

Barons Courts of Prestoungrange & Dolphinstoun

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

JUDGEMENT AND DECLARATOR

[E II. 53. 2004 P&D. 06] Selection of territorial Duthus ‘Plant Badge’ and Slughorn for use within a Compartment within the Crown Baronies of Prestoungrange and Dolphinstoun for subsequent matriculation with the Lyon Court as *acquired* legal rights of property consisting of “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron vesting indefeasibly as such existed upon the date of Royal Assent (9th June 2000) and statutorily incorporated by use of the *verb* “**includes**” in §63(4) of the Abolition of Feudal Tenure (Scotland) Act 2000 as integral component parts existing as intangible rights of property statutorily incorporated into the very fabric, fibre and substance of “incorporeal heritable property” constituting ‘the dignity of baron’ in §63(2) of the ACT and forming integral component parts of the property-right of the ‘dignity of baron’:

Upon the Petition of our Common Baron Bailie [standing down as judge in this matter] for the Barons Courts of Prestoungrange and Dolphinstoun (1) to select for each Our Ancient Baronial Lands a territorial duthus ‘plant badge’ and Slughorn for future use within a Compartment within the Crown Baronies of Prestoungrange and Dolphinstoun for subsequent matriculation with the Lyon Court as may be necessary and (2) to determine the acquired property-rights of the Baronage of Scotland in the various ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ associated with or incidental to the ‘dignity of baron’ statutorily transformed by §63(4) of the Abolition of Feudal Tenure (Scotland) ACT 2000 [hereinafter, the ‘ACT’] into concrete individual acquired legal rights of intangible property and statutorily incorporated as an integral component ‘bundle’ of such acquired rights of property by use of the *verb* “**includes**” in §63(4) of the ACT into the *essence* or the *very fabric, fibre, and substance* of the ‘dignity of baron’ as “incorporeal heritable property” under §63(2) of the ACT and to issue a **Declarator of Entitlement** setting forth in detail and with specificity the various and sundry acquired legal rights of intangible property to which the Baronage of Scotland is entitled to be granted by the Lord Lyon King of Arms in his judicial capacity as a matter of legal right.

1. THAT for jurisdictional purposes intangible incorporeal property such as (1) territorial *duthus* ‘plant-badges’; (2) slughorns; and (3) heraldic additaments such as flags, compartments and similar devices are *acquired* legal rights of intangible ‘incorporeal property’ having a nominal value of twenty shillings or less and thereby fall within the purview of the jurisdiction of the Barons Courts in their statutory capacity as intangible rights of property:

1.A. In their capacity as statutorily designated rights of property statutorily incorporated by use of the *verb* “**includes**” in §63(4) of the Abolition of Feudal Tenure (Scotland) ACT 2000 [hereinafter, the ‘ACT’] as a ‘bundle’ of integral component parts into the *very substance, fibre, and fabric* of the ‘dignity of baron’ as “incorporeal heritable property” re §63(2) of the ACT; the determination of proper *ownership* of such as statutorily designated rights of property statutorily incorporated as integral component parts of “incorporeal heritable property” constituting the ‘dignity of baron’ are matters within the purview of these Barons Courts as a matter of any court’s prerogative to make an interpretation of the meaning of a statute.

- 1.B.** Specifically use of the verb **“includes”** in §63(4) of the ACT *statutorily incorporates* the referenced “any quality or precedence associated with and any heraldic privilege incidental to” the dignity of baron in their capacity as intangible rights of incorporeal property as integral component parts of “incorporeal heritable property” constituting the ‘dignity of baron’ under §63(2) of the ACT:
- i)** Pursuant to §63(2) of the ACT the ‘dignity of baron’ consists of the ‘bundle’ of those intangible rights of property referenced in §63(4) of the ACT as “qualities” or “precedences” associated with ‘the dignity of baron’ as well as “any heraldic privilege” incidental to” the ‘dignity of baron’ existing legally as “incorporeal property” which ‘bundled’ together constitute the ‘dignity of baron’:
 - ii)** In essence, after the ‘appointed day’ the ‘dignity of baron’ will consist *solely* of that ‘bundle’ of those intangible rights of incorporeal property specifically referenced in §63(4) of the ACT and *statutorily incorporated* by use of the verb **“includes”** in the same section as integral component legal rights of intangible property constituting ‘the dignity of baron’ as “incorporeal heritable property” re §63(2) of the ACT.
- 1.C.** Having first instance jurisdiction over the granting or recognition of such statutorily designated rights of property in §63(4) of the ACT **as a matter of legal right** to the owner of “incorporeal heritable property” constituting the dignity of baron re §63(2) of the ACT; the role of the Court of the Lord Lyon King of Arms is (1) *judicial* insofar as it concerns the granting or recognition of such devices or additaments *as a matter of legal right* to armigerious owners of “incorporeal heritable property” constituting the dignity of baron; and (2) *ministerial* or discretionary only insofar as the technical blazoning of such devices or additaments upon an achievement of arms is concerned:
- i)** The first instance jurisdiction of the Lyon Court over the proper technical blazoning of such devices or additaments in no way detracts from the general jurisdiction of *any other court*, including these Barons Courts, to pronounce upon the legal ownership of such in their capacity as intangible rights of incorporeal property *incorporated statutorily* by use of the verb **“includes”** in §63(4) of the ACT as a ‘bundle’ of integral component right of property constituting the ‘dignity of baron’ as “incorporeal heritable property”:
 - ii)** An armigerious owner of the ‘dignity of baron’ possesses the legal right upon petition to be granted or to have recognised officially by the Lord Lyon in his *judicial capacity* as the proper judge having first instance jurisdiction over heraldic matters the various *legal rights of property* referenced in §63(4) of the ACT: Such property consists of (1) “any quality ... associated with” the dignity of baron; (2) “any ... precedence associated with” the dignity of baron; and (3) “any heraldic privilege incidental to” the dignity of baron.
 - iii)** Lyon’s *discretionary ministerial determination* is limited to the proper technical blazoning of such intangible rights of incorporeal property upon an achievement of Arms.
- 2.** THAT *acquired* legal rights of property consisting of “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron *indefeasibly ‘vested’* as such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ existed on the date – 9th June 2002 – when the ACT received Royal Assent and are statutorily incorporated by use of the verb **“includes”** in §63(4) of the ACT as integral component rights of intangible property forming the *very substance, fibre, and fabric* of “incorporeal heritable property” constituting ‘the dignity of baron’ under §63(2) of the ACT:
- 2.A.** A legal right of property ‘vests’ as indefeasible or becomes fixed in interest at the time that right of property is created: The items referenced in §63(4) of the ACT – consisting of those particular ‘qualities’, specific ‘precedences’, and actual ‘any heraldic privilege’ “associated with” and “incidental to” the dignity of baron – were **statutorily transformed** into specific acquired legal rights of intangible property ‘bundled’ together as integral component parts of ‘the dignity of baron’ and ‘vesting’ as property in the owner of the ‘dignity of baron’ as “incorporeal heritable

property” upon the date of Royal Assent to the ACT: 9th June 2000.

- 2.B.** Use of the verb **“includes”** in §63(4) of the ACT operates to cause those rights of intangible property consisting of “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron to become **statutorily incorporated** as integral component parts **into the very fabric** of “incorporeal heritable property constituting ‘the dignity of baron’ under §63(2) of the ACT as such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ existed at the time when the ACT received Royal Assent (9th June 2000):
- 2.C.** The particular ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ pertaining to the dignity of baron were statutorily transformed into *acquired legal rights* of property ‘vesting’ in the owner of the ‘dignity of baron’ and by use of the verb **“includes”** in §63(4) of the ACT were **statutorily incorporated** as a ‘bundle’ of integral component intangible legal rights of property within “incorporeal heritable property” forming ‘the dignity of baron’ re §63(2) of the ACT.
- 2.D.** The *language* of §63(4) of the ACT that “‘dignity’ includes any quality or precedence associated with, and any heraldic privilege incidental to, a ‘dignity’” and the use of the Active Case of the verb **“includes”** operates to cause the particular ‘qualities’ or ‘precedences’ associated with and ‘any heraldic privilege incidental to’ the dignity of baron to be statutorily transformed into individual *acquired legal rights* of intangible incorporeal property ‘vesting’ as property-rights in the owner of the ‘dignity of baron’ on the date of Royal Assent and to become indefeasibly incorporated as an integral component ‘bundle’ of legal rights of property constituting the *very substance* of the dignity of baron as “incorporeal heritable property” under §63(2) of the ACT: In sum, all such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ associated or incidental to the ‘dignity of baron’ became *statutorily transformed* by the ACT into , individual legal rights of property which ‘bundled’ together form the whole of “incorporeal heritable property” constituting the entire ‘dignity of baron’.
- 2.E.** In particular the use of the verb **“includes”** in the *language* of §63(4) of the ACT operates to cause the complete ‘bundle’ of intangible legal rights of property referenced as “any heraldic privilege incidental to” the dignity of baron as such existed upon the date of Royal Assent to the ACT **to ‘vest’** as a packaged ‘bundle’ of particular acquired legal rights of heraldic properties (i.e., a ‘shield’, a ‘crest’, ‘supporters’, a ‘compartment’, a ‘badge’, heraldic flags, a ‘motto’, a ‘slughorn’ or any other “heraldic privilege” once granted by the Lord Lyon *vests* as intangible “incorporeal heritable property” belonging to the grantee and his heirs) constituting integral components of the ‘dignity of baron’ and to become statutorily incorporated into the very fibre, substance, and fabric of such “incorporeal heritable property”:
- i) The dignity of baron is ‘incorporeal heritable property’ consisting of a packaged ‘bundle’ of those individual intangible rights of property specifically referenced in §63(4) of the ACT: (1) individual intangible rights of property consisting of “any quality ... associated with” the dignity of baron; (2) individual intangible rights of property consisting of “any ... precedence associated with” the dignity of baron; and (3) individual intangible rights of property consisting of “any heraldic privilege incidental to” the dignity of baron.
 - ii) ‘Bundled’ together by statutory incorporation by use of the verb “includes” in §63(4) of the ACT, these referenced individual intangible rights of property are ‘packaged’ together in 63(4) of the ACT to form the integral components of the entire ‘dignity of baron’ as “incorporeal heritable property” under §63(2) of the ACT.
 - iii) Expressed in another manner, the ‘dignity of baron’ is “incorporeal heritable property” which consists of a ‘bundle’ of those individual intangible rights of property referenced in 63(4) of the ACT (i.e., those ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ associated with or incidental to the dignity of baron) **statutorily incorporated** by use of the *verb* **“includes”** as integral component parts constituting the ***very substance, fabric, and fibre*** of the whole

incorporeal heritable property-right forming the dignity of baron.

iv) The property-right of ‘dignity of baron’ as “incorporeal heritable property” re §63(2) of the ACT... “**includes** any quality or precedence associated with, and any heraldic privilege incidental to, a dignity” statutorily incorporated by §63(4) of the ACT as indefeasible integral component legal rights of intangible property ‘bundled’ together in a ‘package’ of legal rights of property to form the ‘whole’ or the entirety of the ‘dignity of baron’

2.F. As acquired legal rights of intangible property statutorily incorporated by Act of Parliament in §63(4) of the ACT into “incorporeal heritable property” consisting of ‘the dignity of baron’, it is ULTRA VIRES or beyond the competence of any government official or officer to ignore, refuse to recognize, or refuse to grant **as a matter of legal right of property** any component of the ‘bundle’ of acquired legal rights of property referenced in §63(4) of the ACT which ‘vested’ indefeasibly into “incorporeal heritable property” constituting the ‘dignity of baron’ re §63(2) of the ACT as such existed upon the date when the ACT received Royal Assent: 9th June 2000

2.G. The *legislative history* of Sec. 63 of the ACT as set forth in ¶¶ 2.40 and 2.41 of the Scottish Office’s “Report on the Abolition of the Feudal System” (SCOT LAW COM 168) even further clarifies the explicit intent of Parliament that no change by the ACT was to be worked upon the hereditary ‘noble element’ in baronies, in particular ‘the social, ceremonial and armorial aspect of baronies’, which give them their value and would otherwise give rise to ‘substantial claims for compensation’

2.H. The explicit parliamentary intent that Sec. 63 of the Abolition of Feudal Tenure (Scotland) ACT 2000 **was to work no change upon** the ‘title of baron’ or upon the existing ‘precedence and ceremonial or heraldic privileges’ of the dignity of baron after the ‘appointed day’ is evidenced in the official Recommendation to Parliament set forth in ¶2.45 of the Scottish Office’s “Report”.

2.I. The precise composition of *any* ‘qualities’, *any* ‘precedences’, and ‘any heraldic privilege’ “associated with” and “incidental to” the dignity of baron – transformed statutorily into individual acquired legal rights of intangible property by §63(4) of the ACT – which pursuant to use of the verb “**includes**” in §63(4) of the ACT (1) ‘vest’ indefeasibly as acquired legal rights of property belonging to the owner of the ‘dignity of baron’ and (2) are statutorily incorporated as an indefeasible integral component ‘bundle’ of individual legal rights of intangible property forming the ‘whole’ or the entirety of “incorporeal heritable property” constituting the ‘dignity of baron’ in §63(2) of the ACT may be determined judicially by a court of law in their capacity as indefeasibly ‘vested’ rights of property by reference to the following:

- Actual grants of hereditary baronial heraldic additaments, official declarations of ‘baronial status’ and precedence made in modern times by various Lord Lyon before the ACT received Royal Assent on 9th June 2000 to evidence the existence of such ‘qualities’ and ‘precedences’ “associated with” and “any heraldic privilege incidental to” the dignity of baron as individual rights of intangible property *statutorily incorporated* as integral component parts of the ‘dignity of baron’ by use of the verb “includes” in §63(4) of the ACT and forming components of the entire property-right of the ‘dignity of baron’ as “incorporeal heritable property:

Such would include the grant of the Red Chapeau, *Gules doubled Ermine* tasselled Or, *Chisholm of Chisholm*, Lyon Register 33/12: 30th March 1944. Declarations of baronial status made in Chisholm of Chisholm, Lyon Register 33/12; Wauchop of Niddrie, Lyon Register 35/31; and Borthwick of Borthwick, Lyon Register 35/14; and Lord Lyon’s Judgement of 26th February 1943 re the Baronage as ‘titled nobility’ in Register of Genealogies Vol. IV, p. 26

- Specialist historical and heraldic research by authoritative publicists on the Minor Baronage of Scotland and their applicable heraldic additaments: The late Lord Lyon Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland”, Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111–163, (Session 1944-45)

- Writing of the authoritative publicists upon the Law of Arms as applied in Scotland, including the following:
- Sir George Mackenzie of Rosenhaugh, The Science of Heraldry, Edinburgh, 1680, declared to be of *institutional authority* in Scotland
- Alexander Nisbet, System of Heraldry, Edinburgh 1722, in two Volumes
- George Seton, The Law and Practice of Heraldry in Scotland, Edinburgh, 1863
- J. H. Stevenson, Heraldry in Scotland, Glasgow, 1914
- Lord Lyon Sir Thomas Innes of Learney, Scots Heraldry, 2nd Edition, 1956
- Lord Lyon Sir Thomas Innes of Learney, The Clans, Septs, and Regiments of the Scottish Highlands 8th Edition, 1970
- Lord Lyon Sir Thomas Innes of Learney, The Tartans of the Clans and Families of Scotland, 5th Edition, 1950
- Lord Lyon Sir Malcolm Innes of Edingight, Scots Heraldry, 3rd Edition, 1978.

2.J. The particular ‘qualities’, ‘precedences’ and the specific heraldic additaments listed by the above authorities as being appropriate to ‘the dignity of baron’ **concretely evidences** exact composition of those items referenced in §63(4) which were statutorily transformed by reference in this section into actual individual acquired rights of intangible property indefeasibly ‘vesting’ in the owner of the ‘dignity of baron’ as property and were statutorily incorporated by use of the verb **“includes”** in §63(4) of the ACT as an integral component ‘bundle’ of individual rights of intangible property ‘packaged’ together to constitute the ‘whole’ or the ‘entirety’ of the ‘dignity of baron’ as “incorporeal heritable property” under §63(2) of the ACT

2.K. Whatever may have been the previous status of “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron under heraldic law and practice *before* the enactment of The Abolition of Feudal Tenure (Scotland) ACT 2000; the denomination of such ‘qualities’, ‘precedences’, and ‘any heraldic privilege incidental to’ as **included** within the term **“dignity”** operates (1) to transform statutorily these particular ‘qualities’, ‘precedences’, and ‘any heraldic privilege incidental to’ into specific legal rights of intangible property forming the ‘dignity of baron’ and (2) to incorporate statutorily all of the same rights of intangible property into the very substance, fabric, and fibre of the ‘dignity of baron’ as “incorporeal heritable property”.

i) Whatever might have been the previous status of such ‘qualities’, ‘precedences’ and ‘any heraldic privilege incidental to’ the dignity of baron before the ACT; The ACT *itself* statutorily transformed all of the items referenced in §63(4) of the ACT into specific rights of property and statutorily incorporated all of these items into integral component legal rights of property forming the *essence* of the ‘dignity of baron’ as “incorporeal heritable property”.

ii) In their transformed *statutory capacity* as acquired legal rights of property incorporated statutorily as a ‘bundle’ of integral component legal rights of intangible property forming the *very essence* of the ‘dignity of baron’ as “incorporeal heritable property”; armigerous owners or holders of the ‘dignity of baron’ possess a legal right of property to be granted or to be accorded by the Lord Lyon King of Arms in his *judicial capacity* the **entirety** of the whole ‘bundle’ consisting of “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron **as a matter of the legal right of property** included within the ‘dignity of baron’ as “incorporeal heritable property”.

iii) When petitioned by the armigerous owner of the ‘dignity of baron’ to be accorded or to be granted any or all of the acquired legal rights of intangible property referenced in 63(4) of the ACT, the Lord Lyon King of Arms acts *solely* in his judicial capacity as the proper judge of the court of the first instance having specific jurisdiction in heraldic matters to make the grant the requested heraldic additaments or to make the requested declaration of baronial status as a matter of legal right.

