granted in the title. We agree with the Keeper's suggestion, which attracted support at a meeting of our advisory group, that **these aspects of barony titles should be removed**. The new Scottish system of landownership should, in our view, be **free of feudal peculiarities**. Land which is owned outright under the new system of landownership should be conveyed in the same way, and should be subject to the same rules, no matter what the nature of the feudal holding was under the former law. In fact, the issue is no longer of much practical significance. New salmon fishing rights are unlikely to be acquired today, and existing rights would not be affected by our proposals. **Once land is entered on the Land Register, the conveyancing privileges cease to have a distinctive role.** (Emphasis supplied.)

[3] See the Scottish Office's "Report on Abolition of the Feudal System" (SCOTS LAW COM 168) at ¶2.40, as follows:

¶ 2.40 The **right to the title and dignity of baron** is the right which gives baronies the value which they have over and above the actual value of the lands themselves. Indeed the barony as such is often attached to a residual plot of land, with little or no intrinsic value, which is recognised as the *caput baroniae*. **Baronies have a considerable commercial value** and to abolish the so-called **noble element** in them, as was strongly urged by some consultees and members of our advisory group, would give rise to **substantial claims for compensation**. We see no need to do this. Although baronies are a feudal relic, **the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure**. We do however consider that **the social, ceremonial and armorial aspects of baronies should be severed from landownership. Baronies should become non-territorial dignities.** There should be no change in the jurisdiction of the Lord Lyon in relation to questions of precedence and arms. If the Lord Lyon were not satisfied, on the evidence produced, that an applicant for a coat of arms with baronial additaments was entitled to a barony, and refused the application in relation to the additaments, then it would be open to the applicant to seek a declarator of entitlement to the barony in the ordinary courts and, if successful, to return to the Lord Lyon with that declarator. The courts already have sufficient jurisdiction to decide questions relating to heritable right and title. There is no need to create any special new jurisdiction. (Emphasis supplied.)

[4] See the Scottish Office's "Report on Abolition of the Feudal System" (SCOTS LAW COM 168) at ¶2.40, as follows:

¶ 2.40 The **right to the title and dignity of baron** is the right which gives baronies the value which they have over and above the actual value of the lands themselves. Indeed the barony as such is often attached to a residual plot of land, with little or no intrinsic value, which is recognised as the *caput baroniae*. **Baronies have a considerable commercial value** and to abolish the so-called **noble element** in them, as was strongly urged by some consultees and members of our advisory group, would give rise to **substantial claims for compensation**. We see no need to do this. Although baronies are a feudal relic, **the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure**. We do however consider that **the social, ceremonial and armorial aspects of baronies should be severed from landownership. Baronies should become non-territorial dignities.** …. (Emphasis supplied.)

[5] See the Scottish Office's "Report on Abolition of the Feudal System" (SCOTS LAW COM 168) at ¶2.44, as follows:

¶ 2.44 …

In our view the Scottish Parliament could, if it wished, abolish feudal baronies altogether as part of a reform of the feudal system of land tenure. If that is so then it is even more clear that it can **take baronies out of the system of land tenure and land registration, while allowing the dignity of baron,** derived from the former connection with the Crown as feudal superior, **to continue as a floating dignity.** (Emphasis supplied.)

[6] See the Scottish Office's "Report on Abolition of the Feudal System" (SCOTS LAW COM 168) at ¶2.45, as follows:

¶2.45 **Recommendation.** We recommend that

5. (a) Any surviving criminal or civil jurisdiction of barony courts should be abolished.

(b) Any conveyancing privileges incidental to barony titles to land should be abolished.

(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.

(d) The dignity of baron should **no longer be attached to land**. It should be, and **should be transferable only as, incorporeal heritable property.**

(e)It should be provided that after the appointed day **a barony will not be an interest in land for the purposes of the Land Register and no deed relating to a barony can be recorded in the Register of Sasines**. (Emphasis supplied.)

[7] See the Scottish Office's "Report on Abolition of the Feudal System" (SCOTS LAW COM 168) at ¶2.41, as follows:

¶2.41 The surviving rights or privileges of barons (which can all be covered by the term "the dignity of baron") would **no longer have a connection with an interest in land**. The dignity of baron would become a "floating" right or privilege. It would no longer be possible to transfer it as an incident of the transfer of the land to which it was formerly attached. **It would cease to be an appropriate matter for the Register of Sasines or the Land Register.** We have considered whether some alternative registration system should be established for baronies in their new form but have concluded that this would be neither necessary nor appropriate. The dignity of baron would be, and would be transferable as, **incorporeal heritable property.** For the avoidance of any doubt, and to protect the Keeper of the Registers from attempts to continue to register baronies or deeds relating to them in the land registers, there should be a provision in the legislation making it clear that **baronies are not interests in land for the purposes of the Land Registration (Scotland) Act 1979 and that deeds relating to them cannot be recorded in the Register of Sasines**. A barony could be sold along with a plot of land if that were desired but the effect would be like selling a valuable painting along with the land. From the Keeper's point of view the selling of the painting, or the barony, would be a **separate transaction of no relevance to the land registers.** We have no doubt that conveyancers will be able to devise a suitable form of document for transferring baronies as **incorporeal heritable rights** from one living person to another. In other respects, **including succession on death,** the law applicable to the preserved barony rights would be unchanged. In cases of intestacy it would be **the old pre-1964 law of succession to heritable property**, with its preference for males and its rule of primogeniture, which would apply. (Emphasis supplied.)

[8] The "any qualities … associated with" the 'dignity of baron' referenced in §63(4) of the ACT may be summarised as follows:

1. Personal ennoblement of the holder of the 'dignity of baron'

2. 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 Sergeant

iv) Dempster
v) Procurator Fiscal
vi) Keeper of the Castle and Fortalice or baronial caput
vii) Burlaw Men
viii) Lacqueys or Pages
ix) Halberdier Guards

3. 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 armigerious 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 fundamental "legal entities" construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular 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 fundamental "legal entities" construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular 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' into fundamental "legal entities" construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular 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*** into fundamental "legal entities" construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular individual acquired legal right of intangible property 'vesting' in that baron:

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

[9] Those "any … **precedence** associated with" the 'dignity of baron' referenced in §63(4) of the ACT may be summarised as follows:

1. 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.
2. Use of the title "Baron of X [*nomen dignitatis*]" as part of the name of the owner or holder of the 'dignity of baron'
3. Addition of the *nomen dignitatis,* 'fife name' or 'territorial designation' to the surname of the owner or holder of the 'dignity of baron'.
4. Use of the prefix of "The Much Honoured" as in 'The Much Honoured John Doe of Glenroe, Baron of Glenroe'
5. Official Lyon Court recognition of 'baronial status' consisting of the following:

A) That the Baronage of Scotland is an 'order', 'estate' (of the Scots' Realm) and a 'Rank'
B) Statement in official Lyon Court documents of the entitlement to be received as "Hoch-Adel" on the Continent
C) Statement in Lyon Court documents that minor barons are officially the 'equivalent to the chiefs of Baronial Houses on the Continent of Europe'
D) Statement in Lyon Court documents that minor barons statutorily constitute 'a part of the nobility' in the Statute of 20 Dec 1567
E) 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
F) 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 'Estait' 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 estait 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."

[10] The components of "**any heraldic privilege** incidental to" the 'dignity of baron' referenced in §63(4) of the ACT may be summarised as follows:

1. 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.
2. Baronial Chapeau: Gules, furred Ermine, tasselled Or
3. Feudo-Baronial Mantle or Robe of Estate
4. Banner, three feet square, ensigned on the top by the baronial chapeau
5. Steel Helmet of three grills, garnished with gold, or Great Tilting Helmet garnished with gold
6. Badge
7. Standard of four yards, ensigned on the top by the Baronial Chapeau
8. Guidon of eight feet, ensigned on the top by the baronial chapeau
9. Pennon of four feet, ensigned on the top by the baronial chapeau
10. Pinsel of four and one-half feet by two feet, ensigned on the top by the baronial chapeau
11. Ensign, ensigned on the top by the baronial chapeau
12. Streamer (nautical) of four yards, ensigned on the top by the baronial chapeau
13. Compartment representing the fife of the barony in the form of specific local geographical and historical features constituting the noble feus
14. Supporters for the representative of the baronial house entitled to sit in the old Scots Parliament before 1587
15. Heraldic additaments of the Officers of a Baron Court as official insignia of office:

A) Cap of Justice for Baron Baillies

B) Key in bend for Keeper of Baronial Caput

C) Horn and white wand for Baron Sergeant

[11] See Sir Thomas Innes of Learney, Scots Heraldry, 2nd Ed., 1956, p. 10, as follows:

"To Lyon has been conveyed the whole of the Crown's jurisdiction in armorial matters as pertaining to his sphere of duty, i.e., to his function as High Sennachie, the Heraldic 'Visitations' being analogous to the Bardic cuiart, and in terms of the statutes, no grant of arms is effective except when made by him. Since any rate 1542, the King of Scots has never himself granted a coat of arms or augmentation the invariable practice being a Royal Warrant ordering 'Our Lyon' to 'grant and give' the specified honour. This ensures that all grants should go through the official channel, thereby saving the Crown from the possibility of making a grant which might conflict with some previous exercise of the prerogative. It will be noticed, however, that a Royal Warrant does not become effective until presented in Lyon Court, so that the Lord Lyon may act upon it and record the arms in terms of the statutes."

[12] See Sir Thomas Innes of Learney, Scots Heraldry, 2nd Ed., 1956, pp. 198-200, as follows:

"In Scotland, it is the Lord Lyon King of Arms who has jurisdiction in matters of Name and Change of Name. [1672, cap. 47; 30 and 31 Vict., cap. 17, Schedule B; Green's Encyclopaedia of the Laws of Scotland, Vol. X, p. 137, s.v. 'Name and Change of Name'.] ... The name in which a person is granted arms is, however, a 'name of dignity' (i.e., of the 'dignity' of Gentleman), and in the nature of a 'title' if it comprehends a feudal designation. Hence, the real ground on which Lyon takes cognisance of Names of the noblesse, and why changes of name are 'officially recognised' and the applicant declared to be 'now Known and publicly Recognised and Recorded' in the Books and Registers of the Curia Militaris or Court of Honour. ... The principle on which Lyon's exercise of the Royal Prerogative is given is thus essentially analogous to the principle on which the Court of Session recognises Changes of Name by those who fall to be of record in that Court, as qua nobles, it is in Lyon Court."

"The normal Scottish procedure in the case of the noblesse is, therefore, to obtain from the Lord Lyon a 'Certificate regarding Change of Name', in which his Lordship not only 'officially recognises' the name assumed, but issues a Certificate which forms the necessary identification of the individual under his old name and his new one. ... As in the case of a Royal Licence, Lyon's certificate is not obtainable for capricious changes of names by non-armigerious persons. The grounds on which Lyon's jurisdiction can be properly invoked are Changes of Name by (1) persons in right of arms, or members of their families entitled to a courtesy of these arms; (2) persons recorded in, or adding themselves to pedigrees in the Public Register of Genealogies; (3) **persons succeeding to feudal property,** or under settlement (the first category renders the matter one relating to tenures, and the latter presumes a formal act will be taken to effect compliance; ... If the ground of application be (1) or (2) the ground will normally be set forth and appear from reference to the Register of Arms or Genealogies. In other cases the precise ground for invoking Lyon's jurisdiction should be set forth in the application"

[13] See Sir Thomas Innes of Learney, Scots Heraldry, 2nd Ed., 1956, pp. 188, 191, 193-194, as follows:

"Just as Scotland is pre-eminently the land of clanship and kinship, so the Lyon Court Records are not confined to heraldry alone.. Indeed Lyon's pre-heraldic duty as High Sennachie of Celtic Scotland was Judge of Genealogy, to which control of Armoury was added as 'belonging to his sphere of duty'. [Juridical Review, September 1940, and Birthbriefs preamble, p. 201.] Whilst the Lyon Register to some extent serves the purpose of preserving descent – since matriculations proceed on judgement regarding descent and representation of the matriculator – wider pedigree purposes are served by the Lord Lyon's Public Register of Genealogies. [See Juridical Review, September 1940, p. 181; Scottish Law Review, October 1942.]"

.....

"The genealogical section of the Lyon Register deals with two distinct forms of record: (a) The Birthbrief; (b) The Lineal Pedigree. Either form may include **social particulars** incidental to family position or **nobiliary status**, and 'exploits' of ancestors. The former often includes several lines of ancestry, and sets forth **Honours**, Offices, and **Tenures,** and is frequently a Diploma Stemmatis – a Letters Patent certificate of Chiefship."

.....

"Birthbriefs are Letters Patent setting forth the descent, **nobiliary status,** and all such matters relating to the **social, feudal,** or tribal position of the petitioner as may seem useful at home or abroad, in nobiliary circles or public life, and in accrediting the applicant's position at the Court of his own or other Sovereign,, or being received into foreign Orders of Chivalry, or contracting illustrious matrimony. They deal with his position as Chief or cadet in his own family and all other nobiliary matters relating to his estate, offices, family history, and achievement, being Letters Patent issued ministerially, though often after an inquiry, judicial or departmental . It is a writ of the Sovereign's Lieutenant in nobilitas, and outwith the control of any Court. It is consequently set forth as conclusive, and is so received without question by 'all nobles and in all places of honour'."

[14] See Sir Thomas Innes of Learney, Scots Heraldry, 2nd Ed., 1956, pp. 6-7, 11-12, as follows:

"In Scotland the Lord Lyon King of Arms is responsible for the preparation, conduct and record of State, Royal and Public ceremonial. [Encyclopaedia of the Laws of Scotland, Vol. IX, "Lyon King of Arms", ¶774; Vol. XII, "Precedence", ¶39; Royal College o Surgeons v. Royal College of Physicians, 1911 Session Cases, 1054; Sir James Balfour of Kennard's Heraldic Tracts; Juridical Review, Volley, p. 87.] In Scotland he is he King's 'Supreme Officer of Honour', ..."

.....

"... Lyon Court is according the judicature which can, and does, adjudicate upon Chiefship of Clans – and award the 'property' (the arms), possession of which is synonymous with Clan-Chiefship – and upon Pedigrees and Genealogies, conducing and executing of Royal Proclamations, Baptisms, State and public ceremonials of all descriptions in Scotland – which it is Lyon's exclusive privilege to prepare – whilst to him is committed the marshalling of State processions and public solemnities of all descriptions. He is, in numerous matters relating to Scottish Honours and ceremonial, the Official Adviser of the Secretary of State for Scotland [Green's Encyclopaedia of the Laws of Scotland, Vol. XII, "Precedency", ¶40], and 'the only official connected with the law who can trace his descent from the patriarchal and tribal form of Society' of Celtic Scotland."

See also Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 6, "Courts and Competency", "8. The Court of the Lord Lyon", ¶1017 re "Administrative and ministerial functions of the Lord Lyon", as follows:

"The Lord Lyon is the official adviser to the Secretary of State for Scotland in relation to many matters concerning Scottish honours, dignities and ceremonies. Lyon is responsible for the execution of royal proclamations. State and public ceremonies in Scotland are authorised by the signature of the Lord Lyon. Lyon's administrative functions in regard to precedence is to see that the royal warrants and other orders regarding precedence are duly observed and kept. When marshalling state processions and cavalcades Lyon is required to define the order of precedence in which the participants will walk or ride. [Order of State Programme 24 June 1953, Edinburgh Gazette 23 June 1953."

[15] See Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 6, "Courts and Competency", "8. The Court of the Lord Lyon", ¶1018 re "Judicial functions of the Lord Lyon", as follows:

> "With regard to the Lord Lyon's jurisdiction in relation to the question of precedence there is considerable doubt. The question was considered by the Court of Session in litigation between the Royal College of Surgeons and the Royal College of Physicians of Edinburgh, where Lord Johnston remarked that:
>
> 'the present question [that is the question between the two colleges] must be disposed of without a full examination into the history of the matter, which might adduced information which is not before us at present'
>
> In that case the court decided that Lyon had no jurisdiction in the question of precedence because:
>
> 'A right of precedence by itself is not a legal entity which can properly be made a matter of judgement that can be enforced by a Court of law'
>
> "In England it is evident that questions of precedence may be a matter of judgement. [G. D. Squibb *The Law of Precedence in England* (1980)] In a later case Lord Justice-Clerk Aitchinson is reported to have observed during argument that if the question of Lyon's jurisdiction in relation to precedence again came upon on appeal the court would immediately send it to seven judges. Lord Lyon Innes of Learney in 1955 took the view that the extent of Lyon's jurisdiction was 'to determine as between the parties what the Crown has done, and thereafter apply it without prejudice to what the Crown may thereafter do.' It would appear that Lyon may administratively make certain determinations regarding precedence. [*Lay Society of Scotland*, 1955 SLT (Lyon Ct) 2 at 4]"

NOTE BENE: §63(4) of the ACT specifically **statutorily transformed** "any quality or precedence associated with" the 'dignity of baron" into particular statutory **legal entities** recognised upon the law books which empowers the Lyon Court with explicit competence over issues of precedence and 'any quality' concerning the 'dignity of baron' upon which can now be made a specific matter of judgement enforceable by the Court.

[16] See The Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 18, "Part I: General Law", ¶8: 'Creation of real rights', as follows:

> **¶8 Creation of real rights:** Many real rights originate in contract, but the creation of the right itself is a process entirely distinct from the contract.
>
> Except in the case of corporeal moveables, where writing is not usually required, ***there will almost always be a written deed granting the right*** which is executed by the granter and delivered to the grantee. Common examples are dispositions, standard securities and assignations.
>
> Delivery of the deed is then followed by some act which serves to publicise its existence, **such as registration in a public register [**Thus dispositions, standard securities and long leases are registered in the Register of Sasines or Land Register. Transfer of shares are registered in the company's register of members.**]**, or its formal intimitatation to a third party **[**As in the case of the assignation of personal rights, where intimation must be made to the debtor in the right being assigned**]** or the taking of possession of the property to which the right relates **[**As in lease, positive servitude, and pledge.**]** .
>
> Usually **the real right comes into existence on the completion of registration or other public act**, but in the case of floating charges the right remains personal even after registration in the Register of Charges and becomes real only if the charge attaches following the appointment of a receiver of a liquidator **[**Companies Act 1985 9c. 6), §463(I); Insolvency Act 1986 (c. 45), §53(7).**]**."

[17] See Green's classic Encyclopaedia of the Laws of Scotland, Vol. IV, "Completion of Title", ¶387 "Real Rights by Infeftment" declares:

> ¶387: "By completion of title,, when employed with reference to heritable rights, is meant **the conveyancing procedure whereby a *jus ad rem* or personal right may be converted into a *jus in re* or real right.** It is impossible to deliver or to hold possession of land in the same manner as corporeal moveables are delivered or held, and possession cannot therefore be the test of a real right to land. Land may be given as security for a debt and possessed under redeemable rights, or may be vested in trustees, or limited rights of property in it may be constituted. Hence in all civilised countries the great object of conveyancing has been and is to render the forms by which property in land is transferred so distinctive, and at the same time so public, that no doubt may rest on a point of so much importance as property in land. **Where a feudal estate has been transferred in such a way that the new proprietor has acquired a real right in it, such proprietor is said to have completed his title, or to have taken infeftment, or to be infeft.** Infeftment does not infer beneficial enjoyment, and infeftment may be taken though entry to the heritage is postponed."

[18] See The Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 6, "Conveyancing, Including Registration of Title", ¶449 "Registration for publication":

> **¶449: Registration for Publication:** Registration for publication refers to deeds of heritable property, and is made in the General Register of Sasines or, if the land lies in an area which is operational for land registration, in the land Register of Scotland. The Registration Act 1617 (c. 16) which set up the Register of Sasines described it as 'ane publick Register'. **The registration has the additional purpose of *converting the personal right given by the seller to the purchaser* under contract into a real right,** that is to say one enforceable not merely against the seller, but against the whole world. Registration in the Land Register of Scotland under the Land Registration (Scotland) Act 1979 (c. 33) achieves the same purpose.
>
> "It is not necessary for the granter of a deed to consent to registration for publication,, but the grantee consents by signing (by the grantee or the grantee's agent) of the warrant of registration, or, in the case of registered land, the signing of a Form 1, 2, or 3 as may be appropriate."

[19] See The Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 6, "Conveyancing, Including Registration of Title", ¶452 "The General Register of Sasines":

> ¶452.....
>
> "Registration in this register is not compulsory, but it is however essential to give a completed title. Until the deed is registered the parties have only a personal right. **This is converted into a real right by registration,** and any title or security is perilous without this having been done. In addition, rights to the property or in security depend on the date of registration, the earliest registered deed having the first priority."

[20] See "STAIR MEMORIAL ENCYCLOPAEDIA: The Laws of Scotland, Vol. 18, "Part I : General Law" respecting "Transfer of Ownership", ¶652, as follows:

> ¶652: "Incorporeal property consists of rights, and rights may either be **personal**, such as a right in contract or in delict, or **real**, such as a right in security or in lease. In principle **all personal rights are capable of transfer** [Eskine Institute III, 5, 2: "The general rule is, that **whoever is in the right of any subject**, though it should not bear to assignees, **may at pleasure convey it to another**, except where he is barred either by the nature of the subject or by immemorial custom'. So in Libertas-Kommerz GmbH 1978 SLT 222, OH, it was held that **floating charges** may be assigned although not expressly so authorised by statute.'] Real rights

are also capable of transfer ..."

[21] See "STAIR MEMORIAL ENCYCLOPAEDIA: The Laws of Scotland, Vol. 18, "Part I : General Law" respecting "Transfer of Ownership", ¶653: 'The three stages of transfer', as follows:

¶653; The three stages of transfer: "In most cases incorporeal property is transferred by the execution and delivery of a written deed, known as an assignation, followed in the case of personal rights by intimation to the debtor in the right and **in the case of real rights by registration of the assignation** or by possession. If the transfer is for consideration the assignation is usually preceded by a contract of sale. In many cases, therefore, there are **three identifiable stages in the transfer process**, namely **(1) contract of sale, (2) assignation, and (3)** intimation (personal rights) or **registration** or possession (real rights). It is only the **last** of the three stages that the **transfer itself occurs** and unless or until that stage is completed the **transferor is wholly undivested.** In assignations the transferor is usually referred to as the 'cedent' and the transferee as the 'assignee', while the verb of transfer is to 'assign'. The rules of transfer just given apply to most but not to all kinds of incorporeal property."

[22] See "STAIR MEMORIAL ENCYCLOPAEDIA: The Laws of Scotland, Vol. 18, "Part I : General Law" re "Transfer of Ownership", ¶657: *Stage (3): for real rights, registration or possession,* as follows:

¶657: Stage (3): for real rights, registration or possession: "There can be no intimation in the assignation of **real rights** because there is no person to whom intimation can be made, **a real right being a right in a thing (RES)** and not a right against a person. **For real rights the final stage in transfer is some public act in relation to the thing in which the right is held,** in practice either taking possession of the thing **or registration of the assignation** in the Register of Sasine or Land Register. The choice depends on **the method by which the right being assigned was originally made real.** So if a right requires possession for its constitution, for example a pledge of goods or a short lease of land, it requires possession equally for its assignation and until the assignee takes possession of the goods or, as the case may be, the land, there is no transfer and the cedent is undivested. Similarly **in the case of rights requiring registration for their constitution,** such as standard securities or long leases, **transfer is completed only by registration of the assignation** in the Register of Sasines or land Register."

[23] See 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, page 131-132, as follows:

"Reverting to **the 'Estait of the Nobility'**, this – then, and for another 1 1/2 centuries – consisted of" (1) The Earl/*Comites* constitutionally derived from, and representing, the provincial Sub-Kings of early Scottish history, the provincial *Righ/Morair,* and even in mediaeval and heraldic documents an Earl id described as 'High and Mighty Prince', (2) **The Baronage, or Crown vassals holding *in liberam baroniam,*** or apparently *ut baro* in respect of some incorporeal baronial hereditament **[**i.e., Chiefs of Clans or Names of non-baronial tenure**]**." (Emphasis supplied.)

"Parliament came to be, however, conceived as a representation of 'lands' and as represented, in effect, either by the Baronage or by the Earls, and accordingly we shall not find the sub-baronial 'freeholders' until these were admitted by statutory Commissioners at a later stage."

[24] See 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. 111, as follows:

"The Baronage is an Order derived partly from the allodial system of **territorial tribalism in which the patriarch held his *country* 'under God'**, and partly from the later feudal system – which we shall see was, in Western Europe at any rate, itself a developed form of tribalism – in which the territory came to be held 'of and under' the King (i.e., 'head of the kindred') **in an organised parental realm**. The robes and insignia of the Baronage will be found to trace back to both these forms of tenure, ..." (Emphasis supplied.)

[25] See Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at fn 3 beginning on p. 118 and extending to p. 119, as follows:

"Indeed the very contents of many early **feudal charters** warn us that they were **recording, perpetuating, and formalising ancient local institutions**, related, if not to 'tribalism' (now a somewhat ambiguous term), at all events to **'tribes'**, to which the 'Feudal System' gave **machinery for juristic consolidation** – upon which indeed their survivance depended (I. F. Grant, *Social and Economic Development,* pp. 502, 516; Innes of Learney, *Tartans of the Clans, etc.,* 1945, pp. 15-16, 25, 39, 41). This is an aspect of importance not only to historians, but for the consideration of antiquaries and archaeologists in relation to many early objects and structures."

"It is only necessary to look at charters such as those including the Gaelic *'Kenkynol'*, fortunately defined therein as ***'caput toties progenii'*** (*R. M. S.,* Vol. I, p. 509), and **the captaincy of communities** which the ancient Great Seal Indices give, in the vernacular, as **'clan'**, and in the Latin as ***parentela*** (*R. M. S.,* Vol I, App. II, pp. 912, 913, 982); to realise **such organising of loose 'tribalism' is precisely what 'feudalisation' was effecting** (see Evidence of John Cameron, Phd.D., p. 102, *MACLEAN OF ARDGOUR V. MACLEAN,* 1938), that 'Feudalism' as developed in North and West Europe was something quite different from what it was in Italy, and that Brentano is sound in asserting that 'in defining as accurately as possible the real meaning of this word, we should call it **the development, the extension, of the family'** (*Old Regime in France,* p. 5); though *familia* in early documents had, as he points out, an ambit **which included all connected with the *mansionata,*** just as the **'clan'** (which Dr. Mackay Mackensie observed 'is not old and it is not Celtic, it is **feudal**', *Ardgour* Evidence, p. 220 – though the feudalisation, *per* Cameron, supra, **preserved what was 'old' and also 'Celtic'**), i.e., the parentela of David II's charters, is in later statutes set forth as **including persons depending on Chieftains** 'be pretence of blude **or place of thair duelling**' (*A. P. S.,* Vol. III p. 464) ...

"I have also pointed out (*Tartans of the Clans, etc.,* p. 37; *Law of Succession in Ensigns Armorial,* p. 35, n. 2; p. 47, n. 3; *Notes and Queries,* 24th February 1940, p. 132) that the British system of Courtesy Titles, and its armorial prototype the *differentiae consanguineum* are curiously equateable with the *finé* (*gil-finé*) and, so, a **feudally-perpetuated portion of early community organisation**, of which I think archaeologists will find other instances deserving through in such matters as 'fire-houses' and 'hearths' (cf. note 2, p. 116) which may cast light on early settlements, and the community-life therein." (Emphasis supplied.)

[26] See Sir George Mackenzie of Rosenhaugh, Science of Herauldry, Edinburgh, 1680, Chap. ii,. pp. 13-14, as follows:

"The being an Heritor of Land doth not Nobilitate in all cases, even though the Heritage be very considerable; for else a Rich Man might ennoble himself: but the ***feueda*** only **render the possessors Noble**, which are ***bestowed*** by the **Prince**, or ***confirmed*** by him."

"For a **few** in either of these cases ***makes* the receiver ¨**, seeing the Prince is the Fountain of Honour. And a few in those cases is a **sufficient warrant to bear Arms**, *Tiraqu, cap. 7"*

"And this remembers me of a custom in Scotland, which is but gone lately in desuetude, and that is, That such as did ***hold their***

Lands of the Prince, were called **Lairds**;; but such as held their Lands of a subject, though they were large, and their Superior very noble, were only called Good-men, from the old French word, *Bonne homme,* which was the Title of the Master of the Family;" "and therefore such **Fews** as had a **Jurisdiction annext** to them, a **Barony**, as we call it, ***do ennoble***: For a Baronies are establisht only by the Princes erection or confirmation. And thus it was found by the *Parl, of Grenoble,* That *qui possident castrum cum territorio, & omnimoda jurisdictione sunt exempti a contributione subfidiorem, ut Nobiles, licet non sunt a Nobili Progenie,* Guid. pap. decis. 385"

NOTA BENE: Accordingly, a Feudal Baron holding lands erected *in liberam baroniam* is ***Chef de Familee*** 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.

As established by the painstaking research of the late Lord Lyon Sir Thomas Innes of Learney in "The Robes of the Feudal Baronage of Scotland," (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111-163, a feudal Baron holding lands erected *in Iberam baroniam* is *Chef de Famillee* of the 'horizontal' Clan formed territorially around that "Barony" erected historically by the original Crown Charter as a distinct local administrative unit.

This 'horizontal' Baronial territorial Clan has the same legal and heraldic status as 'vertical' Clans formed genealogically under the personal jurisdiction *ut baro* of the Chiefs of Clans and Families.

In its non-judicial aspect the Baron Court provides the *organisational machinery* for this 'horizontal' Clan formed around the Barony: The Baron Court is the essential mechanism for this baronial clan.

[27] See William Croft Dickinson, The Court Book of the Barony of Carnwath (Edinburgh, 1937), pp. xxvi-xxvii, at fn 3 beginning at xxvi, as follows:

"But with the penetration of feudalism into the Celtic administration we find ***barons*** **who enjoyed jurisdictional rights without holding a *barony*** ; that is, **they had *personal* rights rather than *territorial* rights**." (Emphasis supplied.)

[28] See Sir Thomas Innes of Learney, The Clans, Septs, and Regiments of the Scottish Highlands (8th edition, 1970), pp. 104-105, as follows:

"The 'family' or 'clan' is, however always based on a fief, because to be an 'honourable community' which has been 'received into the *noblesse;* of the realm, it must, **in the person of its 'Representer**,' have been granted or conferred, a 'family seal of arms,' and a coat of arms is feudalised property **[***Maclean of Ardgour v. Maclean,* 1941, following *Macdonnell v. Macdonald,* 1826, Shaw & Dunlop, 371**]**, and the family is an 'incorporation,' **[**Sir H. Maine, *Ancient Law,* pp. 205, 211; cf. *Old Regime in France,* p. 5**]** and all the scientific modern evidence concurs that 'clan and family mean exactly the same thing' **(**Appendix XXX, Dr. Lachlan Maclean Watt**)**. **This may explain also why a clan chief, as chief of a 'baronial family' may be 'baron' without holding land *in liberam baroniam* [**cf. *Court book of the Barony of Carnwath,* p. lix**],** by e.g. succeeding to a baronial coat of arms, or amongst several such *in familia,* to that **which carries with it the 'representation' of the clan/family as a noble incorporation**." (Emphasis supplied.)

NOTA BENE: Accordingly, Chiefs of Clans and Names possess the same patriarchal jurisdiction *ut baro* entitling them to supporters without the necessity of owning land erected *in liberam baroniam.*

[29] 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 131, fn. 3, as follows:

"… [C]onsideration of such persons as the 'Baron of the Bachull' (Hereditary Keeper of the *Bachuill Mor,* Pastoral staff of St. Moluag (I. F. Grant, *Lordship of the Isles,* pp. 309, 315)), and the Chiefs of *Communitates,* found in early State Documents, and whom Sir Aeneas Macpherson correlates with the early *Proceres Regni* (*Loyall Dissuasive,* pp. 22, 99, 110). This, and **the patriarchal jurisdictions**, and grants of supporters to 'Chiefs of old families' and or 'Clans', **irrespective of baronial fief**, go far to bear out not only Craig's view that **the earliest Barons were *Capitani Tribuum* (Chiefs of Clans***,* Jus Feudale, 1-8-2 but also to explain the **'other indivisible tenures'** in the Report of the Scottish 'Tryours' in *Bruce v. Baliol,* 1292; and are related to the heraldic view that a **'clan' or 'noble family' is an incorporeal heritable fief** (see Sir Charles Erskine, cited *Juridical Review,* September 1940, p. 205, n. 7), as, moreover, evidenced by the fourteenth-century Great Seal Charters (*Tartans of the Clans and Families of Scotland,* pp. 25, 41) – 'noble fiefs', which, however, in the chivalric concept, though negotiable for 'grave and weighty considerations' (*Scottish Notes and Queries,* December 1933, p. 188) were not vendible to a *'Familiae Emptor'* in the venal Roman manner." (Emphasis supplied.)

NOTA BENE: Such personal patriarchal jurisdiction *ut baro* is derived from 'the dignity of baron', per se, rather than from lands erected *in liberam Baroniam.* As noted above, Chiefs of Clans possess the same patriarchal jurisdiction *ut baro* entitling them to supporters without the necessity of owning land erected *in liberam baroniam.*

[30] See Sec. 63(1) of the ACT, as follows:

63 Baronies and other dignities and offices

(1) Any jurisdiction of, and any conveyancing privilege incidental to, barony shall on the appointed day cease to exist; **but nothing in this Act affects the dignity of baron** or any other dignity or office (whether or not of feudal origin).

(2) When, by this Act, an estate held in barony ceases to exist as a feudal estate, **the dignity of baron, though retained**, shall not attach to the land; …" (Emphasis supplied)

See also the *legislative history* of Sec. 63 of the ACT concerning the civil and criminal territorial jurisdiction of minor barons abolished by §63(1) of the ACT set forth in ¶2.42 of the Scottish Office's "Report", as follows:

2.42 The civil and criminal jurisdiction of barons was preserved by the Heritable Jurisdictions (Scotland) Act 174654 but was limited to cases of a minor nature. The criminal jurisdiction was restricted to cases of "assaults, batteries and smaller crimes" and the powers of punishment were limited to a fine of up to £1 or confinement in the stocks for up to three hours "in the daytime". The civil jurisdiction was limited to cases with a value of up to £2 and cases for the recovery of rents or other dues of a like nature. A privately owned criminal and civil jurisdiction, even if limited and fallen into disuse, is such an anachronistic and objectionable relic of feudalism that it must clearly be abolished. The jurisdictional rights of barons have no value and compensation for their abolition would be inappropriate and unnecessary.

[31] See the *legislative history* of Sec. 63 of the ACT concerning the surviving 'noble element' in baronies set forth in ¶2.40 of the Scottish Office's "Report", as follows:

¶ 2.40 **The right to the title and dignity of baron** is the right which gives baronies the value which they have over and above the actual value of the lands themselves. Indeed the barony as such is often attached to a residual plot of land, with little or no intrinsic value, which is recognised as the *caput baroniae*. Baronies have a considerable commercial value and to abolish the so-called **noble element** in them, as was strongly urged by some consultees and members of our advisory group, would give rise to substantial claims for compensation. We see no need to do this. Although baronies are a feudal relic, the abolition of baronies is not a nec-

essary feature of the abolition of the feudal system of land tenure. We do however consider that **the social, ceremonial and armorial aspects of baronies** should be severed from landownership. **Baronies should become non-territorial dignities**. There should be no change in the jurisdiction of the Lord Lyon in relation to questions of precedence and arms. If the Lord Lyon were not satisfied, on the evidence produced, that an applicant for a coat of arms with baronial additaments was entitled to a barony, and refused the application in relation to the additaments, **then it would be open to the applicant to seek a declarator of entitlement to the barony in the ordinary courts and, if successful, to return to the Lord Lyon with that declarator. The courts already have sufficient jurisdiction to decide questions relating to heritable right and title.** There is no need to create any special new jurisdiction." (Emphasis supplied.)

[32] See the *legislative history* of Sec. 63 of the ACT concerning intestate succession to "incorporeal *heritable* property" consisting of 'the dignity of baron' set forth in ¶2.41 of the Scottish Office's "Report", as follows:

¶2.41 The surviving rights or privileges of barons (which can all be covered by the term "the dignity of baron")51 would no longer have a connection with an interest in land. The dignity of baron would become a "floating" right or privilege. It would no longer be possible to transfer it as an incident of the transfer of the land to which it was formerly attached. It would cease to be an appropriate matter for the Register of Sasines or the Land Register. … The dignity of baron would be, and would be transferable as, incorporeal heritable property. For the avoidance of any doubt, and to protect the Keeper of the Registers from attempts to continue to register baronies or deeds relating to them in the land registers, there should be a provision in the legislation making it clear that baronies are not interests in land for the purposes of the Land Registration (Scotland) Act 1979 and that deeds relating to them cannot be recorded in the Register of Sasines. … . In other respects**, including succession on death, the law applicable to the preserved barony rights would be unchanged. In cases of intestacy it would be the old pre-1964 law of succession to heritable property, with its preference for males and its rule of primogeniture, which would apply**. (Emphasis supplied.)

