

Barons Courts of Prestoungrange & Dolphinstoun

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

JUDGEMENT AND DECLARATOR

[E II. 53. 2004 P&D. 08] Continuation of the *non-judicial* primary function of the Barons Courts of Prestoungrange and of Dolphinstoun as the *organisational mechanism* for the general well-being of the followers of the Crown Baronies of Prestoungrange and Dolphinstoun after the Appointed Day of 28th November 2004 when the *Abolition of Feudal Tenure (Scotland) Act 2000* enters into full force and legal effect:

UPON THE PETITION of our Common Baron Baillie for the Barons Courts of Prestoungrange and of Dolphinstoun for findings of fact, declarations of law, and the issuance of appropriate Court Orders and Charter Proclamation re the legal continuation of the role of the Barons' Courts of the feudal Baronage of Scotland following the Appointed Day of 28th November 2004 when the *Abolition of Feudal Tenure (Scotland) ACT 2000* enters into full force and legal effect:

1. THAT §63(1) of the *Abolition of Feudal Tenure (Scotland) ACT 2000* [hereinafter the 'ACT'] provides that "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. THAT §63(4) of the ACT provides that "In this section ... 'dignity' includes any quality or precedence associated with, and any heraldic privilege incidental to, a dignity".
3. THAT the principal among "any quality or precedence associated with" the 'dignity of baron' re §63(4) of the ACT is the capacity or 'standing' of the minor Baronage of Scotland to hold Baron Courts:
 - 3.A. Constituting the *legislative history* of the ACT, ¶2.31 of the Scottish Office's "Report on Abolition of the Feudal System" [hereinafter the "Report"] declares,

"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. ... Remarkable as it may seem, ownership of such an estate in land carries with it a barony. ... Baronial robes can be worn. **The baron can, in theory, hold a baron's court, appoint a baron bailie to be judge, and exercise a minor civil and criminal jurisdiction,**" Fn. 40 notes, "In practice barons' courts are held now only for ceremonial purposes." (Emphasis supplied.)
 - 3.B. The ability to hold a Baron Court arises from the 'barony title' upon which a minor barony is held, as indicated by ¶2.33 of the "Report", as follows:

"2.33 It is important to be clear about what is meant by a barony title. The term is used in two senses. The first sense refers to the actual title to the land. This must have originally been granted by the Crown by a feudal grant which specifically conferred baronial privileges and responsibilities. The conveyancing terminology varied from time to time but a standard form of wording came to be a grant of all and whole the lands and barony of X to be held in free barony (*in liberam baroniam*). In this sense the term "barony title" simply means a title to land which can, from its nature and wording, be identified by conveyancers as deriving from a Crown grant

of land in barony. The land or the estate in land must still be held of the Crown without any intermediate superior ...”

- 3.C.** Grants of land by Royal Charter gave feudal barons *dominim directum* the right of presiding over a baron court while leaving *dominium utile* the occupation of the land with those previously occupying such:

See Frank Adams, rev. by Sir Thomas Innes of Learney, The Clans, Septs, and Regiments of the Scottish Highlands (8th edition, 1970), p. 15:

“What actually happened was, ... that the kings ‘did not interfere with the **ownership** of land as it existed **before** these grants; the result of his intervention was ultimately to confirm it. What the king gave his friends consisted rather of **rights over** land than of land itself.’ The **dominium utile**, as it is called remained with the Celtic chieftains and their dependents, and by the **new tenure** they got a legal security for ownership; new lords [feudal barons] only got their castle, the demesne, and right of a following, whilst they also got the **dominium directum**, namely, presiding in the new **Baron Court** as a local Parliament. ...” (Emphasis supplied.)

- 3.D.** The capacity of a minor Baron to hold a Baron Court has survived to the present, as indicated by ¶2.38 of the “Report” as follows:

“2.38 **Assessment.** There are three special features of barony titles. First, certain conveyancing peculiarities attach to them. Secondly, **the holder of land on a barony title still has, in theory but not in practice, the right to hold a baron’s court.** 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.” Fn. 48 notes, “See Grier, “Barony Title” 1992 JLSS 306; Bruce “Barony Title”, 1993 JLSS 156.” (Emphasis supplied.)

- 3.E.** The capacity of holding a Baron Court is among the social and ceremonial aspects of baronies constituting “any quality or precedence associated with” the ‘dignity of baron’ re §63(4) of the ACT in the minor Baronage of Scotland:

See ¶2.40 of the “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 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.)

- 4.** THAT §1 of the ACT provides that “The feudal system of land tenure, that is to say the entire system whereby land is held by a vassal on perpetual tenure from a superior is, on the appointed day, abolished.”
- 5.** THAT §71 of the ACT provides that “The Scottish Ministers may, for the purposes of this Act, by order appoint a day (in this Act referred to as the “appointed day”); and that pursuant to §71 the Scottish Ministers have selected 28th November 2004 to be the designated “appointed day”.
- 6.** THAT the basic premise of the ACT is that it is concerned *solely* with land tenure, and is framed so as not to affect abolish or abrogate any right, title, honour, or dignity of feudal origin:
- 6.A.** Abolition of the feudal system of land tenure does not work an abolition of titles, dignities, and honours of feudal origin or offices and positions of feudal origin:

See the *legislative history* of §63 of the ACT set forth in ¶12.30 of the Scottish Offices' "Report on Abolition of the Feudal System" (Scot Law Com 168), 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.** (Emphasis supplied.)

- 6.B.** Abolition of the feudal system of land tenure works no abolition of the 'noble element' of baronies although separating the social, ceremonial, and armorial aspects of baronies from landownership:

See ¶12.40 of the "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 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. ..."

- 6.C.** The ACT merely severs the rights and privileges of the 'dignity of baron' from landownership:

See ¶12.41 of the "Report", 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.)

- 6.D.** The Scottish Parliament possesses the competence to remove baronies from the system of land tenure whilst allowing the 'dignity of baron' to survive as a floating dignity:

¶12.44 of the "Report" declares, as follows: "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..”

- 6.E.** The specific recommendation to Parliament in the *legislative history* was that neither the dignity of baron nor any other dignity even of feudal origin was to be affected by the abolition of feudal tenure of land system:

See ¶2.45 of the Scottish Office’s “Report on the Abolition of Feudal System” (Scot Law Com 168), as follows:

2.45 Recommendation, we recommend that

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

- 7.** THAT the *savings clause* of §63(1) of the ACT that “**nothing** in this Act *affects* the dignity of baron or **any other dignity or office** (whether or not of feudal origin” ... operating to preserve the Baron Courts of such Baronies from abolition as included among “**any quality** or precedence associated with, and any heraldic privilege incidental to, a dignity” under §63(4) of the ACT as a part of ‘the social, ceremonial and armorial aspects of baronies’ referenced in the *legislative history* of the ACT: See ¶2.40 of the Scottish Office’s “Report on Abolition of the Feudal Tenure System” [Scot Law Com 168]

- 7.A.** The ‘standing’ or legal capacity of a Baron to appoint officers and to hold a Baron Court for *non-judicial* social and ceremonial purposes as the *organisational mechanism* of the baronial clan formed around the barony past the ‘appointed day’ is preserved by the *savings clause* in Sec. 63(1) of the Abolition of Feudal Tenure Act 2000 re ‘**nothing in this Act affects ... any other dignity or office (whether or not of feudal origin)**’ in Sec. 63(1) of the ACT.