- iv) When petitioned by the armigerous owner of the ‘dignity of baron’ for the above, the Lord Lyon King of Arms acts in his discretionary ministerial capacity *only* in making the technical blazoning of such upon an achievement of arms.
- 2.L.** The ‘title of baron’ and “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron re §63(4) of the ACT were statutorily transformed into particular acquired legal rights of intangible property **vesting** specifically as property upon the date of Royal Assent to the ACT and were statutorily incorporated by use of the verb “includes” in §63(4) of the ACT into a ‘bundle’ of such individual acquired legal rights of property forming integral component parts of the entire *essence* of the ‘dignity of baron’ as “incorporeal heritable property”.
- 2.M.** Having caused the particular ‘qualities’, ‘precedences’, and ‘any heraldic privilege incidental to’ the dignity of baron referenced in §63(4) of the ACT to be statutorily transformed into acquired legal rights of intangible property ‘vesting’ in the owner of the dignity of baron and to become statutorily incorporated by use of the verb “includes” in §63(4) of the ACT as integral component legal rights of property constituting the ‘dignity of baron’;)”; ... only **Parliament itself** possess the **competence, authority, or jurisdiction** to alter, change, abolish, or otherwise destroy **any** of the particular intangible and ‘incorporeal’ acquired legal rights of incorporeal property referenced in §63(4) of the ACT:
- 2.N.** Use of the verb “**includes**” in §63(4) of the ACT **indefeasibly incorporating** “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron as such existed on or before the date of Royal Assent to the ACT – statutorily transformed by §63(4) of the ACT into particular acquired legal rights of intangible property ‘vesting’ in the owner of the ‘dignity of baron’ – as a ‘bundle’ of integral components rights of intangible property constituting the *essence* of the ‘dignity of baron’ as ‘incorporeal heritable property’ ... took away **any** ‘traditional’ heraldic jurisdiction which Lyon may have otherwise possessed *before* the ACT to alter or other wise affect the ‘title of baron’, ‘any heraldic privilege’, and ‘any quality or precedence’ concerning the dignity of baron.
- 2.O.** Such statutory transformation of the items referenced in §63(4) of the ACT into particular acquired legal rights of intangible property and statutory incorporation by use of the *verb* “includes” causes all rights of property consisting of those matters included within “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron re §63(4) of the ACT to actually **‘vest’** as a ‘bundle’ of individual acquired rights of intangible property integrally constituting together as a whole ‘package’ of components forming the ‘dignity of baron’ as “incorporeal heritable property” under §63(2) of the ACT.
- 3.** THAT the *savings clause* in §63(1), 2nd clause, of the ACT that “*nothing* in this Act *affects* the dignity of baron or *any other* dignity or office (whether or not of feudal origin)” statutorily preserves individual acquired legal rights of intangible property consisting of “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron ‘or any other dignity or office’ re §63(4) of the ACT from *any alteration, refusal to recognise, or ignoring* of such dignity or office by any office or officer of the Government of Scotland, including the Lord Lyon King of Arms:
- 3.A.** When the *savings clause* in §63(1), 2nd clause, of the ACT is read in conjunction with §63(4) of the ACT, the *savings clause* operates to statutorily bar any government official or officer from altering, refusing to recognise, or ignoring acquired legal rights of intangible property consisting of “*any quality or precedence associated with, and any heraldic privilege incidental to*” re §63(4) of the Act constituting “the dignity of baron or any other dignity or office (whether or not of feudal origin)” re §63(1), 2nd clause, of the ACT and indefeasibly ‘vesting’ as ‘incorporeal heritable property’ under §63(2) of the ACT as such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ existed upon the date (9th June 2000) when the ACT received Royal Assent.

- 3.B.** The term ‘the dignity of baron’ as used in §63(1) and §63(2) of the ACT consists *entirely* of a ‘bundle’ of individual acquired legal rights of intangible property consisting of “any quality or precedence associated with, and any heraldic privilege incidental to” this dignity which are incorporated statutorily by the use of the *verb* “includes” in §63(4) of the ACT as integral component rights of intangible property forming a ‘bundle’ of such individual intangible property-rights into the very substance, fibre, and fabric of ‘incorporeal heritable property’ forming ‘the dignity of baron’ under §63(2) of the ACT.
- 3.C.** In its capacity as “incorporeal” property, ‘the dignity of baron’ consists **only** of those referenced items statutorily transformed by §63(4) of the ACT into individual *acquired* legal rights of intangible property as such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ existed upon the date (9th June 2000) of Royal Assent to the ACT and statutorily incorporated by use of the *verb* “includes” into integral component parts of the ‘dignity of baron’. Thus, ‘the dignity of baron’ consists entirely of those individual *acquired legal rights* of intangible property referenced in §63(4) of the ACT.
- 3.D.** Because ‘the dignity of baron’ is comprised entirely and only of those referenced items statutorily transformed by §63(4) of the ACT into individual acquired rights of intangible property ‘*vesting*’ indefeasibly as such existed upon the date (9th June 2000) of Royal Assent to the ACT and statutorily incorporated by use of the *verb* “includes” in §63(4) of the ACT as a ‘bundle’ of integral component acquired rights of intangible property forming into the substance of the ‘dignity of baron’ as “incorporeal heritable property” re §63(2) of the ACT, ... the *language* of the *savings clause* in §63(), 2nd clause, of the ACT “but nothing in this Act *affects* the dignity of baron or any other dignity or office (whether or not of feudal origin)” statutorily preserves acquired rights of intangible property consisting of “any quality or precedence associated with, and any heraldic privilege incidental to” actually constituting “the dignity of baron or any other dignity or office (whether or not of feudal origin)” re §63(1), 2nd clause, of the ACT from *any alteration, refusal to recognise, or ignoring* of such dignity or office by any Government Official.
- 3.E.** Because ‘the dignity of baron’ is composed entirely of those *acquired legal rights* of intangible property referenced in §63(4) of the ACT, the *savings clause* in §63(1), 2nd clause, of the ACT operates legally, as follows: “but nothing in the ACT *affects*” ... acquired rights of intangible property consisting of “any quality or precedence associated with, and any heraldic privilege incidental to” [§63(4)] ... “the dignity of baron or any other dignity or office (whether or not of feudal origin)” [§63(1), 2nd clause] ... which use of the *verb* “includes” in §63(4) of the ACT statutorily incorporates as integral component acquired rights of intangible property forming the *legal essence* or the very *substance* of ‘incorporeal heritable property’ constituting ‘the dignity of baron’ under §63(2) of the ACT.
- 3.F.** Simply put, the *savings clause* in §63(1), 2nd clause, of the ACT means that ‘nothing in this Act affects’ “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron or any other dignity or office (whether or not of feudal origin) – statutorily transformed by §63(4) of the ACT into *acquired legal rights* of intangible property statutorily incorporated by use of the *verb* “includes” in §63(4) of the ACT into integral components forming the *essence* of the ‘dignity of baron’ – ‘*vesting*’ as **property** as such existed upon the date (9th June 2000) of Royal Assent to the ACT.
- 3.G.** The *legal import* of the *savings clause* in §63(1), 2nd clause, of the ACT is that the reform of the feudal system of land tenure taking baronies out of the system of land tenure and land registration is not to ‘affect’ acquired legal rights of intangible property consisting of any precedence and ceremonial or heraldic privilege constituting integral component acquired legal rights of intangible property forming the entire ‘dignity of baron’ after the ‘appointed day’: re “but nothing in this Act affects ...”.

- 3.H.** The use of the verb **“affects”** in the *savings clause* of §63(1), 2nd clause, of the ACT legally operates to bar *any change* as a result of the ACT (i.e., abolition of the feudal system of land tenure, abolition of the obsolete civil and criminal jurisdiction, and removal of baronies from the system of land tenure and land registration) from **‘affecting’** the validity of “any quality or precedence associated with and any heraldic privilege incidental to” the dignity of baron statutorily transformed by referenced in §63(4) of the ACT into individual acquired legal rights of intangible property *‘vesting’* indefeasibly as such ‘quality’, ‘precedence’ and ‘any heraldic privilege’ existed upon the date (9th June 2000) of Royal Assent to the ACT and statutorily incorporated by use of the verb **“includes”** in §63(4) of the ACT as a ‘bundle’ of integral component parts into the very substance, fibre, and fabric of ‘incorporeal heritable property’ constituting the dignity of baron under §63(2) of the ACT:
- 3.I.** By statutorily declaring “but nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin)” in the *savings clause* in §63(1), 2nd clause, of the ACT, Parliament bars *any change, alteration, abolition, ignorance or refusal to recognise* the particular *acquired legal rights* of intangible property referenced in §63(4) of the ACT which constitute constituting ‘the dignity of baron or any other dignity or office (whether or not of feudal origin)’:
- 3.J.** The *savings clause* in §63(1), 2nd clause, of the ACT *removes* whatever capability the Lord Lyon might *otherwise* have possessed *before* the ACT to alter, abridge, change, ignore, abolish, or refuse to recognise “any quality or precedent associated with and any heraldic privilege incidental to” the ‘dignity of baron’ statutorily transformed by inclusion in §63(4) of the ACT into acquired legal rights of intangible property incorporated statutorily by use of the verb **“includes”** as integral components forming the *essence* of the ‘dignity of baron’ as “incorporeal heritable property” in §63(2) of the ACT.
- 3.K.** Parliament clearly intended by the *savings clause* in §63(1), 2nd clause, of the ACT for all such ‘qualities’, ‘precedences’ and ‘any heraldic privilege’ statutorily transformed by reference in §63(4) of the ACT into *acquired legal rights* of intangible property constituting the ‘dignity of baron’ to remain completely *un-affected* by **“nothing”** in any of the changes to the system of land tenure worked by the ACT.
- 3.L.** Parliament emphasises the preservation of the status quo concerning the particular ‘qualities’, ‘precedences’ and ‘any heraldic privilege’ statutorily transformed by reference in §63(4) of the ACT into *acquired* legal rights of intangible property constituting the ‘dignity of baron’ by use of the verb “includes” in §63(4) of the ACT to cause the *statutory incorporation* of the entire ‘bundle’ of *acquired* legal rights of intangible property referenced in §63(4) of the ACT as integral component acquired legal rights of property forming the *essence* or the very substance, fabric, and fibre of ‘incorporeal heritable property’ constituting ‘the dignity of baron’ re §63(2) of the ACT as such ‘qualities’, ‘precedences’ and ‘any heraldic privileges’ existed as of the date (9th June 2000) of Royal Assent to the ACT.
- 3.M.** Pursuant to Sec. 63 of the ACT *only* Parliament possesses the competence to change, abolish, ignore, refuse to recognise *any* of the particular ‘qualities’, ‘precedences’ and ‘any heraldic privilege’ statutorily transformed by reference in §63(4) of the ACT into *acquired* legal rights of intangible property constituting the “the dignity of baron or any other dignity or office (whether or not of feudal origin)” re §63(1) of the ACT... and preserved statutorily from *all change* by the *savings clause* in §63(1), 2nd clause, of the ACT.
- 3.N.** The clear Parliamentary Intent in the *savings clause* in §63(1), 2nd clause, of the ACT is to preserve unaltered the entire ‘noble element’ of baronies consisting of their social, ceremonial and armorial aspects statutorily transformed by reference in §63(4) of the ACT into individual acquired legal rights of intangible property constituting the ‘dignity of baron’ together with the full hereditary succession of one’s heirs to such baronies including the ‘title of baron’, the

complete baronial heraldic additaments, and the precedence and other qualities derived from such baronies which give baronies considerable commercial value.

- 3.O.** Parliament's concern was that abridgement of any part of this 'noble element' – those items referenced in §63(4) of the ACT and statutorily transformed into individual acquired legal rights of intangible property – would give rise to a demand for financial compensation by the Scottish Government for the 'taking' of such *acquired* legal rights of property referenced in §63(4) of the ACT estimated at £60,000 per barony.
- 3.P.** To avoid claims for payment of £60,000 for every barony in Scotland, Parliament insulated those individual *acquired* legal rights of intangible property constituting the dignity of baron referenced in §63(4) of the ACT – rights of property consisting of "any quality or precedence associated with and any heraldic privilege incidental to" the 'dignity of baron' – from any type of abolition, change, refusal to recognise, or ignoring by statutorily incorporating all such *acquired* legal rights of intangible property by use of the *verb* "includes" in §63(4) of the ACT as an integral component 'bundle' of individual acquired rights of property into the *essence* or the *very substance, fabric, and fibre* of 'the dignity of baron' as "incorporeal heritable property" under §63(2) of the ACT:
- 3.Q.** The specific legislative intent of Parliament in the '*savings clause*' of §63(1), 2nd clause, of the ACT to preserve unaltered the particular 'qualities', 'precedences', and 'any heraldic privilege' *associated with or incidental to* "the dignity of baron or any other dignity or office (whether or not of feudal origin)" statutorily transformed by inclusion in §63(4) of the ACT into individual acquired rights of intangible property forming 'the dignity of baron' ... is clearly evidenced in the *legislative history* of Sec. 63 of the ACT set forth in ¶¶2.30 to 2.45 of the Scottish Office's "Report on Abolition of the Feudal System" (168 SCOT LAW COM).
- 3.R.** The *savings clause* in §63(1), 2nd clause, of the ACT **statutorily bars** the change in *legal status* worked by the abolition of feudal tenure in the ACT upon baronies or "any other dignity or office (whether or not of feudal origin)" – this refers to Baron Courts and their Officers – from '**affecting**' those particular intangible incorporeal *acquired legal rights* of property referenced in §63(4) of the ACT constituting "the dignity of baron or any other dignity or office (whether or not of feudal origin)" as such acquired legal rights of intangible property 'vested' indefeasibly into "incorporeal heritable property" forming 'the dignity of baron' re §63(2) of the ACT as the 'qualities', 'precedences' and 'any heraldic privilege' statutorily transformed by §63(4) of the ACT into individual *acquired* legal rights of intangible property ACT existed upon the date (9th June 2000) of Royal Assent to the ACT.
- 3.S.** When the *savings clause* in §63(1), 2nd clause, of the ACT ... is read in conjunction with the statutory incorporation caused by use of the *verb* "**includes**" in §63(4) of the ACT of all those 'qualities', 'precedences', and 'any heraldic privilege' – transformed statutorily by §63(4) of the ACT into individual *acquired* legal rights of intangible property – as an integral component 'bundle' of acquired legal rights of property constituting the very substance, fibre, and fabric of 'the dignity of baron'; the **manifest Parliamentary intent** in Sec. 63 of the ACT is to bar **any type of change whatsoever** by any Government Official, in particular, the Lord Lyon to any aspect or part of this entire 'bundle' of individual *acquired* legal rights of intangible property referenced in §63(4) of the ACT forming "the dignity of baron or any other dignity or office (whether or not of feudal origin)".
- 4.** THAT the following heraldic additaments are included amongst "any heraldic privilege incidental to" the 'dignity of baron' statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property 'vesting' in each individual feudal or minor baron and statutorily incorporated by use of the *verb* "**Includes**" in §63(4) of the ACT into an integral component 'bundle' of legal rights of property constituting the *essence* or the *very substance, fabric, and fibre* of the 'dignity of baron' as "incorporeal heritable property" re §63(2)

of the ACT: The Baronage of Scotland is entitled to receive individual grants of all such heraldic additaments as a matter of legal right from the Lord Lyon King of Arms in his judicial capacity:

4.A. ‘Standing’ or legal capacity of the owner of the ‘dignity of baron’ to petition the Lord Lyon for a grant of hereditary Arms:

As a landowner in Scotland – re ownership of the Messuage or caput to which the barony has been reduced – statutorily required to possess a coat of arms (21 February 1400, Acts, I, 575; 1430, cap. 21, Acts, II, 19) to petition Lyon for a grant of arms, crest, and motto.