[33] See the *legislative history* of Sec. 63 of the ACT concerning the former legal status of baronies as a feudal estate *in commercio* in ¶¶2.31 and 2.32 of the Scottish Office's "Report", as follows:

2.31 **Introduction.** One of the most distinctively feudal features of the system of land tenure in Scotland is that the holding of a feudal estate in land on a particular type of title called a barony title gives rise to certain conveyancing peculiarities and carries with it certain privileges. The estate in land might be no more than the *dominium utile* or even the bare *dominium directum* of a tiny plot of waste ground, of little or no value in itself, which represents the head place or *caput* of the barony. **The estate in land can be bought and sold in the normal way. Remarkable as it may seem, ownership of such an estate in land carries with it a barony.** It enables the owner to claim ennoblement by the "nobilitating effect" of the "noble quality" of the feudal title on which the land is held. The title of "Baron of So-and-So" or "Baroness of So-and-So" can be adopted. If the holder is granted armorial bearings by the Lord Lyon (which is entirely a matter for the Lord Lyon's administrative discretion) and if a *prima facie* title to the barony is established there is a right to relevant baronial additaments to the coat of arms. Baronial robes can be worn. The baron can, in theory, hold a baron's court, appoint a baron baillie to be judge, and exercise a minor civil and criminal jurisdiction." (Emphasis supplied.)

2.32 In recent years **a market in Scottish baronies** has developed. We were informed by a dealer in baronies that in June 1997 **the expected price for a barony**, with no special features and a minimal amount of land of no value in itself, was about **£60,000**. Information from other sources suggests that the market value of baronies has not decreased since then." (Emphasis supplied.)

See also the *legislative history* of Sec. 63 of the ACT concerning the free transferability of 'the dignity of baron' after the 'appointed day' in its transformed legal status as "transferable … incorporeal heritable property" in ¶2.41 of the Scottish Office's "Report", as follows:

2.41 The surviving rights or privileges of barons (which can all be covered by the term "the dignity of baron")51 would no longer have a connection with an interest in land. The dignity of baron would become a "floating" right or privilege. It would no longer be possible to transfer it as an incident of the transfer of the land to which it was formerly attached. It would cease to be an appropriate matter for the Register of Sasines or the Land Register. We have considered whether some alternative registration system should be established for baronies in their new form but have concluded that this would be neither necessary nor appropriate. **The dignity of baron would be, and would be transferable as, incorporeal heritable property.** For the avoidance of any doubt, and to protect the Keeper of the Registers from attempts to continue to register baronies or deeds relating to them in the land registers, there should be a provision in the legislation making it clear that baronies are not interests in land for the purposes of the Land Registration (Scotland) Act 1979 and that deeds relating to them cannot be recorded in the Register of Sasines. **A barony could be sold along with a plot of land if that were desired but the effect would be like selling a valuable painting along with the land.** From the Keeper's point of view the selling of the painting, or the barony, would be a separate transaction of no relevance to the land registers. **We have no doubt that conveyancers will be able to devise a suitable form of document for transferring baronies as incorporeal heritable rights from one living person to another**. In other respects, including succession on death, the law applicable to the preserved barony rights would be unchanged. In cases of intestacy it would be the old pre-1964 law of succession to heritable property, with its preference for males and its rule of primogeniture, which would apply. (Emphasis supplied.)

[34] See the *legislative history* of Sec. 63 of the ACT concerning the declared intent of Parliament re the survival of the 'noble element' in baronies in ¶2.45 of the Scottish Office's "Report", as follows:

¶2.45 **Recommendation.** We recommend that

5. (a) Any surviving criminal or civil jurisdiction of barony courts should be abolished.

(b) Any conveyancing privileges incidental to barony titles to land should be abolished.

(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.)

(d) The dignity of baron should no longer be attached to land. It should be, and should be transferable only as, incorporeal heritable property.

(e) It should be provided that after the appointed day a barony will not be an interest in land for the purposes of the Land Register and no deed relating to a barony can be recorded in the Register of Sasines.

[35] Green's classic Encyclopaedia of the LAWS OF SCOTLAND, Vol. X, "Office", treats such Heritable Offices *in commercio* as follows:

¶941 Classification of Offices:

"All public office is derived from the Crown, either immediately by **direct grant [**under the Great Seal of Scotland**]** , or mediately through some subordinate authority, and is created either by the **royal prerogative [**under the Great Seal**]** , or, now generally, by Act of Parliament. Public offices vary widely in their nature and duties, but may conveniently be classified according as they are **(1)**

heritable or personal, (ancient or new, (3) central or local, (4) judicial or ministerial, and (5) civil or military."

¶942 Heritable or Personal:

"Heritable office is now uncommon. formerly the most important heritable offices were those of the King's household. With the exception of the Coronation offices and a few others, these are no longer heritable, but are treated as political, it being the practices for the officers to retire with a change of Ministry. An exception is recognised in the case of certain offices, more particularly the Coronation offices, which are only called out of abeyance on the occasion of a Coronation. These are still heritable, and the long prescription, both positive and negative applies of them. To establish a title by prescription proof of exercise on consecutive occasions covering the prescriptive period is sufficient.

Generally heritable offices, unlike personal offices, **may be *sold, adjudged subfeued, or deputed,*** [Bell, Com, I, 125; *Cockburn v. Langton's Crs.,* 1747, Mor. 150, 157; 1755, 1 Pt. 603; *Gardner v. Grant,* 1835, 13 S. 664], and these privileges are ***not*** struck at by the Sale of Offices Act, 1809.

Certain offices, however, descend strictly ***jure sanguinis*** and are not ***in commercio*** **[***Earl of Lauderdale v. Wedderburn*, 1908 S.C. 1237, per Lord President at p. 1255; 1910 S.C. (H.L.) 35.**}**. Heritable judicial office was abolished by the Heritable Jurisdiction Act, 1747."

¶943 Ancient or New:

Ancient offices are generally the *creation of the prerogative,* and their attributes are determined by the ancient usages of the realm **[***hill v. R.,* 1852, 8 Moo. P.C.C. 138**]** or where it is **extant, *by the express terms of the grant.*** **[**as set forth in the Register of the Great Seal of Scotland.**]** Since 1455 it has been illegal to create new heritable offices in Scotland, the Act 1455, c. 44, providing that 'there be no office in time to cum given in fee or heritage.' **[**Heritable Offices have been created after this date by ratification by the Scots Parliament.**]**

"The Crown may still use the prerogative to create new personal offices subject to certain restrictions. Thus it may not create a new office which is inconsistent with the Constitution or prejudicial to the lieges; nor one with new fees annexed to it; nor can it annex new fees to an ancient office, since this would be in effect to impose taxation without the authority of parliament. In practice new offices are almost invariably created by statute."

Nota Bene: It would appear that many further Heritable Offices were created *after* The Act 1455 *via* ***ratification*** of such Heritable Offices by the Scots Parliament. Such *parliamentary ratification* of ***new*** Offices created after 1455 would remove them from the classification of "personal offices" and cause them to become ***saleable*** "Heritable Offices" ***in commercio*** - just like feudal baronies.

[36] In addition to feudal baronies, the "Index Officiorum" lists the creation of such Heritable Offices *in commercio* as the following:

- **Heritable Keepers of Castles**
- **Heritable Captainships of Castles**
- **Heritable Constableships of Castles**
- **Heritable Constableships of places**
- **Heritable Sheriffdoms**
- **Hereditary Abbots & Priors**
- **Heritable Regalities**
- **Hereditary Stewartrys**
- **Hereditary Keepers of Abbeys**
- **Heritable Coroners**
- **Heritable Baron-Baillie**
- **Heritable Baron-Serjeants**
- **Hereditary Keeperships of Crosiers or Relics**
- **Hereditary Foresters**

[37] See Sir Thomas Innes of Learney writes in Scots Heraldry, 2nd ed., 1956, "Official Arms and Insignia", pp. 143 – 145:

"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 … Sometimes, however, an office has a coat of arms of its own. …

"These official arms may be born alone, but if the official be himself armigerious, then the official arms may be impaled with the personal arms of the holder of the office. …

In Fig. 68 on p. 144, Sir Thomas gives the illustrated example of the arms of the Earl of Mar and Kellie who holds the Office of Hereditary Keeper of the Castle of Stirling: "behind the shield are placed in satire a key, wards outward, Or and a baton Gules garnished Or, and ensigned with a castle of the last (Insignia of the office of hereditary Keeper of the Castle of Stirling)"

A recent example of matriculating the title and insignia of office of a Heritable Office *in commercio* upon the Lyon Register is the 1981 matriculation of Sir Fitzroy Hew MacLean, Bt. Of the Hereditary Constableship of Dunconnel in Lyon Register 63/65.

[38] See Green's classic Encyclopaedia of the LAWS OF SCOTLAND, Vol. X, "Office", ¶993 re "Sale of Offices", as follows:

¶993 Sale of Office:

"In his Commentaries [I, p. 1225] Bell states the common law as follows: - **'In Scotland all heritable office may be voluntarily sold or adjudged and judicially sold for debt.** So a ***patrimonial offices*** such as are *descendible to heirs* and assignees may be **sold** or adjudged.

"Offices which are not patrimonial but in which there is a personal trust reposed are not saleable nor capable of being attached by diligence.' But he adds: 'The practice in Scotland has been extremely loose; and examples have occurred of the sale even of offices connected with the administration of justice'

"Sale of office is now regulated by the Sales of Offices Act, 1809 [49 Geol III. c. 126], which, in addition to extending the Act 6 Edw. VI. c. 16 'against buying and selling of offices,' to Scotland, provides that any person or persons buying or selling or receiving or paying money or rewards for offices shall be guilty of a criminal offence. **certain offices of the Household** and commissions in the army are expressly excepted [sec. 7].

"***A further exception is made of certain ancient offices and of any offices which were legally saleable before the passing of the Act.*** [Sec. 9]. The Act is substantially declaratory of the common law of Scotland. ***it does not affect materially the sale of ancient heritable offices***, and, since the Act 1455, c. 44, it has been illegal for the Crown to create any new heritable office. **[**It would appear that with ratification by the Scots Parliament that new Heritable Offices have been created after 1455.**]**

"Generally, therefore, it may be said that the question whether or not a ***heritable office*** may be **sold** is determined by ***ancient***

usage, by the express terms of the original grant or by the ***nature of the office itself.*** Certain offices, more particularly those which descend *jure sanguinis,* are extra commercio [*Earl of Lauderdale v. Wedderburn*, 1908 S.C. 1237; 1910 S.C. (H.L.) 35]

"The ***majority*** , however, of ***heritable offices*** are **capable of sale [***Cockburn b. langton's Crs., 1747, Mor. 150, 157; 1755, 4 Pat. App. 603* **]** At common law, on grounds of public policy, the sale of personal office has always been illegal **[***Thomson v. Dove*, 16th February 1811, F.C.; cf. *Hill v. Paul*, 1840, 2 Rob. App. 524**]**"

¶ 994 Deputation of Office:

"The same general principles are applied in the case of deputation of office. By the Sale of Offices Act, 1809, deputation for profit is a crime [49 Geo. III c. 126, s. 3], but an ***exception*** is made in favour of offices formerly deputable and of lawful deputations {49 Geo. III. C 126, ss. 9, 10]. These provision are declaratory of the common law and are based on grounds of public policy. Although deputation is in general illegal, the question whether any particular office may be performed by deputy is to be determined by ***ancient usage***, by the express terms of the grant of office, or by the nature of the office itself **[**Cf. *Hog v. Kerr*, 1681, Mor. 13106; *Lord Clerk Register v. Stuart,* 1795, Mor. 13140.**}** Thus the office may be such that performance by deputy is in the public interest, as where serious inconvenience would be caused by interruption of its performance for even a brief period. Generally heritable offices which descend *jure sanguinis* cannot be deputed **[** *earl of Lauderdale v. Wedderburn*, 1908 S.C. 1237; 1910 S.C. (H.L.) 35 **],** but in England in a case where such an office had descended to two co-heiresses they were allowed, subject to the approval of the Crown, to appoint a deputy **[** *Ex parte Burrell,* 1781, 2 Bro. P.C. 146 **]."**

[39] See Stair Memorial Encyclopaedia of the Laws of Scotland, Vol. 7, "The Crown", under the heading "(5) The Royal Household" under the sub-heading "(b) The Great Officers of the Royal Household", ¶ 820, as follows:

¶ 820: Generally: "The Great Officers of the royal house summoned to give attendance on the occasion of the state visit of George V in 1911 were the hereditary Lord High Constable, Master of the Household, Keeper of Holyroodhouse, Armour-Bearer and Standard Bearer.

"To these must now be added the Bearer of the National Flag.

"In 1910 the House of Lords took the view that such offices vested *jure sanguinis* and were not *in commercio* [Case of Earl of Lauderdale v. Scymgeour Weddernburn.]

"It seems more appropriate, however, to view hereditary offices **as a form of heritable property**, particularly as some were originally linked to and descended with landed estates, and ***the right to them could be recorded in the register of sasines.*** This becomes more apparent in dealing with lesser heritable offices."

NOTE BENE: Within modern times the Hereditary Keepership of the Royal Palace of Falkland was purchased by the 3rd Marquess of Bute and the Hereditary Keepership was vested in his second son, Lord Ninian Crichton-Stuart of Falkland, who matriculated official heraldic insignia for this transferred Hereditary Keepership as well as the 'territorial designation" in Lyon Register 20/8. This insignia was re-matriculated for his descendant, Michael Duncan Crichton-Stuart of Falkland in Lyon Register 40/127.

[40] See Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 11, "Heraldry", ¶1613 'The nature of arms', as follows:

¶1613: The nature of arms: In Scotland a coat of arms is incorporeal heritable property, governed, subject to certain specialities, by the general law applicable to property. Lord Robertson observed in *m'Donnell v. M'Donald* that a right to arms:

'would involve a question of property, which a right to bear particular ensigns armorial undoubtedly is' [*M'Donnell v. M'Donald* (1826) 4 S 371 at 372 (NE 374 at 376)]

……

Further, a coat of arms is a fife annoblissant, **similar to a** territorial peerage or **barony**, the grant of which determines that the grantee

'and his successors in the same are, amongst all Nobles and in all Places of Honour to be taken, numbered, accounted and received as Nobles in the Noblesse of Scotland' [Nobility clause in any grant of arms]

This ennoblement confers a status and a precedence on the holder of the arms, whether a person or a corporate body. [*Law Society of Scotland* **1955 SLT (Lyon Ct) 2**]"

[41] See Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956) p. 20, as follows:

"A coat of arms is the outward indication of nobility, and arms are officially described as 'Ensigns of Nobility'. A patent of arms is – and I say this with full official weight – a Diploma of Nobility, and as such both the Scottish and English Kings of Arms have treated their patents, issued by them as Royal Commissioners."

[42] See Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956) p. 21, as follows:

"… A coat of arms, like a peerage, baronetcy, or right of salmon fishing, become a ***recognised form*** of **'incorporeal heritable property'**, the power of granting which is 'part of the Royal Prerogative', and the Court of Session has laid down, per Lord Robertson [*Macdonell v. MacDonald,* 1826, 4 Shaw & Dunlop 371], that infringement of a right to arms 'involves a **question of property**, which a right to bear particular ensigns armorial undoubtedly is', and that the Scottish Courts must in such cases give redress. [Commented on and approved in House of Lords by Lord Shaw of Dunfermline, *Stewart-Mackenzie v. Fraser-Mackenzie,* 1922 S.C.. (H.L.), 39 at pp. 46 and 47] Nowadays this may seem strange, but in Scotland **a right of any sort**, be it of 'nobility' only, or be it of a peerage or other 'honour', has always been considered a **'right' to which one must have proper 'title deeds'**, and over which one can have a 'guid gangin' plea' before a Court of Justice, should there be any cause for dispute. [Green's *Encyclopaedia,* XI, par. 417, 434; Innes of Learney, *Law of Succession in Ensigns Armorial,* p. 3 n.]" (Emphasis supplied.)

[43] See Green's Encyclopaedia of the Laws of Scotland, Vol. VII, "Heraldry", ¶1376, as follows:

¶1376 … **The Lyon Register fulfils, in regard to armorial bearings, virtually the same purpose as the Register of Sasines does in regard to other forms of heritable property** – though a coat of arms, being a 'token of honour,' does (after registration) vest, like a dignity *jure sanguinis* [*Fiscal v. Earl of Roseberry ,* 9th July 1773, Lyon Court], and without service or sasine. Nevertheless, service or rematriculation may be the best evidence that it has vested, and in certain circumstances the arms may only vest subject to defeasance unless rematriculation takes place. [*Brisbane,* Lyon Office Record Book, p. 181]." (Emphasis supplied.)

[44] See Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956) pp. 83-84, as follows:

"The granting of Arms is a part of the Royal Prerogative committed to the Kings of arms, who issue Letters Patent, in exercise of the Royal Authority, wherein they 'devise and do by These Presents Assign, Ratify and Confirm' the arms brought into existence by the Warrant and Patent – which is a grant of them as an incorporeal *fief noble* **and of which the Grantee takes 'peisible seisin'** [1941 S.C., p. 672, nn. 36 and 37; *Law of Succession in Ensigns Armorial,* pp. 27-9, n.; *Lyachou v. Fishiar* cited in *Albany's Observations on Armorial Conveyancing,* pp. 7-8 (ex. *Notes & Queries,* 1939-41)] **by recording the patent in the Public Register of All Arms and Bearings, *just as a grant of land is recorded in the Register of Sasines,*** and until so matriculated in Lyon Register the

Patent is of no effect [*Cameron of Lochiel v. Cameron of Erracht,* 24 February 1792, Lyon Register, I, 567-8], conform to the maximum *nulla sasine nulla terra.*" (Emphasis supplied.)

[45] See Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956) p. 114, as follows:
"And in the Law and Practice of Arms under the Scottish Acts the matriculation in Lyon Register is the 'infeftment' or record of sasine of the Arms. [*Law of succession in Ensigns Armorial,* pp. 28, 22; 1941 S.C., p. 672.]"

[46] See Mackenzie, Works II, p. 583; See also Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 6, "Courts and Competency", ¶1017, fn. 3

[47] See Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956) p. 93, as follows:
"Moreover, the Court of Session has reaffirmed that arms in Scotland are ***feudal heritage*** [*Maclean of Ardgour v. Maclean,* 1941 S.C., 683, line 35, reaffirming *Macdonell v. Macdonald,* 1826, 4 Shaw 374] **(**rather like a **feudal barony** [Mackenzie, Works, II, 583, 615]**),** which heritage any British subject is capable of acquiring by the feudal grant where Lyon, in exercise of the Royal Prerogative, sees fit to make the grant, ..."

[48] See Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956) p. 116, as follows:
"The seal of arms, chiefship, and sepulchre descend together, ***according to the same principles as govern*** the Scottish Crown, Earldoms, and **Baronies,** each of which were simply tribal chiefships. Arms are **feudal heritage** [Lord Justice Clerk in *Maclean of Ardgour,* 1941 S.C., p. 683, line 35] and an **incorporeal fife** and descend as such unless 'attracted'"
"The principle and practice in Scottish Armorial succession is accordingly quite simple, and results in the original arms descending at common law, essentially like the castle or mansion of a Scottish estate, so long as the heir bears the name incident to the 'armorial fief', i.e., its 'description', really *nomen dignitatis nobilitatis minoris.* "

[49] See *Earl of Lauderdale, Petitioner,* **1985 Scots Law Times (Lyon Ct.) 13 at 15**, as follows:
"His Lordship found in law:
1. That the bearing of the Sovereign's Banner and other Ensigns of Honour is a **noble feudal tenure** *analogous* to **armorial bearings** and such honours, and that claims to the bearing of such ensigns is ***causa armarum*** justiciable in the Court of the Lord Lyon."

[50] See Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956) p. 84, as follows:
"There is nothing in the Statute 1672, cap. 7, to forfeit a then existing right to arms, if, of course, the use was 'of right' and not a usurpation, though penalties are imposed for using these until they are 'ascertained' by the Lyon Court and recorded in Lyon Register, and every coat of arms proved to have been justly borne or used anterior to 1672 is deemed to have been brought into existence by a grant from the Crown or its King of Arms. Arms 'are presumed to be the creation of the Crown', but since a title to heritable property must be proved 'by writ' unless an earlier patent or confirmation is proved or produced for registration under the 1672 Act, what happens is that Lyon, after judicial inquiry regarding the pre-statutory 'possession', issues and records a 'Confirmation' of the arms (if necessary with any technical corrections), which then becomes the foundation of the feudal title to such coat of arms. It is consequently still possible for anyone to prove that he or she is the legal representative of some person who used arms before 167 2, and to get these recorded with any 'difference' which the Lord Lyon may consider necessary, upon payment of the statutory fees under 30 & 31 Vict., cap. 17, Secs. 11 and 13, and Schedule B. [Innes of Learney, *Law of Succession in Ensigns Armorial,* p. 28; Lord Lyon Grant's judgement (cf. "on record") in *Maclean of Ardgour v. Maclean,* 1941 S. C., p. 662, and see Respondent's Argument on Appeal, pp. 671-3]"

[51] See Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 11, "Heraldry", ¶1616 'Confirmation of arms', as follows:
¶1616: Confirmation of arms: Where a petitioner is apparently in right to a coat of arms, but either the original grant is not in existence or there is some potential weakness in his title, then the Lord Lyon will 'Maintain Ratify and Confirm' the coat of arms to the petitioner and his heirs. A confirmation of arms by the Lord Lyon is **the equivalent of a Crown charter of *novodamus* in respect of dignities or heritage,** and secures the recipient against any defect in his title to the arms and **acts as an original grant**." (Emphasis supplied.)
"A confirmation of arms is used where there is no record of the original arms, although the petitioner by virtue of his position (for example as clan chief) is undoubtedly armigerious [*MacNeil of Barra* (1806) Lyon Register Vol 2, p. 5, and (1915) Lyon Register Vol 22, p. 60; *Nicolson of Scorrybreac* (1934) Lyon Register Vol. 31, p. 21], for example where arms can be proved or presumed to have been in use by the petitioner's progenitors before the passing of the Lyon King of Arms Act 16 72 (c 47). A confirmation may also be used where the Chiefship is vacant and either the clan derbhfine has selected a successor for presentation to the Lord Lyon for confirmation as chief [*Morison of Ruchdi* (1967) Lyon Register vol. 31, p. 21] or the chiefly line is apparently extinct and the next cadet seeks confirmation as chief [*Macnab of Macnab* **1957 SLT (Lyon Ct) 2**], or where the chiefly line has been forfeit but the family has later been restored to its former position without a formal restoration of the arms. [*Lord Macdonald* **1950 SLT (Lyon Ct) 8**; *Graham of Duntrune and Claverhouse* **1960 SLT (Lyon Ct) 2**]."

[52] See Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956) p. 117, as follows:
"Even in the case of higher dignities, our ancient practice was fro the heirs to be retoured [J. Riddell, *Inquiry into the Law and Practice in Scottish Peerages,* pp. 141, 640], or otherwise satisfactorily connected to their predecessors in the honours [*Earl of Mar,* 7 July 1933; Lyon Register, 30/67; *Earl of Selkirk,* Lyon Register 35/28; *Kinloss,* 18 July 1947, Lyon Register, 36/61], and in heraldry the statutory means of making up title to arms on succession is to get the arms rematriculated in one's own name in Lyon Register, **the equivalent of recording a progress of title to land in the Register of Sasines**. [1941 S.C., p. 672] **The Lord Lyon's judgement and subsequent matriculation in Lyon Register is analogous to the modern recorded decree of Service as a title to land.** In this, armorial conveyancing from 1672 was two centuries ahead of land conveyancing. A rematriculation by progress is the equivalent of a general retour as regards representation, and a special retour as regards title and pedigree and of great value in succession to honours, including Baronetcies [Home Office letter in *Grant-Suttie,* 5 June 1947 (Case 921, 215); *Strathspy,* 27 January 1950 (**1950 Scots Law Times, p. 17**)], and higher honours [*Selkirk,* Lyon Register 35/28; *Kinloss,* Lyon Register 36/61]."

[53] See Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 11, "Heraldry", ¶1617, 'matriculation', as follows:
¶1617: Matriculation: ... A rematriculation by progress is analogous to a general retour as regards representation and a special retour as regards title and pedigree, and is of great value in establishing the succession to headship of ancient families, clan chiefships, peerages, and baronetcies [*Grant of Grant* **1950 SLT (Lyon Ct.) 17**; *Earl of Selkirk* (1945) **1885 SLT (Lyon Ct) 2**]."

[54] See Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956) p. 196, as follows:
"Pedigrees recorded as satisfactory in the Public Register of All Genealogies and Birthbrieves in Scotland, or **adjudicated upon in Lyon Register** as the basis for confirmations and matriculations of arms **as the reinvestitures in feudal heritage, are received as sufficient evidence in succession to Baronetcies and entry on the Roll of Baronets** [*Grant-Suttie, Bart.,* "If a pedigree is on

record there (in *Lyon Office*) only such evidence as is not covered by it need be submitted", Home Office Letter, 5 June 1947; and for Peerage Precedency Warrants (*Kinloss,* Precedency Warrant 1947), Register of Genealogies, IV, 32, Lyon Register, 36/61, 18 July 1947)], **and the matriculation as equivalent of special service in heritage** when peers present themselves to vote at Holyroodhouse, **Lyon Court's decisions consequently operates as sufficient evidence of succession** ..." (Emphasis supplied.)

[55] See Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 6, "Courts and Competency", ¶1018, as follows:

¶1018 Judicial functions of the Lord Lyon: ...

"Lyon may determine judicially claims to heraldic additaments (for example supporters) and also additaments **which demonstrate the succession to peerages and other honours and great offices of Scotland.** Legislation in 1963 provided that the holder of a peerage in the peerage of Scotland should have the same right to receive a writ of summons to attend the House of Lords as the holder of a peerage in the peerage of the United Kingdom, and that the enactment relative to the election of Scottish representative peers should cease to have effect. ... The Act placed the Lord Chancellor in some difficulty regarding which holders of Scottish peerages were entitled to receive a writ of summons. Most titles were beyond dispute, but some peers had voted at election of representative peers even though doubts existed concerning the validity of their titles. The question was considered by the Committee for privileges of the House of Lords and that committee suggested that not all claimants to Scottish peerages should be required to appear before the committee. The House of Lords accepted the proposal of the committee that **proof of matriculation of arms with additaments appropriate to a peerage of Scotland should constitute sufficient evidence of entitlement** [254 HL Official Report (5th series) col 939 (22 Jan 1964)]. Following the acceptance of that report important decisions were made in the Lyon Court relating to additaments demonstrating of peerage entitlement [*Lady Ruthven of Freeland* **1977 SLT (Lyon Ct) 2**; *Viscount Drumlanrig's Tutor* 1977 SLT (Lyon Ct) 16]. In agreeing to accept a **matriculation in the Lyon Court as sufficient proof of entitlement to a Scots peerage** the House of Lords clearly envisaged that contentious cases would still come before the Committee for Privileges [254 HL Official Report (5th series) col 940]." (Emphasis supplied.)

[56] See Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 6, "Courts and Competency", ¶1018, as follows:

¶1018 Judicial functions of the Lord Lyon: ...

.....

"The Lord Lyon may also determine judicially that a genealogy or birthbrief has been sufficiently proved and may pronounce an interlocutor allowing the Lyon Clerk to record the same in the Public Register of All Genealogies and Birthbrieves in Scotland. A genealogy recorded in obedience to Lyon's interlocutor has been accepted by the Committee for Privileges of the House of Lords a sufficient proof of the genealogy presented in support of a claim to a Scottish Peerage [*Viscount of Oxfuird* **1986 SLT (Lyon Ct) 9** at 13, Committee for Privileges, per Lord Fraser of Tullybelton; *Earldom of Annandale and Hartfell* **1986 SLT (Lyon Ct) 18**]."

viii) Establishment of 'real rights' of entitlement to baronetical heraldic additaments (i.e., Badge of Baronets of Nova Scotia or the 'Red Hand') inseparably linked to the dignity of Baronet ... as the ***RES*** (thing) constituting the dignity of Baronet ... determines legal entitlement to a Baronetcy ... and is so accepted by the Keeper of the Roll of Baronets for enrolment thereupon: *As a Red Baronial Chapeau is also a 'property' incident to, and indicative of the Holder being a Baron, analogously, matriculation of the Red Chapeau on the Lyon Register would judicially establish that the recorder is a Baron in the Baronage of Scotland.*

See Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956) p. 47-50, as follows:

"Baronets of Nova Scotia are entitled to bear a canton of the arms of nova Scotia, which is accordingly – being arms – a **'property'** [*Macdonell v. Macdonald,* 4 Shaw 374] **incident to, and indication of, the holder being a Baronet** [*Cuninghamn,* 11 Dunlop, pp. 1149, 1151]. It cannot be used as a mark of cadency. [Stevenson, *Heraldry in Scotland,* p. 349]. A claim to this 'property' (or the equivalent 'red hand canton conferred on British Baronets by the terms of their patents) involves a **judicial decision determining the claimant's right before a competent Court, and in relation to 'heritage' inseparably related to the Baronetcy.** [*Grant of Grant* (Lord Strathspey), 27 January 1950, Lyon Register 37/143; **1950 Scots Law Times 17** (and equally in *pereduct* form)] Such **a judicial decision on the descent of property descending like the Baronetcy** the Keeper of the Roll of Baronets is **bound to follow** [*Baronetage Report,* Home Office, 1907 , Sec. 20; Treaty of Union, Acts 18 and 19], and illustrates the practical effect of the recognition of the king of Arms' jurisdiction in the Baronetage Warrant, 1911, Sec. 13 – arms in Scotland being an estate, i.e., 'feudal heritage', per Lord Justice Clerk in *Maclean of Ardgour v. Maclean,* p. 683. [Cf. F. W. Pixley, *History of the Baronetage,* p. 184; *A. P. S.,* V, 223]" (Emphasis supplied.)

[57] See Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 6, "Courts and Competency", ¶1018, as follows:

¶1018 Judicial functions of the Lord Lyon: ...

.....

"The Lord Lyon may judicially determine the right of claimants to the additaments demonstrative of a right to a baronetcy. A Baronet of Nova Scotia is entitled to the addition of a canton or inescutcheon of the armorial bearings of Nova Scotia and a baronet of Great Britain (created 1707 to 1801) or of the United Kingdom (created from 1801) is entitled to the additaments of a canton 'Argent, a dexter hand couped Gules'. Lyon has decided that a canton or inescutcheon of Nova Scotia is:

'neither a brisur or mark of cadency but an addition-in-arms duly differenced from the undifferenced arms of the province of Nova Scotia by being tenable only in canton or in inescutcheon in conjunction with the arms of the grantee and heirs specified in the charter, patent or regrant of the baronetcy and, when used as provided and by due procedure granted, is, and forms part of, an armorial heritable property indicative of the heir in the said canton or inescutcheon of Nova Scotia being *eadem persona* with the heir in the Baronetcy' [*Rt Hon Sir Donald Patrick Trevor Grant of Grant, Lord Strathspey* **1950 SLT (Lyon Ct) 12 at 18**]'

"Lyon has also decided that a female may, if the terms of the patent creating the dignity so provide, be entitled to such a baronetical additament. [*Dame Maureen Daisy Helen Dunbar of Hempriggs, Baronetess* **1966 SLT (Lyon Ct) 16**] Lyon's judicial function in relation to baronetcies is specifically reserved in declaration XIII of the royal Warrant of 10 February 1910."

[58] See Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 11, "Heraldry", ¶1621 'Armorial additaments demonstrative of succession to higher dignities or heritable great offices', as follows:

¶1621: Armorial additaments demonstrative of succession to higher dignities or heritable great offices: Certain armorial additaments are inextricably linked to particular dignities such as peerages or heritable great offices such as the Lord High Constable of Scotland. The armorial additaments **descend to the same series of heirs** as that dignity or heritable office. Accordingly, **the establishment before the Lord Lyon of the right to succeed to those particular armorial additaments is demonstrative of succession to that higher dignity or heritable office.** Thus peers of Scotland seeking to establish their rights to a Scottish peerage may petition the Lord Lyon for a rematriculation of arms 'with the insignia appropriate' to them as holders of the peerage. [*Lady Ruthven of Freeland* **1977 SLT (Lyon Ct) 2**] Such matriculations are normally sufficient evidence of entitlement

to a peerage to allow the matriculator claim a writ of summons to the House of Lords. [254 HL Official Report (5th series) cols 380-389 (19 December 1963) and cols 939-943 (22 January 1964); Sir Crispin Agnew of Lochnaw 'peerage and Baronetcy Claims in the Lyon Court' (1981) 26 JLSS 311.] Claims to baronetcies, and in particular to baronetcies of Nova Scotia, are proved by seeking a rematriculation of arms with a canton of arms of Nova Scotia or the arms of Ulster (argent, a hand gules) as appropriate. [*Grant of Grant* **1950 SLT (Lyon Ct) 17**] **Claims to heritable offices are established by matriculating the additaments appropriate to the office claimed**. [*Livingston of Bachuil* **1951 (Lyon Ct) 5**; *Earl of Lauderdale* (1952) **1985 SLT (Lyon Ct) 13**.]" (Emphasis supplied)

[59] See *William Jervis Alastair Livinsgston of Bachuil*, 21 December 1950, **1951 Scots Law Times (Lyon Ct.) p. 5,** as follows:

"William Jervis Alastair Livingston of Bachuil presented a petition invoking the Lord Lyon to grant warrant to the Lyon Clerk to matriculate in the Public Register of All Arms and Bearings in Scotland in name of the petitioner the appropriate ensigns armorial along with the insignia relative to the heritable office of Keeper of the Great staff of the Blessed St. Moluag."

"On 21st December 1950, the Lord Lyon King of Arms found in fact, *inter alia* :

1. That the petitioner is sufficiently established to be heir-male and representative of the Reverend Alexander Livingston of Bachuil, who of date 26th May 2848 had a charter of confirmation of or in relation to the custody of the Bachuil Mor and lands of Bachuil in Lismore, who was heir-male and representative of John McMollemore Vic Evir, pursuivant to the Earl of Argyll, who of date 9th April 1544 had a confirmation of or in relation to the custody of the said Bachuil Mor and of the lands of Peynebachuille and Peynechallen on the narrative of his predecessors having held the said lands and custody of the Bachuil Mor of St. Mouluag."

5. That the *co-arb* of a Celtic abbot was heir of the abbot in his ecclesiastical functions and abbatial mensal territory.

7. That the petitioner's ancestors, upon reasonable inference, used ensigns armorial anterior to the year 1672, which ensigns armorial comprehended gillyflowers or roses."

His Lordship found in law:

1. That the petitioner, as heritable Keeper of the Bachuil Mor, *alias* Bachuil Buidhe, viz. the pastoral staff of St. Moluag, is *co-arb* of St.. Moluag.

2. That as *co-arb* of St. Moluag and heritable Keeper of the Bachuil Mor of St. Moluag, the petitioner is Baron of the Bachuil in the Baronage of Argyll and the Isles."

3. That the petitioner is entitled to matriculate, as a baron, ensigns armorial on ancient user, to be adjusted and blazoned by the Lord Lyon king of Arms and matriculated in the Public Register of All Arms and Bearings in Scotland pursuant to the Statute 1672, cap. 47."

4. That as a baron, in the Baronage of Argyll and the Isles recognised by the Parliament of Scotland, the petitioner is entitled to have a cap of estate gules furred contre-ermine in his achievement-armorial."

[60] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 15, as follows:

"His Lordship found in law:

1. That the bearing of the Sovereign's Banner and other Ensigns of honour is a **noble feudal tenure analogous to armorial bearings** and such honours, and that **claims to the bearings of such ensigns is causa armarum justiciable in the Court of the Lord Lyon**.

2. That the petitioner, Ian Colin, 15th Earl of Lauderdale, is now in right of the ensigns armorial, including external additaments comprehending, inter alia, the insignia of bearing for the Sovereign the national flag of Scotland emblazoned with the Sovereign's badge of a saltire Argent, as heir-male and representative of James, 8th Earl of Lauderdale, for whom, as 'haretable Royal Standard Bearer' and Earl of Lauderdale under destinations primarily in tail male, the said Earldom and offices stood under as facie valid titles of 29 July 1790, of which date the said 8th Earl of Lauderdale had **honourable investiture of the said insignia of the said heritable office by recording thereof, in and along with his ensigns armorial as nobiliary feudal heritage in the Public Register of All Arms and Bearings in Scotland.**

.....