- 7.B.** This specifically ‘includes **any quality** or precedence associated with, and any heraldic privilege incidental to’ ‘the dignity of baron under Sec 63(4) of the ACT and preserved statutorily from **any alteration** by Lyon *via* the *savings clause* in §63(1), 2nd clause, of the ACT that “**nothing** in this Act *affects* the dignity of baron or any other dignity or office (whether or not of feudal origin)”.

- 8.** THAT a minor baron in the Baronage of Scotland is the *Chef de Famille* and Hereditary Representer possessing patriarchal jurisdiction over the ‘following’ of that barony which is a ‘horizontal’ or territorial clan organised around that barony.

- 8.A.** In his master study of the jurisdiction and heraldic aspects of the Baronage of Scotland, the late Lord Lyon Sir Thomas Innes of Learney declares 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 p. 121–122, that the essence of baronial jurisdiction was patriarchal jurisdiction as *Chef de Famille* of that Barony, as follows:

“**The Feudal Baron was *Chief de Famille*, and the familia over which he ruled comprehended not only all his children, and cousins, but also the vassals, tenants, and servants.** This explains why it has been observed of Feudalism in Scotland: ‘Such a form of social organisation accords very well with the natural pugnacity and clannishness of the Scots ... (*and*) made the feudal system in a strange sense a truly popular one.’ (Emphasis supplied.)

- 8.B.** Noting “in a system where each Barony or Manor was a constitutional ‘family’ unit governing itself” [Proceedings p. 115], Lord Lyon Sir Thomas Innes of Learney declares [Proceedings p. 112], “Scottish Feudalism — ‘Family-feudalism’ — was in fact the same popular system as that of ninth to twelfth century France, and preserved its popularity simply because it retained

the clan/family aspect under which ‘the feudal baron was *chef de famille*’ in relation to the occupants of his fief, and never evolved a ‘caste-distinction’ which played havoc with the popularity of feudalism on the Continent.” Sir Walter Scott puts the same concept into the mouth of the ‘Baron of Bradwardine’ that the Baron is *in loco parentis* to all inhabitants of his barony.

- 8.C.** Sir Thomas Innes of Learney states that the noted publicist on Scots feudal law, Sir T. Craig of Riccarton, found that the original jurisdiction of a baron was patriarchal as *Chef de Famille* of all within his barony:

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 116, as follows:

“Such considerations all bear out Craig’s views [Sir T. Craig of Riccarton, *Jus Feudale*, 1-8-2] that the title of **Baron** in Scotland was first applied to those who were **Capitani Tribuum**, and that Feudalism (or anyway an organisation which we would now recognise as synonymous with it) **existed in Scotland prior to the Norman Conquest in England**. [cf. Grant, *Social and Economic Development of Scotland*, p. 16; and J. Cameron, *Celtic Law*, p. 80].” (Emphasis supplied.)

- 8.D.** The original jurisdiction of Barons, declares Sir Thomas, was found by Craig to be patriarchal as chiefs of clans with the Baron reigning as *Chef de famillee*:

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 118, as follows:

“... Craig’s deduction, that the early **Scottish barons were chiefs of clans**, one observes at once that the ‘Wand’ of the Officers of a Barony was the ‘white wand’ associated with Chiefship, and indeed with the sceptre of an Ard-Righ [*Carnwath*, p. lxxxvi; Bute, *Scottish Coronations*, p. 16; *Tartans of the Clans and Families*, p. 30, n. 2], and we thus realise at once the significance of the observations that **‘the feudal baron was a chef de famille’ – and that ‘He reigned’** – that is the word used in documents of the period.” (Emphasis supplied.)

- 8.E.** Sir Thomas declares that precisely the same type of patriarchal baronial jurisdiction is possessed by the chief of a Scots Clan who for this reason is a baron *ut baro* without possessing land erected *in liberam baroniam*:

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.)

- 8.F.** The Chief of a Clan is also a baron who exercises *personal jurisdictional rights ut baro* over his Clan derived from ‘the dignity of baron’ rather than the *territorial jurisdictional rights* of a feudal baron arising from erection of Land *in liberam baroniam*:

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.)

- 8.G.** The ‘essence’ of the jurisdiction of a Baron is patriarchal and familial as an **incorporeal heritable fief** and is identical to the ‘baronial jurisdiction’ possessed by the Chief of a Scots Clan who lacks land erected *in liberam baroniam*. Such baronial patriarchal familial jurisdiction is derived **ut baro** from ‘the incorporeal dignity of baron’ rather than from land per se, as noted by the late Lord Lyon Sir Thomas Innes of Learney:

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.)

- 8.H.** The late Lord Lyon Sir Thomas Innes of Learney observes that this patriarchal jurisdiction derived **ut baro** from ‘the dignity of baron’ is the same *captaincy of communities* enjoyed by the Chiefs of Scots Clans: Such patriarchal jurisdiction **ut baro** provided the machinery for organisation of local communities under the Baron as *Chef de Familee* for all connected with or dependant upon his House by their place of residence. Such jurisdiction is derived from the dignity of baron.

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 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., 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 Mackenzie 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.)

- 8.I.** Noting that "feudalism has aptly been described as 'the development, the extension of the family', or one may say *the organisation of the family upon, and in relation to, the Land*" [*Proceedings*, p. 111]; the late Lord Lyon Sir Thomas Innes of Learney says that the essence of baronial jurisdiction – derived *ut baro* primarily from 'the dignity of baron' itself – is patriarchal over his local tribe formed 'horizontally' around that barony:

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.)

- 8.J.** Such 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*. Erection of lands *in liberam baroniam* conveys separately (1) jurisdiction consisting of 'the dignity of baron' from which patriarchal or 'chiefly' jurisdiction is derived; and (2) Civil and Criminal territorial Jurisdiction re exercise of the King's Justice. This latter type of jurisdiction was based upon statutory authorisation in which part of the King's Justice was conferred upon Baron Courts – most of which was repealed in 1746 following the '45.

- 8.K.** Accordingly, a Baron 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.