Lyon’s ‘ministerial discretion’ in the matter of a Petition for Arms consists only in determining whether the Petitioner is a “worthy and deserving person”.¹

4.B. BARONIAL CHAPEAU: Gules, furred Ermine, tasselled Or:

i) Authority for inclusion of “Chapeau Gules, furred Ermine, tasselled Or” among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron:

- *Chisholm of Chisholm*, Lyon Register 33/12: 30th March 1944;
- Petition, *Gordon of Hallhead*, 4 Sept 1934, Lyon Register 31/20
- *Douglas of Brigton*, 21 May 1941, Lyon Register 34/33
- *Carnegy of Lour*, 28 Feb 1945, Lyon Register 35/24
- *Ainslie of Pilton*, 28 Jan 1836, Lyon Register 4/2
- Sir Thomas Innes of Learney, Lord Lyon, “The Robes of the Feudal Baronage of Scotland”, *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, p. 111 at 149, 152–153;
- Sir Thomas Innes of Learney, *Scots Heraldry*, 2nd Ed., 1956, p. 28. 31–32
- *Nisbet’s Heraldry* (1742 ed.), II, part iv, p. 1, plate of “External Ornaments” after ‘Lords’ coronet and before ‘mural crown’; and
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd. Ed, 1978, pp. 17, 26
- Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands*, 8th Ed., 1970, p. 485
- Norris, *Costume and Fashion*, Vol. II, p. 177

ii) The Lyon Office has established that the red chapeau is the proper insignia of a Scots Minor Baron, the heir of a Baron, and that the red chapeau passes to each succeeding generation inheriting the Barony.²

Painstaking historical and heraldic research by Lord Lyon Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland”, Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111–163, has definitively established that the present officially correct Scottish version of the Red Chapeau or Cap of Maintenance for the Minor Barons is “**Gules Doubled Ermine with a golden tassel on the top Or**” as was allowed by Lyon in *Chisholm of Chisholm*, 30th March 1944, Lyon Register 33/12.³

iii) The actual practice of the Lyon Court in granting the requested “chapeau Gules doubled Ermine, tasselled Or” to a feudal or minor baron is concretely established by the 30th March 1944 addendum to the Matriculation of *Chisholm of Chisholm*, Lyon Register 33/12, as follows:

“Edinburgh, 30th March 1944: On the application of the above Alistair Hamish Wiland André Chisholm of Chisholm, the Lord Lyon King of Arms finds him now to be in right of the above Ensigns Armorial (his said grandfather having died at Trinidad 14th June 1943) and Authorises the Lyon Clerk to make the following external additaments to the Arms, videlicet a Pinsel Gules bearing upon a Wreath of the Liveries the Crest within a cirlet Or inscribed with the words

Chisholm of Chisholm in letters Azure & ensigned with a **chapeau Gules doubled Ermine, tasselled Or**, and accompanied by an escrol also charged with the Motto FEROS FERIO & interlaced with ferns Vert,” (Emphasis supplied.)

4.C. FEUDO-BARONIAL MANTLE or ROBE OF ESTATE:

i) Authority for inclusion of Feudo-Baronial Mantle or Robe of Estate amongst “any heraldic privilege incidental to” the ‘dignity of baron’ statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron:

- Sir Thomas Innes of Learney, Lord Lyon, “The Robes of the Feudal Baronage of Scotland”, *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, p. 111 at p. 124–148
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd ed, 1978, p. 17

The retired Lord Lyon, Sir Malcolm Innes of Edingight writes on p. 17, *Scots Heraldry*, (3rd ed, 1978), “And a feudal Baron will, if he applies for them, receive: (r) Cap of Estate; (s) Standard; (t) Feudo-baronial mantle.”

The minor Baronage of Scotland has an *acquired* legal right of “incorporeal property” re §63(4) of the ACT to be granted by Lyon in Letters Patent *issued as a matter of legal right* a **feudo-baronial Mantle** or **Robe of Estate** displayed draped behind the feudal baron’s complete achievement of arms.⁴

The actual design of the *Baronial Robe of Estate* applicable to the Minor Baronage of Scotland is evidenced in the Birthbrief of Sir Henry Innes of that Ilk (later 4th Baronet) discovered by Sir Thomas in the Charter Chest of the Duke of Roxbury, copied, and re-recorded by Sir Thomas on 22nd June 1942 in the Public Register of All Genealogies and Birthbriefs, Vol. IV, P. 25, in order to provide a permanent public record

Such baronial robes included a hood with fur lining as well as the conventional Baronial Chapeau, and the fur collar grew into a fur cape.⁵

Under Statute 1455, c. 10, both the Lords of Parliament (*Barones Majores*) and the Minor Barons wore red robes lined in white.⁶

4.D. BANNER:

i) Authority for inclusion of the Banner amongst “any heraldic privilege incidental to” the ‘dignity of baron’ statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron:

- Sir Thomas Innes of Learney, Scots Heraldry (2nd ed, 1956), p. 40–42: see fn. 1, p. 42, for size of baronial processional banner
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd ed, 1978, pp. 20–21, 36 fn. 26
- Robert Gayre of Gayre & Nigg, Heraldic Standards and other Ensigns (1959), Chapter III, “The Personal Banner”, pp. 21–42.
- The Coat of Arms, January 1952, p. 9

Lord Lyon Sir Thomas Innes of Learney declares, Scots Heraldry (2nd ed, 1956) pp. 40–41, “Technically the correct sizes are: Sovereign, 5 feet square; Duke, 4 feet square; Earls, 3 feet 6 inches square; Baronets and **feudal barons, 3 feet square**. In actual medieval warfare none below knights-bannerette and (feudal) barons displayed the *square* banner.”

4.E. STEEL HELMET of three grills, garnished with gold, or Great Tilting Helmet garnished with gold:

Authority for inclusion of the assignment of a steel helmet of three grills, garnished with gold, or a great tilting helmet, garnished with gold, amongst “any heraldic privilege incidental to” the

‘dignity of baron’ statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron:

- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), p. 29
- Malcolm Innes of Edingight, *Scots Heraldry* (3rd ed., 1978), p. 17

The late Lord Lyon Sir Thomas Innes of Learney declares on page 29 of *Scots Heraldry* (2nd ed., 1956), as follows:

“THE HELMET: So long as armour was worn, everyone who had a shield wore a helmet of some description. Specific forms have been assigned to the following **ranks**:

(4) **Feudal Barons**. – The great tilting-helm garnished with gold (they being of ‘tournament rank’), or a steel helmet with grill of one or three grills, garnished with gold, but the tilting-helm is most used.”

4.F. BADGE:

i) Authority for inclusion of the Badge amongst “any heraldic privilege incidental to” the ‘dignity of baron’ statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron:

- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), pp. 45–46
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd ed., 1978, pp. 23–24.
- Robert Gayre of Gayre & Nigg, *Heraldic Standards and other Ensigns* (1959), Chapter VII, “The Heraldic Household Badge,” pp. 89–102

Lord Lyon Sir Thomas Innes of Learney declares, *Scots Heraldry* (2nd ed, 1956) p. 46, “The recording of **badges and standards** has become more frequent, but awards of such are restricted, in general, to Peers, **Baronage**, Chiefs, Chieftains, and the older landed houses; ...”

4.G. STANDARD ensigned on the top by the Baronial Chapeau Gules, furred Ermine, tasselled Or:

i) Authority for inclusion of the Standard amongst “any heraldic privilege incidental to” the ‘dignity of baron’ statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron:

- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), pp. 43–45, , fn. 3 on p. 45
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd ed, 1978, pp. 21–22, fn. 30 at p. 35
- Robert Gayre of Gayre & Nigg, *Heraldic Standards and other Ensigns* (1959), Chapter V, “The Heraldic Standard,” pp. 51–85
- *Stuart of Inchmahome*, 27 July 1935, *Lyon Register* 11/74
- *Kinghorn of Auchinhove*, 30 Jan 1943, *Lyon Register* 34/64

Lord Lyon Sir Thomas Innes of Learney declares, *Scots Heraldry* (2nd ed, 1956) p. 44, “**Standards**, guidons, and pennons are assigned by Lyon in grants or matriculations to those who are peers, baronets, knights, **barons**, or chieftains, *i.e.* those who from their position or feudal tenure may be presumed to have a ‘following’.”

The correct size for standards was laid down by Lord Lyon Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed, 1956) p. 43, fn. 3, as follows:

“Length of standards: King, 8 yds.; Duke, 7 yds.; Marquis, 6 1/2 yds.; Earl, 6 yds; Viscount, 5 1/2 yds.; Lord, 5 yds; Baronet, 4 1/2 yds.; Knight and **baron**, 4 yds. In the case of chiefs of clans or of families, the standard is now parted in two per fesse, in the case of very major branch-chieftains, tierced per fess, and in the case of other cadets, even if peers or **barons**, in four tracts. Those of peers and **barons** are split at the ends, those of non-baronial chiefs or others who from special (governorship or such-like) reasons get standards, have round unsplit ends. (*The Coat of*

Arms, April 1951, p. 193). Only persons who have supporters may have their standard, banners, etc., held up by a single supporter.”

ii) Barons are privileged to have all special heraldic flags to which they are entitled – Standards, Banners, Guidons, Ensigns, Pinsels, and (nautical) Streamers – ensigned or capped at the top of each respective flag-staff of all such heraldic flags with the red Baronial Chapeau or Cap of Maintenance ... in the same manner that a Peer of the Realm is entitled to have flag-staff of the special heraldic flags to which that Peer is entitled ensigned at the top with his peerage coronet.

Similar to all other baronial heraldic additaments, one must specifically request that the top of one’s special baronial heraldic flags (Standards, Banners, Guidons, Ensigns, Pinsels, and (nautical) Standards) be ensigned at the top with the red Baronial Chapeau or Cap of Maintenance at the time of petitioning for baronial arms. Every special baronial heraldic additament must be *specifically requested* in the petition to Lyon; *nothing* is granted by Lyon automatically without explicit request in the petition.

Recent authority for ensigning the top of a baron’s standard with the red Baronial Chapeau or Cap of Maintenance may be found in the 22nd January 2001 Matriculation of David Lacey Garrison, Junior, Baron of Tranent and Cockenzie, Lyon Register 82/90.⁷

4.H. GUIDON ensigned on the top by the Baronial Chapeau Gules, furred Ermine, tasselled Or:

i) Authority for inclusion of the Guidon amongst “any heraldic privilege incidental to” the ‘dignity of baron’ statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron:

- Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956), p. 43–44.
- Robert Gayre of Gayre & Nigg, Heraldic Standards and other Ensigns (1959), Chapter IV, “The Guidon”, pp. 43–50.
- The Coat of Arms Vol. I, No. 6, April, 1950, Sir Thomas Innes of Learney, Lord Lyon, “Standards and Badges in Scotland”, pp. 193–194:
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd. ed, 1978, pp. 21–23

ii) Sir Thomas Innes of Learney declares in Scots Heraldry (2nd ed., 1956) p. 44, that “Standards, **guidons, and pennons** are assigned by Lyon in Grants or matriculations to those who are peers, baronets, knights, barons, or chieftains, *i.e.*, those who from their position or feudal tenure may be presumed to have a ‘following’.”

In this connection, in an interesting article, “Standards and Badges in Scotland”, The Coat of Arms Vol. I, No. 6, April, 1950, p. 193–194, Lord Lyon Sir Thomas Innes of Learney states, as follows:

“In certain circumstances it has been granted to persons with followings . In some cases some years ago, full Chiefs or Peers who **could** have got Standards **applied for guidons, as they were entitled to do, in addition to the full standard.**” (Emphasis supplied.)

iii) Accordingly, heraldic entitlement to *lesser* heraldic flags such as guidons and pennons is included within entitlement to *greater* heraldic flags such as the banner: The applicable maxim is *The greater includes the lesser*.

iv) After noting with approval Sir Thomas’s statement from the April 1950 issue of The Coat of Arms that one entitled to a standard may also be granted a guidon – on the grounds that *the greater encompasses the lesser*; in Heraldic Standards and other Ensigns (1959), Chapter IV, “The Guidon”, Col. Gayre observes on page 47 that guidons are but small standards which may properly be granted to feudal barons, as follows:

“From this it would seem that so far as Scotland is concerned, the guidon is very properly treated as a small standard, and it is normally granted to peers, feudal barons, baronets, knights, and

to heads of the families of *nom et cri*, and their main branches. ‘Lairds of non-baronial tenure’ are also allowed guidons, but not standards. In other words both the standard and guidon are granted to the very people who, in the middle ages, would have used them.” (Emphasis supplied.)

4.I. PENNON ensigned on the top by the Baronial Chapeau Gules, furred Ermine, tasselled Or:

i) Authority for inclusion of the Pennon amongst “any heraldic privilege incidental to” the ‘dignity of baron’ statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron:

- Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956), p. 43–44
- Robert Gayre of Gayre & Nigg, Heraldic Standards and other Ensigns (1959), Chapters I, “The Pennon”, pp. 1–11; II, “The Lance-Pennon”, pp. 12–20
- The Coat of Arms Vol. I, No. 6, April, 1950, Sir Thomas Innes of Learney, Lord Lyon, “Standards and Badges in Scotland”, p. 193–194:
- Malcolm Innes of Edingight, Scots Heraldry, 3rd ed., pp. 21–23
- *Kinghorn of Auchinhove*, Lyon Register 34/64
- *Maclean of Ardgour*, 11 July 1944, Lyon Register 35/15

ii) In *Scots Heraldry*, 2nd ed., Sir Thomas declares on p. 44, “Pennons are half the size of guidons, ... Pennons are assigned by Lyon in grants or matriculations to those who are ... barons, ... i.e., to those who from their position or feudal tenure may be presumed to have a ‘following’.”

Retired Lord Lyon Sir Malcolm Innes of Edingight, *Scots Heraldry*, 3rd ed., 1978, page 21, states, “Standards, guidons, and **pennons** are assigned by Lyon in grants or matriculations to those who are peers, baronets, knights, **barons**, or chieftains, i.e., to those who from their position or feudal tenure may be presumed to have a ‘following’.”

4.J. PINSEL ensigned on the top by the Baronial Chapeau Gules, furred Ermine, tasselled Or:

i) Authority for inclusion of the Pinsel amongst “any heraldic privilege incidental to” the ‘dignity of baron’ statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron:

- Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956), p. 45
- Sir Thomas Innes of Learney, Lord Lyon, “Standards and Badges in Scotland”, The Coat of Arms Vol. I, No. 6, April, 1950, pp. 193–194
- Sir Thomas Innes of Learney, “Huntly Processional Roll of Scottish Armorial Funeral, etc”, *Proc. of soc. of Antiquaries of Scotland*, (16 October 1943) Vol. 77, p. 154 at pp. 157, 160 fn. 2 continued on p. 161 – top of footnote section.
- Malcolm Innes of Edingight, Scots Heraldry, 3rd ed. 1978, p. 23.
- Robert Gayre of Gayre & Nigg, Heraldic Standards and other Ensigns (1959), pp. 9, 10, 16, 17–18

ii) Sir Thomas Innes of Learney declares in “Court Rulings and Decisions from the Lord Lyon King of Arms: Standards and Badges in Scotland”, The Coat of Arms, April 1951, Vol. I, No. 6, pp. 193–194 at 194, as follows:

“Pinsels are granted only to the **feudal Baronage** and Peers. They are triangular flags 4 1/2 feet long bearing within a circle inscribed with the title, the crest surmounted by the coronet or chapeau. The motto is set in an escrol towards the fly, with plant badge, if any.”

iii) Sir Thomas Innes of Learney further states in “Huntly Processional Roll of Scottish Armorial

Funeral, etc”, *Proc. of soc. of Antiquaries of Scotland*, (16 October 1943) Vol. 77, p. 154 at pp. 160, fn. 2 continued on p. 161 – top of footnote section, the following:

“Reference in 1644 to ‘divers utheris pinsellis maid for the barronis’ (Spalding, *Memorials of the Trubles*, p. 343) **shows these flags related to the feudal baronage**”. (Emphasis supplied.)

iv) Col. Gayre likewise observes in *Heraldic Standards and Other Ensigns* (Edinburgh, 1959) at p. 18, as follows:

“Reference in 1644 to ‘divers utheris pinsellis maid for the barronis’ **shows that the feudal baronage employed them**, and the reference to Mackay’s pinsel should not be taken to indicate that they were peculiarly highland.” (Emphasis supplied.)

v) The Pinsel is appropriate for use by a Baron- Bailiff, who is the administrative subordinate of the Feudal Baron. As Col Gayre notes, *Ibid.*, pp. 17–18: “... the Pinsel acts as a focal point in a rally of followers (and, thereby, performs some of the functions of a standard, on a less imposing scale and in a more portable manner) ... its use as the rallying flag, in the absence of the head of the house, ...” A Pinsel would perform the same function for the following of a Feudal Baron in his absence but in the presence of his Baron Ballie.