11. That the petitioner, Ian Colin, 15th Earl of Lauderdale, is entitled, as Earl of Lauderdale, chief of the Name and Arms of Maitland and hereditary Bearer of the Sovereign's national flag of Scotland, Azure, a saltire Argent, to matriculation without brisur or mark of cadency of the ensigns armorial of Maitland, Earl of Lauderdale, **containing amongst the external additaments thereof** representation in saltire behind the shield of two flags, Azure, a saltire or Cross of St. Andrew Argent, fringed Or, ropes and tassels of the same, **as insignia of the heritable office of bearing the same for the Sovereign**.

[61] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 15, as follows:

"His Lordship found in law:

3. That the charter of apprising of 24 May 1676 obtained by Charles Maitland of Haltoun, afterwards 3rd Earl of Lauderdale, was inept and invalid to transfer existent ensigns armorial and subjects of dignity extra commercio, so in respect that the office of heritable Banner-bearer otherwise termed Standard-bearer , and the bearing of flags substitutionary thereunto as held by Sir John Scrymgeour, 2nd Earl of Dundee, and his predecessors, was a **nobiliary subject incapable of apprising or recognition and not justiciable (in any rate in first instance) in any ordinary court of law but only in a court of honour,** the said title was inept and invalid in respect of the said office of Heritable Banner-bearer. (Emphasis supplied.)

[62] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 15, as follows:

"His Lordship found in law:

8. That the Earl of Lauderdale, in respect of the grant in the charter of novodamus of 24 May 1676 of the hereditary office of bearing for the Sovereign certain flag-insignia and **the honourable investiture upon decree of Lyon Court and matriculation of date 29 July 1790 including the additament of the S. Andrew's Cross flag Azure a saltire Argent (as indicative of a flag bearing office** conferred by the said charter of novodamus 24 May 1676, ratified by Act of Parliament 6 September 1681, cap. 72), and uncontroverted possession on the **said publicly recorded investiture** (including public bearing of the demonstrative-insignia of the hereditary office of bearing for the Sovereign the national flag of Scotland) has **right and title** (now protected by prescription) to the said office: the honourable bearing for the Sovereign of the Sovereign's national flag of Scotland, from and following upon the said charter of novodamus and investiture.

[63] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 15, as follows:

"His Lordship found in law:

10. That the grant to, and investiture of, James, 8th Earl of Lauderdale, 29 July 1790 as a heritable flag-bearer to the Sovereign of the Sovereign's national flag of the St. Andrew's Cross (viz. Azure, a saltire Argent) – which is a flag indicative of Scottish identity

and not one of the series of flags substitutionary to the Sovereign's banner and indicative of the Sovereign's regal presence or public authority – was (as **nobiliary right and honourable office of ensign-bearing** (under the hereditarium officium gerendi omnia nostra insignia de quocunque lie shap or fashion seu colore tam pedestri qual equestri clause of the charter of novodamus of 24 May 1676) not a grant and investiture in derogation of the grant or grants of the bearing of the Royal Banner (and series of substitutionary flags) to the Scymgeours of Dudhope, and accordingly the charter of 24 May 1676 was a valid grant to the extent of a **noble and heritable office of ensign-bearing in respect of the Sovereign's national flag**, Azure, a saltire Argent, of which the said 3rd Earl of Lauderdale's successor, James, 8th Earl of Lauderdale, was, in virtue of the said grant, **entitled to investiture** and of which the said 8th Earl of Lauderdale was **accordingly rightly invested, 29 July 1790,** and whereof the heirs-male of Scrymgeour of Dudhope have no competing right or title or contrary possession."

[64] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 15, as follows:
"His Lordship found in law:
7. That in respect that the Earls of Lauderdale had no honourable investiture of the said Banner-bearing until the matriculation on decree of Lyon Court, 29 July 1790, and that in August 1822, viz 32 years after the said James, 8th Earl of Lauderdale's honourable investiture in the said Banner-bearing upon the said charter of novodamus of 24 May 1676, the Earls of Lauderdale had not uncontroverted or prescriptive possession of the said office of Banner-bearing of the Royal Banner or Flags substitutionary thereto from or following upon the said charter of novodamus.

[65] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 16, as follows:
"On 26 November 1952 the Lord Lyon *pronounced* an interlocutor in the following terms, inter alia:
"**Grants Warrant to the Lyon Clerk to matriculate of new in the Public Register of All Arms and Bearings in Scotland in name of the petitioner** as Ian Colin, Earl of Lauderdale, Viscount of Lauderdale, Viscount Maitland, Lord Maitland of Thirlestane, Lord Thirlestane of Boltoun, Baronet, Chief of the Name and Arms of Maitland, **Hereditary Bearer for the Sovereign of Her Majesty's National Flag of Scotland**, the following ensigns armorial, viz.: Or, a lion rampant Gules, couped at all his joints of the field, within the Royal Tressure Azure, in a dexter canton Argent a saltire Azure, in a dexter canton Argent a saltire Azure, surmounted of an inescutcheon Or, charged with a lion rampant within a double tressure flory counterflory Gules, being the addition of Nova Scotia as a Baronet above the Shield, from which is pendant by its proper ribbon the badge of a Baronet of Nova Scotia, is placed His Lordship's coronet, thereon a helmet befitting his degree with a Mantling Gules doubled Ermine, and on a Wreath of the liveries is set for Crest a lion sejant afrontee Gules, ducally crowned proper, in his dexter paw a sword of the last, hilted and pommelled Or, and in his sinister a fleur-de-lys Azure, and in a Escrol over the same this Motto CONSILIO ET ANIMUS: on a compartment below the Shield are placed for Supporters two eagles proper, **and behind the Shield in saltire two representations of the Sovereign's national flag for Scotland**, viz. Azure, a saltire or Cross of Saint Andrew Argent, fringed Or,, ropes and tassels of the last, **as insignia of the Honourable Office of Bearer for the Sovereign of the Sovereign's national flag of Scotland**, and authorise the Lyon Clerk to prepare a Statutory Extract as Effeirs, and Decerns." (Emphasis supplied.)

[66] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 16, as follows:
"The noble petitioner claims, however, that the charter of novodamus of 24 May 1676 was a **good grant** of a heritable office of bearing for the Sovereign the Sovereign's national flag of Scotland, of which ensign-bearing his said predecessor had a **valid nobiliary feudal investiture on decree of Lyon Court in and by the matriculation of 1790**, and which his lordship claims in no way derogates from, or conflicts with, the heritable office of Royal Banner-bearer, which was the subject of his grandfather's unsuccessful litigation with the late Henry Scrymgeour Wedderburn." (Emphasis supplied.)

[67] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 18-19, as follows:
"in early writs, this carrying of the Crown,, along with two other functions – the 'first seat and vote in Parliament', and 'the leading of the Van in battle' (which seems not to be the commanding thereof, but to 'pass first in fight' and is perhaps related to certain special symbolic functions) – is described as ***Honores*** (3 February 1602) and later as ***Dignities*** (12 March 1631) so that here again **the highest authority held such a subject justiciable in a court of law, as every heritable right must be.** The decision of the House of Lords of 7 April 1910 can only be reconciled by such office-dignities, including the Standard-bearership, **being justiciable qua causa armarum**, as the latter so patently is, **in the Court of the Lord Lyon — the Judge Ordinary in such matters of dignitas not cognisable in what we may call the 'ordinary courts of law,'** where of course 'ordinary' is used in a different sense from what it imports in 'Judge ordinary' – **which Lyon is in such matters of arms and genealogy** (as Lord Lyon Burnett observed in his Lyon Court MSS) **and relative dignitatis of the relative degree."**
"... I am merely deducing that the heritable office-dignity, of carrying a specific object for the Sovereign, **like any other dignity of Scotland, was justiciable before an appropriate 'Judge-Ordinar'**. What His Majesty approved in Council is accordingly quite consistent with what was ultimately decided in the House of Lords, 1910, viz. that the Banner, or Standard-bearership, in both or either of its aspects, and **its relative heraldic feudo-heritable additaments, should have been passed upon in judgement by Lyon Court in 1790, as also have several other such honourable tenures.**" (Emphasis supplied.)

[68] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 19, as follows:
"... We have to accept their Lordship's decision that this office of bearing certain ensigns armorial and demonstrable by certain additaments of ensigns armorial is one which is not cognisable in the Court of Session or such ordinary courts of law, but **it is a right and a heritable right** and, as His Majesty in Council held in 1823 (and also as Lord Dunedin observed in 1937 – see *Tartans of the Clans and Families of Scotland,* 1952, p. 21, n. 1 — in reference to a later case, and like every great pronouncement of that great jurist it deserves the utmost attention) ***wherever there is a right it must be*** **justiciable and determinable in a court of law**. In a matter of this character, or any such matter of dignity,, there is no mistake about where such dignities are and have been justiciable on both sides of the border; in England the Court of Chivalry, which dealt with cases of arms and heraldry, dealt also with claims to dignities, even including peerages, and its jurisdiction extended also in certain cases to treason."

[69] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 19, as follows:
"... Now in Scotland the Court of Arms, and chivalry, the Court of the Lord Lyon (where the two highest peers of Scotland, the Lord High Constable and the duke of Hamilton are Lords Assessors when such are required) deals likewise and regularly in the cases of arms and likewise offices and their dignities of nobilitas. In certain aspects of Nobilitas major and peerage it has continued to exercise various forms of jurisdiction and in regard to Baronetcies with direct royal sanction and injunction directly and through their insignia (*Lord Strathspey; Lord Reay*). It has also dealt with heritable offices and their insignia, viz. property annexed to and demonstrative of such offices, as appear in numerous matriculations.

[70] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 19, as follows:

"... I have no doubt that both on principle and precedent (not to add as a necessary corollary to **their Lordships' decision that the ordinary civil courts, including the "Court of Session, had no jurisdiction in regard to an office such as the Royal Banner-bearer of Scotland**) **Lyon Court has a jurisdiction in regard to this office**. I have to look into and deal with this matter, as arising out of (and as a corollary of) their Lordships' decision and no less in connection with a decision of Lyon Court itself in 1790, at least in so far as relative to the negative crave of the present Earl of Lauderdale in relation of the heritable office of Banner-bearer of Scotland and also in relation to the bearing of flags other than the Royal Banner. **These are most technical matters, which indeed could only be intelligently tackled in a Court of Chivalry and Arms, matters of which even a preliminary examination shows that the civil courts,**, before which long arguments were led in 1908 and 1910, **had little conception of the technical intricacies involved in the very subject-matter of the dispute**.." (Emphasis supplied.)

[71] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 20, as follows:

"The 'ordinary judge' in matters of this nature, that is in a **matter of 'bearing Ensigns Armorial'** and the 'displaying of banners', and moreover 'in warfare', was, of course, the Court of Arms, viz. in Scotland the Court of the Lord Lyon, then presided over by Sir David Lindsay of the Mount secundus." (Emphasis supplied.)

[72] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 21, as follows:

"... Originally when peerages and suchlike dignities were attached to the caput of the dignified fief, tenure of the fief carried with it, as Lord Crawford has said 'like a shadow', the relative dignity. But when the fief became attachable and in commercio whilst the dignity remained otherwise, **the dignity became capable of being held without the holding of the relative corporeal property**, and where such a separation, inter alia by an apprising of the fief occurred, the sasine of the fief no longer necessarily supplied an investiture or quasi-investiture of the dignity (save as aftermentioned) ***for each had lost their essential inter-relation.*** **(**The baronial dignity, related to *justice* within the fief, remained an exception.**)** In some dignities no alternative form of sasine existed or was substituted. Nevertheless, down to the Union the Scottish Parliament continued to regard even a peerage as properly related to the holding of corporeal feudal heritage (A.P.S., V, 296; *Sources & Literature of the Laws of Scotland,* Stair Society, p. 429). **In the case of dignities related to the tenure of armorial insignia held upon the same limitations as the dignity, the reinvestiture in the arms continues to supply the same judicial procedure and effect in relation to that dignity as the revestiture in corporeal feudal heritage itself**, so long as such heritage continues upon a limitation conform to that of the dignity (or under the instrument governing both) just as in the Home Office Report at the instance of the Roll of Baronets it was indicated that the Secretary of State would necessarily have to accept, in relation to succession to a Baronetcy, the evidence of judicial determination regarding property connected with such Baronetcy (see Home Office Dep. Com., Report,, 1907, para. 20)." (Emphasis supplied.)

NOTA BENE: Following the 'appointed day' when 'the dignity of baron' becomes detached from the corporeal fife re §63(2) of the ACT as well as from the (theoretical) administration of justice within the fife re §63(1) of the ACT; investiture in the applicable baronial heraldic additaments ... and re-investiture in the same upon either intestate succession or inter-vivos transfer of the corresponding barony between living persons ... by recording such baronial armorial insignia upon the Lyon Register "continues to supply the same judicial procedure and in effect in relation to the dignity" of baron to create 'real rights' of ownership in the **RES** (thing) of "incorporeal heritable property" consisting of 'the dignity of baron' re §63(2) of the ACT ... as formerly did taking sasine to the caput to which the barony had been reduced upon the Register of Sasines.

[73] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 21, as follows:

"... As at length set forth by Lord Lyon Grant in the Selkirk succession case 1945, and in 1950 by myself in the case of the Grant of Grant Baronetcy (of Lord Strathspey), it was shown and settled, conform to the Court of Session decisions, that **arms are 'a question of property' and 'incorporeal feudal heritage' with revestiture in ensigns armorial related to the dignity**, and held on the same limitation, and **a necessary index of**, and judicial procedure covering, **the right to the dignity**, unless disturbed by subsequent due and competent process of law, such as a reduction of the armorial investiture involved." (Emphasis supplied.)

[74] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 21, as follows:

"... So early as the 15th century **the character of arms as feudal heritage** was well recognised and **investiture** therein referred to as **'peaceable sasine of arms'**, whilst in Scotland the procedure under 16 72, cap. 47, and **progress of title** in the Public Register of All Arms and Bearings in Scotland **is to all intents and purposes analogous to the Register of Sasines in other forms of heritable property**, and to the practice introduced in the 19th century of dealing with succession **by recording decree of service.** The heraldic administration was indeed analogous to, and for a couple of centuries in advance of, the rest of the law of feudal conveyancing in Scotland." (Emphasis supplied.)

[75] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 22, as follows:

"On 29 July 1790 James, 8th Earl of Lauderdale, in the year following his succession, obtained a **matriculation of arms in the character of 'Hereditary Standard Bearer of Scotland', and behind the achievement was placed insignia demonstrative of the office**, viz. flags in saltire of the tressured lion rampant and St. Andrew's cross. In my opinion this was a belated but **valid investiture** upon the novodamus of 24 May 1676 and explicates the subjects assumed to be included in that grant, and the already-mentioned use of the description 'Insignia' for that of 'Banner'." (Emphasis supplied.)

[76] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 23, as follows:

"The charter of 1676 was duly ratified by the Act of 6 September 1681 (1681, cap. 72; A.P,.S., VIII, p. 339; Lauderdale Print, p. 509) and although this Act falls under the salvo jure cuiuslibet so far as concerns any part of the charter of apprising and novodamus derogating from the Scrymgeour grant and infringing the provisions of 1600, cap. 44, none the less this Act (1681, cap. 72) is good against the Crown quoad any grant in the novodamus which does not derogate from a previous grant to another liege, and I therefore hold that **the novodamus grant of bearing 'Insignia'**, so far as it granted (and by investiture was taken as a grant of) the heritable office of *bearing for the Sovereign the Sovereign's national flag of St. Andrew* was **a good grant upon which there was a good investiture in the Proper Register of Investiture of that sort of thing,, and properly ratified**. Therefore James 8th Earl of Lauderdale was effectively and properly given and **vested in a heritable office** capable of being of great use, interest and gratification to the Sovereign and lieges of Scotland,, and which has nothing to do with nor affects, the grant to the Scrymgeours of 'the Banner' and substitutional flags of 'Authority'. and so validly granted (Stair, II, iii, 15; Erskine, *Institutes of the Law of Scotland,* II, iii, 15, 23; *Cadell v. Allan,* per Lord President at p. 623)." (Emphasis supplied.)

[77] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 23, as follows:

"I have now only to consider briefly the subsequent history in the 19th century and the present of the offices,, for I am well assured that there are now two offices in our view. Whilst in 1821 Lord Lauderdale had officiated at the coronation, a year later, in 1822, without apparently taking any cognisance of Lord Lauderdale's grant under any of his writs, King George IV employed Mr.

Scrymgeour Wedderburn as 'Hereditary Standard Bearer' to carry the Royal Banner of Scotland at Holyroodhouse (*Coronation Claims,* 2nd ed., p. 97). We are not told how this supervened, or who was responsible for it. Sir Walter Scott was certainly responsible for a good deal of the 1822 arrangements, but, looking to the fact that Scrymgeour Wedderburn had not at this date established that he was heir-male of the Scrymgeours, **nor reduced the infeftment of 1790 quoad tressured lion rampant,** it is difficult to see the propriety of him having been allocated the bearing of the Royal Banner, even supposing he were de jure entitled under the Act 1600, cap. 44. **At that stage he had not done anything to prove he was the heir under the Ac**t – except to have Lyon Clark Cummyng's draft of a proposed matriculation which,, had it proceeded, would clearly have shown Scrymgeour Wedderburn as heir-male – **and neither he nor the Crown had yet done anything to divest the Earl of Lauderdale under the grant of 1676 and investiture of 1790**." (Emphasis supplied.)

[78] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 23, as follows:
"On the other hand, coming to the heritable office of Bearing for the Sovereign the National Flag of Scotland,, that is a honourable office which, in the present developed sense of insignia proper to great and historic realms, has come into greater prominence than it might have seemed at any rate in the 17th century, so that the office which rightly, it appears to me, the Earl of Lauderdale claims to hold under the investiture of 1790 and of which he now claims reinvestiture in his own person, is one which, amongst the household and officers of the Sovereign in Scotland, forms one of wide interest. **It flows from a new grant arising of the novodamus of 24 May 1676 duly ratified by Parliament, 1681, cap. 72, of which his predecessor the 8th Earl had investiture on decree of Lyon Court 29 July 1790, and is one to which I am satisfied the noble petitioner has a good right flowing from valid title and infeftment as regarding the bearing of that flag.** There is no mystery about the origin and constitution of this heritable office of bearing this St. Andrew flag, because **we have the deed upon which it proceeds and the statute confirming that deed. These make a perfectly good creation of a heritable office** and, unlike those parts of the deed purporting to regrant the Banner, also originated a grant of bearing St. Andrew's Cross for the Sovereign, which in no way derogates from the ancient grant to the Scrymgeours of the Banner and its substitutionary flags." (Emphasis supplied.)

[79] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 23, as follows:
"... That, however, is by the way; the **issue is one of law**, and I have no difficulty in holding that the present Earl is both in principle and well-=settled law regarding such charters, **entitled to re-investiture by progress in his arms with the external additaments indicative of heritable Bearing for the Sovereign of the National Flag of Scotland, and that this heritable right which he retains** (though resigning pretensions to bear the Royal Banner or substitutionary flags subsidiary thereto) is a distinct office from that held by the Scrymgeours and confirmed to them by 1600, cap. 44, and accordingly in the modified and proper form relative to the Hereditary Bearing for the Sovereign of the National Flag of Scotland the Earl of Lauderdale is entitled **to warrant for rematriculation of his arms** in the Public Register of All Arms and Bearings in Scotland." (Emphasis supplied.)

[80] See Thomas Innes of Learney, Albany Herald, "Armorial Conveyancing", Notes and Queries, 22 February 1941, p. 128 at 129, as follows:
"In any case it was laid down in Cowley v. Cowley, 1901 A.C. 450, that **(**nobiliary**) name** pertains to the **Law of Arms** not to Ordinary Courts of law.**]** and family seal, **devolving** on the **same principles** as the **feudal barony**, and it is in relation to barons and freeholders that arms are first noticed in Scots Statute law (1430, c. 21)."

[81] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 15, as follows:
"His Lordship found in law:
1. That the bearing of the Sovereign's Banner and other Ensigns of honour is a **noble feudal tenure analogous to armorial bearings** and such honours, and that **claims to the bearings of such ensigns is causa armarum justiciable in the Court of the Lord Lyon**.
2. That the petitioner, Ian Colin, 15th Earl of Lauderdale, is now in right of the ensigns armorial, including external additaments comprehending, inter alia, the insignia of bearing for the Sovereign the national flag of Scotland emblazoned with the Sovereign's badge of a saltire Argent, as heir-male and representative of James, 8th Earl of Lauderdale, for whom, as 'haretable Royal Standard Bearer' and Earl of Lauderdale under destinations primarily in tail male, the said Earldom and offices stood under as facie valid titles of 29 July 1790, of which date the said 8th Earl of Lauderdale had **honourable investiture of the said insignia of the said heritable office by recording thereof, in and along with his ensigns armorial as nobiliary feudal heritage in the Public Register of All Arms and Bearings in Scotland."** (Emphasis supplied.)
See also Sir Thomas Innes of Learney, Scots Heraldry (2nd edition, 1956), p. 109:
"1. Initial Matriculations, placing on record arms of ancient user, after proof. These may often contain a destination."
NOTA BENE: An **Initial Matriculation** of 'the dignity of baron' will place on record in the Lyon Register the following information establishing the good title and legal soundness of the particular 'dignity of baron' so recorded:
• The historical erection of the barony-in-question
• Survival of that barony after various potential forfeitures and statutory reforms
• Whether the land forming the barony estate has remained within the barony since its last confirmation
• The legal process by which the lands of a barony had been reduced to a specific caput
• Existence of any competing titles to the barony-in-question
• Existence of any mortgages, entails, annuities, or incapacity of the previous owner to transfer title.
• Search of the Lyon Court Books to establish whether or not 'the dignity of baron' as "incorporeal heritable property" had been transferred **after** the 'appointed day': Because a 'nobiliary subject', a 'noble feudal tenure', a 'fife annoblissant' such as 'the dignity of baron' could **only be transferred** after the 'appointed day' by a formal Deed of Resignation *in favorem* recorded upon the Lyon Court Books (see Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 11, "Heraldry, ¶1622 'Transfer of arms'); a competent search of Lyon Court Books and records by a competent researcher will provide **conclusive proof** that a particular 'dignity of baron' **had not been sold.**

[82] See *Lord Strathspey,* **1950 Scots Law Times (Lyon Ct) 17** at 18, 23-24, and 25, as follows:
"His Lordship found in law:
14. That the petitioner, being found entitled to his achievement of arms with the additions of Nova Scotia provided by the Charter of Baronetcy of 30th August 1625 and regrant of 29 April 1704, is **entitled as of right to be described and recorded in the public register of all arms and bearings in Scotland and other official instruments and documents to be thereafter issued, in the style and title of Baronet, along with the prefix 'Sir' and affix of 'Baronet'** as granted in the said charter and regrant and as rights under the statutes 31st July 1630 and 1633, cap. 28, and Treaty and Act of Union, 1707, Sections 18 and 19." (Emphasis supplied)

.....

"... When Nova Scotia and the 16,000 acres were lost, there was no corporeal heritage to be conferred with baronetcies, **only the additament arms**. These are (as the appellate Courts have reaffirmed) **'feudal heritage' and by making up title to the additamented arms** the Nova Scotia Baronets **could still make up in effect a title covering their dignities,** in precisely the same manner as medieval Scots Lords and Earls had done to the dignities 'annexed to' or shadowing on the *chymmes* of a corporeal feudal property." (Emphasis supplied)

.....

"The charters, diplomas or patents **create heritable rights and confer heritable property in and according to the Laws of Scotland**, unlike even the case of Scottish Peerages under Section 22 of the Treaty of Union, There is in the Treaty of Union nothing whatever affecting the status of the subjects conveyed in the Royal instruments creating Baronetcies and their relative armorial additaments. **These accordingly remain governed entirely**, both as regards the dignities, their rights, relative evidence and procedure of determination, and **by the** instruments and **statutes** and by the protective clauses of the Treaty of Union, and **moreover being heritable rights, they are necessarily justiciable and determinable in the proper channels and upon the proper Scottish evidence**." (Emphasis supplied)

"When the claimant or successor has obtained by legal procedure in Scotland a decree or a revestiure in a character conform to the destination of the patent, and *multo magis* when he has obtained revestiture in the armorial additions demonstrative of being a Baronet and **acquired the public legal character coincident with being such** Baronet, **he is, under the Laws of Scotland, entitled to bear and use the prefix and affix** of Baronet **as well as to use the arms demonstrative of** his being Baronet **all under statutory authority**." (Emphasis supplied)

.....

"In the case of Nova Scotia Baronetcies, any opportunity to settle their succession by reference to the 16,000 acres vanished, **but the additamented armorial bearings remained, 'property' 'feudal heritage',** as the Court of Appeals have held arms to be, and it was accordingly in strictest legal property that the Sovereign in the later 17th and 18th centuries was treating the matters relating to these 'additions' to the Baronets' arms to **the Lord Lyon, who had jurisdiction to give the grants statutory effect and in his Court to determine succession to them and give revestiture in the additamented arms according to Law**." (Emphasis supplied.)

[83] See Sir Thomas Innes of Learney, Scots Heraldry (2nd edition, 1956), p. 114, as follows:

"And in the Law and Practice of Arms under the Scottish Acts the matriculation in Lyon Register is the 'infeftment' or record of sasine of the Arms [*Law of Succession in Ensigns Armorial,* pp. 28, 44; 1941 S.C.,, p. 672]."

[84] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 15, as follows:

"His Lordship found in law:

3. That the charter of apprising of 24 May 1676 obtained by Charles Maitland of Haltoun, afterwards 3rd Earl of Lauderdale, was inept and invalid to transfer existent ensigns armorial and subjects of dignity extra commercio, so in respect that the office of heritable Banner-bearer otherwise termed Standard-bearer , and the bearing of flags substitutionary thereunto as held by Sir John Scrymgeour, 2nd Earl of Dundee, and his predecessors, was a **nobiliary subject incapable of apprising or recognition and not justiciable (in any rate in first instance) in any ordinary court of law but only in a court of honour,** the said title was inept and invalid in respect of the said office of Heritable Banner-bearer. (Emphasis supplied.)

8. That the Earl of Lauderdale, in respect of the grant in the charter of novodamus of 24 May 1676 of the hereditary office of bearing for the Sovereign certain flag-insignia and **the honourable investiture upon decree of Lyon Court and matriculation of date 29 July 1790 including the additament of the S. Andrew's Cross flag Azure a saltire Argent (as indicative of a flag bearing office** conferred by the said charter of novodamus 24 May 1676, ratified by Act of Parliament 6 September 1681, cap. 72), and uncontroverted possession on the **said publicly recorded investiture** (including public bearing of the demonstrative-insignia of the hereditary office of bearing for the Sovereign the national flag of Scotland) has **right and title** (now protected by prescription) to the said office: the honourable bearing for the Sovereign of the Sovereign's national flag of Scotland, from and following upon the said charter of novodamus and investiture.

[85] See Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956) p. 117, as follows:

"Even in the case of higher dignities, our ancient practice was fro the heirs to be retoured [J. Riddell, *Inquiry into the Law and Practice in Scottish Peerages,* pp. 141, 640], or otherwise satisfactorily connected to their predecessors in the honours [*Earl of Mar,* 7 July 1933; Lyon Register, 30/67; *Earl of Selkirk,* Lyon Register 35/28; *Kinloss,* 18 July 1947, Lyon Register, 36/61], and in heraldry the statutory means of making up title to arms on succession is to get the arms rematriculated in one's own name in Lyon Register, **the equivalent of recording a progress of title to land in the Register of Sasines**. [1941 S.C., p. 672] **The Lord Lyon's judgement and subsequent matriculation in Lyon Register is analogous to the modern recorded decree of Service as a title to land.** In this, armorial conveyancing from 1672 was two centuries ahead of land conveyancing. A rematriculation by progress is the equivalent of a general retour as regards representation, and a special retour as regards title and pedigree and of great value in succession to honours, including Baronetcies [Home Office letter in *Grant-Suttie,* 5 June 1947 (Case 921, 215); *Strathspy,* 27 January 1950 (**1950 Scots Law Times, p. 17**)], and higher honours [*Selkirk,* Lyon Register 35/28; *Kinloss,* Lyon Register 36/61]."

[86] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 15, as follows:

"His Lordship found in law:

3. That the charter of apprising of 24 May 1676 obtained by Charles Maitland of Haltoun, afterwards 3rd Earl of Lauderdale, was inept and invalid to transfer existent ensigns armorial and subjects of dignity extra commercio, so in respect that the office of heritable Banner-bearer otherwise termed Standard-bearer , and the bearing of flags substitutionary thereunto as held by Sir John Scrymgeour, 2nd Earl of Dundee, and his predecessors, was a **nobiliary subject incapable of apprising or recognition and not justiciable (in any rate in first instance) in any ordinary court of law but only in a court of honour,** the said title was inept and invalid in respect of the said office of Heritable Banner-bearer. (Emphasis supplied.)

7. That in respect that the Earls of Lauderdale had **no honourable investiture** of the said Banner-bearing **until the matriculation on decree of Lyon Court, 29 July 1790**, and that in August 1822, viz 32 years after the said James, 8th Earl of Lauderdale's honourable investiture in the said Banner-bearing upon the said charter of novodamus of 24 May 1676, the Earls of Lauderdale had not uncontroverted or prescriptive possession of the said office of Banner-bearing of the Royal Banner or Flags substitutionary thereto from or following upon the said charter of novodamus.

8. That the Earl of Lauderdale, in respect of the grant in the charter of novodamus of 24 May 1676 of the hereditary office of bear-

ing for the Sovereign certain flag-insignia and **the honourable investiture upon decree of Lyon Court and matriculation of date 29 July 1790 including the additament of the S. Andrew's Cross flag Azure a saltire Argent (as indicative of a flag bearing office** conferred by the said charter of novodamus 24 May 1676, ratified by Act of Parliament 6 September 1681, cap. 72), and uncontroverted possession on the **said publicly recorded investiture** (including public bearing of the demonstrative-insignia of the hereditary office of bearing for the Sovereign the national flag of Scotland) has **right and title** (now protected by prescription) to the said office: the honourable bearing for the Sovereign of the Sovereign's national flag of Scotland, from and following upon the said charter of novodamus and investiture.

See also Sir Thomas Innes of Learney, Scots Heraldry (2nd Ed., 1956) p. 109, as follows:

"1. Initial Matriculations, placing on record arms of ancient user, after proof. These may often contain a destination."

NOTA BENE: After the 'appointed day', the process of making an Initial Matriculation of a barony not previously placed on the Lyon Register ... would be similar to the present procedure used to establish the existence of a barony for the purpose of matriculating baronial heraldic additaments ... with the logical addition of tracing possible separation of the 'dignity' from the caput to which the barony had been reduced before the 'appointed day':

Because as an incorporeal 'nobiliary subject' falling within the **exclusive jurisdiction** of the Lyon Court and which could be transferred after the 'appointed day' **only** by a Deed of Resignation *in favorem* **recorded upon the Lyon Court Books** (see Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 11, "Heraldry, ¶1622 'Transfer of arms') a search of the Lyon Court Books by a competent researcher for evidence of any transfer would provide competent **legal proof** that 'the dignity of baron'-in-question as "incorporeal heritable property" had **not been transferred.**

[87] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 15, as follows:

"His Lordship found in law:

1. That the bearing of the Sovereign's Banner and other Ensigns of honour is a **noble feudal tenure analogous to armorial bearings** and such honours, and that **claims to the bearings of such ensigns is causa armarum justiciable in the Court of the Lord Lyon**.

2. That the petitioner, Ian Colin, 15th Earl of Lauderdale, is now in right of the ensigns armorial, including external additaments comprehending, inter alia, the insignia of bearing for the Sovereign the national flag of Scotland emblazoned with the Sovereign's badge of a saltire Argent, as heir-male and representative of James, 8th Earl of Lauderdale, for whom, as 'haretable Royal Standard Bearer' and Earl of Lauderdale under destinations primarily in tail male, the said Earldom and offices stood under as facie valid titles of 29 July 1790, of which date the said 8th Earl of Lauderdale had **honourable investiture of the said insignia of the said heritable office by recording thereof, in and along with his ensigns armorial as nobiliary feudal heritage in the Public Register of All Arms and Bearings in Scotland.**

[88] See *Lord Strathspey,* **1950 Scots Law Times (Lyon Ct) 17** at 18 and 22-23, as follows:

"His Lordship found in law:

11. That the canton or inescutcheon of Novo Scotia is neither a brisur or mark of cadency but **an addition-in-arms** duly differenced from the undifferenced arms of the province of Nova Scotia by being tenable only in canton or inescutcheon in conjunction with the arms of the grantee and heirs specified in the charter, patent or regrant of the baronetcy and, **when used as provided and by due procedure granted, is and forms part of, an armorial heritable property indicative of the heir** in the said canton or inescutcheon of Nova Scotia **being *eadem persona* with the heir** in the Baronetcy." (Emphasis supplied)

.....

"... I have to consider, in the petition before me,, the functions, in relation to this baronetcy of Nova Scotia, of the Lord Lyon and of Lyon Court which, unlike that of the Earl Marshal of England has never ceased to function and from which appeal lies through the Court of Session to the House of Lords, on **arms as a question of property**. In *Stewart-Mackenzie v. Fraser-Mackenzie,* 1922 S.L.T. 21, judgement proceeded in the House of Lords as the ultimate appellate Court, in the words of Lord Shaw of Dunfermline 'from an undoubted Court of law, that of the Lyon King of Arms in Scotland'. **Lyon's jurisdiction to reduce his own decrees was also affirmed**. ... The committee apparently was not informed that Lyon already had a Court, and that the proceedings in that Court did, and do regularly extend 'far beyond verification of pedigree' and involve *inter alia* **the most complicated determinations of succession to Scottish arms in the character of incorporeal feudal heritage, involving all the problems of tailzie, settlements, investiture and other points of succession** which occur in the post abstruse peerage and property claims, and that the Lyon Court is a judicature which not only deals with cases of that sort,, but that most of its cases, contested or uncontested, are actually **claims involving just such matters and intricacies of medieval law and conveyancing**. ..." (Emphasis supplied.)

.....

"This grant of a Nova Scotia canton is a grant of arms, *viz.* of **property**, and of **feudal heritage in a specified manner which renders it competent and distinctive,** and following 1672, cap. 47, it became essential to make it perfectly clear that **Lyon in the case of initial steps at creation,, and Lyon Court in progress of revestitures, have a function because that statute prohibits any person using 'any arms' except those which Lyon has judicially found that person to be entitled.** The statute also perfected an already-evolved machinery of investiture, reinvestiture,, and 'progress of title' or 'sesine of arms', and old documents describe it, like the register of land sasines, in a **continuant public register**, and impose penalties upon whosoever should 'use any arms any manner of way' except such as they may be entitled to in terms of the said Act." (Emphasis supplied.)

"There is, then, in this Nova Scotia baronetcy patent an express Royal grant (or direction for a Lyon-grant) of **certain heritable property to be held in a certain manner by the same series of heirs as are to inherit the dignity** of Baronet, **which 'property' is determinable only before an 'undoubted' and functioning 'Court of law',** the Court of the Lord Lyon, and the 'use' of which property without the intervention of Lyon Court is a statutory offence with penalties attaching." (Emphasis supplied.)

"It is then evident that, at any rate in the case of Nova Scotia Baronets, such baronetcy is related to **a matter of heritable property in Scotland**, far more closely bound up with the baronetical dignity – indeed **granted for the express purpose of demonstrating the holder of the arms** to be a Baronet – than anything the committee could be thought to have in view when inditing para. 20 of their report. The Nova Scotia armorial addition is not only an estate-of-inheritance but is made directly referable to Lyon's function both by Act of Parliament and also *ex terminis* of the instrument. Through the machinery of this baronetical addition in arms it actually lies in the hands of Lyon and the appellate Courts entitled to consider an appeal from Lyon's judgement to determine whether a person is by his arms to be ocularly demonstrated and beholden as a Baronet, or whether he is not. **By his armorial jurisdiction Lyon can by his decision make the petitioner a Baronet in the eyes of everyone,, or prohibit him (and that under penalties) from showing himself a Baronet, by his arms.**" (Emphasis supplied.)

[89] See *Lord Strathspey,* **1950 Scots Law Times (Lyon Ct) 17** and 18, as follows:

"*Held* (1) that the grant of a canton of the arms of Nova Scotia in a Baronetcy patent is a grant of arms and as such of **feudal heritage**; (2) that **the said feudal heritage is inseparable from the dignity** of Baronet; (3) that **when a successor has obtained revestiture in the said feudal heritage, which is demonstrative of his being a Baronet, he is entitled to bear and use the prefix and affix of Baronet;** and (4) that any condition or restriction imposed upon the succession to a Nova Scotia Baronetcy by Royal warrant or **other non legislative measure** is an infringement of the Treaty and Act of Union". (Emphasis supplied.)

.....