- 9.** THAT The Baron Court of the minor Baronage of Scotland serves the primary *non-judicial* function as the *operational mechanism* of the territorial or 'horizontal' baronial clan formed about that barony: The Baron Court serves the same purpose that heraldic cadency does for organising 'personal' Clans formed around the Chief of a Name and undifferenced Arms: Constituting the *operating staff* of this 'horizontal' Baronial Clan, the officers of a Baron Court serve the same *non-judicial* social and ceremonial functions which Clan Officers, Branch Chiefs, Chieftains, and sub-chiefs or Heads of armorial cadet Houses serve in 'personal' clans formed around the Chief of a Name:

- 9.A.** Sir Thomas’s investigation of the jurisdiction and heraldic aspects of the Baronage of Scotland found concerning this third territorial jurisdiction aspect of Barony that **the Baron Court was far more linked to social, economic, cooperative, and ceremonial family-related functions** than it was to exercise of actual criminal and civil judicial functions because such Baron Courts were the ‘peaceful self-governing social unit’ of local baronies:

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. 114, as follows:

“It cannot be too strongly emphasised (in view of the misrepresentations of fiction-writers, etc.) that the **Barony was a peaceful self-governing social unit**, and that **the economic functions of the Baronial-Council, or court, were far more important than its judicial functions** (which in their criminal aspect – as is usual of all court proceedings – attract disproportionate attention). The Barony was, like any other rural estate – only more so – both a **co-operative and a communal unit**. These aspects were coloured, and galvanised into more than ordinary vivacity, by **the operating of these units each as a natural family organisation** whereby the State was able to ‘do more than make alliance with the Family, and to *assimilate itself* to the Family’. In **ceremonial, tradition, and legal custom**, this is just *what the feudal state effectively did*, and it is why, as a system, it has proved so enduring, and so attractive, alike to students and tourists. It is always the *feudal* state which these crowd to see, or to study. In this lies what is called its ‘romance’, or ‘glamour’ and the colourful variety, at once stimulating and restful, which characterised the life, clothing, art, and customs of the feudal state.” (Emphasis supplied)

- 9.B.** In essence, Sir Thomas’s investigation found that the **non-judicial functions** of self-government, cooperative economic organisation, and communal, social, family organisation provided by Baron Courts as **the organising mechanism of the ‘horizontal’ Clan of each Barony** perpetuating in ceremony and social activities the traditional local customs of that Barony ... **far out weighed** the specific judicial functions of the Baron Court – as a minor, local, ‘justice-of-the-peace’ type court having an obsolete jurisdiction of £2 in civil matters and to fine a bloke £1 and put him in stocks for 3 hours (such as one might *pay to have done* in a Disney-type ‘theme park’).

- 9.C.** Noting that local Baron Courts were “‘the proper residence of a landed gentleman, *the centre of local government*’ “ [Proceedings, p. 114], Sir Thomas declared that Statutes of the old Scots Parliament required Barons to maintain such Baron Courts precisely to promote the **non-judicial** common social good, the good neighbourhood, and the promotion of local friendship amongst neighbours:

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. 114, as follows:

“So, indeed the Scottish legislature regarded them, enacting that mansions be maintained by lairds ‘for the gracious governall of their landis be gude polising’ (*and as another statute put it*), ‘Mak his ordinary duelling and residence at his awin hous with his familie ... for setting forward of policie [policy] and decoratioun of their saidis duelling places, **supporting of the puir** and interening of freynschip with nechbours be all guid honest means’ (*A. P. S.*, III, 222).”

- 9.D.** Sir Thomas observed that Baron Courts are a living entity in the form of a local self-governing family-legislature:

Sir Thomas Innes of Learney, The Clans, Septs & Regiments of the Scottish Highlands (8th Ed, 1970) p. 72, as follows:

“[I]n Scotland the Baron Court, or formalised local family-legislature and judicature of each baronial *duthus*, is still a surviving living entity, and a link with the old days of a self-governing Scotland.”

- 9.E.** Sir Thomas’s research indicated that Baron Courts are an organisational vehicle for local self-government ‘by and with the advice and consent of the haill tenants and commons of the said barony’:

Sir Thomas Innes of Learney, The Clans, Septs & Regiments of the Scottish Highlands (8th Ed, 1970) p. 72, as follows:

“[T]he true nature of these heritable jurisdictions was a **miniature council or parliament** in which the affairs of the little state were ruled by the baron, with the council and inhabitants of his *cuntrie*. Each **Baron Court was a microcosm of the Royal parliament of the realm of Scotland**. These little popular local councils made their Statutes and Ordinances ‘**by and with the advice and consent of the hail tenants and commons of the said barony**’ for the administration of local business, appointed the ‘four *birleymen*’ or arbiters who settled ordinary disputes.... **The function of the laird or his baron-bailie was solely to carry out the judgement of this people’s court,....**” (Emphasis supplied.)

- 9.F.** Such Baron Courts are essentially a non-judicial local council for self-government to promote the common welfare of a local ‘communal community’:

Sir Thomas Innes of Learney, The Clans, Septs & Regiments of the Scottish Highlands (8th Ed, 1970) p. 124, as follows:

“This reminds us that by its nature the Baron Court (as Craig explains, our first barons were *Capitani tribuum*) was a council for ‘the publique weal, rule, and government’ of the barony for administering the ‘common weill and profit’ of ‘a communal community,’”

- 9.G.** The Baron Court functioned as a miniature local parliament having primarily non-judicial local social, economic, and cooperative communal functions:

Sir Thomas Innes of Learney, The Clans, Septs & Regiments of the Scottish Highlands (8th Ed, 1970) p. 108, as follows:

“In the feudal organisation of the tribal territories, this council became formalised as the **Court of the Barony**, by which legislation for the administration of the estate and people thereof was ‘statuted and ordained by and with advice and consent’ of the whole tenants and vassals thereof, in fact a **miniature but very formal parliament**; and this as a judicature also administered justice with the chief or baron as presiding judge, and upon whom, through his officer of court, and four or six halberdiers armed with Lochaber axes, the judgement of the courts or the legislation of the little baronial ‘clan-parliament’, fell to be administered.” (Emphasis supplied.)

- 9.H.** A quorum for self-government was assured by the ‘fencing’ of the Baron Court:

See Sir Thomas Innes of Learney, The Clans, Septs & Regiments of the Scottish Highlands (8th Ed, 1970) p. 123, fn. 3, as follows:

“This means that there was a **sufficient quorum** of the people of the regality, Duthell District, present, **to insure genuine self-government**. The **fencing** of the court meant a **public declaration of its basis and authority** – just as Parliament was ‘fenced’ by the Lord Lyon King of Arms.” (Emphasis supplied.)

- 9.I.** Such Baron Courts gave advice and consent – on the Westminster Model – to non-judicial local internal affairs:

Sir Thomas Innes of Learney, The Clans, Septs & Regiments of the Scottish Highlands (8th Ed, 1970) p. 123, as follows:

“The function of these councils was to give advice and assistance, for the chief ruled as well as reigned. As Sir George Mackenzie points out of our Scottish parliaments, their ‘**consent**’ applied essentially **to measures involving contributions of property**, which was the ‘vassal’ or clansman’s own, and which the chief was bound (along with the rest of the group) to defend, and could not be affected without that owner’s own consent, or **to make rules and ordinances affecting the internal affairs** of these lesser families. This, as regards matters within the branch *patria potesta*, could not be done without the branch-chief’s consent. (Emphasis supplied.)

“The most formalised variety of these councils was the **Baron Court**; and this, as we should expect, is found **taking a direct part in the administration of the clan system** – even relating to the tartan.” (Emphasis supplied.)

- 9.J.** From his research Sir Thomas found that (1) Baron Courts are one of the few remaining local institutions for local popular self-government and (2) such Baron Courts operated to restrict the Baron to management of the Barony in accordance with the rulings of the local folk:

Sir Thomas Innes of Learney, The Clans, Septs & Regiments of the Scottish Highlands (8th Ed, 1970) p. 102, fn. 2, as follows:

“It would be far more accurate to say that the chief or laird was living in a **constitutionally restricted atmosphere** wherein he had to manage his estate **according to the rulings of his tenantry**; and that, as I have shown above, is precisely why Baron Courts were quietly ‘put in cold storage’ They have never been ‘abolished’, and are still one of the **few remaining institutions embodying popular self government.**” (Emphasis supplied.)