4.K. ENSIGN ensigned on the top of the mantle by the Baronial Chapeau Gules, furred Ermine, tasselled Or:

i) Authority for inclusion of the Ensign amongst “any heraldic privilege incidental to” the ‘dignity of baron’ statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron:

- Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th ed., 1970), p. 521
- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), pp. 29, 42–43
- Malcolm Innes of Edingight, *Scots Heraldry* (3rd ed., 1978), p. 21

ii) Lord Lyon, Sir Thomas Innes of Learney, describes the Ensign in *Scots Heraldry* (2nd ed.), pp. 42–43, as follows:

“The ‘Ensygyne’ is a small and highly decorated rectangular flag, fringed with bullion, and with a ground of the livery colours. On this is embroidered the full achievement, including helmet, crest, mantling, and supporters. Examples of such flags were reproduced on stall plates, *e.g.*, of the Garter, and as flags or identification in a crowd at a reception are still beautiful and useful. These small-size heraldic banners were made up on a stiff foundation so as to display the arms effectively and prevent flapping.”

iii) Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th ed., 1970), p. 521, describes the Ensign, as follows:

“Another form of what we, perhaps, call a ‘**square-standard,**’ the **Ensynzie** developed during the seventeenth century after the carrying of the real heraldic banner became less usual. These later ‘standards’ are rectangular flags with the full heraldic achievement of the chief or chief-tain depicted on them.

“They have been largely used by chiefs in connection with their ‘private armies’ **e.g.**, The Invercauld Highlanders, Lonach Highlanders, and so forth. They were the form used by the Highland regiments in ‘the ‘45’, partly, perhaps, since in many cases the chief was (discreetly) not present in person, so his banner was not displayed, though a ‘standard’ was sent forth with the ‘commander of the Clan.’

“The other ground for the popularity of these flags was that they provided an opportunity to depict the coveted distinction of supporters when these existed. A celebrated example of this *sort* of flag is the dubious ‘Green Banner of Cluny-Macpherson’ — actually one of these square standards.”

iv) Because the Ensign contains the same heraldic additaments as appear on a standard, logically any person entitled to a standard would also be entitled to an ensign. Therefore, a Baron, is also clearly entitled to the form of the ‘square-standard’ known as an “Ensign”.

4.L. STREAMER ensigned on the top of the mantle by the Baronial Chapeau Gules, furred Ermine, tasselled Or:

i) Authority for inclusion of the Streamer amongst “any heraldic privilege incidental to” the ‘dignity of baron’ statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron:

- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd Ed., 1978, p. 36, fn. 33
- Robert Gayre of Gayre and Nigg, *Heraldic Standards and other Ensigns* (Edinburgh, 1959), Chapter VI, “The Streamer”, pp. 86–88; see Plate XIII illustrating the streamer

ii) In its capacity as the nautical form of the Standard, the streamer lacks the motto bends and personal arms or national flag in the hoist of the standard but displays the same badges, crest, etc. against the baron’s livery colours.

In its capacity as a nautical form of the Standard without the motto bends and personal arms or national flag in the hoist displaying the same badges, crest, etc. against the baron’s livery colours. The retired Lord Lyon Sir Malcolm Innes of Edingight notes that the correct length of the heraldic streamer is “4 yds. Long for Baron”.⁸

iii) In *Scots Heraldry* (3rd ed., 1978), page 36 at Footnote 33, the retired Lord Lyon Sir Malcolm Innes of Edingight notes that the correct length of the heraldic Streamer is “4 yds. Long for Baron”

As the nautical form of a standard, anyone entitled to a standard is clearly entitled to a streamer.⁹

iv) Such heraldic nautical forms of the Standard have been specifically matriculated as ‘galley-pavon or Streamer’ for Campbell of Dunstaffnage: 11 November 1943, *Lyon Register* 34/71; 10 June 1959, *Lyon Register* 43/26.

4.M. COMPARTMENT:

i) Authority for inclusion of the Compartment amongst “any heraldic privilege incidental to” the ‘dignity of baron’ statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron:

- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), p. 39:
- Nisbet, *Heraldry*, IV, ii, 137, 138
- Sir George Mackenzie Mackenzie of Rosenhaugh, *Science of Heraldry*, Edinburgh, 1680, Chap. xxxi, p. 95
- *Berowald Fortescue Innes of Inverisla*, *Lyon Register* 31/59

Having *institutional authority* in Scotland, Mackenzie declares that the compartment represents the bearer’s lands and territories.¹⁰

Declaring his agreement with Mackenzie, Nesbit says that compartments represent the Bearer’s lands and territories.¹¹

The compartment upon which supporters stand are restricted to the feudal baronage, represent the bearers territories, and are feudal honours.¹²

Compartments represent and perpetuate a fief in the form of specific local geographical features constituting their noble feus.¹³

Heraldic charges placed on compartments may be used by minor barons to represent their particular baronial fief.¹⁴

Specific compartments may bear the particular geographical and historical features of that family's feudal lands and territories.¹⁵

Figures on compartments pass to successors in the related fief.¹⁶

Entitlement to be granted by Lyon a compartment is included amongst “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron *statutorily transformed* by §63(4) of the ACT into particular individual acquired legal rights of intangible property and ‘vesting’ as “incorporeal heritable property” in the Holder of the dignity of baron under §63(2) of the ACT ... when read in conjunction with the *savings clause* in the second clause of §63(1) of the ACT that “nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin)”.

Even after the ‘appointed day’ when the Holder of ‘the dignity of baron’ still possesses the designated caput or messuage to which the barony was reduced before the ‘appointed day’, that Holder of ‘the dignity of baron’ is entitled to a compartment to represent such territories.

4.N. SUPPORTERS:

i) Authority for inclusion of Supporters amongst “any heraldic privilege incidental to” the ‘dignity of baron’ *statutorily transformed* by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron:

- Sir George Mackenzie of Rosenhaugh, Science of Heraldry, Edinburgh, 1680, Chap. xxxi, p. 94
- Alexander Nisbet, System of Heraldry, Edinburgh, 1722, Vol. II, Part Fourth, Chap. vii. p. 27
- J. H. Stevenson, Heraldry in Scotland (Glasgow, 1914), p. 88
- Sir Thomas Innes of Learney, Scots Heraldry (2nd Ed, 1956), pp. 130–131
- George Seton, The Law and Practice of Heraldry in Scotland, Edinburgh, 1863, p. 287

Having *institutional authority* in Scotland, Sir George Mackenzie declared that the minor Baronage of Scotland who were members of the old Scots Parliament before 1587 are entitled to supporters.¹⁷

Among the classes of persons having a legal right to a grant of supporters are the representatives of those minor barons who were liable to be summoned to sit in parliament before the Act of 1587.¹⁸

In Scotland the heirs of those minor Barons who sat in the old Scots Parliament are entitled to a grant of supporters as a matter of right.¹⁹

Entitlement to supporters as a matter of legal right is vested in The ‘lawful heraldic and genealogical *Representation of the last Baron ante 1587*’²⁰ entitled to sit in the old Scots Parliament by hereditary right before that date ‘vesting’ in the lawful Heir-of-line of the last Baron ante 1587.

In the Case of *George Kenneth Stewart Ferguson of Dunfallandy*, 1953 Scots Law Times (Lyon Ct) 2, the Petitioner’s ancestor had been in possession of the Crown Barony of Douny erected by Crown Charter of 20 Jan 511/2. However, the Petitioner’s ancestors lost possession of the Barony of Douny about 1660. Nevertheless in this 7 April 1949 decision, Lord Lyon Sir Thomas Innes of Learney granted the Petitioner supporters in the right of the representation of the pre-1587 Barony of Douny as follows:

“His Lordship found in law, *inter alia*:

2. That the petitioner, as representer of the feudal free Barons of Douny erected by the Crown charter of 20th January 1511/12 or anterior to the Crown Charter of 21st March 1521.2, is entitled to a patent of supporters and a chapeau azure furred ermine.”

Because the 'Blue Chapeau' is the appropriate insignia for the Representative of a Baronial House no longer in possession of the corresponding barony, this case stands for the proposition that the Representative of a pre-1587 barony no longer in possession of that barony is entitled to supporters on the basis of such representation alone.

4.O. HERALDIC ADDITAMENTS OF OFFICERS OF BARON COURTS:

i) When the *savings clause* of §63(1) re “any *other dignity* or office (whether or not of feudal origin)’ respecting the Officers of a Baron Court is read in conjunction with §63(4) of the ACT declaring that “‘*dignity*’ **includes** any quality or precedent associated with, and any *heraldic privilege* incidental to, a dignity”; the upon proper appointment by a Baron the armigerous Officers of a Baron Court have an acquired legal right of property to be granted by Lyon the heraldic additaments appropriate to such Offices.

ii) The *acquired legal right* of property the Officers and other Personnel of a Baron Court to receive from Lyon official recognition in the ‘name’, ‘title’, or ‘dignity’ of that Office or Position and to be granted by Lyon the official heraldic insignia of office appropriate to that Office or Position ... as constituting “any quality or precedence associated with, and any heraldic privilege incidental to, a dignity” re §63(4) of the ACT applying to their ‘dignity’ as Officers and other Personnel of a Baron Court ... when read in conjunction with the *savings clause* mandating that “nothing in the Act affects the dignity of baron or **any other dignity or office** (whether or not of feudal origin)” re §63(1) of the ACT ... ‘vesting’ in the Officers and other Personnel of a Baron Court upon appointment to such Office or Position by the Baron or the Holder of ‘the dignity of baron’ as a *judicially enforceable legal right* of such Officers and other Personnel of a Baron Court under §63(4) of the ACT when read in conjunction with the *savings clause* in §63(1) of the ACT explicitly mandating the *legal survival* of both the ‘dignity of baron’ as well as “any other dignity or office (whether or not of feudal origin)” past the ‘appointed day’.

iii) Armigerous Officers and other Personnel of a Baron Court possess an *acquired* legal right of property – re the statutory transformation worked by §63(4) of the ACT upon “any heraldic privilege incidental to, dignity” transforming such into actual individual acquired legal rights of intangible property – to receive from Lyon official recognition in the ‘name’, ‘title’, or ‘dignity’ of that Office or Position and to be granted by Lyon the official heraldic insignia of office appropriate to that Office or Position ... as constituting “any quality or precedence associated with, and any heraldic privilege incidental to, a dignity” re §63(4) of the ACT applying to their ‘dignity’ as Officers and other Personnel of a Baron Court ... when read in conjunction with the *savings clause* mandating that “nothing in the Act affects the dignity of baron or **any other dignity or office** (whether or not of feudal origin)” re §63(1) of the ACT ... ‘vesting’ in the Officers and other Personnel of a Baron Court upon appointment to such Office or Position by the Baron or the Holder of ‘the dignity of baron’ as a *judicially enforceable legal right* of such Officers and other Personnel of a Baron Court under §63(4) of the ACT when read in conjunction with the *savings clause* in §63(1) of the ACT explicitly mandating the *legal survival* of both the ‘dignity of baron’ as well as “any other dignity or office (whether or not of feudal origin)” past the ‘appointed day’.

v) Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), pp. 143–145: re “Official Arms and Insignia”:

“There are a number of **offices** to which specific **heraldic insignia** belong, and which the holders are entitled to bear *virtute officii*, or to include in their personal heraldic achievements. Frequently such official insignia consists of “**exterior ornaments**”, such as badges, batons or swords of office.”

A minor Baron in the Baronage of Scotland is entitled to appoint the following Officers to constitute his Baron Court to whom the Lord Lyon will **grant official insignia** to be placed behind the shield of that Officer:

v) **Cap of Justice** for Baron Bailies:

Baron-Baillie, the President (normal executive officer) of the Baron Court, is entitled to matriculate a flat Cap of Justice, environed by two guards of braid in the livery colours of the feudal baron on top his shield. The Baron-Baillie also wore a black legal gown with a one-and-half inch strip blue-black velvet on his sleeves and down the front together with a Medal of Office ensigned with a Chapeau on a light chain.

The Baron-Baillie represented the feudal Baron as the president of the local government of the barony constituting the Baron Court.

The Baron-Baillie was the chief executive officer of a feudal barony who was in charge of its normal operation.

Appointed by 'letter and seal' of the feudal Baron, the Baron-Baillie took the oath *de fidei administratione* in order to have sufficient power to preside over the Baron Court.

See 20th April 1969 Matriculation of Thomas Allan Keith- Hill of a Cap of Justice upon his arms in respect of his office of Baron-Bailey of the Castle and Barony of Lochoreshyre or Inchgall, Lyon Register, Vol. 51, p. 115.

See also the 12th December 1976 Matriculation of Alistair Robertson Ross of a Cap of Justice as the Baron-Baillie of Easter Moncreiffe, Lyon Register 61/37.

See also the 22nd January 2001 Matriculation of David Lacey Garrison, Junior, Baron of Tranent and Cockenzie, Lyon Register 82/90, where in his eldest son is granted a Baron Baillie's Cap of Justice.

vi) Key in bend for Keeper of Baronial Caput

Keeper of the Castle and Fortalice of the feudal barony – the person in charge of the baronial caput – is entitled to matriculate a key proper in bend to place behind his shield.

See Grant of Arms to Major-General Clifford Thomason Becket, Lyon Register 48/58, of a key proper in bend set behind his shield in respect of his office of Keeper of the Castle and Fortalice of Lochoreshyre or Inchgall.

vii) Horn and White Wand for Baron Sergeand

Baron-Officer or Sergeand of the Castle together with subordinate Officers called "Pundlars" or "Foresters", responsible summoning the Baron Court and keeping order, is entitled to the official insignia of a white Ell- Wand of Peace (one Scots ell [37"] long) and a horn used to summon attention and to fence the court. Based upon the specific designation of this particular insignia for Baron-Officers or Sergeants by the old Scots Parliament in A.P.S., II, 22, c. II; it would seem that all appointed Baron-Officers or Sergeands have a judicially enforceable legal right to be granted such heraldic insignia of office by Lyon.

The Baron-Officer or Sergeand was the orderly officer or enforcement officer of the Baron Court: He summoned the tenants to the meetings of the Baron Court, parties having cases, witnesses involved in cases, and executed the judgements of the Baron Court. His heraldic insignia included a horn and a white wand one ell long. If opposed in the execution of his duty he broke his wand as an indication that he had been 'deforced'.

See official insignia for Baron-Officers or Sergeand of a Horn and white Wand one ell long designated by the old Scots Parliament in A.P.S., II, 22, c. II.

See Matriculation of similar insignia of office for Viola Stirling of Gargunock as Hereditary Seneschal of the Free Tenandry of Gargunock, 24th February 1969, Lyon Register 51/105.

- 5.** THAT official Lyon Court recognition of the following matters of "precedence" are included amongst "any ... precedence associated with" the 'dignity of baron' statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property 'vesting' in each individual feudal or minor baron and statutorily incorporated by use of the verb "**Includes**" in §63(4) of the ACT into an integral component 'bundle' of legal rights of property constituting the *essence* or the *very substance, fabric, and fibre* of the 'dignity of baron' as "incorporeal her-

itable property” re §63(2) of the ACT: The Baronage of Scotland is entitled to receive official Lyon Court recognition of the following matters of “precedence” as a matter of legal right from the Lord Lyon King of Arms in his judicial capacity:

§63(4) of the ACT clearly statutorily transforms all matters relating to “any quality or precedence associated with, and any heraldic privilege incidental to, a dignity” which are associated with or are incidental to the dignity baron into particular individual concrete *acquired legal rights* of “incorporeal heritable property” under §63(2) of the ACT: Clearly §63(4) of the ACT constitutes a **statutory change** in whatever might have been the previous legal status of ‘qualities’, ‘precedences’ and ‘any heraldic privilege’ associated with or incidental to the ‘dignity of baron’: §63(4) of the ACT specifically statutorily transforms “any quality or precedence associated with and any heraldic privilege incidental to” the dignity of baron into concrete individual actual *acquired* legal rights of “incorporeal heritable property”: The statutory transformation effected by §63(4) of the ACT mandates the official recognition by the Lord Lyon of “any quality or precedence associated with” the dignity of baron as a specific legal interests of intangible property.

