surrounding witchcraft and the involvement of cats, broomsticks and pumpkins and involves children in the ‘fun’ arising. It is this particular celebration that it is intended to redefine indeed sanctify not by removing the celebratory atmosphere but ensuring that the message conveyed in Prestonpans places most considerable emphasis on the outrageous injustice that was imposed until 1735 in the name of a crime of witchcraft.
11. It remains the view of the Prestoungrange Arts Festival that this approach is potentially the most powerful way to remember those executed after torture and forced confessions rather than seeking to make All Saints Day an alternative focus one day after Hallowe’en. Furthermore it remains our view that the remembrance should be each year just as the celebration of Hallowe’en can be expected to occur each and every year.
12. Notwithstanding these views the Prestoungrange Arts Festival would never wish to proceed in such manner as to give offence to the descendants of those these Courts have pardoned and accordingly it will be their intention both to proceed at all times showing proper respects and also to seek and to take into consideration their views when planning any and all events in these respects including the painting of murals and the publication of historical details. In this respect the 15 descendants of families convicted of witchcraft have expressed their satisfaction

thus far with the way in which the remembrance has been conducted, indeed they have greatly appreciated it.

13. That it had been reported by the Editor of the *Scottish Daily Express*, and in comments to him for publication on October 24th 2004 by Officials of the Scottish Executive and a Faculty member of the University of St Andrew's, that feudal Scottish Baron Courts had no judicial authority in modern times for their decisions and that their role could only be ceremonial; and it was accordingly appropriate for the role and proper jurisdiction of Baron Courts until November 28th 2004 to be asserted once again.
14. That consequent upon the report appearing in the *Scottish Sunday Express* first the *Edinburgh Evening News* but then the wire services globally picked up the story of the pardons and spread it around the world such that reports were received of newspaper summaries in New Zealand, Florida, Seattle; CNN, BBC World Service, Canadian Broadcasting Corporation, BBC Scotland, BBC Radio and Five Live announcing the pardons. In the United Kingdom the *Daily Record*, *The Guardian* and others did also. **Justice was not only done but was seen to be done across the world.**

## **HELD:**

### **This sixteenth day of November 2004:**

1. That provided the views of the descendants of the witches families are regularly sought and taken into consideration it remains proper that all the determinations of these Courts July 27th 2004 [E II. 53. 2004 P&D. 02] continue to be fully implemented.
2. That it is appropriate for the remembrance to continue to be held on Hallowe'en because it is the appropriate occasion already 'celebrated' in respect of witches where proper attention can be given to the injustices committed prior to 1735. The Montjoye and Arts Festival at large must take particular care to ensure a continuing and evolving programme of remembrance activities is created at The Prestoungrange Gothenburg.
3. That notwithstanding the desirability for HM The Queen to give consideration to an evidentially supported Petition seeking Her Pardon for the offences of treason attributed to the witches of Prestonpans, it is not likely to accord sufficient cost beneficial comfort to their descendant families to justify further pursuit and that accordingly all further consideration be adjourned *sine die*. The comprehensive and sympathetic global coverage by all media accorded for the first remembrance day on October 31st 2004 has of itself given most of the comfort that can be expected.
4. That the incorrect assertions by Officials at the Scottish Executive and others as reported by the Editor of the *Scottish Daily Express* on October 24th 2004 had been addressed in the Courts' **Declarator: *Curiis et earum exitibus*** on May 8th 2004 as published in the Proceedings of the Courts' Trinity Session [Elizabeth II. 53. 004] on July 27th 2004 [pp 5-7] and **that Declarator Shall Again Be Made Known to All Whom it May Concern.**