- 9.K.** Sir Thomas’ detailed investigation of the non-judicial functions of Baron Courts revealed that such operated quite *constitutionally* as a family council in which the Baron acted upon the advice and consent of heads of houses – in proper ‘Westminster fashion’:

Sir Thomas Innes of Learney, The Clans, Septs, and Regiments of the Scottish Highlands (8th edition, 1970), p. 108, as follows:

“[T]he authority of the chief was nevertheless far from absolute, **owing to the principle of the family council or clan council**, under which the chief, although parent and representer of the community comprehending his clan, nevertheless **acted constitutionally in concert with the conseil de famille composed of the heads of houses, and by whose advice and assent he was guided on matters of family policy**, and who in some cases, where necessary, even took steps to place a foolish or improvident chief under supervision. In a small clan of family, such council might be quite an informal one, but in the greater clans, and in the case of the Lord of the Isles, it amounted to a full and formal parliament, like those even yet found in many of the great families of Europe. In the feudal organisation of the tribal territories, this council became formalised as the **Court of the Barony**, ...” (Emphasis supplied.)

- 9.L.** In summary, detailed research upon Baron Courts by the late Lord Lyon Sir Thomas Innes of Learney reveal ... operating primarily as a *non-judicial local council* functioning as local parliamentary self-governing family-legislatures having first and foremost non-judicial local social, economic, and cooperative communal functions of self-government, cooperative economic organisation, and communal, social, family organisation to promote common social good, the good neighbourhood, and local friendship amongst neighbours; ... that **these non-judicial functions provided by local Baron Courts to promote the common welfare of a local ‘communal community’** as one of the few remaining local institutions for local popular self-government **far out weighed** the few remaining vestigial civil and criminal *judicial functions* still possessed by Baron Courts in 1945 when Sir Thomas made his investigation.

- 9.M.** As Sir Thomas concluded, “The Baronage and the Baronial-Councils of each fief, continued to function both practicably and ceremonially” [Proceedings, p. 116] as local popular self-governing units: “The fief *was* a ‘family-community’, a sort of beehive.

- 9.N.** The Baron was *Chef de Famille*” [Proceedings, p. 120–121]. In which “it is necessary to consider the order [of the Baronage], both in relation to the baronial fief and in relation to the King and Great Council; *i.e.*, the internal economy and the external relationships of ‘the Baron’, as Hereditary Representer of an organised community” [Proceedings, p. 113]: In sum, Sir Thomas found that the Baron Court functioned primarily as a non-judicial local parliament with the Baron acting constitutionally ‘as advised’ as the *Chef de Famille* of the territorial Clan formed about that Barony.

- 10.** THAT modern Baron Courts commonly function as charitable Clan, family, and historical associations:
- 10.A.** Baron Courts have been revived in recent years as an organisational vehicle for charitable, family, and historical associations.
- 10.B.** Re-cast as non-profit registered charities, such modern Baron Courts serve as the structured framework for such activities. These include the fatherly promotion of craftsmanship by potters, weavers, and other ‘cottage industries’ of followers still living within the territory of the Barony; sponsoring educational opportunities; as well as historical preservation of the traditions and folk-life of that Barony.
- 10.C.** The functions of the traditional Officers of a Baron Court have been renovated to serve as the executive managing the affairs of the barony:
- The Baron-Bailie serves as the ‘managing director’ or president;
 - The Clerk of the Baron Court serves as a ‘general secretary’ in charge of administrative matters;
 - The Baron-Officer or Sergeand is responsible for operations;
 - The Keeper of the Castle and Fortalice functions as treasurer;
 - The Procurator Fiscal of the Baron Court serves as ‘general counsel’ or legal advisor;
 - The Dempster of the Baron Court serves as a ‘general agent’; and
 - The Burlawmen function as a board of directors.
- 10.D.** To execute these executive and operating functions, the Baron Court meets regularly. Functioning as a modern charity, minutes of meetings of the Baron Court are kept together with annual audited accounts.
- 10.E.** The Baron’s Household provides a social and family dimension for the Barony. In addition to the traditional local followers of a Barony, this consists of persons invited to join. The Household constitutes the ‘extended family’ or clan of the Barony. The Baronial Household functions as a ‘clan society’. Such keep in contact with the affairs of the Baron Court and each other via internet web-sites. In essence, such Baron Court and its Household constitute the ‘horizontal’ territorial version of the ‘vertical’ personal Scottish Clans: A territorial Clan with the Baron serving as ‘chief’.
- 10.F.** Keeping their baronies ‘vibrant’ in ‘living’ public memory primarily through providing the *open public representation* of such by the assumption of the *nomen dignitatis* of that barony as their ‘title’ and ‘territorial designation’; historically concerned modern Barons may wish to replicate this ‘model’ for resurrecting their historic Barony Courts as functional ‘clan communities’ based around the Barony. Such Baron Courts provide an additional means for concerned Barons to keep their historic baronies alive in ‘existing’ public memory.
- 10.G.** Establishment of similar Baron Courts through out Scotland is an excellent means for appropriately renovating the historic Baronial Estate of the old Scots Parliament in the Third Millennium.
- 11.** THAT In the first clause §63(1) of the ACT Parliament intended to abolish only the outmoded criminal and civil functions of Baron Courts – not the primary *non-judicial* social and ceremonial functions of the Baron Courts as the *organisational mechanism* of the territorial or ‘horizontal’ clan formed around the Barony nor the *patriarchal jurisdiction* consisting of the ‘moral authority’ of the Baron as the *Chef de Famille* and ‘Hereditary Representer’ of the clan community organized around that Barony:
- 11.A.** The first clause in §63(1) of the ACT – “Any jurisdiction of, and any conveyancing privilege

incidental to, barony shall on the appointed day cease to exist” – must be interpreted according to the evident goal of the parliamentary intent found in the *legislative history* concerning this provision found in ¶2.42 of the “Report” concerning such archaic ‘civil and criminal jurisdiction’ of Barons:

“The civil and criminal jurisdiction of barons was preserved by the Heritable Jurisdictions (Scotland) Act 1746 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.” (Emphasis supplied.)