Pursuant to §63(4) of the ACT, such official recognition by Lyon is no longer merely a discretionary ‘ministerial’ act which cannot be challenged upon appeal to the Court of Session: All such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ associated with or incidental to the ‘dignity of baron’ were statutorily transformed by §63(4) of the ACT into particular *acquired* legal rights of intangible property: These are all now individual concrete *acquired* rights of property ‘vesting’ in the owner of the ‘dignity of baron’. As property-rights ‘vesting’ in the owner of the ‘dignity of baron’, they must be recognised by the Lord Lyon in his administrative judicial capacity as a matter of law. Use of the verb **“includes”** in §63(4) of the ACT statutorily incorporates this entire ‘bundle’ of concrete individual *acquired* legal rights of property encompassed by the phrase “any quality or precedence associated with, and any heraldic privilege incidental to, a dignity” into an integral component ‘package’ constituting the entire ‘dignity of baron’. All such matters of ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ associated with or incidental to the ‘dignity of baron’ are now specific legal rights of property presenting themselves to the Lord Lyon *in his judicial capacity* as the judge of the court having first instance jurisdiction over such subject-matter.

5.A. The **precedence** of Barons is after Knights and before Esquires and amongst themselves as of the date of erection of their particular baronies

- Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 14, “Precedence”, ¶2021
- Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at p. 113;
- Lyon Court Precedency Book folio 76

¶2.45 of the Scottish Office’s “Report on Abolition of the Feudal System” (168 SCOT LAW COM), recommends, as follows:

2.45 **Recommendation.** We recommend that

5. (c) The new legislation should not abolish the dignity of baron or any other dignity (whether or not of feudal origin). Accordingly **barons should retain the right to call themselves baron and should retain any precedence and ceremonial or heraldic privileges deriving from their barony.**” (Emphasis supplied)

The minor Baronage of Scotland has precedence before Esquires and Doctors of Law, Divinity, and Physics.²¹ Minor baron’s precedence is after that of knights.²²

Having *institutional authority* in Scotland Sir George Mackenzie notes that the minor Barons²³ have never ceded precedence to either Baronets or ordinary Knights.²⁴

The precedence of the minor Baronage of Scotland is *now* a legal issue of property for adjudication by the courts: Such ‘precedence’ encompassed within “**any** quality or **precedence associated with, and any heraldic privilege incidental to**” the dignity of baron was statutorily transformed by §63(4) of the ACT into individual concrete acquired legal rights of intangible property ‘vesting’ as “incorporeal heritable property” in the Holder of the ‘dignity of baron’ re §63(2) of the ACT and statutorily incorporated by use of the *verb* “includes” in §63(4) of the ACT into an integral component ‘bundle’ of all such individual rights of property referenced in §63(4) of the ACT constituting the ‘dignity of baron’.

5.B. Use of the title “**Baron of X [nomen dignitatis]**” as part of the name:

The correct ‘title’ and ‘style’ of the minor Baronage of Scotland is “The Baron of Bradwardine” as used by Sir Walter Scott.²⁵ This is the official and legal ‘title’ to be properly accorded to all minor Barons who are not Peers.²⁶ This is also the actual ‘title’ used in popular speech throughout Scotland.²⁷ Such evidence provides both official, legal, and popular *legitimacy* for employment of the ‘title’ and ‘style’ “Ian Mac Smith, The Baron of Glensnooks”.

Once a Petitioner has established his baronial status, Lyon is legally obliged²⁸ to recognise and to record that Petitioner under the *nomen dignitatis* of ‘Baron of X’ as his title, style, and designation.²⁹ Upon proper allegations in the Petition, Lyon will, in fact, accord such official recognition.³⁰

The principal component of ‘the dignity of baron’ re §§ 63(1) and 63(2) of the ACT is to be accorded by the Government “the style and title of baron” – “to be designated as ‘*Baron of Bradwardine*’ – particularly in the certificates issued by the Lord Lyon King of Arms.³¹

The *legislative history* to the ACT notes that it is the legal ‘right to the title and dignity of baron’ which gives baronies their value.³²

5.C. Addition of the ‘**fife name**’ or *nomen dignitatis* to the surname of the feudal baron:

A Scottish feudal Barony is preserved and kept alive in the public eye and mind through the bearing of the *nomen dignitatis* or the ‘fife name’ of that Barony as one’s ‘title’ and ‘territorial designation’:

The *nomen dignitatis* of a feudal baron is the ‘name’ of his fief rather than his surname.³³ The ‘territorial designation’ of that barony.

The “territorial designation” serves as the “title” or *nomen dignitatis* by which a ‘House and Family’ is recognised for the social and identification purpose of preserving and perpetuating the ‘family’ with its influence and leadership status.³⁴

In relation to the enjoyment of a Scottish feudal estate ‘of that name’, the ‘territorial designation’ or ‘fief name’ is in fact a ‘nobilary title’ and form of title by which the holder of the *noble terre* or ‘fife’ is both distinguished and entitled; such “territorial designations” constitute *nomen dignitatis* which serves the official purpose of ‘name’ re establishing certain identity and their nobiliary status as feudal land-owners.

Analogous to peerage law the *nomen dignitatis* of the “territorial designation” is adjoined as part of a feudal baron’s ordinary name constituting both his signature as well as in ordinary speech and writing as his feudal “style” or “title” or in older conveyancing phraseology simply as his “name”:³⁵ Thus, in ordinary speech a feudal baron is commonly called by his ‘fife name’ or ‘territorial designation’ rather than by his own surname.

5.D. Prefix of “**The Much Honoured**”

- See Frank Adams, rev. by Sir Thomas Innes of Learney, The Clans, Septs, and Regiments of the Scottish Highlands (8th edition, 1970), p. 410.
- Sir Thomas Innes of Learney, *The Tartans of the Clans and Families of Scotland* (5th ed., 1952), p. 64.

- Patrick Montague-Smith, Debrett's Correct Form (1986), p. 90.

i) Respecting the proper use of this prefix, the late Lord Lyon, Sir Thomas Innes of Learney declares in *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 410, as follows:

“In personal letters, a Scottish laird or chief, e.g., ‘Campbell of Glenfalloch,’ is addressed ‘Dear Glenfalloch,’ not ‘Dear Campbell,’ which would be as rude to Glenfalloch as to Lord Breadalbane, for the laird or chieftain of Glenfalloch has just as much a ‘title’ as the Earl. The old **prefix** of a laird or chief was **‘The Much Honoured,’** and letters should be and still sometimes are addressed, e.g. ‘The Much Honoured, the Laird of Glenfalloch’ or **if a baron, ‘The Much Honoured, The Baron of Dunfallandyh’** – they arrive quite safely. A clansman in writing to chief may, of course, commence ‘Dear Chief’.” (Emphasis supplied.)

ii) In footnote 4 to the above, Sir Thomas notes that the prefix ‘The Much Honoured’ is the “style [which] should invariably be employed if *An Baran* is on the Continent. The baronial title is carefully set forth in Lyon Court Birthbriefs for production at foreign courts.”

5.E. Official Lyon Court recognition of ‘baronial status’ consisting of the following:

- That the Baronage of Scotland is an ‘order’, ‘estate’ (of the Scots’ Realm) and a ‘Rank’: See Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at 113, 116, fn. 1, 146, 150
- Statement in official Lyon Court documents of the entitlement to be received as **“Hoch-Adel”** on the Continent: See Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at 141, 155. See *Wauchop of Niddrie*, Lyon Register, Vol XXXV, p. 31, 19th April 1945; Matriculation of *Chisholm of Chisholm*, Lyon Register 33/12: 30th March 1944; Matriculation of *Borthwick of Borthwick*, Lyon Register 35/14;
- Statement in Lyon Court documents that minor barons are officially the **‘equivalent to the chiefs of Baronial Houses on the Continent of Europe’**: See Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at p. 143, fn. 3, 155. See *Wauchop of Niddrie*, Lyon Register, Vol XXXV, p. 31, 19th April 1945; Matriculation of *Chisholm of Chisholm*, Lyon Register 33/12: 30th March 1944; Matriculation of *Borthwick of Borthwick*, Lyon Register 35/14;
- Statement in Lyon Court documents that minor barons statutorily constitute **‘a part of the nobility’** in the Statute of 20 Dec 1567 re A.P.S., Vol. III, p. 40: See Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at 132, 144;
- Statement in Lyon Court documents that minor barons constitute a **‘titled nobility’** and that the estate of the Baronage are of the ancient feudal nobility of Scotland: See 26th February 1943, Register of Genealogies, Vol IV, p 26; Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” *Proc. of Soc. of Antiquaries of Scotland*, (27th October 1945) Vol 79, p. 111 at p. 143, fn. 3, 154. See *Petition of Sir Hugh Vere Huntly Duff Munro-Lucas-Tooth*, 1965 S.L.T. (Lyon Ct.) 2 at p. 13:

i) The minor Baronage of Scotland is clearly part of ‘the Nobility of Scotland’ as well as being an ‘Order’ and an ‘Estate’ of the Realm of Scotland.³⁶

The Lyon Court has issued a official pronouncement that the feudal or minor Baronage of Scotland constitute a ‘titled nobility’ and that the Estate of the Baronage are of the ancient feudal nobility of Scotland.³⁷

The practice of the Lyon Court in the twentieth century has been to issue specific declarations of baronial status in re-matriculation of baronial arms granting the baronial chapeau.³⁸

An explicit ‘model’ declaration of baronial status is contained in the 30th March 1944 Matriculation of *Chisholm of Chisholm*, Lyon Register 33/12, in which the Lord Lyon specifically grants the Baronial “chapeau Gules doubled Ermine, tasselled Or”, as follows:

“Edinburgh, 30th March 1944: On the application of the above Alistair Hamish Wiland André Chisholm of Chisholm, the Lord Lyon King of Arms finds him now to be in right of the above Ensigns Armorial (his said grandfather having died at Trinidad 14th June 1943) and Authorises the Lyon Clerk to make the following external additaments to the Arms, videlicet a Pinsel Gules bearing upon a Wreath of the Liveries the Crest within a circlet Or inscribed with the words Chisholm of Chisholm in letters Azure & ensigned with a **chapeau Gules doubled Ermine, tasselled Or**, and accompanied by an escrol also charged with the Motto FEROS FERIO & interlaced with ferns Vert, and the declaration that the Petitioner, as Representer of the Baronial race of Chisholm of Chisholm, Baron of Comer, is of **status equivalent to that designated Hoch Adel & of nobiliary rank corresponding to the Chiefs of Baronial Families in the Feudal Baronages of European Kingdoms [Sir Thomas Craig of Riccarton in ‘Jus Feudale’, book I chapter 8 section 2 re Baron in the Feudal Baronage of Scotland:- “habentur de Baronibus qui a jure feudali descendant cum ante ea tempora Capitanei tantum Tribuun discerentur”]** & that the foresaid Ensigns Armorial are tesserae Nobilitatis by demonstration of which the Petitioner, his predecessors & lawful successors therein, are to be taken and received as such.” (Emphasis supplied.)

The grant of the Baronial “chapeau Gules doubled Ermine, tasselled Or” with the above declaration of baronial status in the Matriculation of *Chisholm of Chisholm*, Lyon Register 33/12, demonstrates that the two are linked together as a prerogative of the feudal Baronage of Scotland:

Both the requested declaration of baronial status and the grant of the Baronial “chapeau Gules doubled Ermine, tasselled Or” are included amongst “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron re *statutorily transformed* by §63(4) of the ACT into individual concrete acquired legal rights of intangible property ‘vesting’ in the Holder of the ‘dignity of baron’ which by the use of the *verb* “includes” in §63(4) of the ACT were *statutorily incorporated* into an integral component ‘bundle’ of all such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ associated with or incidental to the ‘dignity of baron’ which ‘packaged’ together constitute the ‘dignity of baron’ as “incorporeal heritable property” re §63(2) of the ACT.

Such declaration of baronial status in the official documents of the Lyon Office is clearly included within the term “any quality or precedence associated with ... the dignity of baron” as used in §63(4) of the ACT; and, likewise, the particular grant of the Baronial “chapeau Gules doubled Ermine, tasselled Or” constitutes “any heraldic privilege incidental to” the dignity of baron as used in §63(4) of the Act.

Members of the feudal Baronage of Scotland are equally entitled under §63(4) of the Act to be accorded both *as a matter of legal right* of intangible property by the Lord Lyon *in his judicial capacity*.

This declaration of ‘baronial status’ in official Lyon Court documents ought to take much the following form:

“THAT the Petitioner is desirous of the declaration that the feudal Baronage of Scotland is a distinct ‘Estate’ being in terms of Statute 1567, cap. 33, a ‘part of the nobility’; that the Minor Barons of Scotland are, and have been both in this nobiliary Court and in the Court of Session recognised as a ‘titled nobility’ and that the estate of the Baronage (i.e. *Barones Minores*) are of the ancient Feudal Nobility of Scotland; and that the Petitioner, as Representer of the Baronial race of John Doe of Glenroe, Baron of Glenroe is of status equivalent to that designated Hoch Adel and of nobiliary rank corresponding to the Chiefs of Baronial Families in the Feudal Baronages of European Kingdoms [Sir Thomas Craig of Riccarton in ‘Jus Feudale’, book I chapter 8 section 2 re Baron in the Feudal Baronage of Scotland:- “habentur de Baronibus qui a

jure feudali descendant cum ante ea tempora Capitanei tantum Tribuum discerentur”] and that the foresaid Ensigns Armorial are tesserae Nobilitatis by demonstration of which the Petitioner and his lawful successors in the same are to be so accounted, taken and received, Amongst all Nobles and in all places of Honour.”

6. THAT official Lyon Court recognition of the following matters of “qualities” of feudal or minor barons are included amongst “In this section ... ‘dignity’ includes **any quality** ... associated with” “ the ‘dignity of baron’ statutorily transformed by §63(4) of the ACT into concrete individual *acquired* legal rights of intangible property ‘vesting’ in each individual feudal or minor baron and statutorily incorporated by use of the *verb* “**Includes**” in §63(4) of the ACT into an integral component ‘bundle’ of legal rights of property constituting the *essence* or the *very substance, fabric, and fibre* of the ‘dignity of baron’ as “incorporeal heritable property” re §63(2) of the ACT: : The Baronage of Scotland is entitled to receive official Lyon Court recognition of the following matters of baronial “qualities” as a matter of legal right from the Lord Lyon King of Arms in his judicial capacity:

6.A. Personal ennoblement of the owner of the ‘dignity of baron’:

Historically, noble dignities possess annexed ensigns armorial which are transferred with that dignity to new representatives therein.³⁹

Such related ensigns armorial are acquired by possession of the corresponding dignity, territory or jurisdiction.⁴⁰

Acquisition of a noble dignity conveys to the possessor the associated heraldic ensigns.⁴¹

Those dignified with the ‘title’ of a noble dignity carry the related heraldic ensigns associated with that dignity.⁴²

The successor to a dignity assumes the heraldic additaments related to the corresponding dignity.⁴³

‘Dignities’ are resettled along with the heraldic ensigns associated with the heraldic representation of such ‘dignities’.⁴⁴

Having *institutional authority* in Scotland, Mackenzie declares that acquisition of an erected dignity with an annexed authority held directly from the Prince ennobles the possessor and warrants him to bear arms.⁴⁵

A non-armigerous person acquiring a noble dignity is nobiliated by this dignity and may carry its related heraldic additaments.⁴⁶

The ensigns armorial related to a dignities pass to the successive holder of that dignity even if not related in blood to his processor-in-title to that.⁴⁷

Attached to certain dignities, feudal ensigns pass to the successor in that dignity.⁴⁸

The chief heraldic insignia of a barony often follows the resettlement of that dignity in their capacity as the feudal arms of that dignity.⁴⁹ The possessor of a dignity has the legal right to transfer both the dignity as well as arms derived from the heraldic representation of that dignity *to the exclusion of his own heirs*.⁵⁰

The heraldic term ‘representative’ has “a *broader character*” than ‘heir of line’ and is sufficiently *elastic* to include the successor of a stranger-in-blood to a family in its principal dignity.⁵¹

This *character* “could include” the succeeding ‘representative’ to the Owner of that Barony as “nominee”.⁵²

The late Lord Lyon Sir Thomas Innes of Learney, *himself*, declares that because the character of the “Representer” of a dignity has a “broader character” than that of a general legal “heir of line” that the resettlement of the feudal and armorial ‘representation’ of such dignity upon a “**nominee**” who is a “stranger in blood” is an appropriate exercise of the Scots principle of **Tainstry**.⁵³

Such “**nominations**” by the *previous* Owner of a Barony amounts to a form of (armorial) *quasi-adoption* of his succeeding ‘representative’ in the dignity of the corresponding Barony to be the succeeding Baron in the right and in the place of the former Baron.⁵⁴

6.B. The ‘standing’ or legal capacity of the holder of the ‘dignity of baron; to hold a **Baron Court**:

i) Chief among the “**qualities ... associated with**” ‘the dignity of baron’ consist of the ‘standing’ or legal capacity of a minor Baron to hold a **Baron Court** and to appoint the **Officers** of such in its *ceremonial capacity*:

For the right of a minor baron to hold a Baron Court see generally William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), See the Scottish Office’s ¶2.32, ¶2.38 in “Report on Abolition of the Feudal System”,

ii) The ‘standing’ or legal capacity of a Baron after the ‘appointed day’ to hold a Baron Court for ceremonial purposes and to appoint the Officers and Personnel is *an acquired legal right of property* preserved by the ‘savings clause’ in Sec. 63(1) of the ACT: “nothing in this Act affects the dignity of baron **or any other dignity or office** (whether or not of feudal origin).”