"His Lordship found in law:

14. That the petitioner, being found entitled to his achievement of arms with the additions of Nova Scotia provided by the Charter of Baronetcy of 30th August 1625 and regrant of 29 April 1704, is **entitled as of right to be described and recorded in the public register of all arms and bearings in Scotland and other official instruments and documents to be thereafter issued, in the style and title of Baronet, along with the prefix 'Sir' and affix of 'Baronet'** as granted in the said charter and regrant and as rights under the statutes 31st July 1630 and 1633, cap. 28, and Treaty and Act of Union, 1707, Sections 18 and 19." (Emphasis supplied)

[90] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 15, as follows:

"His Lordship found in law:

1. That the bearing of the Sovereign's Banner and other Ensigns of honour is a **noble feudal tenure analogous to armorial bearings** and such honours, and that **claims to the bearings of such ensigns is causa armarum justiciable in the Court of the Lord Lyon**.

2. That the petitioner, Ian Colin, 15th Earl of Lauderdale, is now in right of the ensigns armorial, including external additaments comprehending, inter alia, the insignia of bearing for the Sovereign the national flag of Scotland emblazoned with the Sovereign's badge of a saltire Argent, as heir-male and representative of James, 8th Earl of Lauderdale, for whom, as 'haretable Royal Standard Bearer' and Earl of Lauderdale under destinations primarily in tail male, the said Earldom and offices stood under as facie valid titles of 29 July 1790, of which date the said 8th Earl of Lauderdale had **honourable investiture of the said insignia of the said heritable office by recording thereof, in and along with his ensigns armorial as nobiliary feudal heritage in the Public Register of All Arms and Bearings in Scotland.**

3. That the charter of apprising of 24 May 1676 obtained by Charles Maitland of Haltoun, afterwards 3rd Earl of Lauderdale, was inept and invalid to transfer existent ensigns armorial and subjects of dignity extra commercio, so in respect that the office of heritable Banner-bearer otherwise termed Standard-bearer , and the bearing of flags substitutionary thereunto as held by Sir John Scrymgeour, 2nd Earl of Dundee, and his predecessors, was a **nobiliary subject incapable of apprising or recognition and not justiciable (in any rate in first instance) in any ordinary court of law but only in a court of honour,** the said title was inept and invalid in respect of the said office of Heritable Banner-bearer. (Emphasis supplied.)

See also Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 11, "Heraldry, ¶1622 'Transfer of arms', as follows:

¶1622: Transfer of arms: A coat of arms may be transferred *inter vivos* between living persons by a deed of resignation *in favorem* recorded in the Lyon Court Books followed by a rematriculation in the name of the tanist. [*Mlmont v. Lamont* (1953) Lyon Register 39/119; *Macdonnell of Scotus* (1983) Lyon Register 66/88] The arms may be transferred to a new heir, or the destination altered, b y a deed of resignation *in favorem* into the hands of the Lord Lyon for a regrant. This may be executed formally by deed of registration [*Mcnab of Macnab,* **1957 SLT (Lyon Ct) 2**] or constructively by testament [*Macpherson of Pitmain,* **1977 SLT (Lyon Ct) 18**]. The chief of a clan or the holder of the principal arms may nominate his successor from within his own family for confirmation by the Lord Lyon on a matriculation [*MacLeod of MacLeod* (1962) Lyon Register 46/91 (nomination by Dame Flora MacLeod of Macleod of her nephew [sic] John, being the second son of her second daughter, as next chief of the MacLeods)], ..."

NOTA BENE: Any writing attempting the transfer of 'the dignity of baron' as "incorporeal heritable property" after the 'appointed day' is **completely invalid** unless ***first*** properly recorded upon the Books and Register of the Lyon Court. This result is mandated by the ***exclusive statutory jurisdiction*** of the Lord Lyon King of Arms over all types of 'nobiliary subjects', 'noble feudal tenures', 'fifes annoblissant', heraldic additaments, arms, badges, and insignia analogous to armorial bearings. In case of conflict, the Deed of Resignation *in favorem* first recorded would prevail. In cases of obvious fraud re transfer of 'the dignity of baron', the Lord Lyon has judicial competence to reduce his own decrees and, thus, could reduce any patently fraudulent transfer of 'the dignity of baron' as "incorporeal heritable property"

[91] See Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 11, "Heraldry", ¶1617 'Matriculation', as follows:

¶1617: Matriculation: Successive heirs to the principal or undifferenced arms regularly rematriculate these arms every few generations to make up title to the armorial bearings or to alter the arms or the destination to take account either of succession to a new quartering or of a change in the family circumstances to resettle the arms on a new series of heirs. A rematriculation by progress is analogous to a general retour as regards representation and a special retour as regards title and pedigree, and is of great value in establishing the succession to headship of ancient families, clan chiefships, peerages and baronetcies [*Grant of Grant,* **1950 SLT (Lyon Ct) 17**; *Earl of Selkirk,* (1945) **1985 SLT (Lyon Ct) 2**]."

See also Sir Thomas Innes of Learney, Scots Heraldry (2nd Ed., 1956) p. 110, as follows:

"3. Matriculation by Progress, the equivalent of special service in other feudal heritage, and whereby title is made up either to chief-arms or to existing cadet arms."

See also *Lord Strathspey,* **1950 Scots Law Times (Lyon Ct) 17** and 18, as follows:

"His Lordship found in law:

1. That the petitioner, bearing the name 'Grant of Grant' and inheritor,, as heir-male of James Grant of Pluscardine, 6th Baronet, and his wife Anne Colquhoun, of **the Baronetcy** denominated 'Grant of that Ilk' in the public register of all arms and bearings in Scotland on 1st July 1824, is now, **subject to reinvestiture in a matriculation by progress**, in right of the ensign armorial of grant of grant as of right and without brisur or mark of cadency.

10. That the grantee and his heirs in terms of the charter, patent or regrant are not at liberty to use arms containing the armorial addition of the canton or inescutcheon of Nova Scotia **without the same being matriculated for them** in the public register of all arms and bearings in Scotland pursuant to the statute 1672, cap. 47.' (Emphasis supplied.)

[92] See Sir Thomas Innes of Learney, Scots Heraldry (2nd edition, 1956), p. 110:

"3. Matriculation by Progress, the equivalent of ***special service*** in **other feudal heritage**, and whereby ***title is made- up*** either to chief- arms or to existing cadet arms."

[93] See Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 11, "Heraldry, ¶1622 'Transfer of arms', as follows:

¶1622: Transfer of arms: A coat of arms may be transferred *inter vivos* between living persons by a deed of resignation *in favorem* recorded in the Lyon Court Books followed by a rematriculation in the name of the tanist. [*Mlmont v. Lamont* (1953) Lyon Register 39/119; *Macdonnell of Scotus* (1983) Lyon Register 66/88] The arms may be transferred to a new heir, or the destination altered, b y a deed of resignation *in favorem* into the hands of the Lord Lyon for a regrant. This may be executed formally by deed of registration [*Mcnab of Macnab,* **1957 SLT (Lyon Ct) 2**] or constructively by testament [*Macpherson of Pitmain,* **1977 SLT (Lyon Ct) 18**]. The chief of a clan or the holder of the principal arms may nominate his successor from within his own family for confirmation by the Lord Lyon on a matriculation [*MacLeod of MacLeod* (1962) Lyon Register 46/91 (nomination by Dame Flora MacLeod of Macleod of her nephew [sic] John, being the second son of her second daughter, as next chief of the MacLeods)], ..."

[94] See Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 18, "Property: Transfer of Ownership" re "The Rule Nemo Dat Quod Non Habet", Para 669 - 672, pp. 558 - 563

[95] See Thomas Innes of Learney, Scots Heraldry (2nd edition, 1956), p. 124 - 125, as follows:

"No one can entail, or resign in favour of anyone else, a coat of arms to which he or she has not a legal right in their own person. [Richards-Strachan, Lyon Court, 4 April 1900]."

[96] See Sir Thomas Innes of Learney, Scots Heraldry (2nd edition, 1956), p. 116-117, as follows:

"Armorial bearings being **heritage** whereof the title is 'matter of record', its devolution becomes the subject of a legal progress-of-titles [Mackenzie of Tarbat, 'heir be progress of Macleod of Lewis', Lyon Register 1/184], 'revesting' [*Miscellanea Genealogica et Heraldica,* 1880, III, p. 298, Garter to See, 1536], whether by confirmation, or redestination (or resignation *in favorem*) [Myreton of Cambo, 10 January 1701, *Scottish Notes & Queries,* 1933, p. 187; Grant of Auchernack, 31 December 1777, Lyon Register 1/515; *Encyclopaedia of Scottish Legal Styles,* Vol V, 'Heraldry', No. 286], and may be by a simple letter of renunciation [Hamilton of Binning, 20 July 1687, Lyon Register 1/329, printed in *Notes & Queries,* Vol. 178, p. 293] or by a 'matriculation by progress' [*Notes & Queries,* 27 April 1940, p. 294] for the purpose of making up the title to the arms."

[97] Form No. 257, "Resignation in favorem for Re-Grant" in Green's old Encyclopaedia of Scottish Legal Styles, Vol. V, "Heraldry", pp. 286 - 287, for the transfer of armorial bearings can be ***easily modified*** to provide the "suitable form of document for resettling 'the dignity of baron' as "incorporeal heritable property" from one living person to another" - referenced in ¶ 2.41 of the Scottish Law Commission's 1998 "Report on the Abolition of the Feudal System".

Thomas Innes of Learney, Green's Encyclopaedia of Scottish Legal Styles, Vol. V., pl 286-287, **Form 257**, "Resignation in favorem for Re-Grant", as follows:

"I A. B. of C. in the county of .... being the individual having the only right to the coat armorial matriculated in the Public Register of All Arms and Bearings in Scotland on ... . 20... , Lyon Register Vol. —, Page —, in name of E. D. of E. in the county of ... do by these presents upon certain grave and weighty considerations and just and onerous causes viz. [*the principal cause should preferably be defined, since the Lord Lyon may enquire*] **renounce overgive and convey irredeemably to and in favour of F. G. of H. in the county of .... and his heirs according to the law of arms my right and title to the foresaid Ensigns Armorial with power to the said F. G. of H. to procure the same confirmed to him and his foresaids by the Lord Lyon King of Arms and thereafter to bear and use the same as his and their own proper coat armorial and I consent that these presents be recorded in the books of the Court of the Lord Lyon therein to remain for preservation. In witness whereof."**

Nota Bene: This procedure of transferring 'the dignity of baron' between living persons by only the means of the above deed of resignation recorded in the Lyon Court Books followed by the taking of sasine to 'the dignity of baron' by the new Holder and investiture in both the applicable heraldic insignia and the dignity by recording the same upon the Lyon Register ... meets any need for the establishment of an official register to evidence the existence of baronies and to provide a court record upon which to record the transfer and inheritance of such baronies: Simply put, no transfer of baronies would occur ... unless the procedure of recording a deed of resignation *in favorem* upon the Lyon Court Books and taking sasine to the same and obtaining investiture in both the insignia and the dignity by recording the same upon the Lyon Register had been followed.

This procedure ... already applicable to transfer of arms ... will alleviate all cause for concern about fraudulent transfers of baronies: No transfer would be legal unless (1) the present Holder had made-up-title in his own name by a Matriculation-by-Progress-to-make-up-title upon the Lyon Register, (2) the present Holder had recorded a deed of resignation *in favorem* – in the form of **Form 257**, "Resignation in favorem for Re-Grant", Green's Encyclopaedia of Scottish Legal Styles, Vol. V., pl 286-287 – upon the Lyon Court Books; and (3) the new Holder had taken sasine to and obtained investiture in both baronial heraldic additaments and the dignity by recording the same upon the Lyon Register.

[98] See *Lord Strathspey,* **1950 Scots Law Times (Lyon Ct) 17** at 24 and 25, as follows:

"When, therefore, **these rights have been given statutory authority in Scotland,, it would be unconstitutional** for the Crown by Royal warrant **or other non-legislative measure**, **to over-ride what has been done by the Crown-in-Parliament and protected by the Crown-in-Parliament's Act of Union, by imposing through** Royal Warrant **or other non-Parliamentary instrument**, a condition that the heirs in Nova Scotia Baronetcies must fulfil some additional requirement, such as entry in a roll of non-parliamentary authority and entry to, or exclusion from, or excision from, **by other machinery than the constitutional machinery existent and alone requisite under, or in relation to, the statutes and legal character of the heirs under the Treaty of Union.** That would clearly be an act of the prerogative **interfering to limit or even abrogate a statutory rights**, and accordingly *quoad* Baronets of Nova Scotia such provision by Royal warrant would be **an infringement of rights contrary to the Declaration of Right, 1695**. Indeed, it would be a grave invasion of the principle of that crucially important measure, because **if it were competent for** the Crown by warrant **to supersede the rights of legal determination and justiciable decision of Scottish heritable rights of one character, it would be equally legal so to interfere with all heritable rights**, merely by the machinery of Royal warrants, and to substitute machinery of administrative determination for that of proof, decree and litigation in the Scottish Courts." (Emphasis supplied.)

.....

"In relation to Baronetcies of Nova Scotia, the matter both of creation and succession was, through the relative grants of armorial additions, brought under the control of Lyon Court by the statute 1672, cap. 47, and is, **as a matter of right**, judicially determinable in a matter inextricable from, and indeed involving, the demonstration of the being or not being, Baronet by **a right of property which is necessarily determinable to be in**, or not in, the claimant i**n terms of the limitation of its grant and by procedure which cannot, under the Treaty of Union and Declaration of Right, be abrogated or modified without Parliamentary legislation.**" (Emphasis supplied.)

NOTA BENE: The historic Estate of the Baronage of Scotland cannot be abolished, limited, superseded, ignored, degraded, or be

refused recognition by the Lord Lyon's Rules of 17 December 2002 ... "or other non-legislative measure, to over-ride what has been done by the Crown-in-Parliament".

Only Parliament possesses competence to so abolish, to limit, to ignore, to degrade or to refuse to recognise 'the dignity of baron' statutorily recognised as "incorporeal heritable property" in §63(2) of the ACT and "any quality or precedence associated with, and any heraldic privilege incidental to" the dignity of baron *statutorily defined* in §63(4) thereof, *statutorily transformed* by §63(4) of the ACT into fundamental "legal entities" construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular acquired legal rights of intangible property 'vesting' in the Holder of this 'dignity', and *statutorily incorporated* by use of the verb "includes" therein into an integral component 'bundle' of all such rights of property forming the *essence* of the 'dignity of baron'.

The Lord Lyon hath not the competence to invade, to modify, or to refuse recognition to heritable rights of property created by the Crown-in-Parliament. The Rules of 17 December 2002 are void ab initio as an unconstitutional attempt to over-ride, to limit, to ignore, to abolish 'by the backdoor' what was done by Parliament in Sec. 63 of the Abolition of Feudal Tenure (Scotland) ACT 2000.

[99] See Sir Thomas Innes of Learney, Scots Heraldry (2nd Ed., 1956) at pp. 239-245, as follows:

• Act 1592, c. 125, fol. edit. c. 29 (Jac. VI) *Concerning the Office of Lyoun King-of-Arms and his brether Herauldis,* which reads in pertinent part, as follows:

"and be this present act gevis and grantis **full power and commission, to lyoun king-of-armes** and his brether herauldis, to visite the haill armes of noblemen, **baronis**, and gentlemen borne and vsit within this realme, and to distinguische and discedrn thame with congruent differences, and thairefter **to matriculate tham in thair buiks and Registeris**" (Emphasis supplied)

• Act 1672, c. 21; fol. edit. c. 47 (Car. II) *Concerning the Privileges of the Office of Lyon King-at-Armes,* which reads in pertinent part, as follows:

"And that, in order thereto, Power and Commission is granted to the Lyon King-of-Armes, or his Deputes, **to visite the whole Armes of Noblemen, Barrons, and Gentlemen, and to matriculate the same in their Registers,** ... charging all and sundry Prelates, Noblemen, **Barons,** and Gentlemen, who make use of any Arms or Signes armoriall, ... to bring or send ane account of what Armes or Signes armoriall they are accustome to use; ... **With Testificats** [Testificats are made an admissible form of proof and that from the chief of the name or of a branch here carries considerable weight] **from persones of Honour, Noblemen, or Gentlemen of qualitie, anent the verity of their having and using those Armes**, ... to be delivered either to the Clerk of the Jurisdiction where the persones duells, or to the Lyon Clerk at his office in Edinburgh, at the option of the party ... to the effect that the Lyon King-of-armes may distinguish same **in his Bookes and Registers,** and may give Armes to vertuous and well-deserving Persones, and Extracts of all armes, expressing the blasoning of the Arms, under his hand and seall of office. ... And it is Statute and Ordained, with consent forsaid, that ***the Register shall be respected as the true and unrepeallable rule of all Armes and Bearings in Scotland*****,** to remain with the Lyons office ***as a publict Register of the Kingdome,*** and to be transmitted to his successors in all tyme comeing." (Emphasis supplied)

[100] Sir Thomas Innes of Learney, The Clans, Septs, and Regiments of the Scottish Highlands (8th edition, 1970), p. 407,

"That the rank and title of Feudal Baron is fully recognised even in ordinary statute law, is indicated by 1672 cap. 27, whereunder the "Barons" were grouped in a special section of Lyon Register."

[101] See 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 161, as follows:

"In *Lyon Register* the use of the term *baron* is not so freely found, but for a *perfectly obvious* reason, viz. **the structure of the *Register*** as drawn up in 1672 by Sir Charles Erskine, in which, **conform to the Act which particularly refers to 'the arms of noblemen, *barons,* and gentlemen', a *special section* is apportioned to the arms of the lesser barons**, and it was therefore unnecessary to qualify each as baron. **Merely the name [**The 'Name' including territorial designation in accordance with Scots Law**] of each baron entered in the section is given**, just as in the Rolls of Parliament, and much as in the list of witnesses of 1300, *William de Fedderach et William de Ynes, Baronibus,* **so *every* laird recorded in that section of Erskine's Register was *ipso facto* a 'baron'**, and to add the term *baron* in each case would, as in the Rolls of Parliament, have been superfluous." (Emphasis supplied.)

[102] 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 161, as follows:

"It became, however, **no longer superfluous to use the title *baron* in later matriculations, after the sectional system has been departed from**, and entries became consecutive and chronological. Therefore an entry in the second and subsequent volumes of the Register will contain no evidence of barony **unless the averment is made and entered,** and in these cases where it falls to be entered, as in the similar consecutive Register of Birthbrieves, the proper form is shown to be: *Alexander Areskinus, Baro de Cambo,* The Lord Lyon's own ruling upon the appropriate form of description, and conform to the style used by Mary Queen of Scots in writing to 'the Baron of Kilravock'. There are, however, a number of instances in Lyon Register where the description was inserted: John Ross 'descended of the Baron of Auchlossan' **[**Lyon Register, Vol I, p. 339. These instances occur in the portion of Vol I filled after the sectional system had been superseded by that of the chronological entries recommended by Lord Coulston in 1764**]**, Sir Alexander Colquhoun, Baron of Colquhoun' [Lyon Register Vol I, p. 528], Sir George Brisbane, Baron of Brisbane [Lyon Register Vol I, p. 529], 'Aylmer Hunter, Baron of Hunterston' [Lyon Register Vol I, p. 507], John Erskine, Baron of Balhaggarty' [Lyon Register, Vol VII, p. 90]. " (Emphasis supplied.)

[103] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 19, as follows:

"... We have to accept their Lordship's decision that this office of bearing certain ensigns armorial and demonstrable by certain additaments of ensigns armorial is one which is not cognisable in the Court of Session or such ordinary courts of law, but **it is a right and a heritable right** and, as His Majesty in Council held in 1823 (and also as Lord Dunedin observed in 1937 – see *Tartans of the Clans and Families of Scotland,* 1952, p. 21, n. 1 —- in reference to a later case, and like every great pronouncement of that great jurist it deserves the utmost attention) ***wherever there is a right it must be*** **justiciable and determinable in a court of law**. In a matter of this character, or any such matter of dignity,, there is no mistake about where such dignities are and have been justiciable on both sides of the border; in England the Court of Chivalry, which dealt with cases of arms and heraldry, dealt also with claims to dignities, even including peerages, and its jurisdiction extended also in certain cases to treason."

[104] See *Lord Strathspey,* **1950 Scots Law Times (Lyon Ct) 17** at , 23-24, as follows:

"The charters, diplomas or patents **create heritable rights and confer heritable property in and according to the Laws of Scotland**, unlike even the case of Scottish Peerages under Section 22 of the Treaty of Union, There is in the Treaty of Union nothing whatever affecting the status of the subjects conveyed in the Royal instruments creating Baronetcies and their relative armorial

additaments. **These accordingly remain governed entirely**, both as regards the dignities, their rights, relative evidence and procedure of determination, and **by the** instruments and **statutes** and by the protective clauses of the Treaty of Union, and **moreover being heritable rights, they are necessarily justiciable and determinable in the proper channels and upon the proper Scottish evidence**." (Emphasis supplied)

"When the claimant or successor has obtained by legal procedure in Scotland a decree or a revestiure in a character conform to the destination of the patent, and *multo magis* when he has obtained revestiture in the armorial additions demonstrative of being a Baronet and **acquired the public legal character coincident with being such** Baronet, **he is, under the Laws of Scotland, entitled to bear and use the prefix and affix** of Baronet **as well as to use the arms demonstrative of** his being Baronet **all under statutory authority**." (Emphasis supplied)

[105] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 21, as follows:

"... As at length set forth by Lord Lyon Grant in the Selkirk succession case 1945, and in 1950 by myself in the case of the Grant of Grant Baronetcy (of Lord Strathspey), it was shown and settled, conform to the Court of Session decisions, that **arms are 'a question of property' and 'incorporeal feudal heritage' with revestiture in ensigns armorial related to the dignity**, and held on the same limitation, and **a necessary index of**, and judicial procedure covering, **the right to the dignity**, unless disturbed by subsequent due and competent process of law, such as a reduction of the armorial investiture involved." (Emphasis supplied.)

[106] See *Lord Strathspey,* **1950 Scots Law Times (Lyon Ct) 17** at 18 and 25 as follows:

"His Lordship found in law:

14. That the petitioner, being found entitled to his achievement of arms with the additions of Nova Scotia provided by the Charter of Baronetcy of 30th August 1625 and regrant of 29 April 1704, is **entitled as of right to be described and recorded in the public register of all arms and bearings in Scotland and other official instruments and documents to be thereafter issued, in the style and title of Baronet, along with the prefix 'Sir' and affix of 'Baronet'** as granted in the said charter and regrant and as rights under the statutes 31st July 1630 and 1633, cap. 28, and Treaty and Act of Union, 1707, Sections 18 and 19." (Emphasis supplied)

……..

"In the case of Nova Scotia Baronetcies, any opportunity to settle their succession by reference to the 16,000 acres vanished, **but the additamented armorial bearings remained, 'property' 'feudal heritage',** as the Court of Appeals have held arms to be, and it was accordingly in strictest legal property that the Sovereign in the later 17th and 18th centuries was treating the matters relating to these 'additions' to the Baronets' arms to **the Lord Lyon, who had jurisdiction to give the grants statutory effect and in his Court to determine succession to them and give revestiture in the additamented arms according to Law**." (Emphasis supplied.)

[107] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 21, as follows:

"... So early as the 15th century **the character of arms as feudal heritage** was well recognised and **investiture** therein referred to as **'peaceable sasine of arms'**, whilst in Scotland the procedure under 16 72, cap. 47, and **progress of title** in the Public Register of All Arms and Bearings in Scotland **is to all intents and purposes analogous to the Register of Sasines in other forms of heritable property**, and to the practice introduced in the 19th century of dealing with succession **by recording decree of service.** The heraldic administration was indeed analogous to, and for a couple of centuries in advance of, the rest of the law of feudal conveyancing in Scotland." (Emphasis supplied.)

[108] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 23, as follows:

"... That, however, is by the way; the **issue is one of law**, and I have no difficulty in holding that the present Earl is both in principle and well-=settled law regarding such charters, **entitled to re-investiture by progress in his arms with the external additaments indicative of heritable Bearing for the Sovereign of the National Flag of Scotland, and that this heritable right which he retains** (though resigning pretensions to bear the Royal Banner or substitutionary flags subsidiary thereto) is a distinct office from that held by the Scrymgeours and confirmed to them by 1600, cap. 44, and accordingly in the modified and proper form relative to the Hereditary Bearing for the Sovereign of the National Flag of Scotland the Earl of Lauderdale is entitled **to warrant for rematriculation of his arms** in the Public Register of All Arms and Bearings in Scotland." (Emphasis supplied.)

[109] In *Macrae's Trustees v. Lord Lyon King-of-Arms,* **1927 SLT 285, OH,** the Outer House of the Court of Session ruled that the Lyon Court has a pre-statutory common law jurisdiction over all matters of armorial, genealogical, and nobiliary matters. A portion of the Lyon Curt Book for 1561 in the General Register House contains one of the important pre-statutory heraldic decisions in *Burnet of Burnetland v. Burnett of Leys,* Mackenzie Works II 632, which was heard before Sir David Lindsay of the Mount before 1554

See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 19, as follows:

"... I have no doubt that both on principle and precedent (not to add as a necessary corollary to **their Lordships' decision that the ordinary civil courts, including the "Court of Session, had no jurisdiction in regard to an office such as the Royal Banner-bearer of Scotland**) **Lyon Court has a jurisdiction in regard to this office**. I have to look into and deal with this matter, as arising out of (and as a corollary of) their Lordships' decision and no less in connection with a decision of Lyon Court itself in 1790, at least in so far as relative to the negative crave of the present Earl of Lauderdale in relation of the heritable office of Banner-bearer of Scotland and also in relation to the bearing of flags other than the Royal Banner. **These are most technical matters, which indeed could only be intelligently tackled in a Court of Chivalry and Arms, matters of which even a preliminary examination shows that the civil courts,**, before which long arguments were led in 1908 and 1910, **had little conception of the technical intricacies involved in the very subject-matter of the dispute**.." (Emphasis supplied.)

[110] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 15, as follows:

"His Lordship found in law:

1. That the bearing of the Sovereign's Banner and other Ensigns of honour is a **noble feudal tenure analogous to armorial bearings** and such honours, and that **claims to the bearings of such ensigns is causa armarum justiciable in the Court of the Lord Lyon**.

3. That the charter of apprising of 24 May 1676 obtained by Charles Maitland of Haltoun, afterwards 3rd Earl of Lauderdale, was inept and invalid to transfer existent ensigns armorial and subjects of dignity extra commercio, so in respect that the office of heritable Banner-bearer otherwise termed Standard-bearer , and the bearing of flags substitutionary thereunto as held by Sir John Scrymgeour, 2nd Earl of Dundee, and his predecessors, was a **nobiliary subject incapable of apprising or recognition and not justiciable (in any rate in first instance) in any ordinary court of law but only in a court of honour,** the said title was inept and invalid in respect of the said office of Heritable Banner-bearer. (Emphasis supplied.)

[111] See *Earl of Lauderdale, Petitioner,* 26 November 1952, **1958 Scots Law Times (Lyon Ct) 13** at 18-19, as follows:

"in early writs, this carrying of the Crown,, along with two other functions – the 'first seat and vote in Parliament', and 'the leading of the Van in battle' (which seems not to be the commanding thereof, but to 'pass first in fight' and is perhaps related to certain special symbolic functions) – is described as ***Honores*** (3 February 1602) and later as ***Dignities*** (12 March 1631) so that here again **the highest authority held such a subject justiciable in a court of law, as every heritable right must be.** The decision of the House of Lords of 7 April 1910 can only be reconciled by such office-dignities, including the Standard-bearership, **being justiciable qua causa armarum**, as the latter so patently is, **in the Court of the Lord Lyon — the Judge Ordinary in such matters of dignitas not cognisable in what we may call the 'ordinary courts of law,'** where of course 'ordinary' is used in a different sense from what it imports in 'Judge ordinary' – **which Lyon is in such matters of arms and genealogy** (as Lord Lyon Burnett observed in his Lyon Court MSS) **and relative dignitatis of the relative degree."**

"... I am merely deducing that the heritable office-dignity, of carrying a specific object for the Sovereign, **like any other dignity of Scotland, was justiciable before an appropriate 'Judge-Ordinar'**. What His Majesty approved in Council is accordingly quite consistent with what was ultimately decided in the House of Lords, 1910, viz. that the Banner, or Standard-bearership, in both or either of its aspects, and **its relative heraldic feudo-heritable additaments, should have been passed upon in judgement by Lyon Court in 1790, as also have several other such honourable tenures.**" (Emphasis supplied.)

[112] Article 6(1) of the European Convention of Human Rights and Fundamental Freedoms provides, as follows,

Article 6(1): In the determination of his **civil rights** and obligations or of any criminal charge against him,, **everyone** is entitled to a fair and public hearing within a reasonable time by an independent and **impartial tribunal** established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals,, public order or national security in a democratic society, where the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." (Emphasis supplied)

[113] See P. van Dijk & G. J. H. van Hoof, Theory and Practice of The European Convention of Human Rights (Kluwer, Deventer/Netherlands, 1984) pp. 238-239, as follows:

"Unlike the second and third paragraph of Article 6, the first paragraph does not apply exclusively to criminal cases, but to all those *judicial proceedings* in which the "determination of … civil rights and obligations" is involved."

"The drafters of Article 6 did not specify what is meant by "civil rights and obligations". On the basis of the legal systems of the member States of the Council of Europe these words can be interpreted in widely varying ways, in the first place because the demarcation between public and private law in general is already very vague and is becoming increasingly so,, but also because this line is not always drawn in accordance with t he same criteria in different legal systems. For the effective application of Article 6(1) and for the required uniformity and legal security with respect to that application it is of the greatest importance that the Strasbourg case-law here draws the line and in doing so keeps the necessary distance with regard to the domestic law of the contracting States. In a decision of October 2, 1964 the Commission formulated this as follows:

"'The term 'civil rights and obligations' employed in Article 6(1) of the convention cannot be construed as a mere reference t o the domestic law of the High Contracting Parties, *but on the contrary relates to an* ***autonomous concept*** *which must be interpreted independently of the rights existing in the law of the High Contracting Parties*, even though the general principles of the domestic law of the High Contracting Parties must necessarily be taken in consideration in any such interpretation.'"

"An important step in the direction of such an autonomous interpretation of "civil rights and obligations" was taken by the Court in the *Ringeisen* Case. There, the Court held first of all that the question of whether the *judicial proceedings in question* were civil, administrative, or criminal is not decisive for the question of whether **the determination** of civil rights and obligations is or is not **at issue**. The nature of the law applicable to t he case under consideration was not deemed decisive either, no more than questions of whether both parties to the dispute are individuals or one of the two parties is a **public authority.** The only **decisive question** is *whether the* ***result of the proceedings*** *in question amounts to* **the determination of civil rights** or civil obligations of both parties or one of them. In the judgement in the *Køonig Case* this position was repeated. In that case t he Court also rejected the criterion put forward by the German Government that in case of a dispute between an individual and a public authority Article 6(1) can apply only in so far as an action of a public authority is concern where the authority acted as an individual. **Here again it was the character of the rights and obligations at issue the was deemed decisive by the Court**. In the judgement in the case of *Le Compte, Van Leuven,, and De Meyere,* moreover the Court emphasised that **the legal dispute** (*contestation* in the French text of Article 6(1)) must have a *sufficiently close relation with* **the "civil right**" advanced**,** and **that the outcome of the proceeding must be decisive for that right** if Article 6(1) is to be applicable." (Emphasis supplied)

NOTA BENE: The ability to take sasine to "incorporeal heritable property" consisting of 'the dignity of baron' in order to create 'real rights' of ownership in the ***RES*** (thing) of the same specified in §63(4) of the ACT … as well as the ability to receive official investiture in baronial heraldic additaments inextricably annexed to this dignity, the 'title' of baron, the *nomen dignitatis* or territorial designation as part of both the surname and the 'title of baron', the prefix of 'The Much Honoured' as well as in the 'dignity of baron', itself, by matriculating all of the same upon the Lyon Register … is clearly ***decisive*** for the **"determination"** of private law "civil rights" of a contractual nature encompassed in statutory "Incorporeal heritable property" consisting of 'the dignity of baron'.

[114] See the decision of the European Commission in the *Ringenisen Case:* Op. Com., 19 March 1970, *Ringenisen Case,* §142. Pub. Court B. Vol 11 pp. 69-70 Dec. Adm Com. Ap. 8496/79, 8 Oct 1980. D & R 21 p. 168 (169), as follows:

"According to French Legal terminology, the word "civil" is not ambiguous to the same extent. Although,, under the influence of Anglo-American terminology, the term "droits civil" is sometime used as signifying political rights of the citizen (equivalent to "droits civiques"), the meaning is generally quite different. It refers to rights and obligations under civil law, as distinct from public law and penal law. This is a classic distinction in the legal systems derived from Roman law and the term "civil" in that context refers to the legal relations between individuals and other private subjects of law, as distinct from legal relations between private citizens and public authorities. Following this terminology the French text of Article 6 is clear. The term *"droits et obligations de charactére civil"* means rights and obligations appertaining to that branch of the legal system which is called *"droit civil".*"

"On a point like this where the two authentic texts of the Convention are not equally clear, it is justified to reply primarily on that one of the two texts which is the clearer. In the present context this is further supported by the *travaux preparatoires* which reveal that the French text reflects the intentions of the authors more faithfully than the English text."

See also the decision of the European Commission in the Kaplan Case: Op. Com. 17 July 1980, Kaplan Case, §132. D & R 21 p. 5 (24) Dec. Adm.,. Com. Ap. 8782/79, 10 July 1981. D & R 25 p. 243 (248), as follows:

"As to the issue of substance, the first question which the Commission has examined is whether "civil rights" or "obligations" of the applicant or IGA were affected by the relevant administrative acts. For the purpose of considering the applicability of Article 6(1) it considers that the **direct legal affects of those acts** are relevant. It is thus relevant to consider whether their direct effect **was to create, modify or annul legal rights** and obligations **of a "civil" character**. "

[115] See P. van Dijk & G. J. H. van Hoof, Theory and Practice of The European Convention of Human Rights (Kluwer, Deventer/Netherlands, 1984) pp. 247-248, as follows:

"4. In the *Golder Case* the Commission and the Court developed the important view that Article 6(1) not only contains certain guarantees for the course of judicial proceedings, but also grants a ***right to*** **judicial proceedings** for the cases mentioned there. For this interpretation the Court relied on the preamble of the Convention, the preamble of the Statute of the Council of Europe, and Article 3 of that Statute, which refer to the principle of the **"rule of law",** and to the generally accepted legal principle that a claim must be capable of being submitted to a court, and which prohibits denial of justice. If Article 6(1) were to afford guarantees only for pending judicial proceedings, these might be rendered illusory if the courts were deprived wholly of partly of their jurisdiction and these proceedings were replaced, for instance , by administrative proceedings. As the Commission clearly states in its report in the *Kaplan Case:*

"'Art. 6 thus requires that there should be a court with jurisdiction to determine the matter. The right of access to a court arises wit the claim or dispute in question".'

When interpreted in this way, article 6(1) to a considerable extent takes over the function of Article 13, which guarantees a right to an effective remedy. On the one hand Article 6 goes much further, *because it implies right to recourse to* ***a court*** *and applies to* **all determinations of civil rights and obligations,** and not only those which are related to one of the rights laid down in the Convention." (Emphasis supplied)

See also the decision of the European Commission in the Kaplan Case: Op. Com., 17 July 1980, Kaplan Case, §§ 144-149. D & R 21 p. 5 (26-28), as follows:

"In considering these questions, the Commission first recalls that in the *Ringeisen Case* the Court said: "For Article 6(1) to be applicable to a case (*"contestation"*) it is not necessary that both parties to the proceedings should be private persons, which is the view of the majority of the Commission and of the Government. The wording of Article 6(1), is far wider; the French expression *"contestations sur [des] droits et obligations de charactére civil"* **covers all proceedings the result of which is decisive for private rights and obligations**. The English text "determination of … civil rights and obligations", confirms this interpretation." (Emphasis supplied)

"**The character** of the legislation which governs how the matter is to be determined (civil, commercial, administrative law, etc.) and that **of the authority which is invested with jurisdiction in the matter** (ordinary court, administrative body, etc) are therefore of little consequence" (Series A,, Vol 13, para. 94)." (Emphasis supplied)

See decision of the European Commission in the *Konig Case* : Jud. Court, 28 June 1978, *Konig Case,* §§ 90-95, publ. Court A, Vol. 27 pp. 30-32, as follows:

"If the case concerns a dispute between an individual and a public authority, whether the latter acted as a private individual or in **its sovereign capacity** is therefore not conclusive."

"Accordingly, in ascertaining whether a case (*"contestation"*) concerns the determination of a civil right, only the ***character of the right at issue*** is relevant…." (Emphasis supplied)

…….