- 11.B.** Manifestly, the explicit **Parliamentary intent** of the first clause in §63(1) of the ACT is to abrogate only this passé privately owned criminal and civil jurisdiction as an ‘objectionable relic of feudalism’. ¶2.42 expresses no Parliamentary Intent *whatsoever* to abrogate Baron Courts for their social and ceremonial non-judicial aspects as the *organising mechanism* of the ‘horizontal’ Clan formed around Baronies *or* to abolish the dignity or office of the various Officers and other Personnel of such Baron Courts *and still less* to abrogate the legal capacity of Barons to appoint such Officers and to hold Baron Courts. The **specific ‘evil’** referenced in ¶2.42 of the “Report” is this ‘privately owned criminal and civil jurisdiction’ ... *not* the Baron Courts, per se, *or* their Officers and Personnel.
- 11.C.** The first clause of §63(1) of the ACT stating ‘any jurisdiction of ...barony shall on the appointed day cease to exist’ must be interpreted *in accordance with* the direct Parliamentary Intent specifically expressed in the *legislative history* set forth in ¶2.42 of the “Report” particularly concerned with this clause: that the *language* of this first clause of §63(1) of the ACT must be interpreted to be directed at the ‘evil’ it is intended to remedy: The ‘privately owned criminal and civil jurisdiction’. Had Parliament wished to abolish the Baron Courts, Parliament would have said so **directly** in §63(1) of the ACT.
- 11.D.** When the true Parliamentary Intent of this first clause of §63(1) of the ACT ... set forth in the *legislative history* of this provision in ¶2.42 of the “Report” evidencing the specific ‘evil’ of a ‘privately owned criminal and civil jurisdiction’ which it was intended to remedy ... is read in conjunction with the *savings clause* set forth in the **second clause** of §63(1) of the ACT that **“nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin)”** ... together with §63(4) of the ACT that “dignity” includes any quality or precedence associated with, and any heraldic privilege incidental to, a dignity” re the capacity of a Baron to hold a Baron Court and to appoint its Officers as a ‘quality ... associated with’ the dignity of baron; ... it is clear that Parliament intended to preserve past the ‘appointed day’ Baron Courts for their non-judicial social and ceremonial functions, the Officers and Personnel of such Baron Courts, and the legal capacity of Barons to hold such Baron Courts and to appoint the Officers and Personnel of such Courts.
- 11.E.** As so clearly declared in ¶2.40 of the “Report” Parliamentary intent is that “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.” When Sec 63 of the ACT is read in conjunction with its *legislative history* in ¶¶2.30 to 2.45 of the “Report” together 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)” ... the unmistakable Parliamentary intent is to change *only* the feudal system of **land tenure** but

to preserve all of the heraldic, ceremonial, social, and honorific aspects of baronies *unchanged*.

- 11.F.** *Conversely*, as Parliament was clearly aware of the existence of such Baron Courts, if it was the intent of Parliament to abolish Baron Courts, ‘why’ did not Parliament say so **directly** in Sec. 63 of the ACT ?
- 11.G.** Because there is no evidence in either the language of Sec. 63 of the ACT or in the *legislative history* of Sec. 63 in ¶¶2.30 to 2.45 of the “Report” of **any Parliamentary intent** to abolish Baron Courts for their non-judicial social and ceremonial value – as the *organisational mechanism* of the ‘horizontal’ Clan formed around Baronies – we must conclude that Baron Courts survived the ‘appointed day’ together with the legal capacity of Barons to hold such Baron Courts and to appoint their Officers and other Personnel. **Logically**, if the legal capacity of Barons to hold Baron Courts and to appoint the Officers and other Personnel of such Courts survived the ‘appointed day’; then, **rationally**, such Officers of Baron Courts have a legal right (if armigerous) to be granted by Lyon the official heraldic insignia applicable to such Offices.
- 11.H.** What survives past the ‘appointed day’ is the original patriarchal jurisdiction of the Baron as *Chef de famille* as the ‘representer’ of the community organised around that Barony within the purview of the Baron Court as the organisational mechanism of the territorial Clan of that Barony.
- 11.I.** This is precisely the same familial jurisdiction of the Chiefs of Clans and Families which has survived into the modern era: Originally Clan Chiefs were Barons who exercised *personal jurisdictional rights* over his familial clan organised by heraldic cadency into Branch Clans, Chieftainships within Branches, and sub-Chiefships over heraldically organised ‘Houses’ within each such branch.
- 11.J.** The Clan Chiefs lost the ability to enforce judicially such patriarchal authority under the Heritable Jurisdictions (Scotland) Act 1746. However, the ceremonial formal organisation of such Clans and Families was retained under the principle of heraldic cadency as the *organising mechanism* for the clans under the personal jurisdiction of Clan Chiefs. Such is, in fact, frequently litigated before the Lyon Court.
- 11.K.** This *patriarchal jurisdiction* is the ‘moral authority’ of the Chief as the father of the extended family forming the Clan over that Clan. It may longer possess any legal sanctions enforceable under Civil Law but it must be *accepted* by all those who claim membership in the extended family and wish to wear its tartan and strap-and-buckle heraldic insignia and participate in its activities.
- 11.L.** In the same manner that the Heritable Jurisdictions (Scotland) 1746 Act abolished the baronial civil and criminal jurisdiction of the Clan Chiefs over their Clans and Families ... without abolishing the ‘Honourable Clans’ as ceremonial entities *organised by the mechanism of heraldic cadency* capable of being accounted, taken, and received officially by the Lord Lyon amongst all nobles and in all places of honour: See Matriculation of *Lord Macdonald*, 1st May 1947, Lyon Register 36/44. See also matriculations of *Mackintosh of Mackintosh*, Lyon Register, 36/40; and *Lamont of that Ilk*, Lyon Register, 39/116.
- 11.M.** The *savings clause* of §63(1) of the ACT operates to preserve the Baron Courts of such Baronies as included within “**any quality** or precedence associated with, and any heraldic privilege incidental to, a dignity” under §63(4) of the ACT as a part of ‘the social, ceremonial and armorial aspects of baronies’ referenced in the *legislative history* of the ACT (¶2.40 of the Scottish Office’s “Report on Abolition of the Feudal Tenure System” [Scot Law Com 168]).
- 11.N.** Accordingly, the ‘standing’ or legal capacity of a Baron to hold a Baron Court and to appoint the Officers of such in its ceremonial capacity as the *organising mechanism* for the ‘horizontal’ Clan formed around a Baron as *Chef de famille* and ‘Representer’ of the ‘following’ of that Barony

encompassed under “any quality ... associated with” the dignity of baron under §63(4) of the ACT constitutes a **statutorily-created acquired legal right of “incorporeal heritable property”** re §63(2) of the ACT ‘*vesting*’ in the Holder of ‘the dignity of baron’ ... which survives the ‘appointed day’ ... and must be recognised officially by the Government through its appropriate Officers, specifically by the Lord Lyon King of Arms through granting appropriate heraldic addiments of office to the Officers of such Baron Courts.

12. THAT The ‘standing’ or legal capacity of a minor Baron in the Baronage of Scotland to appoint officers and to hold a non-judicial Baron Court for the social and ceremonial purposes as the *organising mechanism* of the clan formed around that barony past the ‘appointed day’ is preserved by the *savings clause* in Sec. 63(1) of the Abolition of Feudal Tenure Act 2000 re ‘**any other dignity or office (whether or not of feudal origin)**’ in Sec. 63(1) which specifically ‘includes **any quality** or precedence associated with, and any heraldic privilege incidental to’ re Sec 63(4) ‘the dignity of baron’ vesting in the holder or in the heir of such as an acquired *legal right* of ‘incorporeal heritable property’ under Sec. 63(2) of the Act:

12.A. The **legal issue** before these Barons Courts in this Petition ... for a Declarator of Entitlement re the survival of Baron Courts for their social and ceremonial value as the *organising mechanism* of the ‘horizontal’ Clan of each Barony past the ‘appointed day’, the legal capacity of the Baron to continue appointing Officers and other Personnel of such Baron Courts, and the legal entitlement of such Officers of Baron Courts to receive official recognition from Lyon and the legal right to be granted by Lyon the official heraldic insignia of such Offices ... **is ‘whether Baron Courts in their social and ceremonial non-judicial aspects survive the “appointed day” vis-à-vis Sec. 63 of the ACT?’**

12.B. §63(1) of the ACT mandates the following:

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).