The Baron Court and its Officers constitute “any other dignity or office (whether or not of feudal origin)” referenced in Sec. 63(1) of the ACT.

The ‘savings clause’ in Sec. 63(1) of the ACT leaves in effect the capacity of the Holder of ‘the dignity of baron’ to hold a Baron Court and to appoint Officers of such for ceremonial purposes after the ‘appointed day’. This is because the holding of a Baron Court for ceremonial purposes is not connected with land tenure.⁵⁵

See also *legislative history* to Sec 63 of the ACT set forth in ¶2.40 of the “Report” references the specific intent of Parliament to preserve as much as possible of the ‘noble element in them’ re ‘the social, ceremonial and armorial aspects of baronies’ as ‘non-territorial dignities’ which are ‘severed from landownership’ because ‘the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure’

The Official Recommendation of the “Report” set forth in ¶2.45 thereof declares (c) The new legislation **should not abolish** the dignity of baron **or any other dignity (whether or not of feudal origin)**. Accordingly barons should retain the right to call themselves baron and **should retain any** precedence and **ceremonial** or heraldic **privileges deriving from their barony**”. This includes the acquired legal right to hold a Baron Court for ceremonial purposes and to appoint its Officers.

iii) The Officers of such Baron Courts appointed after the ‘appointed day’ by the Holder of ‘the dignity of baron’ must be recognised officially by the Lord Lyon and (if armigerous) possess a legal right to be granted heraldic additaments of office appropriate to the Officers of such Baron Courts:

See Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), pp. 143–145: *re* “Official Arms and Insignia”

v) Such Officers and Personnel of a Baron Court include the following

(1) **Baron-Baillie**, the President (normal executive officer) of the Baron Court: The Baron-Baillie represented the feudal Baron as the president of the local government of the barony constituting the Baron Court.⁵⁶ The Baron-Baillie is the chief executive officer of a feudal barony who is in charge of its normal operation.⁵⁷ Appointed by ‘letter and seal’ of the feudal Baron, the Baron-Baillie took the oath *de fidei administratione* in order to have sufficient power to preside over the Baron Court.⁵⁸

(2) **Clerk of Baron Court** whose role is to act as secretary of the Baron Court: To keep records and official rolls, to make official copies of Baron Court findings and rulings for appeal to a higher court, to keep the economic and financial records of the barony, to keep records of the proceedings and meetings of the Baron Court, to advise on the law, and may also have functioned as a

notary. See William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), §3, pp. lxxxi to lxxxv.

(3) **Baron-Officer** or **Sergeand** together with subordinate Officers called ‘Pundlars’ or ‘Foresters’, are responsible summoning the Baron Court and keeping order. The Baron-Officer or Sergeand is the orderly officer or enforcement officer of the Baron Court: He summoned the tenants to the meetings of the Baron Court, parties having cases, witnesses involved in cases, and executed the judgements of the Baron Court.⁵⁹

(4) **Dempster** executed the writ of the Baron Court. He was also the Barony’s delegated *ad hoc* war leader or *Judex*. The Dempster or Judex of the Baron Court pronounced its ‘doom’ or sentence.⁶⁰

(5) **Procurator Fiscal** prosecuted complaints and handled financial matters.⁶¹

(6) **Keeper of the Castle and Fortalice**⁶² is in charge of the care of the baronial caput.

(7) **Burlaw Men** appointed by the Baron to assure the ‘Good-neighbourhood’ of the Barony and to see that all observed the ‘styles’ or rules of the Barony. Similar to the other Officers of the Baron Court, the Burlaw Men took the oath *de fideli administratione*. Their arbitrations amongst neighbours were up held by the Baron Court. Such arbitrated disputes amongst the folk in order to preserve the commonweal of the Barony. The number of Burlaw Men depended upon the size of the Barony. Some Barons appointed as many as nine Burlaw Men.⁶³ In essence, Burlaw Men acted much as church ‘elders’.

(8) **Lacqueys** or **Pages** from two to four such attendants accompanied Barons at the Riding of the old Scots Parliament.⁶⁴

(9) **Halberdiers** or guard of the Barony. Each baron had a guard of four to six Halberdiers armed with Lochaber axes.⁶⁵

6.C. Heraldic, nobiliary and status equality of the minor Baronage of Scotland with Chiefs of Clans or Names re selection of (1) territorial ‘duthus plant-badge’ and (2) Slughorn or *crie de guerre* for matriculation *as a matter of legal right* with the Lord Lyon *in his judicial capacity*:

i) Among “any quality ... associated with” the dignity of baron re §63(4) of the ACT is the *heraldic, nobiliary and status equality* of the minor Barons in the Baronage of Scotland with Chiefs of Clans or Names for the purpose of petitioning the Lord Lyon King of Arms as a matter of legal right for the grant of certain heraldic additaments or ‘devices’ attributed to the Chiefs of Clans or Names:

As the *Chef de Famille* and ‘Representer’ of the clan community organised territorially around that barony, minor barons in the Baronage of Scotland are *equal heraldically* with and entitled to the same *nobiliary and status equality* with the Chiefs of Clans or Names for the purpose of qualifying for matriculating with the Lord Lyon as a matter of legal right (1) a territorial ‘duthus plant-badge’ for the baronial clan and (2) a Slughorn or *crie de guerre* for the baronial clan:

ii) **The minor baronage of Scotland originated from the tribal structure of Scotland as *Chef de Famille* or Captain over the clan formed territorially around that barony:**⁶⁶

a) The Scottish family was a mixture of tribal tradition clustering around the *ipso facto* landowner fulfilling the patriarchal chiefly functions as leader of the followers dependant on that land.⁶⁷

b) Brought from Ireland the **Scottish Clan System** is localised around a territorial connection known as a “*duthus*” – inheritance – land having an individual ‘heir’.⁶⁸

c) Noting that “feudalism has aptly been described as ‘the development, the extension of the family’, or one may say *the organisation of the family upon, and in relation to, the Land*” [Proceedings, p. 111]; the essence of baronial jurisdiction – derived *ut baro* primarily from ‘the dignity of baron’ itself – is patriarchal over his local tribe formed ‘horizontally’ around that barony.⁶⁹

d) The Baronage of Scotland is an ‘Order’, ‘Estate’ (of the Scots Realm), and a ‘Rank’ derived from both the patriarchal allodial system of territorial tribalism as well as from the feudal organisation of the family in relationship with the Land.⁷⁰

e) The Baronage is one of the surviving institutions of the tribal structure of Scotland.⁷¹

f) The title of ‘Baron’ was first applied to the captains or chiefs of tribes.⁷²

g) The crux of the dignity of baron lay in its jurisdiction of *jus familiae*.⁷³

h) The noted publicist on Scots feudal law, Sir T. Craig of Riccarton, found that the original jurisdiction of a baron was patriarchal as *Chef de Famille* of all within his barony.⁷⁴

i) Erection of Baronies under feudal charters formalised and perpetuated ancient local tribal institutions by creating the organisational machinery for juristic consolidation of such as territorially-based minor baronial clans in the form of Barony Councils or Courts under the captaincy (i.e., *caput toties progenii*) of the Baron as the augmentation of the extended family connected with the *mansionata* as persons depending upon the chiefships of such Barons “be pretence of ... place of their duelling”.⁷⁵

j) Heraldically, the feudal erection of lands into a noble dignity also ennoble the possessor of that dignity.⁷⁶

k) Feudal erection of land into a dignity makes the possessor noble in the right of such dignity.⁷⁷

l) Minor barons and chiefs of tribes came to be named from or gave names to their *duthus* and began to use such names as “territorial designations”.⁷⁸

m) Craig of Riccarton’s legal “Doctrine is that the earliest Barons were ‘Chiefs of Clans’”.⁷⁹

n) At the head of the **fief** as a greatly enlarged family over which he was invested as suzerain, the **minor baron** was “in reality the *Chef de Famille*”.⁸⁰

o) The baron is the *chef de famille* vis-à-vis his followers.⁸¹

p) The baron is the “Hereditary Representer of an organised community” forming a territorial clan organised around that barony.⁸² A minor baron is the *Chef de Famille* and Hereditary Representer of the ‘following’ of that barony which is a ‘horizontal’ or territorial clan organised around that barony.

q) The Chief acted in concert with a family council composed of the heads of houses which governed the baronial clan through its Baron Court.⁸³

r) ‘Baron’ has always conveyed a person of a certain social status, functioning as an official advisor, and ‘representing’ the people of that Barony.⁸⁴

s) Use of fur on the robes of the Minor Baronage relates to the original character of Barons as *Capitani Tribuum* or chiefs of territorially-based clans indicating the *equivalency* of territorially-based clans led by Barons holding the caput of that Barony as the basis for being *Chef de Famille* vis-à-vis personally-based clans led by the genealogical ‘Representer’ of the founder of that family as the basis for his Chiefship.⁸⁵

t) The detailed analysis of the late Lord Lyon Sir Thomas Innes of Learney in “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111–163, definitively establishes that a Minor Baron of Scotland is the *Chef de Famille* and ‘Hereditary Representer’ of the local clan formed around his barony.

iii) Minor barons in the Baronage of Scotland are equivalent in heraldic, nobiliary and patrimonial status to the Chiefs of Clans and Names:⁸⁶

a) The essence of baronial jurisdiction was patriarchal jurisdiction as the *Chef de Famille* of that Barony.⁸⁷

- b) The original jurisdiction of Barons was found by Craig to be patriarchal as chiefs of clans with the Baron reigning as *Chef de famille*.⁸⁸
- c) Minor barons were both magnates of their fiefs as well as “representer” or *chef de famille* of the community of persons forming a baronial clan within the preview of their baronial court.⁸⁹
- d) The ‘essence’ of the jurisdiction of a Baron is patriarchal and familial as an *incorporeal heritable fief* and is identical to the ‘baronial jurisdiction’ possessed by the Chief of a Scots Clan or Name who lacks land erected *in liberam baroniam*. Such baronial patriarchal familial jurisdiction is derived *ut baro* from ‘the incorporeal dignity of baron’ rather than from land per se.⁹⁰
- e) Such patriarchal jurisdiction *ut baro* is derived from ‘the dignity of baron’, per se, rather than from lands erected *in liberam Baroniam*.⁹¹
- f) The patriarchal jurisdiction derived *ut baro* from ‘the dignity of baron’ is the same *captaincy of communities* enjoyed by the Chiefs of Scots Clans and Names: Such patriarchal jurisdiction *ut baro* provided the machinery for organisation of local communities under the Baron as *Chef de Famille* for all connected with or dependant upon his House by their place of residence. Such jurisdiction is derived from the dignity of baron.⁹²
- g) Precisely the same type of patriarchal baronial jurisdiction is possessed by the chief of a Scots Clan or Name who for this reason is a baron *ut baro* without possessing land erected *in liberam baroniam*.⁹³
- h) The Chief of a Clan or Name is also a baron⁹⁴ who exercises *personal jurisdictional rights ut baro* over his Clan or Name derived from ‘the dignity of baron’ rather than the *territorial jurisdictional rights* of a minor baron arising from erection of Land *in liberam baroniam*.⁹⁵
- i) Minor barons are also *Chef de Famille*, and the term “chief” is closely associated with feudal houses which are recognised as being essentially “clannish”.⁹⁶
- j) The personal familial jurisdiction of and grants of supporters to ‘chiefs of old families’ evidence Craig’s doctrine that the earliest Barons were, in fact, *Capitani Tribuum* or Chiefs of Clans and Names whose territorially-based baronial clans are incorporeal heritable noble fiefs: An “Honourable Clan”.⁹⁷
- k) Because Scotland never had the English Statute Quia Emptoris, the Minor Baronage retained their title, status, courts, and character.⁹⁸
- l) The legal position of the Minor Baronage of Scotland as part of ‘The Nobility’ in its constitutional sense and as an ‘order’ or an ‘Estate’ of the Scots Realm is statutorily defined by the Statute of 20th December 1567 (*A. P. S.*, Vol. III, p. 40).⁹⁹
- m) Patriarchal jurisdiction of the Chief was exercised in the family “tribunal of the seigneur” in the form of the Baron Court.¹⁰⁰
- n) The Barony Court “was a constitutional ‘family’ unit governing itself” as a natural family organisation through ceremonial, tradition, and custom into what is a territorially-based Scots Clan.¹⁰¹
- o) Identical with the Chief of a Clan or Family, the Baron’s towerhouse functioned as a ‘centre of local government’ to support public policy, assisting the poor, and promoting friendship amongst neighbours.¹⁰²
- p) Craig of Riccarton’s legal “Doctrine that the earliest Barons were ‘Chiefs of Clans’” indicates that Baronies are, in essence, territorially-based clans, whose **organisational vehicle** is the Baron Court, under the chiefship of that Baron as *Chef de famille*.¹⁰³
- q) The Baron Court serves the same purpose that heraldic cadency does for organising ‘personal’ Clans formed around the Chief of a Name and undifferenced Arms: Constituting the *operating staff* of this ‘horizontal’ Baronial Clan, the officers of a Baron Court serve the same *non-judicial*

social and ceremonial functions which Clan Officers, Branch Chiefs, Chieftains, and sub-chiefs or Heads of armorial cadet Houses serve in 'personal' clans formed around the Chief of a Name.

r) Such territorially-based 'horizontal' clans under a Baron may be compared with the personally-based 'vertical' clans in which heraldic cadency provides the organisational mechanism: Heraldic Cadency (i.e., the 'Stoddard system') organises personally-based 'vertical' clans into Main Branches under Branch Chiefs, Chieftainships within each Branch, and sub-chiefships of the sub-branches of each Branch. Thus, in a territorially-based 'horizontal' clan under a Baron as *Chef de famille* the Baron Court or Council provides the same **organisational mechanism** as heraldic cadency provides for the personally-based 'vertical' clans. Where the Baron Court has been revived, the Barony possesses the *organisational capacity* to extend itself into a clan.

s) A baronial clan derived 'horizontally' from the territory of a minor barony **differs** from a genealogical 'vertical' personal clan in that the *Chief de Famillee* or Hereditary Representer of the baronial clan is **always** the minor baron. Therefore, a minor baron is *Chef de Famillee* and Hereditary Representer of the **territorial clan** formed around his Barony in precisely the same manner that the chief of a clan or family is the patriarchal chief of the **personal clan** formed of all those who bear his Name or the Names of related Septs.

t) A Baron as the *Chef de Famille* and Hereditary Representer of the 'horizontal' or territorial baronial clan formed around his barony possess the legal capacity to extend the membership of his baronial clan through the time-honoured legal mechanism of adoption into the clan, which in former times was accomplished via 'Bonds of Man-Rent'.¹⁰⁴ 'Adoption' implies that those so adopted into a baronial clan need not be genealogically related.

u) As an issue of "social status or precedence" or "a question of social dignity or precedence", as per Lord Wark, official recognition by Lyon of a Baron as the *Chef de Famillee* and Hereditary Representer of the "Noble Community" or "Honourable Clan" formed around his Barony and organised by his Baron Court is a **matter explicitly "recognised by law"** as statutorily transformed by §63(4) of the ACT into a concrete particular acquired legal right of "incorporeal heritable property" vesting in the Baron as manifestly included among "**any quality or precedence associated with**" the dignity of Baron.¹⁰⁵

iv) Minor barons in the Baronage of Scotland are entitled to the same heraldic insignia and regalia of Chiefs of Clans and Names:¹⁰⁶

a) Scots Minor Barons are the nobiliary "equivalent to the *Hoch-Adel* of the Continent, and of the Chiefs of Continental Baronial Houses".¹⁰⁷

b) A close relationship exists between the minor barony and the clan system.¹⁰⁸

c) Scotland's Minor Barons are "*Chef de Famille*" or "Tribal Patriarch", as reflected in their robes and chapeau.¹⁰⁹

d) The **Chapeau** or Cap of Maintenance of a minor baron is "the parental cap underlying ... the whole principle of barony and chiefship".¹¹⁰

e) The Minor Baronage of Scotland wore the 'cap of dignity' to denote that they were 'the "Fathers" of the great families' forming their respective baronies under the King as 'Father of all the Fathers'.¹¹¹

f) The early Scottish barons were the chiefs of clans" and used the 'white wand' associated with such Chiefship.¹¹²

g) The official white wand of both the Chief and a Minor baron evidences the connection of baronial jurisdiction with chiefship of a family or branch.¹¹³

h) Minor barons in the Baronage of Scotland is the equivalent of clan chiefs.¹¹⁴

i) The minor baron is the exact equivalent of the Chief of a Clan or Family.¹¹⁵

j) Chiefship was later annexed to the caput of a *duthus* (minor barony), and, even later, to the arms and seal.¹¹⁶

k) A Chief is, in essence, a baron who exercised *personal jurisdictional rights* rather than the *territorial jurisdictional rights* of a minor baron.¹¹⁷

l) A minor barony is the “formalised equivalent” of the heraldically “organised family” of the Clan with the baron as *Chef de Famille* as the “Representer” or “sacred embodiment of the race” of that barony organised via the Baron Court into a baronial clan.¹¹⁸

m) A minor baron holding the *caput* of a barony ought to be considered the “chief” of an honourable community or baronial clan organised around that barony.¹¹⁹

n) A clan is a recognised legal entity which consists of a ‘community’ based upon *either* genealogical descent *or* place of residence which depends upon the direction of a Chief.¹²⁰

o) A baronial clan based territorially around a minor barony meets the heraldic definition of ‘what’ constitutes a clan.¹²¹

p) Because a minor baron is the *exact equivalent* of the chief of a family or clan as the *Chef de famille* and ‘representer’ of the community organised around that barony and within the pre-view of its Baron Court, a minor baron is to be regarded as *heraldically equal* to a chief of a Clan or a Family and is entitled to the heraldic additaments related to such chiefship.