"In these conditions, it is of little consequence that here the cases concern *administrative measures* taken by the competent bodies *in the exercise of public authority.* Neither does it appear pertinent that, under the law of the State concerned, it is for Administrative Courts to give the decision on these cases and to do so in proceedings which leave to the court the responsibility for the investigation and for the conduct of the trial. **All that is *relevant* under Article 6(1) of the Convention is the fact that the object of the cases in question is the *determination* *of rights of a private nature."*** (Emphasis supplied)

See decision of the European Commission in the *Case of Le Compte, Van Leuven and De Meyere* : Judg. Court, 23 June 1981, Case of Le Compte, Van Leuven and De Meyere, §§ 41-44. publ. Court A, Vol. 43 pp. 19-20, as follows:

"The very notion of "civil rights and obligations" lay at the heart of the Konig Case. The rights at issue included the right "to continue his professional activities" as a medical practitioner "for which he had obtained the necessary authorisations". In the light of the circumstances of that case, the Court classified this right as **private**, and hence as ***civil*** for the purpose of Article 6(1) (loc. cit., pp. 29-32, paras. 88-91 and 93-95)."

"The ramifications of this line of authority are again considerably extended as a result of the Golder Judgement of 21 February 1975. The Court there concluded that "Article 6(1) secures to everyone **the right to have *any claim* relating to his civil rights and obligations brought before a court or tribunal"** (Series A,, Vol. 18, p. 18, para. 36). One consequence of this is that Article 6(1) is not applicable solely to proceedings which are already in progress: it may also be relied on by anyone who considers that **an interference with the exercise of one of his (civil) rights is unlawful** and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6(1)." (Emphasis supplied)

Finally, see the decision of the European Commission in the *Airey Case* : Judg. Court, 9 October 1979, *Airey Case,* § 21. Publ. Court A, Vol. 32 p. 12, as follows:

"The applicant wishes to obtain a decree of judicial separation. There can be no doubt that the **outcome** of separation proceeding is **"decisive for private rights** and obligations" and hence, *a fortiori,* for **"civil rights and obligations" within the meaning of Article 6(1);** this being so, Article 6(1) is applicable in the present case (see the Koing Judgement of 28 June 1978, Series A, Vol. 27, pp. 30-32, paras 90-95)." (Emphasis supplied)

NOTA BENE: Under Scottish Law the baronial heraldic additaments, the 'title of baron', use of the *nomen dignitatis* or territorial designation as part of both the surname and the 'title of baron', the prefix of 'The Much Honoured' as well as the 'dignity of baron', itself, cannot be used unless such have been matriculated upon the Lyon Register. Much matriculation constitutes the "necessary permit" from the applicable national authority for the use of such. Accordingly, the process by which one matriculates 'the dignity of baron' upon the Lyon Register constitutes a **"determination"** of "incorporeal heritable property" consisting of 'the dignity of baron' as a private law **"civil right"** of a contractual nature under Convention Article 6(1).

[116] See P. van Dijk & G. J. H. van Hoof, Theory and Practice of The European Convention of Human Rights (Kluwer, Deventer, Netherlands, 1984) pp. 259-261, as follows:

"8. Finally the first paragraph of Article 6 also provides that the trial there referred to be in the hands of an independent **and impar-**

tial tribunal established by law. Of the two required qualifications of the court the former has an objective, ***the latter a subjective character***." (Emphasis supplied)

……

"The requirement of **impartiality** is very closely related to that of a fair hearing, since in the **case of a *partial court*** there can be no question of a **fair hearing.** An example of a case in which the *impartiality of a judge* was involved in Strasburg is the well-known *Boeckmans Case.* The Judge concerned had become ***so indignant*** about one of the defences put up by the counsel that as acting president he uttered the warning that persistence in the defence might lead to an *aggravation of the penalty* imposed by the court at first instance. After the Commission had declared the case to be admissible, a friendly settlement was reached, in which the Belgian Government promised to pay Boeckmans a compensation. This case did not therefore result in a decision on the merits, ***but the behaviour of the judge was undoubtedly contrary to the requirements of a fair hearing.***" (Emphasis supplied)

…….

"A kind of cross between dependence and partiality was concerned in the *Piersack Case,* where the applicant submitted that the *president of the judicial body* which had convicted him had been involved in his case *in an earlier phase* as a member of the prosecution, and on that account could **not be qualified as an *independent and impartial judge.*** Both the Commission and the Court concluded that Article 6(1) had been violated in this case." (Emphasis supplied)

See also the decision of the European Court in the *Piersack Case* : Judg. Court, 1 October 1982, Piersack Case, §§ 30-32, Publ. Court A, Vol. 53 pp. 14-16, as follows:

"Whilst impartiality normally denotes ***absences of prejudiced or bias,*** its existence or otherwise can, notably under Article 6(1) of the Convention, be tested in various ways. A distinction can be drawn in this context between a **subject approach,** that is endeavouring to ascertain ***the personal conviction of a given judge*** in a given case, and an **objective approach,** that is determining whether he offers **guarantees sufficient *to exclude* any legitimate doubt** in this respect." (Emphasis supplied)

(a) As regards the first approach, the Court notes that the applicant is pleased to pay tribute to Mr. Van de Walle's personal impartiality; It does not itself have any cause for doubt on this score and indeed personal impartiality is to be presumed ***unless there is proof to the contrary*** (see the Le Compte, Van Leuven and De Meyer Judgement of 23 June 1981, Series A, Vol. 43, p. 25, para. 58)." (Emphasis supplied)

"However, it is not possible to confine oneself to a purely subjective test. In this area, ***even appearances may be of a certain importance*** (see the Delcourt Judgement of 17 January 1970, Series A, Vol. 11, p. 17, para. 31). As the Belgian Court of Cassation observed in its judgement of 21 February 1979 (see para 17 above) **any judge in respect of whom there is a *legitimate reason to fear a lack of impartiality* must withdraw.** What is at stake is **the confidence which the courts must inspire in the public** in a democratic society." (Emphasis supplied)

…….

"Whether or not Mr. Piersack was, as the Government believe, unaware of all these facts at the relevant time is of little moment. Neither is it necessary to endeavour to gage the precise extent of the role played by Mr. Van de Walle, by undertaking further enquiries in order to ascertain, for example, whether or not he received the covering note of 4 February 1977 himself and whether or not he discussed this particular case with Mrs. Del Carril and Mr. De Naw. **It is sufficient to find *that the impartiality of the "tribunal"*** which had to determine the merits (in the French text: *"bien-fonde"*) of the charge **was capable of appearing open to doubt**." (Emphasis supplied)

"In this respect, the Court therefore concludes that there was a violation of Article 6(1)."

See also the opinion of the European Commission in the *Case of Albert and Le Compte* : Op. Com., 14 December 1981, Case of Albert and Le Compte, §§ 75-76 pp. 32-33, as follows:

"The Commission has some hesitation in following the approach of the Court on this point. It does not necessarily follow from the presence of a representative of one of the parties to a case on the decision-making body, that it will necessarily be partial. Nonetheless, the Commission takes this opportunity of referring once again to the Court's Judgement in the Delcourt Case, which recognises that the English legal adage, which had been adopted in many legal systems, including the Belgian system, that **"Justice must not only be done —*it must also be seen to be done"*** expresses an idea which is also embodied in Article 6 of the Convention. Also worth of note is the following maxim: **"A judge must be impartial. *It is also his duty to give no one any reason to doubt his impartiality***", taken from a note by Mr. Ganshof van der Meersch in : *"Reflexions sur ll'art de juger et l'exercice de la fonction judiciaire"* (J. T. 1973, pp. 509 ff.)." (Emphasis supplied)

NOTA BENE: It is highly unethical for a judge to rule on matters where he knowing and publicly harbours prejudice against any of the parties or against the subject-matter of the proceedings. In such a situation the only ethical option for a judge is to withdraw from the proceedings. A failure of a prejudiced judge to withdraw from cases where he harbours prejudice against one of the parties or the subject matter of the proceedings is grounds for overturning his actions upon appeal and for complaint to a judicial disciplinary board.

[117] See Scotland on Sunday for 8th February 2004, at
http://scotlandonsunday.scotsman.com/index.cfm?id=154542004 as follows:

Wannabe nobles make blue blood pressure rise

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THEY are shameless social climbers, more interested in dropping their posh names into conversation at the right dinner party than preserving the integrity of Scotland's illustrious aristocratic history.

This is what the guardian of the country's heraldic heritage thinks of the pushy women who he believes are often behind their husbands' plan to buy expensive titles.

And the Lord Lyon, King of Arms, Robin Blair, believes it is often this need to climb up the social ladder which is responsible for an increase in the purchase of Baronies rather than the historical significance they hold.

The 35th man to hold the office responsible for approving all Scotland's Coats of Arms made his comments in a magazine article in which he defended his ancient office and spoke of his work to preserve the integrity of Scotland's heraldic history. He is working against an increasing trend by aristocrats to sell their titles for the going rate of £60,000 to the highest bidder, whatever the colour of their blood.

He said: "What you get for that amount of money is a tiny piece of land and the right to call yourself a Baron. Usually, what's more important, is that their wife can call herself the Baroness of something or other. Very often I'm afraid, this sort of status-seeking is

driven by the ladies."
He added: "It's certainly a feature that does arise. Women seem to be pushing the idea forward more than their partners and often the reason will be to elevate themselves socially rather than for the historical reasons. People do find having a title attractive."
Blair's comments have provoked widespread criticism from social commentators and those holding titles north of the Border, ruffling both female and male feathers. He also commented on the large amount of Americans of Scottish descent keen to spend for the privilege of owning an ancient title, and some of the bizarre designs they requested.
He said: "We get many applications from Americans wanting an application for a Grant of Arms.
We had a request for a computer so we had to think of a way to represent that in a timeless way."
'I would get rid of my title if I could. I have no intention of using it'
The Duchess of Hamilton was one blue-blooded female who accused Blair of sexism. The wife of the Duke of Hamilton, speaking from her ancestral home of Lennoxlove in East Lothian, said: "I don't think it's the ladies, it's more like the men wanting to do it. It's a bit sexist to say it's the women."
She added: "Anyone I've known who has bought a title has done so because the man wants to. I think the men do it to make themselves more attractive to the ladies."
Charles Kidd, co-author of Burke's Peerage, Baronetage & Knightage, agreed: "I don't think it's the women, it would be more likely to be the men. It's probably the equivalent to owning a flash red Ferrari."
He added: "I would hope the majority of people would buy titles because of the history. We are a country very rich in history and it would be a shame if that was overlooked."
Peter York, the social commentator who coined the phrase "Sloane Ranger", took a more sanguine view: "Where would we be without social climbing women? We need them for social dynamics and we should love and respect them."
He added: "My advice to anyone who has bought a title is flaunt it. They should hold their heads up high, wear all the regalia that goes with it and make everyone call them by their new titles."
Don Dennis, an American businessman, bought Achamore House on the island of Gigha last year and with it the title of Baron of Gigha, said he did not agree with Blair's criticism of women. Dennis, who paid £665,000 for the house and surrounding land, was also highly critical of the system.
He said: "I would get rid of my title if I could. I have no intention of using it. I think it's a bunch of hogwash. I'm told that it has a very good pedigree but I don't really see it as a benefit.
Skye landlord Sir Iain Noble, owner of Eilean Iarmain estate on Skye - who recently sold the title Barony of MacDonald to a mystery buyer for an estimated £1m - also said Blair's comments were not correct.
Noble, who purchased the 23,000-acre estate from the late Lord MacDonald, Chief of Clan Donald more than 30 years ago, said: "People are attracted to the idea of having a title but I don't think its a women driven thing. What's really important is not the prestige but the fact that it is recognised as a privilege and with that privilege comes social responsibility."
Brian Hamilton, a researcher and title dealer who runs the website Baronytitles.com, said he had no evidence to support Lord Lyon's claims.
Hamilton, who has 200 potential clients on his books from Venezuela to New Zealand in search of Scottish titles, said: "It's not for me to contradict him but usually the women know nothing about the purchase of the titles because often it's a surprise present from their husbands."
Baronies have been recognised by the Crown as land-holding titles for nearly 1,000 years. They were primarily to secure the allegiance of their subject, with most barons providing military service. But baronial powers were largely abolished after the 1745 Jacobite rebellion.
The whole notion of ancient titles such as Sir, Dame, Lord and Lady has attracted widespread criticism over the years for being "outdated" and "undemocratic" by opponents.
Last week MPs suggested a move to abolish the titles, which date from medieval times, in a discussion paper issued by the Commons Public Administration Committee.
NOTA BENE: The "impartiality" evidenced in the 'attitude' expressed by the concerned public official/judge *speaks for itself* … any further comment would be superfluous….
As to the allegation of 'social climbing', one might observe that the ***difference*** between paying £1303 for the instant social status of becoming a "Noble in the Noblesse of Scotland" by the grant of a coat of arms … matriculating 'the dignity of baron' … or paying hundreds of thousand of pounds to litigate the revival of long defunct peerages, clan chiefships in abeyance since Jacobite times, or medieval hereditary offices to the House of Lords … is merely a matter of ***degree*** : *As Einstein declared, 'Everything is relative'….*
Might one even ask whether men of a certain age wearing tabards to read royal proclamations to the accompaniment of State Trumpeters … publicly photographed wearing the same in republics founded in opposition to the hereditary principle … *all in the expectation of receiving a 'k' for so doing* … ought to take to heart the admonition in Matthew 7:5 ?
Legally, the *totally irrelevant* personal and private 'motive' of a petitioner seeking the judicial "determination" of a private law "civil right" of a contractual nature ought to make ***no difference*** whatsoever in the requisite **"impartiality"** required by Article 6(1) of the Convention of the public official/judge called upon to make such a judicial "determination". The above-quoted expressions re 'social motives' imputed to Holders of 'the dignity of baron' evidences complete lack of the requisite judicial "impartiality" mandated by Article 6(1) in the official charged with making "determinations" concerning 'the dignity of baron'.
The (presently suspended) Lyon Court Rules of 17th December 2002 *further evidences* that the public official/judge-in-question has, abused the State Power inherent in the position of Lord Lyon King of Arms by promulgating the same as an official act to impose upon the general public his personal 'social' prejudices against Holders of 'the dignity of baron' declared in his 8th February 2004 interview with *Scotland on Sunday*

[118] The (suspended) Lyon Court Rules of 17th December 2002 concerning 'the dignity of baron' are as follows:

COURT OF THE LORD LYON
ABOLITION OF FEUDAL TENURE ETC (SCOTLAND) ACT 2000

In connection with the Appointed Day under the above Act, which has been announced to be 28 November 2004, the following Rules will apply.
(1) With effect from the Appointed Day the Lord Lyon will no longer officially recognise a person as a feudal baron, nor make any grant of baronial additaments as part of Armorial Bearings.

(2) Any Petition for recognition as a baron and/or for baronial additaments must be submitted to the Court of the Lord Lyon not later than 30 April 2004 in order to allow time for it to be processed before the Appointed Day. No such Petition lodged after 30 April 2004 will be considered.
(3) After the Appointed Day the Lord Lyon will be prepared to consider allowing a blue chapeau , as part of the Arms matriculated by an heir of a baron who has been recognised by the Lord Lyon prior to the Appointed Day, in a similar manner as blue chapeaux have in the past been, and will continue to be, allowed to Representers of former owners of baronial lands.
(4) After the Appointed Day a baron who has a grant of Arms with baronial additaments may continue to use the additaments for his lifetime. Use of the additaments by his heir after the death of the baron will not be permissible and all existing grants will be subject to this Rule.

Robin 0. Blair
Lord Lyon King of Arms 17 December 2002

NOTA BENE: Totally at variance with the parliamentary intent established by Sec. 63 of the ACT, implementation of the above (presently suspended) Rules would completely destroy the historic Estate of the Baronage of Scotland: Upon the death of the last present Holder of 'the dignity of baron', the Estate of the Baronage of Scotland will become effectively extinct. *. His 'motives' for so doing are clearly expressed in his 8th February 2004 interview in Scotland on Sunday referenced above.*
Promulgation of the above-Rules **concretely evidences** the manifest prejudice, bias, disdain and the total lack of judicial "impartiality" towards Holders of 'the dignity of baron' mandated by Article 6(1) of the Convention for public officials/judges charged with making a "determination" of private law "civil rights" of a contractual nature consisting of the statutorily created 'dignity of baron' constituted as "incorporeal heritable property" by §63(2) of the ACT:
Reading the Lyon Court Rules of 17th December 2002 in conjunction with the interview of 8th February 2004 published in *Scotland on Sunday,* establishes the ***manifest lack of judicial "impartiality"*** towards Holders of 'the dignity of baron' required by Article 6(1) of the public official/judge making a "determination" of private law "civil rights" of a contractual nature concerning the taking sasine to "incorporeal heritable property" consisting of 'the dignity of baron' and the investing of such Holders with both baronial heraldic insignia inextricably annexed to this dignity as well as the title & dignity of baron by recording the same upon the Lyon Register.

[119] NOTA BENE: When the (presently suspended) Lyon Court Rules of 17 December 2002 … are read in conjunction with the 8th February 2004 *Scotland on Sunday* interview with the public official/judge concerned … and contrasted with the manifest *public policy or order publique* of the Scottish Government towards the survival after the 'appointed day' of 'the dignity of baron' established by Sec. 63 of the ACT, the *parliamentary intent* of which is explicitly evidenced in ¶¶2.30 to 2.45 of the Scottish Office's "Report on the Abolition of the Feudal System" (SCOT LAW CM 168); … ***any refusal*** after the 'appointed day' of the public official/judge concerned to make a "determination" of the private law "civil rights" of a contractual nature consisting of statutory "incorporeal heritable property" of 'the dignity of baron' re §63(2) of the ACT by recording sasine to the same and investing the Holders of this dignity in baronial heraldic additaments inextricably annexed to this dignity, the 'title' of baron, the *nomen dignitatis* or territorial designation as part of both the surname and the 'title of baron', the prefix of 'The Much Honoured' as well as in the 'dignity of baron', itself, by matriculating all of the same upon the Lyon Register … ***must be imputed*** to the declared lack of judicial **"impartiality"** of the public official/judge concerned towards and active prejudice against Holders of 'the dignity of baron' as expressed in the said interview and as officially exemplified in the said Rules.

[120] Article 1 of Protocol I to the European Convention of Human Rights and Fundamental Freedoms provides, as follows:

Article 1 of Protocol I: Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."
"The preceding provisions shall not, however,, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."
See the opinion of the European Court in the Sporrong and Lonnroth Case: Judg. Court, 23 September 1982, *Case of Sporrong and Lönnroth,* §61. Publ. Court A, Vol 52 p. 24, as follows:
"That Article comprises three distinct rules. The first rule, which is of a general nature, enounces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to certain conditions; it appears in the second sentence of the same paragraph. The third rule recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose; it is contained in the second paragraph.

[121] See P. van Dijk & G. J. H. van Hoof, Theory and Practice of The European Convention of Human Rights (Kluwer, Deventer, Netherlands, 1984) pp. 340, as follows:

"2. The concept of 'possessions' in the first sentence must not be understood in the technical-juridical meaning of the word; it is wider, as also appears from the French word **'biens'**. Yet, the **object of the possession** must admit of being adequately defined in relation to the claims laid to them."
NOTA BENE: "Peaceful enjoyment of possessions" under Article 1 of Protocol I to the European Convention protects not only the 'shell' of statutory "incorporeal heritable property" consisting of 'the dignity of baron' re §63(4) of the ACT but extends to include ***specifically*** those particular concrete legal rights of acquired incorporeal property 'vesting' in the Holder of 'the dignity of baron' statutorily specified in §63(4) of the ACT which makes 'the dignity of baron' **meaningful** to the Holder, those whom may have inherited this dignity, and those to whom this dignity has been transferred.

[122] Particular acquired legal rights of intangible property or incorporeal "possessions" comprehended in "any qualities … associated with" the 'dignity of baron' referenced in §63(4) of the ACT consist of the following rights of incorporeal property:

1. Personal ennoblement of the holder of the 'dignity of baron'
2. 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 Sergeant

iv) Dempster
v) Procurator Fiscal
vi) Keeper of the Castle and Fortalice or baronial caput
vii) Burlaw Men
viii) Lacqueys or Pages
ix Halberdier Guards

3. 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 armigerious 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 fundamental "legal entities" construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular 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 fundamental "legal entities" construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular 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 fundamental "legal entities" construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular 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 fundamental "legal entities" construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular individual acquired legal right of intangible property 'vesting' in that baron:

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

[123] Particular acquired legal rights of intangible property or incorporeal "possessions" comprehended in "any … **precedence** associated with" the 'dignity of baron' referenced in §63(4) of the ACT consist of the following rights of incorporeal property:

1. 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.
2. Use of the title "Baron of X [*nomen dignitatis*]" as part of the name of the owner or holder of the 'dignity of baron'
3. Addition of the *nomen dignitatis,* 'fife name' or 'territorial designation' to the surname of the owner or holder of the 'dignity of baron'.
4. Use of the prefix of "The Much Honoured" as in 'The Much Honoured John Doe of Glenroe, Baron of Glenroe'
5. Official Lyon Court recognition of 'baronial status' consisting of the following:

A) That the Baronage of Scotland is an 'order', 'estate' (of the Scots' Realm) and a 'Rank'
B) Statement in official Lyon Court documents of the entitlement to be received as "Hoch-Adel" on the Continent
C) Statement in Lyon Court documents that minor barons are officially the 'equivalent to the chiefs of Baronial Houses on the Continent of Europe'
D) Statement in Lyon Court documents that minor barons statutorily constitute 'a part of the nobility' in the Statute of 20 Dec 1567
E) 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
F) 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 'Estait' 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 estait 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."

[124] Particular acquired legal rights of intangible property or incorporeal "possessions" comprehended in "**any heraldic privilege** incidental to" the 'dignity of baron' referenced in §63(4) of the ACT consist of the following acquired legal rights of incorporeal property:

1. 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.
2. Baronial Chapeau: Gules, furred Ermine, tasselled Or
3. Feudo-Baronial Mantle or Robe of Estate
4. Banner, three feet square, ensigned on the top by the baronial chapeau
5. Steel Helmet of three grills, garnished with gold, or Great Tilting Helmet garnished with gold
6. Badge
7. Standard of four yards, ensigned on the top by the Baronial Chapeau
8. Guidon of eight feet, ensigned on the top by the baronial chapeau
9. Pennon of four feet, ensigned on the top by the baronial chapeau
10. Pinsel of four and one-half feet by two feet, ensigned on the top by the baronial chapeau
11. Ensign, ensigned on the top by the baronial chapeau
12. Streamer (nautical) of four yards, ensigned on the top by the baronial chapeau
13. Compartment representing the fife of the barony in the form of specific local geographical and historical features constituting the noble feus
14. Supporters for the representative of the baronial house entitled to sit in the old Scots Parliament before 1587
15. Heraldic additaments of the Officers of a Baron Court as official insignia of office:

A) Cap of Justice for Baron Baillies
B) Key in bend for Keeper of Baronial Caput
C) Horn and white wand for Baron Sergeant

[125] See P. van Dijk & G. J. H. van Hoof, Theory and Practice of The European Convention of Human Rights (Kluwer, Deventer, Netherlands, 1984) pp. 343, 344 as follows:

"4. The most important restriction to be imposed by the authorities on the peaceful enjoyment of one's possessions is regulated explicitly in the first paragraph itself: **expropriation in the *public interest.*** Whether a particular expropriation has indeed been performed in the public interest will be subjected by the Strasbourg organs to a very marginal review only, **the main objective being to detect cases of *détournement de pouvoir;* or of manifest arbitrariness**."

.....

"… Consequently, national legislation and *its application* can be reviewed only for their conformity with the prohibition of **discrimination** of Article 14, with the prohibition of ***détournment de pouvoir*** laid down in Article 18, and possibly with Article 17. This was expressly stated by the Court in the *Handyside Case* :

'"this paragraph sets the Contracting States up as the sole judges of the 'necessity' for an interference. Consequently, the Court must restrict itself to supervision the lawfulness and **purpose** of the restriction in question"'

"In its report in the *Sporrong and Lonnroth Case* the Commission concluded from the slightly modified formulation of the Court in the *Marckx* judgement that the Court only recognizes the States as the 'sole judges' in regard to *the law* from which the restrictions ensue, but not in relation to the **necessity** of *the measures which are based on that law.* As regards the latter, in the Commission's opinion the possibility of review by the Strasbourg organs goes further and includes, for instance, the ***proportionality*** between those measures and the purpose of the law on which they are based."

NOTA BENE: The entirely *subjective reason* that *in his opinion* that the Holders of 'the dignity of baron' are **"shameless social climbers"** given in the 8th February 2004 *Scotland on Sunday* article "Wannabe nobles make blue blood pressure rise" given by the particular public official/judge charged by statute with judicial competence to record sasine to "incorporeal heritable property" consisting of 'the dignity of baron' in order to create 'real rights' of ownership in the ***RES*** (thing) of the same specified in §63(4) of the ACT as well as the ability to receive official investiture in baronial heraldic additaments inextricably annexed to this dignity, the 'title' of baron, the *nomen dignitatis* or territorial designation as part of both the surname and the 'title of baron', the prefix of 'The Much Honoured' as well as in the 'dignity of baron', itself, by matriculating all of the same upon the Lyon Register … is ***prima facia evidence* of 'manifest arbitrariness' or 'abuse of State power'** on the part of this public official/judge as the motive for promulgation of the Lyon Court Rules of 17 December 2002.

Prevention of 'social climbing' is simply not **a proper purpose of public utility "in the public interest"** under Article 1 of Protocol I of the European Convention for depriving the Holder of "incorporeal heritable property" consisting of 'the dignity of baron' of the legal ability to establish 'real rights' of ownership in this dignity by taking sasine to such and receiving official investiture in baronial heraldic additaments inextricably annexed to this dignity, the 'title' of baron, the *nomen dignitatis* or territorial designation as part of both the surname and the 'title of baron', the prefix of 'The Much Honoured' as well as in the 'dignity of baron', itself, by matriculating all of the same upon the Lyon Register.

The 'comments' of the European Commission and Court of Human Rights on this particular 'purpose' will be priceless!

Moreover this *administrative attempt* to prevent 'social climbing' is directly contrary to the explicit ***parliamentary intent*** statutorily established in Sec. 63 of the ACT and declared in the *legislative history* to Sec, 63 in ¶¶2.30 to 2.45 of the Scottish Office's "Report on the Abolition of the Feudal System" (SCOT LAW COM 168) … that 'the dignity of baron' which "includes any quality or precedence associated with, and any heraldic privilege incidental to" this dignity re §63(4) of the ACT was to survive the 'appointed day' in **undiminished form**.

Sec. 63 of the ACT establishes 'public policy' of the Scottish Government with respect to the freedom to acquire a barony, the 'title of baron' the *nomen dignitatis* or territorial designation as part of both the surname and the 'title of baron', the prefix of 'The Much Honoured' as well as in the 'dignity of baron', itself.

The notion of 'social climbing' is *entirely subjective* and like 'beauty' is purely in the *eye of the beholder.* As a 'social phenomena' belonging entirely to the realm of the drawing room, 'social climbing' is an issue lying totally outside concept of the "public interest" as used in Article 1 of Protocol I to denote a ***proper purpose of public utility*** as legitimate grounds upon which to deprive one of his possessions.

One might even observe that *all petitioners* to the Lyon Court are to some extent 'social climbers' … whether for the social status of 'Noble in the Noblesse of Scotland' via a grant of arms for £1303 …. or for the revival of a peerage, chiefship, or hereditary office: All of which raises the issue of ***discrimination*** between different classes of so-called **'social climbers'** on the entirely subjective personal prejudices revealed in the 8th February 2004 *Scotland on Sunday* interview.

Legally such **discrimination** between different classes of petitioners on the subjective basis of 'social climbing' constitutes a violation of Article 14 of the European Convention when read in conjunction with Article 1 of Protocol I: *The European Convention mandates that **all** petitioners in the Lyon Court must be treated **alike** by public officials/judges and that it is impermissible to discriminate against **different classes** of Petitioners — on the entirely subjective notion of 'social climbing'.*

Simply put, in matters concerning the "peaceful enjoyment of possessions" or deprivation of the same for proper purposes of public utility "in the public interest", Article 1 of Protocol I when read in conjunction with Article 14 of the Convention … requires that public officials/judges must treat **all** petitioners in a like manner irrespective of whatever might be their personal, private, and *unknown* 'motive' for petitioning.

[126] See P. van Dijk & G. J. H. van Hoof, Theory and Practice of The European Convention of Human Rights (Kluwer, Deventer, Netherlands, 1984) pp. 342 as follows:

"3. Article 1 speaks of **"peaceful enjoyment".** This implies, *inter alia,* that this provision may also be violated when a person has not been affected as to his property or possessions *per se,* **but is not accorded an opportunity to use that property, for instance *because a necessary permit is refused to him,*** or because in some other way ***such restrictions with regard to that use*** ensue from the legislation or **from government measures** that there is no longer any question of a "peaceful enjoyment". (Emphasis supplied.)

See also the decision of the European Court in the *Case of Sporrong and Lonnroth:* Judg. Court, 23 September 1982, Case of Sporrong and Lonnroth, §§ 58-60. Publ. Court A, Vol. 52 pp. 22-24, as follows:

Though not claiming that they had been formally and definitively deprived of their possessions, the Sporrong Estate and Mrs.

Lonnroth alleged that the permits and prohibitions at issue **subjected the enjoyment** and power to **dispose of their properties to limitations that were excessive** and did not give rise to any compensation. **Their right of property had** accordingly, so they contended**, been deprived of its substance** whilst the measures in question were in force." (Emphasis supplied.)
"The Government accepted that market forces might render it more difficult to sell or let a property that was subject to an expropriation permit and that the longer the permit remained in force the more serious this problem would become. It recognised that prohibitions on construction restricted the normal exercise of the right of property. However, it is asserted that such permits and prohibitions were an intrinsic feature of town planning and did not impair the right of owners to "the peaceful enjoyment of [their] possessions", within the meaning of Article 1 of Protocol No. I."
"The Court is unable to accept this argument."
"Although the expropriation permits left intact in law the owner's right to use and dispose of their possessions, they nevertheless **in practice significantly reduced the possibility of its exercise**. They also affected ***the very substance of ownership*** in that they recognised before the event that any expropriation would be lawful and authorised the City of Stockholm to expropriate whenever it found it expedient to do so. **The applicant's right of property thus became precarious and defeasible**." (Emphasis supplied.)
"The prohibitions on construction, for their part, undoubtedly restricted the applicant's right to use their possessions."
"The Court also considers that the permits and prohibitions should in principle be examined together, except to the extent that analysis of the case may require a distinction to be drawn between them. This is because, even though there was not necessarily a legal connection between the measures (see para. 35 above) and even though they had different periods of validity, they were complementary and had the single objective of facilitating the development of the city in accordance with the successive plans prepared for this purpose."
"**There was therefore an interference with the applicant's right of property** and, as the Commission rightly pointed out, the consequence of that interference were undoubtedly rendered more serious by he combined use, over a long period of time, of expropriation permits and prohibitions on construction." (Emphasis supplied.)
NOTA BENE: The Holder of "incorporeal heritable property" consisting of 'the dignity of baron' cannot lawfully use any of the particular concrete acquired legal rights of intangible property referenced in §63(4) of the ACT ... such as baronial heraldic additaments inextricably annexed to this dignity, the 'title' of baron, the *nomen dignitatis* or territorial designation as part of both the surname and the 'title of baron', the prefix of 'The Much Honoured' as well as in the 'dignity of baron', itself ... until he has received official investiture in the same by matriculating the such upon the Lyon Register.
Thus the Lyon Court is the government authority empowered to issue the **"necessary permit"** authorising the Holder of 'the dignity of baron' "an opportunity to use that property". Refusal by the Lyon Court to so authorise the use of any of the particular concrete acquired legal rights of intangible property referenced in §63(4) of the ACT —- by issuing the "necessary permit" – has the legal affect of depriving the Holder of "the substance" of the "peaceful enjoyment of possessions" guaranteed by Article 1 of Protocol I.
Similar to the *Case of Sporrong and Lonnroth*, any denial or refusal by the Lyon Court – as the Government Agency authorised to grant the **"necessary permit"** for the effective use of "incorporeal heritable property" consisting of 'the dignity of baron' specified in §63(4) of the ACT – constitutes "an infringement with the applicant's right of property" which affects **"the very substance of ownership"** by "in practice significantly reduc[ing] the possibility of its exercise":
Simply put, by refusing to issue the **"necessary permit"** to use the particular concrete acquired legal rights of intangible property referenced in §63(4) of the ACT, the Lyon Court interferes with "the peaceful enjoyment of possessions" guaranteed by Article 1 of Protocol I of the Convention by depriving the Holder of 'the dignity of baron' of **"the very substance of ownership"** of such 'incorporeal heritable property'.
Stated differently, ***"the very substance"*** of "incorporeal heritable property" consisting of 'the dignity of baron' consists of precisely those particular concrete acquired legal rights of intangible property referenced in §63(4) of the ACT: Use by the Holder of the full range of baronial heraldic additaments inextricably annexed to this dignity, the 'title' of baron, the *nomen dignitatis* or territorial designation as part of both the surname and the 'title of baron', the prefix of 'The Much Honoured' as well as the 'dignity of baron', itself, as well as official recognition of baronial status in Lyon Court documents.
Because the Holder of 'the dignity of baron' cannot legally use the particular concrete acquired legal rights of intangible property referenced in §63(4) of the ACT ... until he receives the **"necessary permit"** from the Lyon Court; any refusal to issue the "necessary permit" – taking the form of a grant or matriculation of all such items – deprives the Holder of **"the very substance of ownership"** of 'the dignity of baron'.
Such denial of the effective exercise of any of the particular concrete acquired legal rights of intangible property referenced in §63(4) of the significantly reduces in the practice the possibility of "peaceful enjoyment of possessions" as guaranteed by Article 1 of Protocol I of the Convention.
Accordingly, any attempt to enforce the (presently suspended) Lyon Court Rules of 17 December 2002 or any new 'rules' similar thereto after the 'appointed day' will violate the "peaceful enjoyment of possessions' guaranteed under Article 1 of Protocol I.
[127] See P. van Dijk & G. J. H. van Hoof, Theory and Practice of The European Convention of Human Rights (Kluwer, Deventer, Netherlands, 1984) pp. 341-342 as follows:
"… **The claim itself may constitute a "possession"** in the sense of Article 1, but it should then be a **concrete, adequately specified claim**. … it does of course protect **the right of the testator to dispose of his patrimonial rights**, since as the Court holds, "Article 1 is in substance guaranteeing the right of property"." (Emphasis supplied.)
See also the decision of the European Court of Human Rights in the *Marckx Case* : Judg. Court,, 13 June 1979, Marckx Case, §63. Publ. Court A, Vol. 31 pp. 27-28, As follows:
"In the applicants' submission, the **patrimonial rights** claimed by Paula Marckx **fall within the ambit of,** *inter alia,* **this provision**. This approach is shared by the Commission but contested by the Government." (Emphasis supplied.)
"The Court takes the same view as the Commission. By recognising that everyone has the right to the peaceful enjoyment of his possessions, Article 1 is in substance guaranteeing the right of property. This is the clear impression left by the words "possessions" and "use of property" (in French: *"biens", "propriéte", "usage des biens"*); the *travaux Préparatoires,* for their part, confirm this unequivocally: the drafters continually spoke of "right of property" or "right to property" to describe the subject-matter of the successive drafts which were the forerunners of the present Article 1. Indeed, **the right to dispose of one's property constitutes a traditional and fundamental aspect of the right of property**…." (Emphasis supplied.)

NOTA BENE: The Lord Lyon's (presently suspended) Rules of 17 December 2002 by refusing to 'officially recognise a person as feudal baron, nor make any grant of baronial additaments as part of Armorial Bearings' or to allow 'use of the additaments by his heir after the death of the baron' after the 'appointed day' ... violates "the peaceful enjoyment of possessions" guaranteed by Article 1 of Protocol I of the Convention ... by depriving the Holder of "incorporeal heritable property" consisting of 'the dignity of baron' the right to dispose of ***the substance*** of his property.

Because 'the dignity of baron' as "incorporeal heritable property" consists ***solely*** of those matters referenced in §63(4) of the ACT ***statutorily transformed*** by such reference into fundamental "legal entities" construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular acquired legal rights of intangible property 'vesting' in the Holder of this dignity and ***statutorily incorporated*** by use of the *verb* **"includes"** therein into an integral 'bundle' of all such component acquired legal rights of intangible property which constitutes 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 **substance** of "incorporeal heritable property" constituting 'the dignity of baron' consists ***precisely*** of the entire range of "qualities", "precedences", and "any heraldic privilege" referenced in §63(4) of the ACT set forth above in specificity and with detail.