12.C. It is axiomatic that legislation must always be interpreted in accordance with the **intent of Parliament** as established by the *legislative history* of that ACT. The *legislative history* of every aspect of the Abolition of Feudal Tenure (Scotland) ACT 2000 is set forth in specificity and in detail in the Scottish Office’s “Report on Abolition of the Feudal System” (Scot Law Com 168), hereinafter the “Report”.

12.D. The *general premise* of the entire ACT in general and Sec. 63 of the ACT in particular is established by ¶2.30 of the “Report”, as follows:

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. (Emphasis supplied.)**

12.E. Sec. 63 of the ACT operates to abolish only the following features of “Barony” connected with land tenure:

- any remaining obsolete criminal and civil judicial jurisdiction of barony re §63(1) of the ACT
- any conveyance privilege incidental to barony in §63(1) of the ACT
- an estate held in barony ... as a feudal estate re §63(2) of the ACT

12.F. Sec. 63 of the ACT leaves in effect the following aspects of Barony not connected with land tenure:

- nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin). re §63(1) of the ACT
- the dignity of baron as ‘transferable incorporeal heritable property’ re §63(2) of the ACT
- the dignity of baron specifically includes any quality or precedence associated with, and any heraldic privilege incidental to the dignity of baron re §63(4) of the ACT
- though retained the dignity of baron shall not attach to the land and shall not be an interest in land for the purposes of the Land Registration (Scotland) Act 1979 (c.33) or a right as respects which a deed can be recorded in the Register of Sasines re §63(2) of the ACT

12.G. Clearly, the *intent* of the ACT and Art. 63 is to change the mode of ‘land tenure’ but ***not*** to affect ‘any right, title, honour or dignity (even if of feudal origin historically)’ nor ‘any of the ancient offices or positions which may have been feudal in origin’. The ACT is written so ‘that all such matters would be unaffected by it’. ¶2.30 of the “Report” evidences that the ACT must be properly interpreted by the Courts as affecting ***only*** “land tenure” but not as working the abolition of any dignity or office – such as the Baron Courts and their Officers.

12.H. When the *general premise* of the ACT established by ¶2.30 of the “Report” is read in conjunction with the *savings clause* in the second clause of §63(1) that “nothing in the ACT affects the dignity of baron or any other dignity or office (whether or not of feudal origin)” together with §63(4) of the ACT declaring that “‘dignity’ includes any quality or precedent associated with, and any heraldic privilege incidental to a, dignity”; ... the **intent of Parliament is clear**: The ACT is concerned solely with land tenure, but the dignity of Baron and every and ‘any heraldic privilege incidental to’ a Baron is to be retained after the ‘appointed day’ – Barons with all of their existing heraldic additaments simply become personal dignities ... not dissimilar from peerages.

12.I. As noted in ¶2.34 of the “Report” ‘the preferred approach’ taken was ‘the minimalist one’ because ‘the abolition of entitlement to the title “baron” was not a necessary part of feudal land reform and might well give rise to justifiable claims for compensation’. In this connection, ¶2.32 of the “Report” found that “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.”

12.J. In order to avoid payment of such compensation for every barony ever erected in Scotland the *legislative history* to Sec 63 of the ACT set forth in ¶2.40 of the “Report” references the specific intent of Parliament to preserve as much as possible of the ‘noble element in them’ re ‘the social, ceremonial and armorial aspects of baronies’ as ‘non-territorial dignities’ which are ‘severed from landownership’ because ‘the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure’ – which ‘would give rise to substantial claims for compensation’, as follows:

“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.)

- 12.K.** The Parliamentary intent evidenced in ¶2.40 of the “Report” is that abrogation of the ‘noble element in’ baronies is not a necessary feature of the abolition of the feudal system of land tenure. Parliament saw ‘no need to do this’. Accordingly, Sec. 63 of the ACT is to be interpreted by the Courts in accordance with the *clear parliamentary intent* to preserve *as much as possible* of this ‘noble element’ as relates specifically to ‘the social, ceremonial and armorial aspects of baronies’ which are not ‘a necessary feature of the abolition of the feudal system of land tenure’ – the **real object** of the ACT.
- 12.L.** This Parliamentary intent to avoid abrogation of any of ‘the noble element in’ Baronies not necessary to the object of the ACT to reform the feudal system of land tenure is seen in the third paragraph of ¶2.44 of the “Report”, as follows:
- “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.)
- 12.M.** The underlined portions of the above provides a ‘key’ to the interpretation of *parliamentary intent* re the issue of whether §63(1) of the ACT worked an abolition of Baron Courts in their social and ceremonial non-judicial aspects as the *organising mechanism* of the ‘horizontal’ Clan formed around Baronies:
- 12.N.** The clear and unmistakable intent of Parliament through out both the ACT as well as in the *legislative history* set forth in the “Report” is the **“reform of the feudal system of land tenure”** – **not** to work the abolition of ‘the dignity of Baron’, the Baron Courts, or the Officers and other Personnel of such Courts. Rather, as expressed in the *savings clause* of the last clause of §63(1) of the ACT, the Parliamentary Intent is to save as much as possible of the ‘noble element’ in Baronies not relevant to the specific goal of reforming the feudal system of land tenure.
- 12.O.** In this specific connection, the Official Recommendation of the “Report” set forth in ¶2.45 thereof declares in full:
- 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.**
- 12.P.** Note specifically that ¶5(a) above calls for the abolition of only ‘any surviving criminal or civil jurisdiction’ but **not of the ‘barony courts’ themselves**. This is very significant because the ACT could have just as easily completely abolished the Barony Courts. Rather the clear

parliamentary intent in ¶5(a) is to abolish only the ‘surviving criminal or civil jurisdiction’ involved in such Barony Courts.