Entitlement of a minor baron derived from his *heraldic equality* with the Chiefs of Clans and Names to be granted *as a matter of legal right* by Lyon (1) a *totem ‘duthus’* plant badge to be the ‘district badge’ for his barony and (2) Lyon a ‘slughorn’ or secondary motto running underneath the compartment is included amongst “any quality or precedence associated with” the dignity of baron statutorily transformed by §63(4) of the ACT into concrete individual acquired legal rights of intangible property and statutorily incorporated by the use of the *verb “includes”* in §63(4) of the ACT as an integral component of the ‘dignity of baron’ ... when read in conjunction with “any heraldic privilege incidental to” the dignity of baron likewise statutorily transformed by §63(4) into concrete individual acquired legal rights of intangible property and likewise statutorily incorporated by the use of the *verb “includes”* in §63(4) of the ACT as an integral component of the ‘dignity of baron’ ... when both of which are read in conjunction with the *savings clause* in the second clause of §63(1) of the ACT that “nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin)”.

v) Minor barons are entitled to select *totum ‘duthus’* plant-badges for use as a ‘district badge’ for the following of the minor baronial fief for matriculation with the Lord Lyon as a matter of legal right:

In Scotland the sprig of a tree, flower, or shrub is used as a mystic ‘fife-plant’ as a totem of commonality amongst the ‘following’, group, or extended family of a particular clan or fife. Sir George Mackenzie refers to such mystic ‘fife-plants’ or totem ‘plant-emblems’ as “**Devices**”.¹²² The most famous of such sprigs used as a totem badge of commonality is the Thistle.

Such plant emblems are, in essence, the mystic ‘race-plant’ or the *totum ‘duthus-badge’* for a particular fife, barony, or group to be worn as a means of distinction by all those considered to be the followers of that fife, minor barony, or family.

As the ‘district badge’ of a minor barony *totum ‘duthus’* plant badges constitute an emblem of commonality used to identify the following of such fife. Use of such plant as a common badge helped to organise the following. Such plant emblems serve as the local territorial *totum ‘duthus-badge’* for the district of a particular barony, fife, or ‘country’.

Use of a particular plant as a mystic totem by the followers, adherents, etc of a minor barony, fife or clan group serves the same purpose that the use of the Thistle does as the Scottish National Badge for indicating Scottish identity. Heraldically, the term ‘plant badge’ includes both (1) the ‘race-plant’ of a particular tribe, clan, or extended family as well as (2) the local territorial ‘duthus-badge’ of particular district, fife, barony, or ‘country’.

In Scotland such plant-emblems are normally worn as a sprig affixed behind the strap-and-buckle badge worn on the bonnet along side eagle’s feathers. A local subsidiary fife or district badge

may be born along with a major clan-group badge worn joined with a clan badge behind the brooch affixed to the cap.

Compatible with the designation of an official 'district' tartan by the Chief of a Clan or Name; as *Chef de Famille* of his following, the minor baron may properly designate the *totem 'duthus'* plant badge as the endorsed 'district' badge for his barony.¹²³

Concerning the official designation of tartans by Lairds and *chefs de familles* in modern Lyon Office proceedings, "the opinion of a chief ... is in general the appropriate foundation for a genuine *clan* tartan".¹²⁴

As the *Chef de Famille* or 'Representer' of the community organised around his barony and its Baron Court, a minor baron possesses the same 'standing' as does a clan chief to select a *totem 'duthus'* plant badge to be the 'district badge' for his barony whose adoption as a 'heraldic device' may be later sought from the Lyon Court.

As authority for the above see:

- J. H. Stevenson, Heraldry in Scotland (Glasgow, 1914), p. 226,
- Sir Thomas Innes of Learney, The Clans, Septs & Regiments of the Scottish Highlands (8th ed, 1970), pp. 124, 525, 543–554,
- Sir George Mackenzie, Science of Heraldry, Edinburgh, 1680, Chap. xxxi, p. 98,
- Alexander Nisbet, System of Heraldry, Edinburgh, 1722, Vol. II, Part Fourth, Chap. VI, "Of Mottos, Cries of War, and Devices", pp. 25–26,
- George Seaton, The Law and Practice of Heraldry in Scotland (Edinburgh, 1863), p. 259,

Collins Scottish Clan & Family Encyclopaedia by George Way of Pleau and Romilly Squire report an almost infinite variety of different plants, flowers, fruits, berries, grasses, mosses, and firs used heraldically as plant-badges or, more properly, "heraldic devices".

Entitlement of a minor baron derived from his *heraldic equality* with the Chiefs of Clans and Names to be granted *as a matter of legal right* by Lyon a *totem 'duthus'* plant badge to be the 'district badge' for his barony is included amongst "any quality or precedence associated with" the dignity of baron statutorily transformed by §63(4) of the ACT into concrete individual acquired legal rights of intangible property and statutorily incorporated by the use of the *verb* "**includes**" in §63(4) of the ACT as an integral component of the 'dignity of baron' ... when read in conjunction with "any heraldic privilege incidental to" the dignity of baron likewise statutorily transformed by §63(4) into concrete individual acquired legal rights of intangible property and likewise statutorily incorporated by the use of the *verb* "**includes**" in §63(4) of the ACT as an integral component of the 'dignity of baron' ... when both of which are read in conjunction with the *savings clause* in the second clause of §63(1) of the ACT that "nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin)".

vi) Minor barons are entitled to select a slughorn or *crie de guerre* for use by the following of the minor baronial fief for matriculation with the Lord Lyon as a matter of legal right:

Acquired Legal Right of "incorporeal property" re §63(4) of the ACT to be allowed by Lyon in Letters Patent *issued as a matter of legal right* a '**slughorn**' to be placed on or underneath the compartment:

Having *institutional authority* in Scotland, Mackenzie states that the Slughorns, Slogans, or *crie de guerre* which run on or underneath the compartment of an achievement of arms represent the 'gathering place' where the followers should meet or as a 'Watch-Word' to the family.¹²⁵

Respecting the enjoyment of such Slogans, Mackenzie notes in Science of Heraldry, p. 98, that "they were of allowed to any but to the Chiefs of Clans, and to **great men**, who had many followers, Vassals, and Dependens; ... *Menestier* allows them only to such as had power of carrying a Displayed Banner, ..."

This description clearly encompasses a feudal Baron who did have ‘many followers, vassals, and Dependens’. A feudal Baron is, in essence, a *territorial chief over his Barony* in the same manner that the Chief of a Clan is a *patriarchal chief over his ‘Name’ or extended family*. Because a feudal Baron is clearly heraldically entitled to a ‘Displayed Banner’, a feudal Baron comes within the purview of those entitled to a Slogan.

Mackenzie notes that the actual ‘slogan’ may properly be taken from a variety of sources.¹²⁶

Also quoting Menestrier, *Treatise of Exterior Ornaments*, Nesbitt cites four additional sources for a Slogan, Slughorn, or *Crie de guerre* from cries of resolution, invocation, exhortation, and rallying.¹²⁷

Particular to Scotland the Slogan or Slughorn frequently come from the designated meeting place of the Laird’s following or principal messuage of his Lands and Barony.¹²⁸

Most of the Scottish heraldic slogans are the name of the meeting point of the Laird’s following.¹²⁹

The remainder of such Scottish heraldic cries are those which arouse a Laird’s following to its pride.¹³⁰

The actual ‘words’ of such may be taken appropriately from the following: (1) Name of the Dignity or of the Laird; (2) *Locus* or principal gathering-place of the following of the Dignity; (3) Name of a patron saint; (4) Design or purpose of the following; (5) Happy Incident related to the Laird’s family; (6) Declaration of resolution; (7) Invocations to God; (8) Exhortations; and (9) Cries of Rallying.

Entitlement of a minor baron derived from his *heraldic equality* with the Chiefs of Clans and Names to be granted as a matter of *legal right* by Lyon a ‘slughorn’ or secondary motto running underneath the compartment is included amongst “any quality or precedence associated with” the dignity of baron statutorily transformed by §63(4) of the ACT into concrete individual acquired legal rights of intangible property and statutorily incorporated by the use of the verb “includes” in §63(4) of the ACT as an integral component of the ‘dignity of baron’ ... when read in conjunction with “any heraldic privilege incidental to” the dignity of baron likewise statutorily transformed by §63(4) into concrete individual acquired legal rights of intangible property and likewise statutorily incorporated by the use of the verb “includes” in §63(4) of the ACT as an integral component of the ‘dignity of baron’ ... when both of which are read in conjunction with the *savings clause* in the second clause of §63(1) of the ACT that “nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin)”.

FINDINGS OF THE BARONS COURTS

On 27th July 2004 the Barons Courts of Prestoungrange and Dolphinstoun pronounced the following interlocutor:

Finds in fact:

- 1) That intangible incorporeal property such as (1) territorial *duthus* ‘plant-badges’; (2) slughorns; and (3) heraldic additaments such as flags, compartments and similar devices are *acquired* legal rights of intangible ‘incorporeal property’ having a nominal value of forty shillings or less.
- 2) That the precise composition of the individual components or incidences of “any quality or precedence associated with, and any heraldic privilege incidental to” the ‘dignity of baron’ in §63(4) of the ACT may be determined judicially by a court of law by reference to the following criteria:
 - 2)A. Actual grants of particular hereditary baronial heraldic additaments, official declarations of ‘baronial status’ and precedence made in modern times to feudal or minor barons of Scotland by var-

ious Lord Lyons before the ACT received Royal Assent on 9th June 2000 to evidence concretely the precise composition of the particular individual component heraldic additaments encompassed by the term “any heraldic privilege incidental to’ the ‘dignity of baron’ as used in §63(4) of the ACT as well as the precise individual constituents, declarations, or components of “any quality or precedence associated with” the ‘dignity of baron’ as used in §63(4) of the ACT.

2)B. The writings of the most authoritative publicists upon the Law of Arms as applied in Scotland specifically the following:

- Sir George Mackenzie of Rosenhaugh, The Science of Heraldry, Edinburgh, 1680, declared to be of *institutional authority* in Scotland
- Alexander Nisbet, System of Heraldry, Edinburgh 1722, in two Volumes
- George Seton, The Law and Practice of Heraldry in Scotland, Edinburgh, 1863
- J. H. Stevenson, Heraldry in Scotland, Glasgow, 1914
- Lord Lyon Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland”, Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111–163, (Session 1944–45)
- Lord Lyon Sir Thomas Innes of Learney, Scots Heraldry, 2nd Edition, 1956
- Lord Lyon Sir Thomas Innes of Learney, The Clans, Septs, and Regiments of the Scottish Highlands 8th Edition, 1970
- Lord Lyon Sir Thomas Innes of Learney, The Tartans of the Clans and Families of Scotland, 5th Edition, 1950
- Lord Lyon Sir Malcolm Innes of Edingight, Scots Heraldry, 3rd Edition, 1978.

3) That the precise composition of the individual components of “any heraldic privilege incidental to” the ‘dignity of baron’ as used in §63(4) of the ACT include the following heraldic additaments and privileges:

3)A. The ‘Standing’ or legal capacity of the owner of the ‘dignity of baron’ to petition the Lord Lyon for a grant of hereditary Arms on the basis of the possession or ownership of this dignity

3)B. Baronial Chapeau: Gules, furred Ermine, tasselled Or

3)C. Feudo-Baronial Mantle or Robe of Estate

3)D. Banner, three feet square, ensigned on the top by the baronial chapeau

3)E. Steel Helmet of three grills, garnished with gold, or Great Tilting Helmet garnished with gold

3)F. Badge

3)G. Standard of four yards, ensigned on the top by the Baronial Chapeau

3)H. Guidon of eight feet, ensigned on the top by the baronial chapeau

3)I. Pennon of four feet, ensigned on the top by the baronial chapeau

3)J. Pinsel of four and one-half feet by two feet, ensigned on the top by the baronial chapeau

3)K. Ensign, ensigned on the top by the baronial chapeau

3)L. Streamer of four yards, ensigned on the top by the baronial chapeau

3)M. Compartment representing the fife of the barony in the form of specific local geographical and historical features constituting the noble feus

- 3)N. Supporters for the representative of the baronial house entitled to sit in the old Scots Parliament before 1587
- 3)O. Heraldic additaments of the Officers of a Baron Court as official insignia of office:
- i) Cap of Justice for Baron Baillies
 - ii) Key in bend for Keeper of Baronial Caput
 - iii) Horn and white wand for Baron Sergeand
- 4) That the precise composition or components of amongst “any ... precedence associated with” the ‘dignity of baron’ as used in §63(4) of the ACT include the following:
- 4)A. The precedence of feudal or minor Barons is after Knights and before Esquires, and before doctors of divinity, law and physics and that rank among themselves according to the date of the erection of their lands into a barony.
- 4)B. Use of the title “Baron of X [*nomen dignitatis*]” as part of the name of the owner or holder of the ‘dignity of baron’
- 4)C. Addition of the *nomen dignitatis*, ‘fife name’ or ‘territorial designation’ to the surname of the owner or holder of the ‘dignity of baron’.
- 4)D. Use of the prefix of “The Much Honoured” as in ‘The Much Honoured John Doe of Glenroe, Baron of Glenroe’
- 4)E. Official Lyon Court recognition of ‘baronial status’ consisting of the following:
- i) That the Baronage of Scotland is an ‘order’, ‘estate’ (of the Scots’ Realm) and a ‘Rank’
 - ii) Statement in official Lyon Court documents of the entitlement to be received as “**Hoch-Adel**” on the Continent
 - iii) Statement in Lyon Court documents that minor barons are officially the ‘**equivalent to the chiefs of Baronial Houses on the Continent of Europe**’
 - iv) Statement in Lyon Court documents that minor barons statutorily constitute ‘**a part of the nobility**’ in the Statute of 20 Dec 1567
 - v) Statement in Lyon Court documents that minor barons constitute a ‘**titled nobility**’ and that the estate of the Baronage are of the ancient feudal nobility of Scotland
 - vi) Declaration of ‘baronial status’ in official Lyon Court documents stating the following:

“THAT the Petitioner is desirous of the declaration that the feudal Baronage of Scotland is a distinct ‘Estate’ being in terms of Statute 1567, cap. 33, a ‘part of the nobility’; that the Minor Barons of Scotland are, and have been both in this nobiliary Court and in the Court of Session recognised as a ‘titled nobility’ and that the estate of the Baronage (i.e. *Barones Minores*) are of the ancient Feudal Nobility of Scotland; and that the Petitioner, as Representer of the Baronial race of John Doe of Glenroe, Baron of Glenroe is of status equivalent to that designated Hoch Adel and of nobiliary rank corresponding to the Chiefs of Baronial Families in the Feudal Baronages of European Kingdoms [Sir Thomas Craig of Riccarton in ‘Jus Feudale’, book I chapter 8 section 2 re Baron in the Feudal Baronage of Scotland:- “habentur de Baronibus qui a jure feudali descendant cum ante ea tempora Capitanei tantum Tribuum discerentur”] and that the foresaid Ensigns Armorial are tesseræ Nobilitatis by demonstration of which the Petitioner and his lawful successors in the same are to be so accounted, taken and received, Amongst all Nobles and in all places of Honour.”
- 5) That the precise composition or components of amongst “any qualities ... associated with” the ‘dignity of baron’ as used in §63(4) of the ACT include the following:

- 5)A. Personal ennoblement of the holder of the ‘dignity of baron’
- 5)B. The ‘standing’ or legal capacity of the holder of the ‘dignity of baron’ to hold a Baron Court and to appoint the following Officers and personnel of that Baron Court:
- i) Baron-Baillie
 - ii) Clerk of Baron Court
 - iii) Baron-Officer or Sergeand
 - iv) Dempster
 - v) Procurator Fiscal
 - vi) Keeper of the Castle and Fortalice or baronial caput
 - vii) Byrlaw Men
 - viii) Lacqueys or Pages
 - ix) Halberdier Guards
- 5)C. The *heraldic, nobiliary, and status equality* of the minor Baronage of Scotland with the Chiefs of Clans or Names re selection of the following heraldic additaments or devices for matriculation with the Lord Lyon:
- i) Territorial ‘duthus plant-badge’ heraldic device
 - ii) Slughorn or *crie de guerre*