The fact that all of these matters – such as baronial heraldic additaments, 'title' of baron', *nomen dignitatis* or 'territorial designation' as part of both the surname and the 'title of baron', the prefix of 'The Much Honoured', and recognition in official documents the 'baronial status' of such Holders as equivalent to Hoch Adel and the Chiefs of Continental baronial houses – are **intangible** and **incorporeal** ... does not subtract from their legal status under Scottish law as being valid concrete, acquired legal rights of incorporeal **property** 'vesting' personally in the Holder and ***incorporated*** into the essence of 'the dignity of baron'.

Upon studying Sec. 63 of the ACT, one must conclude that after the 'appointed day' "incorporeal heritable property" constituting 'the dignity of baron' will consist of ***nothing more*** than those intangible, incorporeal matters referenced in §63(4) of the ACT. The fact that such are 'incorporeal' and intangible does not render them any less **'real' rights of property** … or "possessions" within the meaning of Article 1 of Protocol I of the Convention.

As "possessions" vesting personally in the Holder of 'the dignity of baron', all such intangible and 'incorporeal' armorial, titular, heraldic, and nobiliary matters fall within the protection of Article 1 of Protocol I of the European Convention: Article 1 of Protocol I protects 'incorporeal' and intangible "possessions" as much as it protects 'corporeal' possessions

Being the particular government official/judge charged by statute with issuing the "necessary permits" for the use, employment, and enjoyment of such armorial, titular, heraldic, and nobiliary "possessions" or acquired legal rights of 'incorporeal property'; ... after the 'appointed day' any implementation of the Lord Lyon's (suspended) Rules of 17 December 2002 – or any new 'Rules' similar thereto – will effectively deprive the Holder of 'the dignity of baron' as statutory "incorporeal heritable property" re §63(2) of the ACT of the legal capacity to transfer **"the very substance of ownership"** (see *Case of Sporrong and Lonnroth)* of such property inherent in such 'incorporeal' and intangible heraldic, titular, and nobiliary "possessions":

Simply put, ***without*** the referenced baronial heraldic additaments, 'title' of baron', *nomen dignitatis* or 'territorial designation' as part of both the surname and the 'title' of baron, the prefix of 'The Much Honoured', and recognition in official documents the 'baronial status' of such Holders as equivalent to Hoch Adel and the Chiefs of Continental baronial houses; ... "incorporeal heritable property" consisting of 'the dignity of baron' re §63(2) of the ACT is simply an **empty shell —** consisting of ***nothing***....

After the 'appointed day', the **legal effect** of the Lord Lyon's (suspended) Rules of 17 December 2002 – or any new 'Rules' similar thereto – will be to strip "incorporeal heritable property" consisting of 'the dignity of baron' of those matters *statutorily defined* in §63(4) of the ACT, *statutorily transformed* by reference therein into fundamental "legal entities" construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular acquired legal rights of intangible property 'vesting' personally in the Holder of this dignity, and *statutorily incorporated* by use of the verb "includes" therein into an integral 'bundle' of all such legal rights of intangible property forming the *essence* or the *very substance, fibre, and fabric* of 'the dignity of baron' ... constituting **"the very substance of ownership"** (*Case of Sporrong and Lonnroth)* of 'the dignity of baron' as statutory "incorporeal heritable property" ... thereby depriving the Holder of "the peaceful enjoyment of possessions" guaranteed by Article 1 of Protocol I of the Convention as well as of **"the right to dispose of one's property** [which] **constitutes a traditional and fundamental aspect of the right of property"** (the *Marckx Case*).

The "right to dispose of one's property" as "a traditional and fundamental aspect of the right of property" (the *Marckx Case*) must of necessity include the legal capacity to transfer those incidents or parts and pertinents of such property as "possessions" which constitute **"the very substance of ownership"** (the *Case of Sporrong and Lonnroth*). By refusing to grant the **"necessary permit"** for the transfer, grant, or re-matriculation of those particular concrete acquired legal rights of intangible property referenced in §63(4) of the ACT after the 'appointed day', the Lord Lyon's (suspended) Rules of 17 December 2002 – or any new 'Rules' similar thereto – will begin violating the "peaceable enjoyment of possessions" guaranteed under Article 1 of Protocol I of the European Convention.

[128] NOTA BENE: The *public policy* or *order publique* of the Scottish Government for the survival of "incorporeal heritable property" consisting of 'the dignity of baron" which statutorily "includes any quality or precedent associated with, or any heraldic privilege incidental to" this dignity re §63(4) of the ACT was established by Sec. 63 of the Abolition of Feudal Tenure (Scotland) ACT 2000. This explicit parliamentary intent for the survival of 'the dignity of baron' past the 'appointed day' is evidenced in specificity and in detail in the *legislative history* to Sec. 63 set forth in ¶¶f2.30 to 2.45 of the Scottish Office's "Report on the Abolition of the Feudal System" (SCOT LAW COM 168).

The composition of this "incorporeal heritable property" is statutorily defined in §63(4) of the ACT as including "any quality or precedency associated with, and any heraldic privilege incidental to" 'the dignity of baron'

Specific inclusion of such 'qualities', 'precedences', and 'any heraldic privilege' associated with or incidental to 'the dignity of baron' in the legal definition of such "incorporeal heritable property" *statutorily transforms* all such 'qualities', 'precedences', and 'any heraldic privilege' into particular concrete acquired legal rights of intangible property 'vesting' personally in the Holder of 'the dignity of baron'.

Use of the *verb* "includes" in §63(4) of the ACT *statutorily incorporates* all such particular concrete acquired legal rights of intangible property into an integral 'bundle' of such incorporeal properties constituting the *essence* of 'the dignity of baron' as "incorporeal heritable property".

In his capacity as judge of the court having special first instance jurisdiction over such nobiliary subject, fifes annoblissant, or noble feudal tenures analogous to armorial bearings, the Lord Lyon King of Arms is responsible for issuing the **"necessary permits"** for the use of such specialised "incorporeal heritable property". His ministerial discretion applies only to the *threshold determination* as

to whether a particular petitioner for Arms is a "well deserving person". Once that ministerial determination has been made, in his judicial capacity he does not possess any competence to deny that Petitioner the full range of heraldic additaments, prefixes, 'titles', 'territorial designations' to which he may otherwise be entitled as a legal right of property.

Similar to an heir re-matriculated a previously granted coat of arms, an armigerious Holder of 'the dignity of baron' possesses a legal right of property to be granted by the Lord Lyon in his judicial capacity the full range of all such heraldic additaments, prefixes, 'titles', 'territorial designations' which the Holder **owns** as a legal right of **property**.

The Lord Lyon possesses ***no competence*** whatsoever to refuse a qualified armiger his legal right of property to the grant of such baronial heraldic additaments, prefixes, 'titles', 'territorial designations' referenced in §63(4) of the ACT. Nor does the Lord Lyon possess ***any competence*** to expropriate such property once granted or to refuse to grant such additaments, prefixes, 'titles', 'territorial designations' to an existing armiger ... or to a person whom he has already determined to be a "well deserving person" qualifying for a grant of arms. Once granted, such armorial property may only be confiscated or expropriated by Act of Parliament.

Simply put, the Lord Lyon is not a public official/judge empowered by law to work an expropriation of any type of lawful property, heraldic, armorial, nobiliary or otherwise. His judicial role as judge is limited to putting down bogus arms only. As "transferable ... incorporeal heritable property" established by Sec. 63 of the ACT, neither 'the dignity of baron' nor the 'qualities', 'precedences' or 'any heraldic privilege' explicitly referenced in §63(4) of the ACT ... can be considered to be bogus or fraudulent nobiliary subjects or Arms.

Under Article 1 of Protocol I to the European Convention, member States clearly retain their normal authority to expropriate private "possessions" **"in the public interest and subject to the conditions provided for by law".**

The first condition refers to ***proper purposes of public utility "in the public interest".*** This refers to the normal construction of streets, roads, bridges, as well as public economic policy.

The second condition refers to legal conditions and procedures established by the public law of the State concerned for the expropriation of private property for public use. Such "conditions provided for by law" statutorily designate the public officials or government agencies entitled to make such expropriations, the public purposes for which lawful expropriations may be made, the legal procedures to be followed in making such expropriations of private property, and normally provide for the payment of some type of compensation.

The laws of Scotland do not empower the Lord Lyon King of Arms to confiscate, to expropriate, to refuse to recognise, to ignore, or to otherwise disregard arms already granted, peerages, baronetcies, titles, dignities, and heritable offices already granted. Not even the Crown can abolish or expropriate "incorporeal heritable property" consisting of arms, dignities, titles, peerages, and the like already granted. Only Parliament can abolished such by statute.

Prima facia, the following particular grounds set forth by the present Lord Lyon in his 8th February 2005 *Scotland on Sunday* interview entitled "Wannabe nobles make blue blood pressure rise" at http://scotlandonsunday.scotsman.com/index.cfm?id=154542004 do not constitute ***proper purposes of public utility "in the public interest"*** under Article 1 of Protocol I of the European Convention for the prospective expropriation worked after the 'appointed day' by any implementation of the Lord Lyon's (presently suspended) Rules of 17 December 2002 – or by any future 'Rules' similar thereto – upon "incorporeal heritable property" consisting of 'the dignity of baron' which he concedes has the value of £60,000 .

- "**shameless social climbers**"
- "**interested in dropping their posh names into conversation at the right dinner party**"
- "**pushy women"**
- "**need to climb up the social ladder**
- "**This sort of status-seeking is driven by the ladies**"
- "**Women seem to be pushing the idea forward more than their partners and often the reason will be to elevate themselves socially**"
- "**Americans of Scottish descent keen to spend for the privilege of owning an ancient title"**
- "**applications from Americans ... for a Grant of Arms**"
- "**the bizarre designs ... requested"** by Americans including "**a request for a computer**" in Arms

Such 'motives' by a sitting public official for expropriating "possessions" worth £60,000 are as ludicrous as they are patently offensive to the legal rights of women and Americans and constitute valid grounds for complaint to both the Equality Commission and the judicial disciplinary committee:

A copy of this interesting interview ought to be sent to Baroness Amos, Leader of the House of Lords and Lord President of the Council, ... particularly should there be any difficulty after the 'appointed day' in taking sasine to "incorporeal heritable property" consisting of 'the dignity of baron' or receiving official investiture in the full range of baronial heraldic additaments, the 'title of baron', the nomen dignitatis of the barony both as part of the surname and the 'title of baron', official recognition of 'baronial status' as equal to the Hoch Adel and the Chiefs of Baronian Houses on the Continent, as well as in 'the dignity of baron', itself, by matriculating all of the forgoing 'qualities', 'precedences' and 'any heraldic privilege' associated with or incidental to the dignity of baron re §63(4) of the ACT upon the Lyon Register.... The Rt. Hon. Baroness Amos may be contracted through The Privy Council Office, 2 Carlton Gardens, London SW1Y 5AA, Tel. 020 7210 1033, Fax 020 7210 1078

In light of the *public policy* or *order publique* statutorily established by the Scottish Parliament in Sec. 63 of the ACT concerning 'the dignity of baron', it is highly doubtful that either the Strasburg European Commission or the Court of Human Rights would find any of the above 'grounds' given by the public official/judge concerned to be proper purposes of public utility "in the public interest" under Article 1 of Protocol I of the European Convention for the prospective expropriation worked after the 'appointed day' upon "incorporeal heritable property" consisting of 'the dignity of baron' by implementation of the Lord Lyon's (presently suspended) Rules of 17 December 2004 – or by future 'Rules' in any way similar thereto.

Rather, the 'grounds' stated above have all the hallmarks of being the personal, private 'social' prejudices of the public official/judge concerned which he has allowed to determine official policy. As such the Lord Lyon's (presently suspended) Rules of 17 December 2004 – or any future 'Rules' similar thereto – constitute a case of *détournement de pouvoir,* or of manifest arbitrariness on the part of the concerned public official/judge.

[129] Article 13 of the European Convention of Human Rights and Fundamental Freedoms provides, as follows:

"Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity"

See also P. van Dijk & G. J. H. van Hoof, Theory and Practice of The European Convention of Human Rights (Kluwer, Deventer,

Netherlands, 1984) pp. 379, 381-382 as follows:

"1. According to **the concept of the rule of law**, which along with the idea of democracy forms one of the pillars of the Council of Europe, **a general guarantee of an effective remedy for anyone who considers that one of his rights has been violated by the authorities** or b a fellow-citizen would in our opinion certainly have been in place in the Convention." (Emphasis supplied.)

"It appears, however, from the words "whose rights and freedoms as set forth in this Convention are violated" that Article 13 does not contain such a general guarantee. It refers exclusively to cases in which the alleged violation concerns one of the rights and freedoms of the Convention. It cannot therefore be invoked as an independent right, but only in conjunction with one or more of these rights and freedoms."

……..

"3. In the discussion of Article 6(1) we mentioned that the Court has inferred form that provision a right to access to an independent and impartial court in the cases there referred to, i.e. also, among other instances when a **"civil right"** is involved. When interpreted this way, **Article 6(1) strengthens and extends on a number of points the guarantee which Article 13 is intended to provide**:" (Emphasis supplied.)

"(1) The right to an effective national remedy consists not only in the case of an alleged violation of one of the rights and freedoms guaranteed in the Convention, but also in case of violation of ***any*** **"civil right"** in the sense of Article 6(1). In the latter case, *that right to a national remedy may actually form the object of an independent complaint*, because it is guaranteed in Article 6 as one of the rights and freedoms. There again the violation of a **"civil right"** has to be proved by only ***prima facie*** evidence and need not have been established. The Strasburg organs would not even be competent to establish such a violation if a **"civil right"** not laid down in the Convention is concerned. To what extent Article 6(1) also confers a right of access to a court *against acts and omissions of the authorities* depends on the question of whether in such a case a **"civil right"** can be involved. In any case Article 13 remains relevant for those cases where the complaint concerns violation of one of the rights or freedoms of the Convention without a **"civil right"** being at issue; it is of a subsidiary character." (Emphasis supplied.)

"(2) Article 6(1) guarantees access to a court, while the term "remedy before a national authority" is so wide that it also refers to procedures other than judicial ones. These too will then have to be endowed with sufficient guarantees; otherwise it is not possible to speak of an "effective remedy"."

……

"… On the other hand, however, when a violation of Article 6 has been found, this may precisely raise the question of **whether against such violation** – e.g. ***excessively long proceedings*** – an **effective national remedy** was **available**. In that case it will have to be a judicial remedy, since appeal to a non-judicial authority against an act or omission of a judicial organ indeed would impair the independence of the court which is also guaranteed by Article 6. .." (Emphasis supplied.)

NOTA BENE: Although presently 'suspended' (*for how long ?*), the Lyon Court's Rules of 17 December 2002 clearly constitutes a **"determination"** under Article 6(1) of the European Convention by the public official/judge having particular first instance competence concerning nobiliary subjects, fifes annoblissant, and noble feudal tenures analogous to armorial bearings concerning private law **"civil rights"** of a contractual nature re statutory "incorporeal heritable property" constituting 'the dignity of baron' re §63(2) of the ACT … and in special regard to those particular concrete acquired legal rights of intangible property 'vesting' personally in the Holder of 'the dignity of baron' referenced in §63(4) of the ACT.

Such Rules were adopted *motu proprio* by the public official/judge concerned without any public consultation of the interested parties, without any public hearings upon the issue to allow the expression of various points of view on the matter at issue, and it appears without legal analysis by this public official/judge of either Sec. 63 of the ACT or of the *legislative history* – establishing parliamentary intent – of Sec. 63 set forth in ¶¶ 2.30 to 2.45 of the Scottish Office's "Report on the Abolition of the Feudal System" (SCOT LAW COM 168).

In so far as it can be determined, the 'motives' for the adoption of such Rules are those given in an interview by the public official/judge concerned published in the 8th February 2004 issue of *Scotland on Sunday* entitled ""Wannabe nobles make blue blood pressure rise". These 'motives' relate more to the private 'social' prejudice, personal bias, and disdainful whim of the public official/judge concerned against the entire 'class' of persons who are Holders of 'the dignity of baron':

Strange words *from one whose sole raison d'etat is elevating those with £1303 into "Nobles in the Noblesse of Scotland" and resurrecting from the dead all manners of defunct peerages, clan chiefships, and high Hereditary Offices from the middle ages. Because 'applications from Americans' constitutes a particular obnoxious social offence, one might do well to reflect upon what Benjamin Franklin had to say about people "who live in glass houses"….*

Such prejudiced 'motives' have no relation whatsoever to any legal concept concerning legal rights to "peaceful enjoyment of possessions", proper purposes of public utility in "the public interest" re expropriation, or the previously determined *public policy or order publique* statutorily established by the Scottish Government in Sec. 63 of the ACT.

The 8th February 2004 published interview evidences the complete lack of the essential judicial **"impartiality"** required by Article 6(1) of the Convention of the "tribunal" making a "determination" of private law "civil rights" of a contractual nature re "incorporeal heritable property" consisting of 'the dignity of baron' caused by the adoption of the Rules of 17 December 2002.

Simply put, Holders of 'the dignity of baron' have no recourse but to submit their legal rights of "incorporeal heritable property" to the ***personal prejudice*** *of the judge/public official expressed in his 8 February 2004 Scotland on Sunday interview.*

The concerned Holders of "incorporeal heritable property" consisting of 'the dignity of baron' possess no "effective remedy before a national authority" re Convention Article 13 to affordably challenge such Rules … other than through an appeal to the Court of Session … necessitating the services of highly expensive Advocates and Solicitors specialising in appellate court procedure.

[130] On the issue of ***affordability*** of an "effective remedy" see the decision of the European Commission on Human Rights in BY XX: Dec. Adm. Com. ap. 6289/73, 7 July 977, YB XX p. 180 (198-202); D & R 8 p. 42 (49-50), as follows:

"The applicant submits that her complaint is not based simply on the absence of free legal aid in civil cases in Ireland, but that the Irish Government should provide **a cheap, effective, accessible remedy** to her serious family law problems **in order to ensure that** her family **rights under** Article 8 of **the Convention are respected**. She claims that **the inaccessibility of the High Court procedure constitutes a breach of her rights of access to the courts ensured by Article 6(1) of the Convention** as interpreted by the European Court of Human Rights in the Golder Case. That **this remedy is available to wealthier people** she contends constitutes discrimination contrary to Article 14 and **the absence of any other effective remedy constitutes a breach of Article 13 of the Convention**,. ..." (Emphasis supplied.)

"However, the Commission has carried out a preliminary examination of the information and arguments submitted by the parties on

the issue of the alleged inaccessibility of the High Court remedy, because of **the prohibitive costs involved.** It finds that this part of the application rises ***substantial issues of law and fact*** under Articles 6, 8, 13 and 14 of the Convention, whose determination requires an examination on the merits." (Emphasis supplied.)

NOTA BENE: The Lyon Court possesses no internal procedural means for effectively and affordably challenging such Rules on the grounds of clear conflict with Sec. 63 of the ACT or on the grounds of arbitrariness or personal prejudice ... such as expressed by the public official/judge concerned in the interview published in the 8th February 2004 issue of *Scotland on Sunday* entitled ""Wannabe nobles make blue blood pressure rise".

In early January 2003 the public official/judge concerned ***refused to meet with*** a senior Herald of the Lyon Court and an experienced Advocate who was commissioned by concerned Holders of 'the dignity of baron' to discuss the "determination" made in the Lyon Court Rules of 17 December 2002 of "incorporeal heritable property" constituting 'the dignity of baron'. This evidences that there is no "effective remedy" available at the Lyon Court for Rules obviously motivated by the personal 'social' prejudices revealed in the extraordinary 8th February 2004 *Scotland on Sunday* interview, which may be found at http://scotlandonsunday.scotsman.com/index.cfm?id=154542004 The only recourse was to institute an expensive appeal to the Court of Session … necessitating the services of expensive Advocates and Solicitors specialising in appellate court procedure.

Simply put, Holders of 'the dignity of baron' should not be forced to resort to expensive appeals to the Court of Session for a declarator of entitlement every time matters concerning such "incorporeal heritable property" are brought the Lyon Court.

The ***lack*** of affordable, expedient internal Lyon Court procedures for challenging judicial Rules believed to be manifestly arbitrary and based on the personal 'social' prejudices of the public official/judge concerned is a violation of the right to "an effective remedy before a national authority" guaranteed under Convention Article 13 when read in conjunction with Article 6(1) {"civil rights"] and Article 1 of Protocol I re "peaceful enjoyment of possessions" and no "deprivation of possessions except in the public interest and subject to the conditions provided for by law".

[131] NOTA BENE: In an interview published in the 8th February 2004 issue of *Scotland on Sunday* entitled ""Wannabe nobles make blue blood pressure rise", the present Lord Lyon expressed what can only be considered to be ***extreme personal 'social' prejudice*** (without citing evidence) against persons who are Holders of 'the dignity of baron'.

The gravamen of this public official/judge's personal 'social' prejudice bear no rational relationship whatsoever to any legal concept concerning rights of property, the public interest, or the previously determined *public policy or order publique* statutorily established by the Scottish Government in Sec., 63 of the ACT. Such opinions relate more to the private 'social' prejudice, personal bias, and disdainful whim of the public official/judge concerned towards *what he assumes* (without citing evidence) to be the motivating factor of the Holders of "incorporeal heritable property" constituting 'the dignity of baron'.

The 8th February 2004 published interview evidences the complete lack of the essential judicial **"impartiality"** required by Article 6(1) of the Convention of the "tribunal" making a "determination" of private law "civil rights" of a contractual nature re "incorporeal heritable property" consisting of 'the dignity of baron'.

Ordinarily, such highly prejudicial *extra judicial* remarks by a judge before whose court legal rights of property belonging to the 'class' of persons targeted by such remarks are regularly litigated … would provide **legitimate grounds** for petitioners/litigants to move that the judge concerned be recused or remove himself from all proceedings concerning the rights of persons who were the targets of such statements: I.e., Blacks would be entitled to obtain the removal of a judge who publicly called them "niggers".

However, the internal procedure of the Lyon Court fails to provide for either the recusal of the judge concerned on the grounds of prejudice or for adequate internal procedures to move for the replacement of this judge when rights of property belonging to the class of persons targeted by his remarks are litigated before his court. Nor are there any internal procedures empowering affected litigants before the Lyon Court to petition conveniently, expeditiously, and inexpensively an appellate court for a replacement first instance judge when matters concerning the object of his 'social' prejudices are litigated before his court.

The lack of ***internal procedures*** in the Lyon Court for petitioners and litigants to obtain easily the recusal, removal, or withdrawal of a biased judge who has publicly expressed such adamant personal prejudices against them as a 'class' is a violation of the right to **"an effective remedy before a national authority" guaranteed under Convention Article 13** when read in conjunction with Article 6(1) re "determination of private law "civil rights" of a contractual nature by an **"impartial tribunal"** and Article 1 of Protocol I re "peaceful enjoyment of possessions" and no "deprivation of possessions except in the public interest and subject to the conditions provided for by law".

[132] On the issue of ***procedural arbitrariness*** re interference with "peaceful enjoyment of possessions" see the decision of the European Commission on Human Rights in the Case of Sporrong and Lonnroth: Op. Com., 8 October 1980, Case of Sporrong and Lonnroth, §§ 159-161 pp. 63-64, as follows:

"... The issue arising under Article 13 of the Convention is to the effect that there was **no remedy available to the applicants** under Swedish law **whereby a national authority could effectively consider their claim, based on the convention, that there was an unlawful and unjustified interference with their right to peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. I.**" (Emphasis supplied.)

"The Commission is furthermore of the opinion that the decision of the City Council to expropriate properties must be considered to be a mere preliminary step in the administrative procedure which may eventually lead to the granting by the Government of a permit to expropriate. **An individual property owner is not even considered as a party to proceedings bearing on a request for an expropriation permit and he has no standing before the Government in this respect.** In fact, the second applicant unsuccessfully applied to the Government to have her property exempted (see para. 19 above). It is within **the exclusive competence** of the Government to grant an expropriation permit and, in so doing, it **acts as an organ of first and final instance**. Therefore, it cannot be considered that, in being seized with a demand for an expropriation permit , the Government would act as **an instance of appeal** and thereby constitute a ***remedy*** within the meaning of Article 13 of the Convention. (Emphasis supplied.)

On the issues of the ***theoretical availability*** of appeal and denial of ***effective first instance redress*** see the decision of the European Commission on Human Rights in the Case of Sporrong and Lonnroth: Op. Com., 8 October 1980, Case of Sporrong and Lonnroth, §§ 162-165 pp. 64-65, as follows:

"It is true, in the next place, that, apart from the normal procedure considered in the preceding paragraph, there is, in principle, a right to lodge a municipal appeal against decisions taken by the municipal council (see para.. 27 above(). However, it is important to note in this context that **the decisions of the municipal council are not communicated to the persons affected by them** ...

The Commission observes moreover that **it has not been shown that a municipal appeal has ever been successfully made** against a decision of a municipality to apply to the Government for an expropriation permit or for an extension of the validity of an

already existing permit. The respondent Government has, in this respect, even admitted that it is not aware of an case where such an appeal has been lodged. in these circumstances, the Commission considers that **the *mere theoretical possibility* of bringing an appeal can be disregarded for the purpose of Article 13 of the Convention.** In the light of these facts the Commission concludes that the municipal appeal cannot be considered to be a **separate effective remedy** either within the meaning of Article 13." (Emphasis supplied.)

.....

"Moreover, as examined under Article 6(1) of the Convention, the Swedish **ordinary courts were not competent to deal with the essence of the applicant's complaints**, stemming from the prolonged existence of the expropriation permits and the combined prohibitions on construction. **Nor could the applicants address themselves to the Government** again for the purpose of having the time-limit of redemption shortened in view of the considerable inconvenience caused to them. This possibility was first introduced in the Expropriation Act of 1972 which, however, is not applicable to the present cases.." (Emphasis supplied.)

"From all the preceding considerations the Commission concludes that there was **no authority which was competent to examine the applicants' claims and to provide effective redress** should it have been established that their rights and freedoms guaranteed by the Convention had been violated to their personal detriment. It follows that **there has been a violation of Article 13** in the present cases." (Emphasis supplied.)

With respect to the issue allowing an effected party his 'day in court' before adoption of governmental action affecting his rights guaranteed under the Convention See the decision of the European Commission of human rights in Ap. 9324/81: Dec. Adm. Com. Ap. 9324/81, 8 December 1981 (unpublished), as follows:

"It is true that Article 13 of the Convention – which is invoked by the applicant – provides that everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority."

"As the **applicant was apparently not heard before the search warrant was issued**, he could not invoke his Convention rights before the District Court. Therefore he had a right under Article 13 to **an effective remedy** but only in so far as he claimed that the search warrant violated any of the Convention rights (European Court of Human Rights, Judgement in the Case of Klass and others, 6 September 1978, Series A, Vol. 28 p.. 29, para. 64)." (Emphasis supplied.)

NOTA BENE: The (presently suspended) Lyon Court Rules of 17 December 2002 concerning "incorporeal heritable property" constituting 'the dignity of baron' were adopted ***without*** any public consultation, without any public hearing allowing effected parties an opportunity to present their legal position, and against which the internal Lyon Court procedure affords no ***effective first instance redress*** against the manifest arbitrariness and capriciousness of both these Rules and personal 'social' prejudices of the public official/judge who promulgated them ... or for any future Rules concerning the same subject-matter.

The adoption of such Rules constitute a "determination" of private law "civil rights" of a contractual nature re Article 6(1) of the Convention. They also interfere with "peaceful enjoyment of possessions" guaranteed under Article 1 of Protocol I of the Convention and constitute a "deprivation of possessions" under the same.

Although no 'motives' for these Rules were declared at the date of promulgation, the interview published in the 8th February 2004 issue of *Scotland on Sunday* entitled ""Wannabe nobles make blue blood pressure rise" provides the apparent 'motives' of the public official/judge concerned ... evidencing a complete lack of the required judicial **"impartiality"** mandated by Article 6(1) of the Convention for a "tribunal" which makes any "determination" of private law "civil rights" of a contractual nature.

The theoretical possibility of making a bank-busting appeal is no "effective remedy" for judicial arbitrariness, capriciousness, and personal prejudice within the meaning of Convention Article 13

The Lyon Court procedures under which such Rules were promulgated are ***prima facia*** **defective.** This is because such procedures offer no opportunity for public consultation, provide for no public hearings permitting affected parties the opportunity to present their legal position, and afford no provisions for public reconsideration of such Rules as effective first instance redress against the manifest arbitrariness, capriciousness, and personal 'social' prejudice of the public official/judge concerned – amply evidence in his interview published in the 8th February 2004 issue of *Scotland on Sunday* .

The *prima facia* defectiveness of the internal Lyon Court procedures under which the Rules of 17 December 2002 were promulgated constitutes a violation of the right to "an effective remedy before a national authority" guaranteed under Convention Article 13 when read in conjunction with Article 6(1) {"civil rights"] and Article 1 of Protocol I re "peaceful enjoyment of possessions" and no "deprivation of possessions except in the public interest and subject to the conditions provided for by law".

[133] Article 14 of the European Convention on Human Rights and Fundamental Freedoms reads as follows:

Article 14: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex,, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

See also P. van Dijk & G. J. H. van Hoof, Theory and Practice of The European Convention of Human Rights (Kluwer, Deventer, Netherlands, 1984) pp. 387-389 as follows:

"Two closely connected questions concerning the relationship between Article 14 and the rights and freedoms of Section I [i., Convention Articles 1-12] are more or less interwoven in the case-law. On the one hand, the question of whether Article 14 has its own significance, independently of the rights and freedoms protected in the Convention.. On the other hand, the question of whether in relation to those rights and freedoms Article 14 grants an autonomous or only an accessory protection in the sense that it can only be applied if any of those rights or freedoms has been violated. Both questions have been briefly answered as follows by the Commission, with a reference to the Court's judgement in the *Belgian Linguistic Case,* to be discussed below:"

"'the guarantee of Article 14 of the Convention 'has no independent existence in the sense that, under the terms of Article 14, it relates solely to rights and freedoms set forth in the Convention'; **nevertheless 'a measure which in itself is in conformity with the requirements of the Article enshrining the right or freedom in question, may however infringe this Article when read in conjunction with Article 14 for the reason that it is of a discriminatory nature**.'"

"The starting point with regard to the first-mentioned question is therefore that Article 14 has no significance independently of the rights and freedoms ensured in Section I [i.e., Convention Articles 1-12]. In a more recent case the Commission once again expressed this as follows:"

"'Article 14 is not directed against discrimination in general but only against discrimination in relation to the rights and freedoms guaranteed by the Convention.'"

……..

"As regards this second question, quite a number of the decisions of the Commission seem to point in the direction that the acces-

sory character of Article 14 entails that this provision can be brought up only if there is *prima facie* evidence that one of the rights or freedoms of the Convention has been violated. This accessory character then implies at the same time that the restrictions of the "main" article may be advanced for the justification of what in itself constitutes discrimination."

"However, unlike Article 13, Article 14 does not refer solely to cases involving alleged *violations,* but to ***every*** discriminatory restriction on the enjoyment of the rights and freedoms. Even if a restriction in itself finds support in the relevant provision of the Convention, the authorities must not act in a discriminatory way. …"

[134] See also P. van Dijk & G. J. H. van Hoof, Theory and Practice of The European Convention of Human Rights (Kluwer, Deventer, Netherlands, 1984) pp. 390, 391-392 as follows:

"In a case against the Federal Republic of Germany the Commission held that for the application of Article 14 it is sufficient "that the **'subject matter'** *falls within the scope* of the Article in question". In between the formulations used by the Commission in these two decisions we find that of its decisions on App. 6573/74:

"'Article 14 may be taken in conjunction with another article which need not itself be violated. **It is enough for the matter at issue *to be covered by* that other article**.'"

This case-law shows that the Commission has qualified in its above-mentioned view that Article 14 refers only to discrimination in relation of the rights and freedoms protected in the Convention. Nevertheless, it still appears from the latter case that the matter complained of must have **some connection** with one of the rights and freedoms guaranteed, *if there is to be question of violation of Article 14."*

……..

"All in all,, the Commission has turned Article 14 into a largely autonomous provision, *provided only that it is invoked by the applicant simultaneously with one or more other provisions and has some sort of connection therewith."*

……

"The Court has also assigned to a high degree an autonomous character to Article 14. Thus in the *Belgian Linguistic Case* the Court ruled:

"'While it is true that this guarantee [viz. That laid down in Article 14] has no independent existence in the sense that under the terms of Article 14 it relates solely to 'rights and freedoms set forth in the Convention', a **measure** which is in itself is in conformity with the requirements of the Article enshrining the right or freedom in question may however infringe this Article when read in conjunction with Article 14 **for the reason that it is of a discriminatory nature'"**

"According to the Court, Article 14 forms as it were "an integral part of each of the Articles laying down rights and freedoms".

"In latter case-law the Court took a similar view. Thus, in its judgement in the *National Union of Belgian Police Case* it held:

"Although the Court has found no violation of Article 11(1), it has to be established whether the **difference in treatment** complained of by the applicant union contravenes Articles 11 and 14 ***taken together*** … A measure which in itself is in conformity with the requirements of the Article enshrining the right or freedom in question may therefore infringe this Article when read in conjunction with Article 14 for the reason that it is of a discriminatory nature.'"

"Summarizing, the case-law discussed above induces us to conclude that Article 14 contains an autonomous, though complementary guarantee in relation to the rights and freedoms protected in Section I. Even though the article in question as such has not been violated, **the facts** may show a violation of that article in conjunction with Article 14."

NOTA BENE: In The interview given in the 8th February 2004 issue of *Scotland on Sunday* entitled ""Wannabe nobles make blue blood pressure rise", the public official/judge concerned ***singles out*** Holders of 'the dignity of baron' ***from the entire class of petitioners and litigants*** at the Lyon Court … precisely on the grounds of "sex", "national or social origin", "property", and "birth or other status".

Because it is *highly probable* that the Lyon Court Rules of 17 December 2002 were promulgated by the public official/judge concerned **precisely for the particular 'social' grounds publicly declared in his extraordinary interview** published in 8th February 2004 issue of *Scotland on Sunday* at http://scotlandonsunday.scotsman.com/index.cfm?id=154542004 … and because it is *equally probable* that any future difficulty after the 'appointed day' encountered by Holders of 'the dignity of baron' in taking sasine to such "incorporeal heritable property" and in becoming officially invested in both the baronial heraldic additaments inextricably annexed to this dignity as well as in the 'title', *nomen dignitatis* or 'territorial designation' as part of both the surname and the 'title', and 'the dignity of baron', itself, by matriculating the same upon the Lyon Register will be based upon the **same grounds;** … the grounds stated in this interview must be examined for conflict with the requirements Convention Article 14, as follows:

1) Discrimination against Holders of 'the dignity of baron' on the grounds of **"sex"** re 'women' contrary to Convention Article 14 is evidenced by the following comments made by the public official/judge concerned:

- "**pushy women"**
- "**This sort of status-seeking is driven by the ladies**"
- "**Women seem to be pushing the idea forward more than their partners and often the reason will be to elevate themselves socially**"

2) Discrimination against Holders of 'the dignity of baron' on the grounds of **"national origin"** re 'Americans' contrary to Convention Article 14 is evidenced by the following comments made by the public official/judge concerned:

- "**Americans of Scottish descent keen to spend for the privilege of owning an ancient title"**
- "**applications from Americans … for a Grant of Arms**"
- "**the bizarre designs … requested"** by Americans including "**a request for a computer**" in Arms

3) Discrimination against Holders of 'the dignity of baron' on the grounds of **"social origin"** re the *lack* of such and **"other status"** as 'social climbers' contrary to Convention Article 14 is evidenced by the following comments made by the public official/judge concerned:

- "**shameless social climbers**"
- "**interested in dropping their posh names into conversation at the right dinner party**"
- "**need to climb up the social ladder**
- "**status-seeking**"
- "**to elevate themselves socially**"

4) Discrimination against Holders of 'the dignity of baron' on the grounds of **"property"** re the entire class of persons owning particular "incorporeal heritable property" consisting of 'the dignity of baron" contrary to Convention Article 14 is evidenced by the following comments made by the public official/judge concerned:

There is a clear violation of Article 14 of the Convention when read in conjunction with Article 6(1), Article 1 of Protocol I of the Convention, and Convention Article 13 because the public official/judge concerned,

(1) "determines" private law "civil rights" of a contractual nature consisting of "incorporeal heritable property" forming 'the dignity of baron',

(2) issues the "necessary permits" to authorise the Holders of such the "peaceful enjoyment of possessions" re baronial heraldic additaments, the *nomen dignitatis* of the barony as both part of the surname and the 'title' of baron, the 'dignity of baron' itself, as well as all other matters referenced in §63(4) of the ACT, and

(3) has the legal ability to "deprive one of his possessions" by refusal or failure to permit the Holders to acquire 'real rights' of ownership in the **RES** (thing) constituting this dignity by taking sasine and by receiving investiture in both baronial heraldic additaments inextricably annexed to this dignity as well as in the 'title' and 'dignity of baron', itself.