- 12.Q.** In this connection ¶5(c) of the Recommendation demonstrates *parliamentary intent* to preserve both ‘the dignity of baron’ as well as ‘any other dignity (whether or not of feudal origin)’: The only ‘other dignities’ involved with or affected by the abolition of the feudal system of land tenure are the Baron Courts and the Officers and Personnel connected with such Baron Courts. The clear *parliamentary intent* is to preserve such – less ‘any surviving criminal or civil jurisdiction’. In sum, along with ‘the dignity of baron’ the Baron Courts and their Officers and Personnel are to survive ... minus any remaining obsolete ‘criminal or civil jurisdiction’:
- 12.R.** To paraphrase the third paragraph in ¶2.44 of the “Report”: *If the Scottish Parliament could, if it wished, abolished Barony Courts altogether as a part of the reform of the feudal system of land tenure. If that is so then it is even more clear that it can take Barony Courts out of the system of land tenure, while allowing such Courts and the dignity of its Officers, derived from the former connection with the Crown as feudal superior, to continue as floating dignities.*
- 12.S.** This is made more specific in ¶5(c) of the Official Recommendation that Barons ‘should retain any ... ceremonial ... privileges deriving from their barony’: The **principal ‘ceremonial privilege’** derived from a barony is the right of a Baron to hold a **Baron Court** for their social and ceremonial non-judicial aspects as the *organising mechanism* of the ‘horizontal’ Clan formed around his Barony and **to appoint the Officers and Personnel of this Court.**
- 12.T.** QUERY: ‘What **other** ‘ceremonial privilege’ is derived from a Barony *exists* ?
- 12.U.** In all of his exhaustive research on the Estate of the Feudal Baronage of Scotland, former Lord Lyon Sir Thomas Innes of Learney lists **one** and **only one** ‘ceremonial privilege’: Holding a Baron Court and appointing the Officers and Personnel of that Court. There **are** no **others**....
- 13.** THAT specifically, the Officers and other Personnel of a Baron Court constitute “any other dignity or office (whether or not of feudal origin)” preserved by the *savings clause* of §63(1) of the ACT.
- 14.** THAT when the *savings clause* of §63(1) re “any **other dignity** or office (whether or not of feudal origin)’ respecting the Officers of a Baron Court is read in conjunction with §63(4) of the ACT declaring that “‘**dignity**’ **includes** any quality or precedent associated with, and *any heraldic privilege* incidental to, a dignity”; the upon proper appointment by a Baron the armigerous Officers of a Baron Court have an acquired legal right of property to be granted by Lyon *in his judicial capacity* the heraldic additaments appropriate to such Offices:
- 14.A.** 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, the Baron 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 Baronial 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 *organizational machinery* for this ‘horizontal’ Clan formed around the Barony: The Baron Court is the essential mechanism for this baronial clan.
- 14.B.** Similar to the *legal effect* of the Heritable Jurisdiction (Scotland) Act of 1746 upon Clans under the personal jurisdiction *ut baro* of the Chiefs of Clans and Families; Sec. 63 of the ACT removes the last vestiges of public law criminal and civil jurisdiction of Barons within their Baronies but does not destroy the ‘horizontal’ Clans formed territorially around each Barony as an “Honourable Community”; nor does Sec. 63 of the ACT destroy the position of the Baron as the “Heritable Representer” and *Chef de Famillee* of the ‘horizontal’ Clan formed around that Barony.

- 14.C.** In their non-judicial capacity as the *organisational mechanism* of the ‘horizontal’ or territorial Clans formed around Baronies ... 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)”, ... Baron Courts for this non-judicial social and ceremonial organisational function of this Baronial Clan 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 ... ‘vesting’ in the Holder of the dignity of baron ... which survive the ‘appointed day’.
- 14.D.** Accordingly, the *legal capacity* to hold a Baron Court for its non-judicial social and ceremonial function as the *organisational vehicle* of the ‘horizontal’ or territorial Clan formed around the Barony and to appoint the Officers and other Personnel of such Baron Court ... 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)”, ... survives 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 ... ‘vesting’ in the Holder of the dignity of baron.
- 14.E.** Likewise, the *acquired legal right* of the 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 the official heraldic insignia of office appropriate to that Office or Position ... (see matriculation of Caps of Justice for Baron Baillies in Lyon Register 51/115, 61/37 and 82/90; see matriculation of Key in bend for the Keeper of Baronial Caput in Lyon Register 48/58; see 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) ... 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 property of such Officers and other Personnel of a Baron Court under §63(4) of the ACT when read in conjunction with the *savings clause* in §63(1) of the ACT explicitly mandating the *legal survival* of both the ‘dignity of baron’ as well as “any other dignity or office (whether or not of feudal origin)” past the ‘appointed day’.
- 14.F.** Holders of the ‘dignity of baron’ constituting the Baronage of Scotland retain the legal capacity or ‘entitlement past the ‘appointed day’ to hold Baron Courts for non-judicial social and ceremonial purposes as the *organisational vehicle* of the ‘horizontal’ Clan organised around that Barony ... and to appoint the Officers and Personnel of such Baron Court ... when read in conjunction with the *savings clause* in §63(1) of the ACT explicitly mandating the *legal survival* of both the ‘dignity of baron’ as well as “any other dignity or office (whether or not of feudal origin)” past the ‘appointed day’ ... is an *acquired legal right* consisting of “any quality or precedence associated with” the dignity of baron under §63(4) of the ACT ‘vesting’ as “incorporeal heritable property” in Holder of dignity of Baron under §63(2) of the ACT.
- 14.G.** Armigerous Officers and other Personnel of a Baron Court retain the *acquired legal right* or ‘entitlement’ 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 the official heraldic insignia of office appropriate to that Office or Position ... as constituting “any quality or precedence associated with, and any heraldic privilege incidental to, a dignity” re §63(4) of the ACT applying to their ‘dignity’ as Officers and other Personnel of a Baron Court ... when read in conjunction with the *savings clause* mandating that “nothing in the Act affects the dignity of baron

or **any other dignity or office** (whether or not of feudal origin)” re §63(1) of the ACT ... ‘vesting’ in the Officers and other Personnel of a Baron Court upon appointment to such Office or Position by the Baron or the Holder of ‘the dignity of baron’ as a *judicially enforceable legal right* of such Officers and other Personnel of a Baron Court under §63(4) of the ACT when read in conjunction with the *savings clause* in §63(1) of the ACT explicitly mandating the *legal survival* of both the ‘dignity of baron’ as well as “any other dignity or office (whether or not of feudal origin)” past the ‘appointed day’.

(See matriculation of Caps of Justice for Baron Baillies in Lyon Register 51/115, 61/37 and 82/90; see matriculation of Key in bend for the Keeper of Baronial Caput in Lyon Register 48/58; see 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)

- 15.** THAT the Officers and other Personnel of a Baron Court clearly constitute the “any other dignity or office (whether or not of feudal origin)” preserved by the *savings clause* of §63(1) of the ACT. Such Officers and other Personnel of a Baron Court are clearly “**dignities**” within the meaning of Sec. 63 of the ACT. Accordingly, the *acquired legal right* of such Officers and other Personnel of a Baron Court to be officially recognised by Lyon under the ‘titles of their offices’ and to be granted the official heraldic insignia of their respective offices is explicitly preserved by §63(4) of the ACT in that “‘dignity’ includes any quality or precedent associated with, and any heraldic privilege incidental to, a dignity” – including the ‘dignity’ of Officers of Baron Courts.
- 16.** THAT a minor Baron in the Baronage of Scotland is entitled to appoint the following Officers to constitute his Baron Court to whom the Lord Lyon will **grant official insignia** to be placed behind the shield of that Officer:

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

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

- 16.A.** **Baron-Baillie**, the President (normal executive officer) of the Baron Court, is entitled to matriculate a flat Cap of Justice, environed by two guards of braid in the livery colours of the feudal baron on top his shield. See 20th April 1969 Matriculation of Thomas Allan Keith-Hill of a Cap of Justice upon his arms in respect of his office of Baron-Bailey of the Castle and Barony of Lochoreshyre or Inchgall, Lyon Register, Vol. 51, p. 115. See also the 12th December 1976 Matriculation of Alistair Robertson Ross of a Cap of Justice as the Baron-Baillie of Easter Moncreiffe, Lyon Register 61/37. See the 22nd January 2001 Matriculation of David Lacey Garrison, Junior, Baron of Tranent and Cockenzie, Lyon Register 82/90, where Lyon granted the eldest son of this baron a Cap of Justice as Baron Baillie.