Finds in Law:

- 1) That having a nominal value of twenty shillings or less, *acquired* legal rights of intangible ‘incorporeal property’ such as (1) territorial *duthus* ‘plant-badges’; (2) slughorns; and (3) heraldic additaments such as flags, compartments and similar devices fall within the purview of the jurisdiction of the Barons Courts for the purpose of issuing a Declarator of Entitlement stating the legal rights of property ‘vesting’ in the armigerous owners or holders of the ‘dignity of baron’ – encompassing the entire feudal or minor Baronage of Scotland – to be granted such devices or heraldic additaments *as a matter of legal right* by the Lord Lyon King of Arms *in his judicial capacity* as judge of the particular court having statutory first instance jurisdiction over such matters.
- 2) That the explicit statutory declaration made in §63(4) of the Abolition of Feudal Tenure (Scotland) 2000 ACT [hereinafter the ‘ACT’] that “In this section ... “dignity” includes any quality or precedence associated with, and any heraldic privilege incidental to, a dignity” ***statutorily transformed*** all such referenced ‘qualities’, ‘precedences’ and ‘any heraldic privilege’ associated with or incidental to the ‘dignity of baron’ ***into particular individual concrete acquired legal rights of intangible property*** ‘vesting’ personally in the owner or holder of the ‘dignity of baron’ as “incorporeal heritable property” under §63(2) of the ACT as such existed upon the day of Royal Assent to the ACT: 9th June 2000.
- 3) That use of the *verb* “**includes**” in §63(4) of the ACT ***statutorily incorporates*** all such particular individual concrete acquired legal rights of property ‘vesting’ in the owner or holder of the ‘dignity of baron’ – specifically, “any quality or precedence associated with, and any heraldic privilege incidental to” the ‘dignity of baron’ – as an integral ‘bundle’ of such component acquired legal rights of property **into the *essence* or the *very fabric, fibre and substance*** of the ‘dignity of baron’ as “incorporeal heritable property” under §63(2) of the ACT as such existed upon the day of Royal Assent to the ACT: 9th June 2000.
- 4) That when the *savings clause* in §63(1), 2nd clause, of the ACT that “**nothing** in this Act ***affects*** the dignity of baron or *any other* dignity or office (whether or not of feudal origin)” ... is read in conjunction with the statutory transformation of “any quality or precedence associated with,

and any heraldic privilege incidental to” the ‘dignity of baron’ effected by §63(4) of the ACT into particular individual acquired legal rights of intangible property ‘vesting’ personally in the holder of the ‘dignity of baron’ ... and the statutory incorporation by use of the verb “**includes**” in §63(4) of the ACT of all such particular individual concrete acquired legal rights of property into an integral component ‘bundle’ constituting the essence or the very fabric, fibre, and substance of the ‘dignity of baron’ as “incorporeal heritable property” re §63(2) of the ACT; ... the *savings clause* in §63(1), 2nd clause, of the ACT **statutorily bars** the *change in legal status* of baronies or of “any other dignity or office (whether or not of feudal origin)” – this refers to the Baron Courts and their Officers – worked by the abolition of feudal tenure in the ACT from ‘**affecting**’ these particular individual acquired legal rights of intangible property ‘bundled’ as integral components constituting as a ‘whole’ the actual ‘dignity of baron’ (or Officers of Baron Courts):

- 4)A. Pursuant to the *savings clause* in §63(1), 2nd clause, of the ACT, **only** Parliament possesses the **competence** to change, to alter, to abolish, to ignore, or to refuse to recognise **any** of the particular individual acquired legal rights of intangible property encompassed within the meaning of §63(4) of the ACT and statutorily incorporated by use of the verb “**includes**” in §63(4) of the ACT into integral components constituting the *essence* of the ‘dignity of baron’.
- 4)B. The manifest *Parliamentary intent* of the *savings clause* in §63(1), 2nd clause, of the ACT is **to preserve unaltered** the particular ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ *associated with* or *incidental to* “the dignity of baron or any other dignity or office (whether or not of feudal origin)” statutorily transformed by §63(4) of the ACT into individual acquired rights of intangible property forming ‘the dignity of baron’ ... as well as **to bar any type of change whatsoever** to such acquired rights of incorporeal property statutorily incorporated by use of the verb “**includes**” into an integral ‘bundle’ of components forming the ‘dignity of baron’ by any Government agency or official, including the Lord Lyon.
- 4)C. The *savings clause* in §63(1), 2nd clause, of the ACT **statutorily removes** whatever capability the Lord Lyon might *otherwise* have possessed *before* the ACT to alter, abridge, change, ignore, abolish, or refuse to recognise **any** of those matters encompassed by “any quality or precedence associated with, and any heraldic privilege incidental to” the ‘dignity of baron’ (or the dignity of Officers of Baron Courts) *statutorily transformed* by §63(4) of the ACT into particular individual concrete acquired legal rights of intangible property ‘vesting personally in the owner or holder of the ‘dignity of baron’ and *statutorily incorporated* by use of the verb “**includes**” into a ‘bundle’ of integral components constituting the ‘dignity of baron’.
- 5) That because §63(4) of the ACT statutorily transformed the individual components, heraldic additaments, features, and privileges of “any heraldic privilege incidental to” the ‘dignity of baron’ into particular individual concrete or ‘actual’ *acquired* legal rights of intangible property ‘vesting’ in the owner or holder of the ‘dignity of baron’ as “incorporeal heritable property” under §63(2) of the ACT ... and because use of the verb “**includes**” in §63(4) of the ACT statutorily incorporates all such particular individual concrete acquired legal rights of property as an integral ‘bundle’ property **into** the *essence* or the **very fabric, fibre and substance** of the ‘dignity of baron’ as incorporeal heritable property” under §63(2) of the ACT as such existed upon the day of Royal Assent to the ACT, 9th June 2000; ... the armigerous holder or owner of the ‘dignity of baron’ possesses a **legal right of property** to be granted the following heraldic additaments or devises **as a matter of legal right** by the Lord Lyon King of Arms acting **in his judicial capacity** as judge of the particular court having statutory first instance jurisdiction over such matters:
- 5)A. The ‘Standing’ or legal capacity of the owner of the ‘dignity of baron’ to petition the Lord Lyon for a grant of hereditary Arms on the basis of the possession or ownership of this dignity.
- 5)B. Baronial Chapeau: Gules, furred Ermine, tasselled Or

- 5)C. Feudo-Baronial Mantle or Robe of Estate
- 5)D. Banner, three feet square, ensigned on the top by the baronial chapeau
- 5)E. Steel Helmet of three grills, garnished with gold, or Great Tilting Helmet garnished with gold
- 5)F. Badge
- 5)G. Standard of four yards, ensigned on the top by the Baronial Chapeau
- 5)H. Guidon of eight feet, ensigned on the top by the baronial chapeau
- 5)I. Pennon of four feet, ensigned on the top by the baronial chapeau
- 5)J. Pinsel of four and one-half feet by two feet, ensigned on the top by the baronial chapeau
- 5)K. Ensign, ensigned on the top by the baronial chapeau
- 5)L. Streamer of four yards, ensigned on the top by the baronial chapeau
- 5)M. Compartment representing the fife of the barony in the form of specific local geographical and historical features constituting the noble feus
- 5)N. Supporters for the representative of the baronial house entitled to sit in the old Scots Parliament before 1587
- 5)O. Heraldic additaments of the Officers of a Baron Court as official insignia of office:
 - i) Cap of Justice for Baron Baillies
 - ii) Key in bend for Keeper of Baronial Caput
 - iii) Horn and white wand for Baron Sergeand
- 6) That because §63(4) of the ACT statutorily transformed the precise composition or components included amongst “any ... precedence associated with” the ‘dignity of baron’ into particular individual concrete or ‘actual’ *acquired* legal rights of intangible property ‘vesting’ in the owner or holder of the ‘dignity of baron’ as “incorporeal heritable property” under §63(2) of the ACT ... and because use of the *verb* “**includes**” in §63(4) of the ACT statutorily incorporates all such particular individual concrete acquired legal rights of property as an integral ‘bundle’ property **into** the *essence* or the *very fabric, fibre and substance* of the ‘dignity of baron’ as incorporeal heritable property” under §63(2) of the ACT as such existed upon the day of Royal Assent to the ACT, 9th June 2000; ... the armigerious holder or owner of the ‘dignity of baron’ possesses a **legal right of property** to be accorded or to have officially recognised the following ‘precedences’ **as a matter of legal right** by the Lord Lyon King of Arms acting **in his judicial capacity** as judge of the particular court having statutory first instance jurisdiction over such matters:
 - 6)A. Assignment of the precedence of feudal or minor Barons after Knights and before Esquires, and before doctors of divinity, law and physics and that rank among themselves according to the date of the erection of their lands into a barony.
 - 6)B. Use of the title “Baron of X [*nomen dignitatis*]” as part of the name of the owner or holder of the ‘dignity of baron’
 - 6)C. Addition of the *nomen dignitatis*, ‘fife name’ or ‘territorial designation’ to the surname of the owner or holder of the ‘dignity of baron’.

6)D. Use of the prefix of “The Much Honoured” as in ‘The Much Honoured John Doe of Glenroe, Baron of Glenroe’

6)E. Official Lyon Court recognition of ‘baronial status’ consisting of the following:

- i) That the Baronage of Scotland is an ‘order’, ‘estate’ (of the Scots’ Realm) and a ‘Rank’
- ii) Statement in official Lyon Court documents of the entitlement to be received as “Hoch-Adel” on the Continent
- iii) Statement in Lyon Court documents that minor barons are officially the ‘equivalent to the chiefs of Baronial Houses on the Continent of Europe’
- iv) Statement in Lyon Court documents that minor barons statutorily constitute ‘a part of the nobility’ in the Statute of 20 Dec 1567
- v) Statement in Lyon Court documents that minor barons constitute a ‘titled nobility’ and that the estate of the Baronage are of the ancient feudal nobility of Scotland
- vi) Declaration of ‘baronial status’ in official Lyon Court documents stating the following:

“THAT the Petitioner is desirous of the declaration that the feudal Baronage of Scotland is a distinct ‘Estate’ being in terms of Statute 1567, cap. 33, a ‘part of the nobility’; that the Minor Barons of Scotland are, and have been both in this nobiliary Court and in the Court of Session recognised as a ‘titled nobility’ and that the estate of the Baronage (i.e. *Barones Minores*) are of the ancient Feudal Nobility of Scotland; and that the Petitioner, as Representer of the Baronial race of John Doe of Glenroe, Baron of Glenroe is of status equivalent to that designated Hoch Adel and of nobiliary rank corresponding to the Chiefs of Baronial Families in the Feudal Baronages of European Kingdoms [Sir Thomas Craig of Riccarton in ‘Jus Feudale’, book I chapter 8 section 2 re Baron in the Feudal Baronage of Scotland: “habentur de Baronibus qui a jure feudali descendant cum ante ea tempora Capitanei tantum Tribuum discerentur”] and that the foresaid Ensigns Armorial are tesserae Nobilitatis by demonstration of which the Petitioner and his lawful successors in the same are to be so accounted, taken and received, Amongst all Nobles and in all places of Honour.”

7) That because §63(4) of the ACT statutorily transformed the precise composition or components included amongst “any qualities ... associated with” the ‘dignity of baron’ into particular individual concrete or ‘actual’ *acquired* legal rights of intangible property ‘vesting’ in the owner or holder of the ‘dignity of baron’ as “incorporeal heritable property” under §63(2) of the ACT ... and because use of the *verb* “**includes**” in §63(4) of the ACT statutorily incorporates all such particular individual concrete acquired legal rights of property as an integral ‘bundle’ property **into** the *essence* or the *very fabric, fibre and substance* of the ‘dignity of baron’ as incorporeal heritable property” under §63(2) of the ACT as such existed upon the day of Royal Assent to the ACT, 9th June 2000; ... the armigerous holder or owner of the ‘dignity of baron’ possesses a **legal right of property** to be accorded or to have officially recognised the following ‘qualities’ **as a matter of legal right** by the Lord Lyon King of Arms acting **in his judicial capacity** as judge of the particular court having statutory first instance jurisdiction over such matters:

7)A. Personal ennoblement of the holder of the ‘dignity of baron’

7)B. The ‘standing’ or legal capacity of the holder of the ‘dignity of baron’ to hold a Baron Court and to appoint the following Officers and personnel of that Baron Court:

- i) Baron-Baillie
- ii) Clerk of the Baron Court
- iii) Baron-Officer or Sergeand
- iv) Dempster

- v) Procurator Fiscal
- vi) Keeper of the Castle and Fortalice or Baronial Caput
- vii) Byrlaw Men
- viii) Lacqueys or Pages
- ix) Halberdier Guards

7)C. The *heraldic, nobiliary, and status equality* of the minor Baronage of Scotland with the Chiefs of Clans or Names re selection of the following heraldic additaments or devices for grant or matriculation *as a matter of legal right* to armigerous holders of the ‘dignity of baron’ by the Lord Lyon King of Arms acting *in his judicial capacity* ... when such heraldic, nobiliary, and status equality of minor Barons with Chiefs of Clans or Names encompassed within “any qualities ... associated with” the ‘dignity of baron’ *statutorily transformed* by §63(4) of the Act into concrete individual acquired legal right of intangible property ‘vesting’ in the Holder of the ‘dignity of baron’ ... **is read in conjunction with** “any heraldic privilege incidental to” the ‘dignity of baron’ likewise *statutorily transformed* by §63(4) of the Act into concrete individual acquired legal right of intangible property ‘vesting’ in the Holder of the ‘dignity of baron’ as “incorporeal heritable property” under §63(2) of the ACT:

Simply put, if a minor baron is statutorily entitled to *heraldic, nobiliary and status equality* with the Chiefs of Clans and Names encompassed among “any qualities ... associated with” the ‘dignity of baron’ *statutorily transformed* into concrete individual acquired legal right of intangible property; the minor baron is **also** statutorily entitled to the particular heraldic additaments pertaining to the Chiefs of Clans and Names encompassed among “any heraldic privilege incidental to” this ‘dignity of baron’ **likewise** *statutorily transformed* into concrete individual acquired legal right of intangible property ‘vesting’ in that baron:

- i) Territorial ‘duthus plant-badge’ heraldic device
- ii) Slughorn or *crie de guerre*

HELD:

- 1) The Barons Courts of Prestoungrange and Dolphinstoun rule that weightily and sufficient grounds of both fact and law exist, as set forth above, to issue Our Declarator of Entitlement setting forth the acquired legal rights of intangible property as a member of the Noble Estate of the Baronage of Scotland as determined above, and Order that it be so done;
 - 2) Further We Select and Hereby authorise the following specific intangible property for continuous display within the Crown Baronies concerned and request and require if that may be deemed necessary and appropriate in Court of Session such matriculation and/or grant *as a matter of legal right* with the Lord Lyon King of Arms acting *in his judicial capacity* as judge of the particular court in Scotland having statutory first instance jurisdiction over such matters:
- 2)A. As the territorial ‘Duthus Plant-Badge’ heraldic device within a compartment for the Crown Barony of Prestoungrange [as illustrated here]:

“Displayed between two burning hills Vert in flames of fire Gules fimbriated Or representing the obligation from *time immemorial* to build fires on the hills and the seacoast at Prestoungrange to keep ships from the rocks at Cuthill and guide them to Morison’s Haven on the Firth of Forth stands on either side a **branch of the thorn tree being the district ‘Duthus Plant-Badge’ of the Barony of Prestoungrange** representing the Battle successfully fought at Prestonpans in 1745 a sea Azure crested Argent upon which is set the Sun in his splendour Or fimbriated Gules environed by alternating straight and wavy rays representing its rising on the Firth of Forth each morning in the Barony”.

2)B. As the territorial 'Duthus Plant-Badge' heraldic device within a compartment for the Crown Barony of Dolphinstoun [as also illustrated here]:

"Displayed between two foothills of the Lammemuir Range Vert stands on either side a **sprig of poppies Tenne being the district 'Duthus Plant-Badge' of the Barony of Dolphinstoun**, a field of ripened wheat Or upon which is set an Autumn Harvest Man-in-the-Moon Proper corresponding seasonally with the fields of ripening wheat in the Barony".

2)C. As the Slughorn or *crie de guerre* for the Crown Barony of Prestoungrange: "**Prestoungrange**" beneath the compartment.

2)D. As the Slughorn or *crie de guerre* for the Crown Barony of Dolphinstoun: "**Dolphinstoun**" beneath the compartment.