[135] See P. van Dijk & G. J. H. van Hoof, Theory and Practice of The European Convention of Human Rights (Kluwer, Deventer, Netherlands, 1984) pp. 395 as follows:

"5. Besides the qualification of the prohibition of discrimination in the sense that unequal treatment of unequal cases does not constitute discrimination, in the case-law of the Commission and the Court certain criteria have been developed on the basis of which it can be determined *whether a given difference in treatment does or does not conflict with Article 14."*

"These criteria,, which were mentioned for the first time by the Court in the *Belgian linguistic Case,* were formulated by the Commission in a later case in the following schematic way. Discrimination contrary to Article 14 (in conjunction with another article of Section I of the Convention) can be spoken of when in a given case the existence of the following three elements can be established:

"'(a) the facts found disclose a **differential treatment**; (b) the distinction does not have a **legitimate aim**, i.e., it has no *objective and reasonable justification* having regard to the aim and effects of the measure under consideration; and (c) there is no *reasonable proportionality* between the **means employed** and the **aim** sought to be realised'."

"Review of an allegedly discriminatory act of a contracting State by reference to the above criteria has meanwhile become established case-law of the Strasburg organs."

NOTA BENE: The reasons stated by the public official/judge-concerned in his 8th February 2004 interview in *Scotland on Sunday* entitled ""Wannabe nobles make blue blood pressure rise" at http://scotlandonsunday.scotsman.com/index.cfm?id=154542004 ... as the implicit **aim** for his promulgation of the Lyon Court Rules of 17 December 2002 ... is ***directly contrary*** to the clear public policy established by the Scottish Parliament in enacting Sec. 63 of the ACT as evidenced in the *legislative history* to 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" (SCOT LAW COM 168) **to preserve** the free transferability of baronies and **to preserve** the full legal capacity of those acquiring such baronies to acquire the full range of the "noble element" in baronies statutorily described in §63(4) of the ACT, statutorily transformed by reference therein into fundamental "legal entities" construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular acquired legal rights of intangible property 'vesting' in the Holder of a barony, and statutorily incorporated by use of the *verb* "includes" therein into an integral 'bundle' of component acquired rights of incorporeal property forming the *essence* of the dignity of baron, as follows:

• ¶2.30: "This report is concerned with land tenure. Superiors will disappear and there will be special provisions on baronies but, subject to that, the report is not concerned with any right, title, honour or dignity (even if of feudal origin historically) held by any person. In particular, it is not the purpose of this report to affect any of the feudal elements in constitutional law or practice, any peerages, or any of the ancient offices or positions which may have been feudal in origin. The draft Bill is framed in such a way that all such matters would be unaffected by it."

• ¶2.31: "The estate in land can be bought and sold in the normal way. Remarkable as it may seem, ownership of such an estate in land carries with it a barony. It enables the owner to claim ennoblement by the "nobilitating effect" of the "noble quality" of the feudal title on which the land is held. The title of "Baron of So-and-So" or "Baroness of So-and-So" can be adopted. If the holder is granted armorial bearings by the Lord Lyon (which is entirely a matter for the Lord Lyon's administrative discretion) and if a *prima facie* title to the barony is established there is a right to relevant baronial additaments to the coat of arms. Baronial robes can be worn."

• ¶2.32"… the expected price for a barony, with no special features and a minimal amount of land of no value in itself, was about £60,000."

• ¶2.33: " The second sense of "barony title" refers to the right to use the title or appellation "Baron". This is more of a lay person's usage than a lawyer's usage but the idea that the purchaser of a barony acquires a "title" in this sense may well contribute to the value of baronies on the market."

• ¶2.38: " **Assessment.** There are three special features of barony titles … Thirdly, the holder of land on a barony title has the right to use the title of baron and, if granted armorial bearings by the Lord Lyon, to add certain special baronial features to the coat of arms.

• ¶2.40: "The right to the title and dignity of baron is the right which gives baronies the value which they have over and above the actual value of the lands themselves. Indeed the barony as such is often attached to a residual plot of land, with little or no intrinsic value, which is recognised as the *caput baroniae*. Baronies have a considerable commercial value and to abolish the so-called noble element in them, … would give rise to substantial claims for compensation. We see no need to do this. Although baronies are a feudal relic, the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure. We do however consider that the social, ceremonial and armorial aspects of baronies should be severed from landownership. Baronies should become non-territorial dignities. There should be no change in the jurisdiction of the Lord Lyon in relation to questions of precedence and arms…."

• ¶2.42: "The surviving rights or privileges of barons (which can all be covered by the term "the dignity of baron")51 would no longer have a connection with an interest in land. The dignity of baron would become a "floating" right or privilege. … . The dignity of baron would be, and would be transferable as, incorporeal heritable property. … We have no doubt that conveyancers will be able to devise a suitable form of document for transferring baronies as incorporeal heritable rights from one living person to another. In other respects, including succession on death, the law applicable to the preserved barony rights would be unchanged. In cases of intestacy it would be the old pre-1964 law of succession to heritable property, with its preference for males and its rule of primogeniture, which would apply."

• ¶2.43: "…Barons of this type have no constitutional position. They are not members of the House of Lords. They are an aspect

of the feudal system of land tenure. Feudal baronies go with land which can be bought and sold in the ordinary way. Anyone can buy a barony."

• ¶2.44: "… In our view the Scottish Parliament could, if it wished, abolish feudal baronies altogether as part of a reform of the feudal system of land tenure. If that is so then it is even more clear that it can take baronies out of the system of land tenure and land registration, while allowing the dignity of baron, derived from the former connection with the Crown as feudal superior, to continue as a floating dignity."

• ¶2.45: "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.

(d) The dignity of baron should no longer be attached to land. It should be, and should be transferable only as, incorporeal heritable property.

The Scottish Government made a **policy decision** in Sec. 63 ***statutorily legitimising*** the legal capacity for people, including women and Americans, to acquire such baronies and all of the heraldic additaments, 'titles', etc. which go with the same.

As the apparent 'motive' for the Lyon Court Rules of 17 December 2002, the public official/judge-concerned has **manifestly abused the State Power** which he exercises as Lord Lyon by imposing as an official act his private 'social' prejudices declared in his 8th February 2004 *Scotland on Sunday* interview against Holders of 'the dignity of baron' as a formal Rule of the Lyon Court.

Accordingly, the promulgation of the Lyon Court Rules of 17 December 2002 on the apparent grounds revealed the 8th February 2004 interview in *Scotland on Sunday* not only violates Article 14 of the Convention when read in conjunction with Article 6(1), Article 1 of Protocol I, and Article 13 as discrimination on grounds of "sex", "national or social origin", "property", "birth or other status" ... but is also a case of *détournement de pouvior,* manifest arbitrariness, and the manifest abuse of State Power by the public official/judge concerned.

[136] Article 18 of the European Convention on Human Rights and Fundamental Freedoms reads as follows:

"Article 18: The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for **any purpose** other than those for which they have been prescribed."

See also P. van Dijk & G. J. H. van Hoof, Theory and Practice of The European Convention of Human Rights (Kluwer, Deventer, Netherlands, 1984) pp. 415 and 416-417 as follows:

"1. Article 18 contains for the contracting States a general prohibition to use the restrictions permitted to them under the Convention for *any purpose* other than those for which they are intended."

"This prohibition cannot form the object of a separate complaint, but can be advanced only in conjunction with one of the rights and freedoms; It forms one of the non-independent provisions of Section I. As is the case with respect to Article 14, Article 18 too has nevertheless been given a fairly autonomous character in the case-law of the Commission, in the sense that this provision may be violated in conjunction with another article, *even though this latter article* ***itself*** *has not been violated. …"* (Emphasis supplied)

"2. It appears from its formulation that Article 18 refers to all restrictions permitted under the Convention. These include not only the special restrictions provided for in Articles 8 to 11 inclusive of the Convention and Article 2 of Protocol IV. Article 18 also applies to the general restrictions ensuing from Articles 15, 16, and 17. …"

……..

"3. Article 18 is a provision which is hard to apply in practice, as is the case for the prohibition of misuse of power (*détournement de pouvoir*) in general. Indeed, **it requires an *exact determination* of the *motives* on the part of the *authorities* for taking a *given measure*, while further it must also be established that this was not in conformity with the aims envisaged when the restriction in question was incorporated into the Convention.** Although bad faith forms no essential element of *détounement de pouvior,* still in most cases the establishment of the former is implied in that of the latter. … A particularly difficult burden of proof comes to rest on the applicant party when the latter makes Article 18 a part of is complaint, **unless the intention of the national authority concerned clearly ensues from the *nature of the measure* or finds expression in the *motivation* given for it.**" (Emphasis supplied)

NOTA BENE: The public official/judge-concerned directly supplies the **"motive"** for his promulgation of the Lyon Court Rules of 17 December 2002 in his 8th February 2004 interview in *Scotland on Sunday* entitled ""Wannabe nobles make blue blood pressure rise": To combat "shameless social climbing" in his own words.

The **nature** of the Lyon Court Rules of 17 December 2002 – or any future Rules similar thereto – is to deprive Holders, transferees, and inheritors of 'the dignity of baron' after the 'appointed day' of legal capacity to obtain official recognition as a baron, receiving a grant of baronial heraldic additaments, or re-matriculating such following the death of the present baron.

The **RES** (thing) of "incorporeal heritable property" consisting of 'the dignity of baron' are those matters *statutorily described* in §63(4) of the ACT, statutorily transformed by reference therein into fundamental "legal entities" construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular acquired legal rights of intangible property 'vesting' in the Holder of a barony, and statutorily incorporated by use of the *verb* "includes" therein into an integral 'bundle' of component acquired rights of incorporeal property forming the *essence* of the dignity of baron.

According, "the intention of the national authority clearly ensues from the nature of the measure" re the Lyon Court Rules of 17 December 2002:

(1) To prevent Holders of 'the dignity of baron' from obtaining a "determination" of private law "civil rights" of a contractual nature consisting of "incorporeal heritable property" consisting of 'the dignity of baron' from taking sasine to such and receiving official investiture in both the baronial heraldic additaments inextricably annexed to 'the dignity of baron' as well as in the 'title' of baron, the *nomen dignitatis* of that barony as part of both the surname and the title of baron, and 'the dignity of baron', itself, by matriculating the same upon the Lyon Register in violation of Article 6(1) of the Convention.

(2) To deprive transferees or inheritors of 'the dignity of baron' "peaceful enjoyment of possessions" re "the very substance of ownership" (*Case of Sporrong and Lonnroth*) of the **RES** of 'the dignity of baron' re §63(4) of the ACT by refusing to issue the "necessary permit" for the use of such in violation of Article 1 of Protocol I of the Convention.

(3) To expropriate indirectly the Baronage of Scotland in its entirety upon the death of the last living baron by refusing to re-matriculate baronial heraldic additaments, the 'title' and dignity of baron constituting a "deprivation of possessions not in the public interest and subject to conditions provided for by law" violating the guarantee of Article 1 of Protocol I of the Convention

When the "nature of the measure" is read in conjunction with the 8th February 2004 *Scotland on Sunday* interview, it is obvious

that the "motivation" for the Lyon Court Rules of 17 December 2002 is to combat "shameless social climbing"

Prima facia, the stated motive of combating "shameless social climbing" is **not included** within special restrictions provided for in Articles 8 to 11 inclusive of the Convention and Article 2 of Protocol IV. Nor does the motive of combating "shameless social climbing" applicable to the general restrictions ensuing from Convention Articles 15, 16, and 17.

This public official/judge's declared motive of combating "shameless social climbing" is directly contrary to and contradicts the *public policy or order publique* established by the Scottish Parliament in enacting Sec. 63 of the ACT as exemplified in the *legislative history* thereto set forth in ¶¶2.30 to 2.45 of the Scottish Office's "Report" – as discussed in detail above.

The public official/judge-concerned used his position as Lord Lyon King of Arms to promulgate Lyon Court Rules of 17 December 2002 to combat "shameless social climbing" as a ***manifest abuse of State Power*** to impose upon the general public his own particular 'social' prejudices, biases, dislikes, and disdain against persons whom he considers in his 8th February 2004 interview to be (citing no evidence) "shameless social climbers", particularly "pushy women" needing "to climb up the social ladder" who are "interested in dropping their posh names into conversation at the right dinner party" in order "to elevate themselves socially" as well as against "Americans" requesting "bizarre designs" such as "a computer".

Such arbitrary use of the State Power inherent in the position of Lord Lyon King of Arms for the particular 'social' reasons stated in http://scotlandonsunday.scotsman.com/index.cfm?id=154542004 constitutes a ***détournement de pouvior*** or a clear case of manifest abuse of State Power by the public official/judge-concerned in violation of Convention Article 18 when read in conjunction with Article 6(1), Article 1 of Protocol I to the Convention, and Convention Articles 13 and 14.

[137] Per example, an initial grant of arms is a 'discretionary matter' and Lyon's ministerial decision rejecting a person as not being 'well-deserving' cannot be challenged upon judicial appeal.

A person seeking a matriculation of arms off an *existing* grant of arms has a legal right to received such from Lyon in his judicial capacity. Lyon's refusal to grant a matriculation can be successfully appealed to the Court of Sessions who can issue a Declarator of Entitlement to such matriculation ... as a legal right flowing from the original grant of arms. In his judicial capacity as the judge of an inferior court Lyon can be ordered by the Court of Session to recognise all such legal rights. Lyon possesses no 'ministerial discretion' to deny one his legal rights of property to armorial bearings.

Thus, a matriculated Armiger who acquires a minor barony possesses a legal right of property to be granted by Lyon in his judicial capacity the conventional baronial heraldic additaments ... such as the red chapeau, a banner, a heraldic standard, baronial robes of estate together with official recognition under the style of 'Baron of X', and a 'territorial designation'. Refusal by Lyon may be appealed to the Court of Session for a Declarator of Entitlement to the legal right of property to such baronial heraldic additaments.

[138] Lord President in the Court of Session, College of Surgeons of Edinburgh v. College of Physicians of Edinburgh (1911 S.C. at p. 1060):

"Now, your Lordships will have already noticed that this petition is presented as a petition to the Lyon King of Arms **in his capacity as a Judge in one of the inferior judicatories of Scotland. From that inferior judicatory an appeal lies to your Lordships' Court and your Lordships have to determine upon the merits such things as come from that Court by appeal**. and I think it is a corollary of that that your Lordships would enforce any decree, which was pronounced, by the usual methods by which the Court enforces its decrees." (Emphasis supplied.)

[139] See Case of Procurator-fiscal of the Lyon Court v. Murray of Touchadam, Brown's *Supplement,* V 490 at 493, as follows:

"But, as to the former parts of the process concerning Mr Murray's right to arms, and the jurisdiction of the Lyon, they thought them unjustifiable, and that the Lyon was liable in the expenses incurred on that account; and, 9th July 1778, they refused a reclaiming petition without answers, and adhered. " (Emphasis supplied)

[140] Lord Wark in the Court of Session, in Maclean of Ardgour v. Maclean (1941 S.C. 613, at p. 657):

"It was decided in the case of College of Surgeons of Edinburgh v. College of Physicians of Edinburgh (1911 S.C. 1054) that Lyon has no jurisdiction **except such as is conferred by statute,** or is vouched by the authority of an Institutional writer, or by continuous and accepted practice of the Lyon Court." (Emphasis supplied.)

[141] Gloag and Candlish Henderson, Introduction to the Law of Scotland, 9th ed, 1987, p. 25, as follows:

""The Lord Lyon King of Arms has jurisdiction, subject to appeal to the Court of Session and the House of Lords, in questions of heraldry, and the right to bear arms. (*Hunter v. Weston* (1882) 9 R 492, *Mackenzie v. Mackenzie* (1920) S.C. 764, affd. 1922 S.C. (H.L.) 39.) He has no jurisdiction to determine rights of precedence (*Royal College of Surgeons v. Royal College of Physicians*, 1911 S.C. 1054.), nor to decide a disputed question of chiefship or chieftainship. (*Maclean of Ardgour v. Maclean*, 1938 S.L.T. 49; and see 1941 S.C. 613.)""

[142] See Case of Procurator-fiscal of the Lyon Court v. Murray of Touchadam, Brown's *Supplement,* V 490 at 492, as follows:

"finds it proved, by the evidence produced, or referred to, and not contradicted, that, ever since the year 1660, the family of Murray of Touchadam has been wont to give or bear the supporters, crest, and device which the said William Murray now gives or bears: **finds, that such long possession infers an antecedent right, or excludes all challenge on account of defect of such antecedent right**." (Emphasis supplied)

[143] See Case of Procurator-fiscal of the Lyon Court v. Murray of Touchadam, Brown's *Supplement,* V 490 at 492, as follows:

"Therefore, and upon the whole, finds, **That the representative of the family of Touchadam was entitled to be matriculated, in terms of the statute 1592 and 1672, for the armorial bearings whereof William Murray of Touchadam, raiser of the advocation, is in possession.**." (Emphasis supplied)

[144] See Case of Procurator-fiscal of the Lyon Court v. Murray of Touchadam, Brown's *Supplement,* V 490 at 492, as follows:

" Because it is admitted that the armorial bearings of certain persons matriculated did not appear. therein till of late: that the present Lord Lyon has become more attentive to the duties of his office than his predecessors ; and, therefore, **finds, That it is not proved whether the armorial bearings of. Murray of Touchadam have been actually matriculated in the Lyon register or not : that William Murray was not *in mala fide* to continue the use of the armorial bearings which his predecessors enjoyed ; and that there is no sufficient warrant for the penal conclusions of the original summons**: " (Emphasis supplied)

[145] See Case of Procurator-fiscal of the Lyon Court v. Murray of Touchadam, Brown's *Supplement,* V 490 at 493, as follows:

In reasoning, the Lords made a distinction betwixt a right to wear arms and matriculation. In the first, immemorial possession would presume a grant even from the Sovereign himself to wear them; and many families in Scotland had right to arms before the Act 1592 ; so did not derive right to wear them from the Lyon in virtue of that Act of Parliament. " (Emphasis supplied)

[146] Stewart Mackenzie v. Fraser-Mackenzie, 12th December 1921, 1922 S.C. (H.L.) 39: Lord Dunedrin, Judgement of 12th December 1921, 1922 S.C. (H.L.) 39 at p. 45, ruled:

"I think, however, that he also fails on quite a separate ground, namely, that I think **the coat of 1817 was an Allangrange coat**. It was applied for as an Allangrange coat to satisfy the condition of an entail involving forfeiture upon disregard. It was given as such. No doubt it contained, as an ingredient so to speak, the Seaforth coat. Lyon says that the coat was properly differenced by the Falconer quartering, and I do not see that he is wrong; but suppose it was bad heraldry, **it must stand, for it is protected by prescription**." (Emphasis supplied.)

"The decree of 1817 is a decree conferring a coat as a whole as the arms of Allangrange. Now **it is settled law** that, quite apart from the question of title in the defender, **a pursuer cannot attack if, in order to attack successfully, he must cut down a decree which is more than forty years old.** *(Dundonald v. Dykes,* (1836) 14 S. 737 ; *Cubbison v. Hyslop* (1837) 16 S. 112*.)* The decree must therefore stand giving the arms as the arms of Allangrange." (Emphasis supplied.)

"If they are Allangrange arms, **then what Lyon did in 1908 to satisfy the entail was clearly within is ministerial powers and will not be interfered with by the Court of Session.**" (Emphasis supplied.)

"The question of supporters cannot be treated as a separate question. No peculiar and exclusive right to supporters of a certain class can be asserted, and, whether Lyon was right or wrong in granting the supporters, the appellant is not *in titulo* to raise such a question."

"I therefore move your Lordships that the appeal be dismissed with costs."

[147] Royal College of Surgeons of Edinburgh v. the Royal College of Physicians of Edinburgh, 20th June 1911, 1911 S.C. 1045: Lord President's Advising of 20th June 1911, 1911 S. C. at 1060, as follows:

"Now, your Lordships will have already noticed that this petition is presented as a petition to the Lyon King of Arms **in his capacity as a Judge in one of the inferior judicatories of Scotland. From that inferior judicatory an appeal lies to your Lordships' Courts, and your Lordships have to determine upon the merits such things as come from that Court by appeal.** And I think it is a corollary of that that your Lordships would enforce any decree, which was pronounced, by the usual methods by which the Court enforces its decrees." (Emphasis supplied.)

[148] See Procurator-fiscal of the Lyon Court v. Murray of Touchadam, Brown's *Supplement,* V 490 at p. 491, as follows:

"But Lord Hailes, 30th November 1774, "Repelled the declinature, and sustained the jurisdiction of the Court of Session: Found the advocation competent in respect that **the question at issue was a civil cause**; neither is there any statute pointed out by the pursuer whereby the radical or consuetudinary **jurisdiction of the Court of Session in matters of this sort, stands abolished**;" and, 26th July 1775, the Lords adhered." (Emphasis supplied)

[149] Lord Dunedin in the House of Lords, Stewart Mackenzie v. Fraser-Mackenzie (1922 S.C. (H.L.) at p. 41):

"The Court of the Lyon is an inferior Court, and from inferior Courts there lies an appeal to the Court of Session, and final interlocutors of the Court of Session in civil matters are appealable to your Lordships' House."

[150] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187 Lord Ordinary's Interlocutor, Note I, 11 Dunlop 1139 at 1143, states:

"It is enough for the ' Lord Ordinary to be satisfied, that **the subject of the wearing of coats-of-arms is matter of legal right; and this being once settled, the dispute must be considered and determined with a due regard to the interest of the parties,** just as much as if it involved largo patrimonial ." (Emphasis supplied)

"There are two grounds of complaint made by the advocator :-One, that the respondent has been awarded supporters, which belong to the advocator; and the other, that the arms of the respondent have not been distinguished, as they ought to have been front those of the advocator, by the difference or mark of cadence applicable to a junior branch. In substance, **the complaint therefore is, that the arms awarded to the respondent by the Lyon-depute, are legally the arms of the advocator** ; and, ... it seems to be indisputable, that into such alleged wrong this Court is bound to inquire." (Emphasis supplied.)

[151] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187: Lord President, 11 Dunlop 1139 at 1148, declares:

"I am of opinion that Mr Cuninghame did instruct **rights**, imaginary they may be, and trivial in the opinion of many, **but well known to and recognised by the law, with which the interlocutor of the Lord Lyon interfered**. **On such an invasion of rights, I would have no difficulty in holding an appeal to this Court competent**, even were the case of Glengarry not on the books. That case **[**Macdonnell of Glengarry v. Macdonald, 20th Jan 1826, 3 Shaw and Dunlop 371**] fully established the competency of this Court to review the judgments of the Lord Lyon**; and we have here an **additional ground** to go upon, for we are called on to see that the **provisions of an Act of Parliament have been complied with**." (Emphasis supplied.)

[152] Stewart Mackenzie v. Fraser-Mackenzie, 12th December 1921, 1922 S.C. (H.L.) 39: Lord Shaw of Dunfermline, Judgement of 12th December 1921, 1922 S.C. (H.L.) 39 at p. 45-46, ruled:

"The appellant was within his rights in bringing this appeal. It is competent; ..." (Emphasis supplied.)

"... **Courts of law in their due order as appellate Courts [46] from an undoubted Court of law, that of the Lyon King of Arms in Scotland, are not relieved of the task of determining cases of this character in those instances in which a heraldic right vested in one subject of the Crown has been seized or invaded by another subject of the Crown.**" (Emphasis supplied.)

"I agree entirely with the opinion of Lord Dunedin."

[153] Stewart Mackenzie v. Fraser-Mackenzie, 12th December 1921, 1922 S.C. (H.L.) 39: Lord Shaw of Dunfermline, Judgement of 12th December 1921, 1922 S.C. (H.L.) 39 at p. 46-47, ruled:

"I am, however, of opinion that the law with regard to any interference with the administration of the Lord Lyon, or with the exercise by him of his **ministerial powers** in regard to the grant of arms remains in the same position as that set forth by Lord Robertson in the case of *M'Donnell v. M'Donald*, [4 S. 371, at p. 372] a decision pronounced in the year 1826. In my view, no appeal to the ordinary Courts of law against such a grant is competent **unless upon the ground which I have stated, namely, an *invasion of a right vested in the appellant*.**" (Emphasis supplied.)

"In Lord Robertson's words, The power of granting ensigns armorial is part of the Royal Prerogative, but everything belonging to that power has been given by sundry statutes to the Lord Lyon. His power to grant new armorial bearings is merely discre[47]tionary and ministerial, and with that this Court cannot interfere. **But the Lord Lyon should grant to one person arms which another is entitled to bear, and should refuse to give redress, there could be no doubt of the jurisdiction of this Court to entertain an action at the instance of the party to have his right declared, as this would involve a *question of property*, which a right to bear particular ensigns armorial undoubtedly is.** But a question remains behind, whether the summons in the present case is so conceived, that it could be entertained by any Court. . . " (Emphasis supplied.)

[154] See Dundas of Dundas v. Dundas of Fingask, 22nd January 1762, Brown's *Supplement,* V 493 - 494, as follows:

" Finds, That George Dundas of Dundas, heir-male of James Dundas of that ilk, who was forfeited in the year 1449, but afterwards

rehabilitate, **has the sole right to use and bear the coat of arms belonging to Dundas of that ilk, as matriculated in the register, authenticated by the subscription of Sir James Balfour then Lord Lyon** ; (Emphasis supplied.)
and find, **That the coat of arms obtained in the 1744, by Thomas Dundas, defender, from the late Lord Lyon,, was obtained by obreption, and that he has no right to use the same;** (Emphasis supplied.)
and therefore ordain the said coat of arms to be recalled and expunged from the Lord Lyon's books, reserving to the said Thomas Dundas to apply for a new coat of arms, as accords: (Emphasis supplied.)
Find the defender Thomas Dundas of Fingask, and Thomas Dundas of Quanal, liable to the pursuer in the expense of the complaint before the Lord Lyon's court, and in the expense of this process of advocation," &c.

[155] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187: Lord Fullerton, 11 Dunlop 1139 at 1150, stated:
But I am afraid we cannot avoid the inquiry on that ground. **It is fixed by decision, that the raising of such questions before us is competent ; and we must determine it as we best can, guided by the lights which have been afforded ion' by the elaborate arguments we have heard.**" (Emphasis supplied.)
I must say, however, that it is rather a relief to consider, **that the question here is limited to the construction of a statute.** ..." (Emphasis supplied.)
.....
But I agree with the Lord Ordinary in thinking **that there is enough in the statute to guide our decision**. Whatever may be the general effect of a private Act of this kind, as fixing the law in relation to the rights of other parties, it may be safely assumed to fix the law of this case between the advocator and respondent, by the arrangement between whom it was obtained in the terms it now bears." (Emphasis supplied.)

[156] Stewart Mackenzie v. Fraser-Mackenzie, 12th December 1921, 1922 S.C. (H.L.) 39: Lord Dunedrin, Judgement of 12th December 1921, 1922 S.C. (H.L.) 39 at p. 41, ruled:
"It may be a matter for regret that the opinion of this House should be asked on such a question. There seems, however, no doubt as to the competency of the appeal. **The Court of the Lyon is an inferior Court, and from inferior Courts there lies an appeal to the Court of Session, and final interlocutors of the Court of Session in civil matters are appealable to your Lordships' House."** (Emphasis supplied.)

[157] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187: Lord Jeffrey, 11 Dunlop 1139 at 1153, stated:
"**The Court is bound to see that the provisions of the Act are not evaded; and if the Lord Lyon has invaded the rights of the advocator under the statute, the Court are entitled to see that justice is done him. Under the statute his rights have been reserved to him entire,** and he has, therefore, a right to be satisfied that the mark of cadence assigned by the Lord Lyon is truly such." (Emphasis supplied.)

[158] Stewart Mackenzie v. Fraser-Mackenzie, 12th December 1921, 1922 S.C. (H.L.) 39: Lord Shaw of Dunfermline, Judgement of 12th December 1921, 1922 S.C. (H.L.) 39 at p. 47, ruled:
"There is no conclusion in favour of his right to these arms; so that, were he to obtain decree in terms of his libel, he could take nothing under it. Popular actions are unknown in our law, and no one can bring an action to take from another **what he himself has no right to."** The good sense and sound law of this latter proposition are beyond question. And, therefore, it is a startling fact to find that the appellant asks Courts of law to restrain the respondent front using the Fraser of Bunchrew coat of 1908, and from using indirectly the Mackenzie of Allangrange coat of 1817, when, in point of fact, the appellant makes no claim to be the owner of, or the person entitled to wear, either the one of these coats or the other." (Emphasis supplied.)
"It stands, accordingly, beyond question that this challenge of the ministerial action of the Lord Lyon is at the instance of a person **whose rights to wear the coat which has been granted have not been invaded or taken away.** If in such a position room were left for challenges at law, the whole field of heraldry might become a field of battle, and every member of every clan in Scotland would be vested with the right to fight in Courts of law about **matters in which he personally had no heraldic or patrimonial interest at stake.**" (Emphasis supplied.)

[159] Stewart Mackenzie v. Fraser-Mackenzie, 12th December 1921, 1922 S.C. (H.L.) 39: The following persons have a "direct interest" in any litigation contesting any deprivation of baronial heraldic additaments, etc. after the 'appointed day':
- Barons having arms with baronial heraldic additaments;
- Heirs of such matriculated Barons, particularly if such Heirs are mentioned by name in the terms of such grants or matriculations of arms with baronial heraldic additaments – creating 'vested' or acquired legal rights to such intangible property;
- Owners of Baronies without matriculated Arms who may wish to transfer such Baronies for market value – for the matters referenced in §63)4) of the ACT; and
- Purchasers of Baronies who have failed to petition for baronial heraldic additaments before the 'appointed day'.

[160] Dundas of Dundas v. Dundas of Fingask, 22nd January 1762, Brown's *Supplement,* V 493

[161] Stewart Mackenzie v. Fraser-Mackenzie, 12th December 1921, 1922 S.C. (H.L.) 39: The gravamen of such allegations ought to consist of the following invasion of acquired legal rights of property:
- That such deprivation has invaded the *acquired* legal rights of Barons and their Heirs in arms, grants of baronial heraldic additaments and the hereditary succession thereto ***already*** **'vested'** under the terms of existing Grants or Matriculations of Arms made by Lyon:
- That such deprivation has invaded the *acquired* legal rights consisting of "any quality or precedence associated with, and any heraldic privilege incidental to" the dignity of baron re §63(4) of the ACT **'vesting'** as "transferable ... incorporeal heritable property" in the (non-matriculated) Owners of Baronies under §63(2) of the ACT to obtain such by future grant from Lyon (if armigerious or a "well deserving person").
- That any refusal to grant or to re-matriculate baronial heraldic additaments to the entire class of persons – matriculated Barons, Heirs of such Barons, and the (non-matriculated) Owners of Baronies – legally entitled to a grant of baronial heraldic additaments (if armigerious or a "well deserving person") ... constitutes an ***invasion*** of the *acquired* legal right of property consisting of "any quality or precedence associated with, and any heraldic privilege incidental to" the dignity of baron re §63(4) of the ACT **'vesting'** as "transferable ... incorporeal heritable property" in the entire class of affected persons under §63(2) of the ACT to receive ***future grants*** from Lyon of all such baronial heraldic additaments, official recognition of the 'title of baron', the *nomen dignitatis* or territorial designation of that barony both as part of the name and in the 'title of baron', and to receive official investiture in all the same by matriculation upon the Lyon Register

[162] **S**ee the *legislative history* to Sec. 63(2) of the ACT re 'incorporeal **heritable** property' by The Scottish Office set forth in ¶¶ 2.41, of the

"Report on Abolition of the Feudal System" (Scot Law Com 168)

[163] Dundas of Dundas v. Dundas of Fingask, 22nd January 1762, Brown's *Supplement,* V 493

[164] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187: Lord Ordinary's Interlocutor, Note III, 11 Dunlop 1139 at 1144-1145, states:

> **"He considers it quite clear, that the matter has been settled by Act of Parliament**. ...
> .....
> It is said that this statute enjoins bad heraldic law,... But even if it were the common usage to give the arms and supporters to the heir male, in preference to the heir of line, **the reverse has been declared by this statute as applicable to this particular case.**
> .....
> But if the enactment could be shown to be inconsistent with the usage of heraldry, **still it has been so declared by the highest authority as the law affecting the rights of the parties in this particular case.** ... Effect, therefore, must be given to the Act of Parliament, and no heraldic difficulty has been pointed out, which renders it impossible to obey that Act in the case in hand. (Emphasis supplied.)

[165] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187: Lord Ordinary's Interlocutor, Note IV, 11 Dunlop 1139 at 1145, states:

> "The interlocutor of the Lyon-depute gives to the respondent the supporters of Dick of Prestonfield, and that specially on the finding, that as head and chief in the male line of Cunyngham, of Lambrughton, and Dick of Prestonfield, he would have been entitled to the full arms but for the Act of Parliament. **That Act of Parliament, however, took away any right that he had, or might have claimed, to supporters, and gave them to the heir of line of both families,** just as much as it rendered it imperative on the respondent, in wearing the arms of Cunyngham of Lambrughton, to do so with the difference or mark of cadency of . younger branch. **The interlocutor, with regard to the supporters, appears to be in the face of the Act of Parliament, and gives to the respondent, those supporters which that Act gives to the advocator.**" (Emphasis supplied.)

[166] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187: Lord Ordinary's Interlocutor, Note IV, 11 Dunlop 1139 at 1146, states:

> "**The heraldry enacted by the legislature, applicable to this case,** in short, so far as the Lord Ordinary can judge, is more consistent and intelligible than that of the Lyon-depute. **There could, at all events, have been no difficulty in carrying the Act of Parliament into effect,** and denoting the junior branch by a crescent or mullet, according to what is explained to he the usual form. But as the Act can practically be carried into execution, **it is satisfactory to decide the case upon the statute, which is binding both in this Court and in the Lyon Court.** The Lord Ordinary begs it to be explicitly understood, that his judgment proceeds on this view of the statute; ... " (Emphasis supplied.)

[167] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187: Lord President, 11 Dunlop 1139 at 1147-1148, declares:

> "I must confess that I am not particularly versant with the rules and usages of heraldry, nor have I any great skill in heraldic terms. But such knowledge does not seem to me to be at all necessary to the right determination of this case; **for, upon the statute I have no difficulty in making up my mind that the interlocutor of the Lord Ordinary should be adhered to**. The Lord Ordinary, although **he rests his judgment on the Act of Parliament**, has intimated all opinion upon the abstract question of heraldic right, and inclines to the view maintained by the heir of line. I am not prepared to go into that abstract question, and on it I give no opinion. **I will not go a step beyond the statute.**" (Emphasis supplied.)

[168] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187: Lord Mackenzie, 11 Dunlop 1139 at 1149, declares:

> "I give no opinion on the merits of that question at common law, but, at any rate, **under the Act of Parliament**, the decision of the Lord Ordinary, as between the present parties, is perfectly right. **We must adhere to the Act**, and it expressly gives the supporters of the family to the advocator." (Emphasis supplied.)
>
> "... But whether the original use was founded on right or sufferance, and in whatever way the present question would have been settled by the rules of common law-whether in favour of the heir of line or the heir-male—there can be no doubt that **now die matter is fairly settled under the Act of Parliament**. The advocator has right to the indivisible honours, and specially has right to the supporters ; and this right is reserved to him, entire." (Emphasis supplied.)

[169] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187: Lord President, 11 Dunlop 1139 at 1148-1149, declares:

> "It was argued by the respondent that Parliament had no power to confer heraldic honours; **but we cannot for a moment assume that they have done anything illegal or *ultra vires***. In this state of matters Parliament having declared the right of the heir of line to the indivisible honours of the family, and *inter alia* to the supporters, it follows that the advocator is clearly entitled to the supporters under the statute ; and this right he is to have entire-unencroached upon by the respondent.
>
> The enactment of the statute is express, "that the said Sir R. K. Dick, being a younger branch of the said families, in taking the name of Cunyngham, and arm of Cunyngham of Lambrughton, shall do so with the difference and mark of cadence in such cases applicable to a younger branch." This is **a provision which must be strictly enforced**; and the **question** is, Has the Lord-Lyon, in introducing into the arms, for a difference, "on a canton, the badge of Nova Scotia," **sufficiently complied with the terms of the statute** ? (Emphasis supplied)
>
> Without going into, the heraldic dispute we have here **a very important question on the statute**. I am not satisfied that he has done so, for, without any deep knowledge of heraldry I can see that what has been assigned as the difference, is not a mark of cadence [1149] at all. ...'
>
> What difference is to be introduced, so as to comply with the statute, it is not for me but for the Lord-Lyon to determine ; but this is clear, that the badge of Nova Scotia is not a mark of cadence. I hold that the difference assigned by the Lord-Lyon is not **a compliance with the Act of Parliament**, and I am therefore for adhering." (Emphasis supplied.)

[170] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187: Lord Jeffrey, 11 Dunlop 1139 at 1151-1152, stated:

> "I concur with your Lordships, and particularly on that point which we must all feel to be a great relief-**that we can rest our judgment on the construction of the statute, and need not go into the question which we would have been called upon to decide, had the statute not existed, upon the common law of heraldry.** ..." (Emphasis supplied.)
>
> "**.... I think the right to supporters in this case rests upon the Act of Parliament.**" (Emphasis supplied.)
>
> .....
>
> "**But I do not assent to the argument that Parliament cannot grant arms** ; that is hardly a correct expression. It may be indecent to suppose that Parliament would go so far out of its way as to make a grant of arms or to make a bishop ; but we cannot enter upon that consideration in giving judgment on an Act which was passed on the consent of parties, first, because of that consent,

and, **second, because this is a statute of the realm, to which, as a Court, we must give effect.**" (Emphasis supplied.)

[171] Dundas of Dundas v. Dundas of Fingask, 22nd January 1762, Brown's *Supplement,* V 493

[172] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187

[173] •Official Recognition of Barons *via* Letters Patent *issued as a matter of legal right* by Lyon under the *title, style, and prefix* of "The Much Honoured, The Baron of X" and to be accorded the *style* in the same of 'The Laird and Baron of 'the *nomen dignitatis* of the Barony.

• Official Recognition of Barons *via* Letters Patent *issued as a matter of legal right* by Lyon as a member of the 'titled nobility' of Scotland, the nobiliary equivalent of the *Hoch – Adel* of the Continent and of the Chiefs of Baronial House on the Continent of Europe.

• Legal capacity of Barons to hold a *non – judicial* Baron Court for social and ceremonial purposes as the essential *organisational mechanism* of the clan formed around that Barony and to appoint the Officers and other Personnel of that Baron Court. This would also include the *independent* acquired legal right of the Officers of Baron Courts pursuant to §§3(4) of the ACT to be granted by Lyon the official heraldic insignia of office in Letters Patent *issued as a matter of legal right* .

• Official Recognition of Barons *via* Letters Patent *issued as a matter of legal right* by Lyon as the *Chef de Familee* and Hereditary Representer of the 'noble community' or 'Honourable Clan' formed about that Barony upon presentation of a legal *Derbhfine* consisting of nine Scots Armigers forming the core 'true community' of that baronial Clan.

[174] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.

[175] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.

[176] Royal College of Surgeons of Edinburgh v. the Royal College of Physicians of Edinburgh, 20th June 1911, 1911 S.C. 1045

[177] Royal College of Surgeons of Edinburgh v. the Royal College of Physicians of Edinburgh, 20th June 1911, 1911 S.C. 1045: Lord President's Advising of 20th June 1911, 1911 S. C. at 1060, as follows:

"Now, having said that, the next observation I make is this, that **there is no trace in the statutes which deal with the office of the Lyon of any jurisdiction being given in the matter of precedency.** There is no authority for it in any text writer—because the note that was quoted of a very learned editor of "Erskine" is not an authority—and there is admittedly no recorded instance of a decision of such a matter." (Emphasis supplied.)

"I think it is enough to dispose of the case; ..."

[178] Royal College of Surgeons of Edinburgh v. the Royal College of Physicians of Edinburgh, 20th June 1911, 1911 S.C. 1045: Lord Kinnear at Advising of 20th June 1911, 1911 S. C. at 1061, as follows:

"I am of the same opinion. I think it enough for the decision of this case that **the supposed jurisdiction of the Lyon Court in this matter certainly rests upon no Act of Parliament, and upon no such continuous and accepted practice as should enable the Court to presume a legal and constitutional origin**. There is no instance before us of the supposed jurisdiction having been exercised, and, as I have said, there is no statutory foundation for it." (Emphasis supplied.)

[179] Royal College of Surgeons of Edinburgh v. the Royal College of Physicians of Edinburgh, 20th June 1911, 1911 S.C. 1045: Lord Johnston at Advising of 20th June 1911, 1911 S. C. at 1061-1063, as follows:

"The Lyon appears at first on Thomson's page in the position of a herald merely. But in the middle of the sixteenth century he had become responsible for the exercise of their duties by messenger-at-arms. In 1567, cap. 80, provision is made for re-formation of the office of arms, in terms evidently pointing to irregularities both in the appointment and in the actings of messengers-at-arms, and, to that end, for definition of the Lyon's duties thereanent. **This led to the Act 1587, cap. 30, which, as [1062] far as I can find, first establishes the Lyon Court**. ... **This Court is made a Court of record**. There are several confirmatory Acts—e.g., that of 1669, cap. 95." (Emphasis supplied.)

"Then in 1592, cap. 29, there is found what appears to be the origin of another branch of the Lyon's functions and jurisdiction. ... It is sufficient to say that **this Act originates the jurisdiction of the Lyon King in the matter of bearing arms. Duties of an inquisitorial nature are imposed upon him and his subordinates, and power to determine the right to bear arms and "to distinguish and decern them with congruent differences, and thereafter to matriculate them in their books and register."** This Act is also confirmed in later Acts, as, for instance, 1672, cap. 47. The Lyon's jurisdiction in this matter was partly quasi-judicial and partly ministerial. **But it seems to spring from statutory authority.**" (Emphasis supplied.)

.....

"I have stated these details with a view of showing that **the matter of precedence was not one in which the Lyon King had any original function of jurisdiction**, although he was called in expressly to assist, where commissions to inquire and to determine a ranking were issued. This appears to me to be entirely against the contention of the Lyon King and the respondents. ..." (Emphasis supplied)

.....

"It would rather appear, therefore, that the Lyon King's function is to see that established order of precedence is complied with in state ceremonials. ..."

"..... I agree with your Lordships that the above considerations require that this appeal be sustained and the petition dismissed, as its prayer is of no limited character, but craves a decerniture that the petitioners are entitled in all time coming to a certain precedency, or otherwise a grant of such precedency. **To comply with such prayer is clearly beyond the power of the Lyon King."** (Emphasis supplied.)

[180] Royal College of Surgeons of Edinburgh v. the Royal College of Physicians of Edinburgh, 20th June 1911, 1911 S.C. 1045: Lord Mackenzie at Advising of 20th June 1911, 1911 S. C. at 1064, as follows:

"I am of the same opinion. **No statute has been referred to which confers such a jurisdiction; no institutional writer says that such a jurisdiction exists;** and, as the Lord Lyon states in the note appended to his interlocutor, there is no instance on record of a case in which such a jurisdiction has been exercised. The reason for this is that **a right of precedence by itself is not a legal entity which can properly be made matter of a judgment that can be enforced by a Court of law**. The King determines by the exercise of the royal prerogative the scale of precedence. The duty of the Lyon King of Arms is ministerial, to see that the order is observed and kept." (Emphasis supplied.)

[181] In Royal College of Surgeons of Edinburgh v. the Royal College of Physicians of Edinburgh, 20th June 1911, 1911 S.C. 1045

[182] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Four matters of 'precedence', 'social dignity', and 'social status' concerning "any quality or precedence associated with" the dignity of baron under §63(4) of the ACT ... which 'vest' as *acquired* legal rights of "incorporeal heritable property" in the Holder of the dignity of baron under §63(2) of the ACT:

1. Entitlement of a Baron to hold a Baron Court for *non-judicial social and ceremonial purposes* as constituting the *organisation-*

al vehicle of the 'horizontal' Clan formed around that Barony and to appoint Officers and other Personnel of this Baron Court having purely 'honorific' social and ceremonial functions as the *operational officers* of the 'horizontal' Clan formed around that Barony. Such entitlement is clearly included among "***any* quality** or precedence ***associated with*** " the 'dignity of baron' under §63(4) of the ACT ... preserved by the *savings clause* in §63(1) of the ACT declaring that "nothing in this Act affects the dignity of baron or **any *other* dignity or office** (whether or not of feudal origin)" ... ... 'vesting' in a Baron the Holder of 'the dignity of baron' as a legal right of "transferable ... incorporeal heritable property" under §63(2) of the ACT:

• the Baron is *Chef de Famillee* and Hereditary Representer of the 'horizontal' Clan formed territorially around that "Barony" erected historically by the original Crown Charter as a distinct local administrative unit. See Sir Thomas Innes of Learney in "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, 114, 116, 118, fn. 3, 121-122, 131, fn. 3,

• Baron Courts for their primary non-judicial social and ceremonial organisational functions in operating the baronial clan formed about a barony survive the 'appointed day' as included amongst "any quality or precedence associated with" the dignity of baron re §63(4) of the ACT as an *acquired* legal right of "incorporeal heritable property" under §63(2) of the ACT ... when read in conjunction with the *saving clause* in 63(1) of the ACT declaring that "nothing in the Act affects the dignity of baron or **any other dignity or office** (whether or not of feudal origin)". See Sir Thomas Innes of Learney, The Clans, Septs & Regiments of the Scottish Highlands (8th Ed, 1970) pp. 72, 102 fn. 2, 104-105, 108, 114, 123, 124.

2. Entitlement of a Baron to official recognition in Letters Patent *issued as a matter of legal right* **by Lyon** *in his judicial capacity* **as the *Chef de Familee* and Hereditary Representer of the territorial or 'horizontal' Clan formed around his Barony** upon presentation of a legal **Derbhfine** of nine Scots Armigers forming the 'true community' of the noble community or Honourable Clan formed about his barony.

Such recognition is an *acquired* legal right being included among "***any* quality** or precedence ***associated with*** " the 'dignity of baron' under §63(4) of the ACT ... preserved by the *savings clause* in §63(1) of the ACT declaring that "nothing in this Act affects the dignity of baron or **any *other* dignity or office** (whether or not of feudal origin)" ... ... 'vesting' in a Baron the Holder of 'the dignity of baron' as a legal right of "transferable ... incorporeal heritable property" under §63(2) of the ACT.

• Constitution of *Durbhfine* of at least nine Scots Armigers as constituting the core 'true community' of a Clan: See Sir Thomas Innes of Learney, Clans, Septs, and Regiments, p. 188 - 197

• Adoption into a clan and clan membership with the consent of the Chief: See Sir Thomas Innes of Learney, Clans, Septs, and Regiments, p. 201.

• Growth of Clans through branches breaking off and forming clans in their own rights: See George Way of Plean, Secretary of the Standing Council of Scottish Chiefs, in Collins Scottish Clan and Family Encyclopaedia (Updated Edition, 1998) p. 24-29.

• Baron as the *Chef de Familee* and Hereditary Representer of the 'horizontal' or territorial Baronial Clan formed around his Barony and operationally organised by his Baron Court: 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 et seq

Because the *acquired* legal right consisting of "any quality or precedence associated with" the dignity of baron re §63(4) of the ACT 'vests' as "incorporeal heritable property" in the Holder of the dignity of baron under §63(2) of the ACT, a baron possesses the *judicially enforceable* legal right to be recognised as the *Chef de Familee* and Hereditary Representer of the "Noble Community" or "Honourable Clan" formed around his Barony, the Lord Lyon must grant **judicial recognition** in Letters Patent *issued as a matter of legal right* to the Baron as chief of this 'noble community' upon presentation of a legal *Derbhfine* of nine Scots Armigers constituting the true 'community' of his baronial clan.

Such recognition of a Clan as an "Honourable Community" may be legally accomplished through *language* in Letters Patent *issued as a matter of legal right* or in a Matriculation in which Lyon declares (usually in the final paragraph), the following:

"And that by demonstration of which Ensigns Armorial he and his successors therein are to be Accounted, Taken, Numbered and Received as Baron of X, Hereditary Representer and Chef de Famille of the noble community or Honourable Clan of the Barony of X and in the sense and words of Sir George Mackenzie of Rosenhaugh, His Majesty's Advocate, 'Head of the Clan' of the Barony of X amongst all Nobles and in All Places of Honour."

3. Entitlement of Barons to official recognition in Letters Patent *issued as a matter of legal right* **by Lyon** *in his judicial capacity* **as having the 'precedence' as members of the 'titled nobility' of Scotland, the nobiliary equivalent of 'Hoch Adels' on the Continent, and the equals of the Chiefs of Baronial Houses on the Continent of Europe.**

Entitlement of Barons to receive official recognition in Letters Patent *issued as a matter of legal right* as constituting part of the 'titled nobility' of Scotland, as the nobiliary equivalent of *Hoch Adel* on the Continent, and as the equal of the Chiefs of Baronial Houses on the Continent of Europe ... is an *acquired* legal right included within **"any quality or privilege associated with"** the dignity of baron under §63(4) of the ACT '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 §63(1) of the ACT to the effect that " nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin)" ... as a legal right of "incorporeal heritable property" under §63(2) of the ACT ... 'vesting' in the Holder of the dignity of baron.

The **statutory nature** of this *acquired* legal right of property to receive such official recognition in Letters Patent *issued as a matter of legal right* ... removes this issue from Lyon's administrative 'ministerial discretion': A baron is entitled to such official recognition in Letters Patent *issued as a matter of legal right* or in a Matriculation as a matter of the 'vested' **legal right of property:**

The **statutory issue** of being given such official recognition may be properly directed to Lyon in a petition for Letters Patent *issued as a matter of legal right* in his **judicial capacity** as the judge of an inferior court having first instance competence to give such official recognition.

• Recognition of Barons as statutorily constituting 'a part of the nobility': See Acts of the Parliament of Scotland or A.P.S. , III. 40, s. 33; Lord Lyon's Judgement of 26th February 1943 re the Baronage as 'titled nobility' in Register of Genealogies Vol. IV, p. 26

• Recognition to a Baron as constituting part of the 'titled nobility' of Scotland, as the nobiliary equivalent of *Hoch Adel* on the Continent, and as the equal of the Chiefs of Baronial Houses on the Continent of Europe: See 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 136, 141, 143 fn. 3, 146, 154, 155

• Lord Lyon's Judgement of 26th February 1943 re the Baronage as 'titled nobility' in Register of Genealogies Vol. IV, p. 26;

• Lyon Court Precedency Book fol 76 re precedence of Barons in Scotland;

• Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 14, "Precedence", ¶2021, "The baronage";

• Matriculation of Chisholm of Chisholm, Lyon Register 33/12;
• Re-matriculation of Wauchop of Niddrie, Lyon Register 35/31;
• Matriculation of Borthwick of Borthwick, Lyon Register 35/14

Explicit Lyon Court judicial recognition of such 'precedence' may be legally accomplished through *language* in Letters Patent *issued as a matter of legal right* or in a Matriculation in which Lyon declares, the following:

"and the declaration that the Petitioner, as Representer of the Barony of X, as The Much Honoured, The Baron of X, is part of the 'titled nobility' of Scotland having a 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 et tempora Capitanei tantum Tribuum discerentur'] and that the foresaid Ensigns Armorial are tesserae Nobilitatis by demonstration of which the Petitioner, and his lawful successors therein, are to be Accounted, Taken, Numbered and Received as such amongst all Nobles and in All Places of Honour."

4. Entitlement of the *acquired* legal right of the armigerious Officers and other Personnel of a Baron Court after the 'appointed day' **to receive from Lyon official recognition in the 'name', 'title', or 'dignity' of that Office or Position and to be granted by Lyon in Letters Patent *issued as a matter of legal right* 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:

• Matriculation of Caps of Justice for Baron Baillies in Lyon Register 51/115 and 61/37; 82/90
• Matriculation of Key in bend for the Keeper of Baronial Caput in Lyon Register 48/58;
• Official insignia for Baron-Officers or Sergeant of a Horn and white Wand one ell long designated by the old Scots Parliament in A.P.S., II, 22, c. II
• Similar insignia for the office of Hereditary Seneschal has been granted in Lyon Register 51/105; and such other insignia for the other Officers of Baron Courts as may be discovered upon further research

[183] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Wark, First Advisement of 16th July 1937, 1941 S.C. 613 at 656 stated:

"... But, in view of the elaborate argument addressed to us, and especially of the claims made by Mr Innes as to the extent of Lyon's jurisdiction, unnecessary as they were to his main argument, I feel, with your Lordships, that it is necessary to express my opinion upon the question of **Lyon's jurisdiction to determine a question of disputed chiefship** of a Highland clan, or chieftainship of a branch thereof." (Emphasis supplied)

"The anxiety of the respondent to exclude from Lyon's consideration *any question of chieftainship of the Macleans of Ardgour as a branch of the Clan Maclean* is accounted for by the desire, should he fail in his opposition to the grant to the petitioner of the principal arms of her father, **to preserve his claim to this chieftainship** which, in the view of both parties, **has a real existence as a social dignity**, although, as the respondent argued, **it is unknown to the law and has no patrimonial or armorial significance.**" (Emphasis supplied.)

[184] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Mackay, First Advisement of 16th July 1937, 1941 S.C. 613 at 650 stated:

"Although it may have been held in a civil cause that the revocation of the old statutes referred to by your Lordship which placed responsibility on Chiefs of clans for the conduct of, and the production in judgment of, their Clansmen, and (I presume) the disarming and the temporary regulation of the clothing of the Highland clans for a decade or two after 1745, had, as it were, eliminated clanship from ordinary civil or statutory law, **I am unable to think that that can be true of the Law of Honours. The fact, which is admitted, that Chiefship by a very old claim carries an equal right to supporters as does a patent of peerage, seems to me to exclude that narrow idea.**" (Emphasis supplied.)

[185] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Justice-Clerk Aitchinson, First Advisement of 16th July 1937, 1941 S.C. 613 at 636, stated:

" ... [I]n particular, if there is a dispute as to who the chieftain is, in the sense that there is divided recognition within the branch, **is that dispute justiciable** in the Lyon Court so that Lyon's determination of it shall have **the force of law?** That is the immediate issue in this appeal." (Emphasis supplied.)

"In answering this question, the fundamental thing to bear in mind is that neither chiefship of a clan, nor chieftainship of a branch, **subject to one exception as regards the right to supporters in arms**, is any longer a status known to the law. Highland chiefship or chieftainship in the modern sense is today no more than a **high social dignity**. Historically it was otherwise." (Emphasis supplied.)

"The chief and the chieftain were at one time in the governmental system of the Highlands high political personages, who wielded a large and often an arbitrary authority. But not even a semblance of this now remains. To stand in the succession of an ancient line of chiefs or chieftains maybe a legitimate ground of family pride, but **it is not a status that the law recognises**. It carries **no patrimonial consequences that the law will countenance** and enforce, subject to one exception in the law of supporters. It does not depend upon **any defined law of succession** of which a Court of law could take cognisance. It ultimately depends, as it must, **upon recognition by the clan**, in the case of chiefship, or the branch of the clan, in the case of a lesser chiefship. The recognition of the clan or the branch is immune from challenge before any tribunal. Historically the idea of a chief or chieftain submitting his dignity to the arbitrament of it Court of law is really grotesque. The chief was the law, and his authority was derived from his own people." (Emphasis supplied.)

"There is no instance in the registers of any judicial decision by Lyon in a disputed question of chiefship or chieftainship. ..."

[186] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Justice-Clerk Aitchinson, First Advisement of 16th July 1937, 1941 S.C. 613 at 636, stated:

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"There is no instance in the registers of any judicial decision by Lyon in a disputed question of chiefship or chieftainship. ..."

[187] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Mackay, First Advisement of 16th July 1937, 1941 S.C. 613 at 643-644, stated:

"A. I propose to affirm (a) **that there is no original (or other) jurisdiction in the Lyon Court to entertain and decide by Declarator or other Decree a dispute between two persons as to the Chiefship or Chieftainship of a Highland Clan—-or as to the alleged status of Chieftainess or Chieftain** ... " (Emphasis supplied.)

.....

"I am against the contention (a) because **in the statutes regulating the Court from 1592 to ditto there is nothing to suggest it**, (b) because in point of principle (all Courts flowing from the Sovereign power) the constitution of a special judicial power, lower than the Supreme Courts who have power over all things justiciable not otherwise exclusively assigned, to determine these things, cannot be presumed, and (c) because in answer to our requests for precedent, no authentic instance can be shown in the three or four centuries covered by Lyon's and parties' research of its exercise." (Emphasis supplied.)

[188] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Wark, First Advisement of 16th July 1937, 1941 S.C. 613 at 657-658 stated:

"There is direct authority, by way of precedent, for Lyon considering an acknowledged chiefship of a clan as incidental to a grant of arms with supporters. The case of Macnaghton [13th January 1818, Lyon Register, vol. ii, p. 172] is a case of that kind. But it is a different thing altogether to say that in a case of dispute Lyon has jurisdiction to determine and declare who is chief. For that no precedent has been cited to us. In my opinion, it is outwith his jurisdiction to decide because (1) at best it is a question merely of social status or precedence ; (2) this social status is not one recognised by law; and **(3), and, most important of all, it depends, not upon any principle of law of succession which can be applied by a Court of law**, but upon recognition by the clan itself." (Emphasis supplied.)

"Like your Lordship, I am at a loss to understand bow any determination or decree of Lyon ever could impose upon a clan a head which it did not desire to acknowledge. " It is a sound rule," said Lord President Inglis in Fraser v. Fraser and Hibbert, [(1870) 8 Macph. 400.] **"that no Court should arrogate a jurisdiction which it cannot [658] effectively exercise."** If one goes back to the time when chiefship of a Highland clan was part of the system of local government and was recognised by law as such, it is, to my mind, little less than grotesque to suggest that the chief could be effectively designated and appointed by decree of the Lyon Court. And I see no reason to think that there is any wider power in Lyon now that the law no longer recognises any such office." (Emphasis supplied.)

[189] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Wark, First Advisement of 16th July 1937, 1941 S.C. 613 at 657 stated:

"I agree with your Lordships that **Lyon has no jurisdiction to entertain a substantive declarator of chiefship of a Highland clan, or of chieftainship of a branch of a clan**." (Emphasis supplied.)

"No instance of such a declarator was cited to us. The case of Cameron of Lochiel , [24th February 1795, Lyon Register, i, 567] is not, in my view, such a case. Nor is the case of Clan Chattan [Nisbet, System of Heraldry, 1742, vol. ii, App. p. 48] nor of Innes , [14th December 1698] nor of Drummond of Megginch. [Lyon Register, vol. i, p. 456] In the case of Macrae [22nd April 1909, Stevenson, Heraldry, ii, 465] Sir James Balfour Paul observed : "I am not here to try the question of chieftainship. ***I am here to try the question of arms.*** I have really no jurisdiction in the question of chieftainship." It appears from his note that he was referring to chiefship of a clan by itself and not as incidental to a grant of arms." (Emphasis supplied.)

"The question of chiefship of a Highland clan, or chieftainship of a branch of a clan, is not in itself, in my opinion, ***a matter which involves any interest which the law can recognise***. At most, it is a question of social dignity or precedence. In so far as it involves social dignity it is a dignity which, in my opinion, is unknown to the law. It was decided in the case of College of Surgeons of Edinburgh v. College of Physicians of Edinburgh ,[1911 S. C. 1054] that **Lyon has no jurisdiction except such as is conferred by statute, or is vouched by the authority of an Institutional writer, or by continuous and accepted practice of the Lyon Court.**" (Emphasis supplied.)

[190] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Justice-Clerk Aitchison, Second Advisement of 27th March 1941, 1941 S.C. 613 at 680 stated:

"In the former appeal from Lyon this Court decided that chiefship or chieftaincy was not a legal status justiciable in a Court of Law, but had the character only of a social dignity without **legal status**, and the Court would no more determine it than it would a question of precedency. **The right of succession to arms stands in a different Position. It is a right of property, recognised as such by subsisting statutory enactments, and it falls to be determined in accordance with the law of heraldic succession**." (Emphasis supplied.)

[191] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Mackay, First Advisement of 16th July 1937, 1941 S.C. 613 at 645-646, stated:

"I would like to keep this Court [646] absolutely right with historians and genealogists, so I add it is no doubt true that where certain Arms were originally granted to one then recognised by the Clan duaine-vasals as undoubted Highland Chief of a recognised Highland Clan, the ascertainment, by the Judge of Arms of who is the " chef du nom et des armes d'une famille " may have some influence upon those who are the **true and only tribunal**, the Clan in general conclave, **or the principal landed gentlemen within the Clan, when they are called upon to select or " recognise " their leader**." (Emphasis supplied.)

"Also, in contrariwise, if the Arms or Achievement is held by proof of use to have been **Arms of the Chief of Clan, as such Chief**, and not simply as " heir " proper of anyone (see for suggestions at least of this view Stevenson, Heraldry of Scotland, pages 312 onwards ; Innes, Scots Heraldry, p. 92 ; Cuninghame, 11 D. 1139), **then the Clan's recognition may be regarded as a forcible,**

or even determinative factor, by the Lyon. I am of opinion that these important views of **the limited function of the Lyon's Tribunal in things of Chiefship** in the Highlands, recognised as it if; by practically all writers, Sir Walter Scott, Historiographer-Royal Skene, Frank Adam, et aliis, are well illustrated and proved by the instance of M'Naghtan (1818). Beyond that, in my judgment, Lyon cannot possible go." (Emphasis supplied.)

[192] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.

[193] Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq. … when read in conjunction with the researched findings of 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 et seq., that a the Baron is *Chef de Famillee* and Hereditary Representer of the 'horizontal' Clan formed territorially around that "Barony"

[194] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187

[195] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187

[196] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187

[197] In Royal College of Surgeons of Edinburgh v. the Royal College of Physicians of Edinburgh, 20th June 1911, 1911 S.C. 1045: The ***express Parliamentary Will*** of Sec. 63 of the ACT consists of the following:

• The specific *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" (Scot Law Com 168) ... evidences the unmistakable Parliamentary Intent that all aspects of the 'noble element' in baronies including "the right to the title and dignity of baron" as well as "the social, ceremonial and armorial aspects of baronies" re ¶2.40 of the "Report" are to survive the 'appointed day' completely unimpaired because "the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure":

• After the 'appointed day' the changes in the *legal status* of baronies caused by the ACT are explicitly barred by the *savings clause* in §63(1), 2nd clause, of the ACT from ***'affecting'*** the particular statutorily created *acquired* legal rights referenced in §63(4) of this ACT – including "any heraldic privilege incidental to" the dignity of baron – 'vesting' indefeasibly as such existed upon the date (9th June 2000) of Royal Assent to the ACT and incorporated statutorily by use of the *verb* "includes" in §63(4) of the ACT into the very substance, fabric, and fibre of "transferable ... incorporeal heritable property" constituting the dignity of baron under §63(2) of the ACT .

Parliament clearly intended that 'the social, ceremonial and armorial aspects of baronies' were to survive the 'appointed day' as 'non-territorial dignities' severed from landownership: All aspects of this 'noble element' were to remain specifically recognised by Lyon in as much ' it would be open to the applicant to seek a declarator of entitlement to the barony in the ordinary courts and, if successful, to return to the Lord Lyon with that declarator': See ¶2.40 of the "Report".

Furthermore, Parliament intended that baronies ' would be transferable as, incorporeal heritable property' . Likewise, Parliament clearly intended that the heir of a baron was to succeed to the full armorial and titular rights of the previous baron: ' In other respects, including succession on death, the law applicable to the preserved barony rights would be unchanged. In cases of intestacy it would be the old pre-1964 law of succession to heritable property, ..., which would apply." See ¶2.41 of the "Report"

In reference to the 'taking' of the intangible essence in §63(4) of the ACT constituting the dignity of baron 'vesting' as "incorporeal heritable property" in the Holder there of under §63(2) of the ACT .. worked by Lyon's Rules of 17th December 2002:, ... the *legislative history* in the third paragraph of ¶2.44 of the "Report" establishes the **definite Parliamentary intent for the** full survival **of the dignity of baron — severed from the land tenure:**

"In our view the Scottish Parliament **could,** if it wished, **abolish** feudal baronies altogether as part of a reform of the feudal system of land tenure. If that is so then it is even more clear that it can take baronies out of the system of land tenure and land registration, **while allowing the dignity of baron**, derived from the former connection with the Crown as feudal superior, **to continue as a floating dignity**."

The specific and unambiguous Intent of Parliament for the ***full survival*** after the 'appointed day'' of the 'noble element' in baronies particularly 'the social, ceremonial and armorial aspects of baronies' as a hereditary dignity to be transmitted to ones heirs is explicit in the official Recommendation to Parliament made in ¶2.45 of the "Report", as follows:

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.)

(d) The dignity of baron should no longer be attached to land. It should be, and should be transferable only as, incorporeal heritable property. (Emphasis supplied.)

Lyon's Rules of 17th December 2002 constitutes the **refusal** of the proper judge having first instance jurisdiction **to enforce an ACT of Parliament *explicitly mandating* the full survival of the dignity of baron which specifically** "includes any quality or precedence associated with, and any heraldic privilege incidental to" this dignity re §63(4) of the ACT as "transferable ... incorporeal heritable property" under §63(2) of the ACT passing to one's heirs under the pre-1964 law of succession applicable to "any title, coat of arms, honour or dignity transmissible on the death of the holder" under §37(1)(a) of the Succession (Scotland) Act 1964.

By his Rules of 17th December 2002 Lyon has set himself up above Parliament and has worked the uncompensated 'taking' of "incorporeal heritable property" which Parliament intended to survive fully and unaltered past the 'appointed day'.

[198] QUERY: Would Baroness Amos consider a sitting judge who made public declarations of this nature about petitioners in such matters being actively litigated before his court to be a 'male chauvinist pig'? Lady Amos' fax at the Privy Council Office is 020 7210 1071

[199] Dundas of Dundas v. Dundas of Fingask, 22nd January 1762, Brown's *Supplement,* V 493

[200] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187

[201] Cuninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187

[202] Because the RES (thing) constituting 'the dignity of baron' specified in Sec. 63(4) of the ACT is particular incorporeal heritable property falling within the jurisdiction of the Lord Lyon under the Laws of 1592 and 1672 as well as custom having the force of law (see Sir Thomas Innes of Learney, Scots Heraldry (2nd Ed., 1956), Chap. II 'The Heraldic Executive in Scotland', pp. 6-17; Cap. III 'Theory of Heraldry in Scotland', pp. 18-24; Cap. XIV 'The Public Register of All Genealogies and Birthbriefs in Scotland', pp. 188-197; and Cap. XV. 'Name and Change of Name', pp. 198-210); ... the LYON REGISTER is the obvious official public register of the Kingdom of Scotland having clear competence over the subject-matter of the RES (thing) – set forth in Sec. 63(4) of the ACT – constituting "incorporeal heritable property" of 'the dignity of baron' under Sec. 63(2) of the ACT.

Explicit statutory authority to establish a particular official register for 'any quality or precedent associated with, and any heraldic privilege incidental to' constituting the ***RES*** (thing) of 'the dignity of baron' under §63(4) of the ACT defined legally as 'transferable

. .. Incorporeal heritable property' in §63(2) of the ACT ... is unequivocally created under the 1592 and 1672 statutes of the Old Scots Parliament

[203] Dundas of Dundas v. Dundas of Fingask, 22nd January 1762, Brown's *Supplement,* V 493

[204] Such Rules issued by the Court of Session in the form of a Permanent Court Order directed to Lyon in his judicial capacity as the first instance judge having jurisdiction over legal rights in armorial property ought to include the following:

• Declaration that registration of a person in the re-established section of the Lyon Register for "Barons" provides conclusive public law proof that the person so enrolled is *ipso facto* the holder of 'the dignity of baron' without further qualification or identification

• Declaration that 'the dignity of baron' descends automatically by intestate succession in accordance with the pre-1964 Laws of Succession to the line of succession specified in the Letters Patent or matriculation of arms of baronial heraldic additaments for that barony.

• Diversion of the intestate succession to 'the dignity of baron' may be accomplished only by a specific "Matriculation for Redestination" made upon the Lyon Register: See Sir Thomas Innes of Learney, Scots Heraldry (2nd Ed, 1956) pp. 110, 126-128; J. H. Stevenson, Heraldry in Scotland p. 129; Thomas Innes of Learney, "Scottish Armorial Tailzies", Notes & Queries, clxxviii, p. 273; *Maclachlan of Maclachlan,* 3 July 1946, Lyon Register 35/72; *Campbell of Dunstaffnage,* 11 Nov 1943, Lyon Register 34/71.

• Declaration that 'the dignity of baron' may be transferred inter-vivos only by registration upon the re-established section of the Lyon Register for "Barons" through the use of the certificate, notarised documentation, and formal procedures specified by these Rules. (This is to prevent a barony from being transferred in pencil on the back of an envelope., etc.)

• Declaration of the criteria for the evidentiary 'proofs' to establish the existence of 'the dignity of baron' after the 'appointed day' for the purpose of initially matriculating it upon the Lyon Register

• Declaration that the "Testificats" referenced in the 1672 Law (notarised affidavits) may be used to establish that the owner of a 'barony title' before the 'appointed day' had not alienated such after that date and is, thus, the possessor of 'the dignity of baron';

• Declaration setting forth in detail and with specificity the procedure and documentation to be used for the inter-vivos transfers of such as well as for the intestate succession to this dignity;

• Declaration establishing the issuance of an appropriate certificate under seal of the Lyon Court to create "real rights" in 'the dignity of baron' as conclusive proof of the ownership of such

• Declarator of Entitlement of the legal rights of property of the Holders of 'the dignity of baron' by the Court of Session should state ... that as a matter of law use of the *verb* **"includes"** in §63(4) of the Abolition of Feudal Tenure (Scotland) ACT 2000 **statutorily incorporates** the conventional baronial heraldic additaments re "any heraldic privilege incidental to" the dignity of baron ... as well as "any quality or precedence associated with" the dignity of baron ... amongst the particular intangible incorporeal *acquired* legal rights of property referenced in §63(4) of the ACT ***'vesting' indefeasibly*** as such 'heraldic privileges', 'qualities' and 'precedences' existed upon the date (9th June 2000) of Royal Assent to the ACT … into the **very substance, fabric, and fibre** of 'transferable … incorporeal heritable property' constituting 'dignity of baron' under §63(4) of the ACT:

Sec. 63(4) of the ACT incorporates by Act of Parliament all such baronial heraldic additaments ... together with "any quality or precedence associated with" ... as an **integral part** of the Baronial Dignity: The Red Chapeau and all other baronial heraldic additaments together with such 'qualities' and 'precedences' constitutes an **integral part of the baronial dignity** and not merely an armorial reflection of this dignity – subject to changing re-interpretation at the discretion of the Lord Lyon.

Any attempt by Lyon to abolish, to abridge, to refuse to recognise, or to ignore any such baronial heraldic additaments or "any quality or precedence associated with" the dignity of baron after the 'appointed day', are ***void ab initio*** for irreconcilable conflict with an Act of Parliament.

• Declarator of Entitlement of the legal rights of property of the Holders of 'the dignity of baron' by the Court of Session should state ... that the *savings clause* in §63(1), 2nd clause, of the ACT **statutorily bars** any change of the *legal status* of barons caused by the ACT – re "nothing in this Act" – from **"affecting"** any of the *acquired* legal rights referenced in §63(4) of the ACT – including the conventional baronial heraldic additaments as "any heraldic privilege incidental to" the dignity of baron – ***actually constituting*** "the dignity of baron or any other dignity or office (whether or not of feudal origin)".

Parliament clearly intended this *savings clause* to prevent the change in *legal status* of baronies worked by the ACT from ***"affecting"*** the baronial heraldic additaments or any of the other *acquired* legal rights referenced in §63(4) of the ACT … actually constituting 'the dignity of baron' … and which give baronies their value.

Any attempt by Lyon to seize upon the change in the *legal status* of baronies – caused by the abolition of the feudal system of land tenure, connection with an interest in land re the Land Register or a right for which a deed may be recorded in the Register of Sasines, and abolition of the obsolete criminal and civil jurisdiction of Baron Courts – as a pretext to alter or abrogate the conventional baronial heraldic additaments or "any quality or precedence" existing upon the date (9th June 2000) of Royal Assent to the ACT ... are ***void ab initio*** for irreconcilable conflict with this *savings clause* in §63(1), 2nd clause, of the ACT.

• Declarator of Entitlement of the legal rights of property of the Holders of 'the dignity of baron' by the Court of Session should state ... that as evidenced by the *legislative history* of Sec. 63 of the ACT set forth in ¶¶ 2.30 to 2.45 of the Scottish Offices "Report on Abolition of the Feudal System" (SCOTS LAW COM 168); … the ***manifest Parliamentary intent*** of Sec. 63 of the ACT is to ***preserve in their entirety*** the "noble element in" baronies consisting of "the right to the title and dignity of baron" and "the social, ceremonial and armorial aspects of baronies" as being "the right which gives baronies the value which they have over and above the actual value of the lands themselves" which gives baronies "considerable commercial value" … the abolition of which "would give rise to substantial claims for compensation": See ¶ 2.40 of the "Report".