The Baron-Baillie also wore a black legal gown with a one-and-half inch strip blue-black velvet on his sleeves and down the front together with a Medal of Office ensigned with a Chapeau on a light chain.

The Baron-Baillie represented the feudal Baron as the president of the local government of the barony constituting the Baron Court: See Sir Thomas Innes of Learney, The Clans, Septs & Regiments of the Scottish Highlands (8th Ed, 1970) p. 72–73, as follows:

“Or, as the 8th Duke of Argyll explained it [j. Fyffe, *Scottish Diaries and Memoirs*, p. 565]: ‘Great estates were then generally erected into **baronies**, that is to say, districts with a **regular system of rural government** in which the tenantry of various classes took part **under a president** who represented the proprietor and **was called the Bailie**.’” (Emphasis supplied.)

The Baron-Baillie was the chief executive officer of a feudal barony who was in charge of its normal operation: See *Registrum Magni Sigilli Regum Scottorum*, Vol II, p. 369; See also *Antiq. Abdn. and Banff*, Vol. II, pp. 248–249.

Appointed by ‘letter and seal’ of the feudal Baron, the Baron-Bailie took the oath *de fideli administratione* in order to have sufficient power to preside over the Baron Court: See William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), pp. lxxviii–lxxix and footnote 1 on p. lxxix, as follows:

“The court might be presided over by the baron himself, or by his bailie; or the baron might sit *with* his bailie; or two or more bailies might sit together. The bailie was appointed by the baron and, upon appointment, took the oath *de fideli administratione* [He had to have ‘sufficient power, be letter and seale of the baron’ to hold the court (*forme and Maner of Baron Courts*, c. I)]. For fuller details of the appointment and powers of a baron-bailie, see, for example, *R. M. S.*, II, 369; *Antiq. Abdn. and Banff*, III, 248–249].”

16.B. Clerk of Baron Court whose role was to act as secretary of the Baron Court: To keep records and official rolls, to make official copies of Baron Court findings and rulings for appeal to a higher court, to keep the economic and financial records of the barony, to keep records of the proceedings and meetings of the Baron Court, to advise on the law, and may also have functioned as a notary. See William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), §3, pp. lxxxi to lxxxv.

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

Insignia for a similar Office has been matriculated: Matriculation of Viola Stirling of Gargunnoch as Hereditary Seneschal of the Free Tenandry of Gargunnoch, 24th February 1969, Lyon Register 51/105.

The Baron-Officer or Sergeand was the orderly officer or enforcement officer of the Baron Court: He summoned the tenants to the meetings of the Baron Court, parties having cases, witnesses involved in cases, and executed the judgements of the Baron Court. His heraldic insignia included a horn and a white wand one ell long: See William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), pp. lxxxv–lxxxvi, as follows:

“The **baron-officer or sergeant**, like the mair of the sheriffdom, was the **orderly officer of the court**. It was his duty to ‘summand warne attache & arrest all the fre tanandis ... and all uthir substanchus 3emen men’ to the meeting of the court in fulfilment of their court service; to summon or attach the parties whose cases were to come before the court – doing this in the presence of witnesses, and subsequently proving his summons ‘be his precep Indorsat be him thairapon’; and to summon the necessary witnesses. When the court met it was fenced by him; he called the suitors; he called the parties; he called the witnesses for the various cases. After the meeting of the court he was responsible for **seeing that its decisions were carried out** – he executed all poindings and arrestments; he ensured that all ‘borghs’ were observed. **His insignia of office included a horn and white wand ‘ane eln lang’**. If opposed in the execution of his duty he broke his wand as an indication that he had been ‘deforced’.” (Emphasis supplied.)

16.D. Dempster of Baron Court executed the writ of the Baron Court. He was also the Barony’s delegated *ad hoc* war leader or *Judex*: Sir Thomas Innes of Learney, *The Clans, Septs & Regiments of the Scottish Highlands* (8th Ed, 1970) p. 108.

16.E. Procurator Fiscal of Baron Court prosecuted complaints and handled financial matters. The Dempster or Judex of the Baron Court pronounced its ‘doom’ or sentence: William Croft Dickinson, The Court Book of the Barony of Carnwath (Edinburgh, 1937), pp. lxxxviii, as follows:

“To complete the court it was necessary to have a **dempster** and the requisite number of suitors. Of the dempster there was little to be said, save that he was one of the suitors of the court and that **it was his duty to pronounce its ‘doom’**” (Emphasis supplied.)

16.F. Keeper of the Castle and Fortalice of the feudal barony is entitled to matriculate a key proper in bend to place behind his shield: See Grant of Arms to Major-General Clifford Thomason Becket, Lyon Register 48/58, of a key proper in bend set behind his shield in respect of his office of Keeper of the Castle and Fortalice of Lochoshyre or Inchgall. Grant referenced in The Military and Hospitaller Order of St. Lazarus of Jerusalem: The Hereditary Commandery of Lochore (Edinburgh, ca. 1970), page 11.

16.G. Burlaw Men appointed by the Baron to assure the ‘Good-neighbourhood’ of the Barony and to see that all observed the ‘styles’ or rules of the Barony. Similar to the other Officers of the Baron Court, the Burlaw Men took the oath *de fidei administratione*. Their arbitrations amongst neighbours were up held by the Baron Court. Such arbitrated disputes amongst the folk in order to preserve the commonweal of the Barony. The number of Burlaw Men depended upon the size of the Barony. Some Barons appointed as many as nine Burlaw Men: See William Croft Dickerson, The Courtbook of the Barony of Carnwath, pp. lxvi, cxiv–cxvi.

In essence, Burlaw Men functioned much as do church ‘elders’.

16.H. Lacqueys or Pages from two to four such attendants accompanied Barons at the Riding of the old Scots Parliament: 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 137

16.I. Halberdiers or guard of the Barony. Each baron had a guard of four to six Halberdiers armed with Lochaber axes: See Sir Thomas Innes of Learney, The Clans, Septs & Regiments of the Scottish Highlands (8th Ed, 1970) p. 108.

17. THAT the ‘standing’ or legal capacity of the Holder of the ‘dignity of baron’ re §63(2) of the ACT to appoint Officers and to hold a ceremonial Baron Court as the *organising mechanism* of the ‘horizontal Clan’ formed around that Barony past the ‘appointed day’ ... preserved under the *savings clause* of §63(1) of the ACT that “*nothing* in this Act *affects* the dignity of baron or any *other* dignity or office (whether or not of feudal origin” as included within “*any quality* or precedence associated with, and any heraldic privilege incidental to, a dignity” under §63(4) of the ACT ... constitutes a **statutorily-created acquired legal right of “incorporeal heritable property”** re §63(2) of the ACT ‘*vesting*’ in the Holder of ‘the dignity of baron’ ... which survives the ‘appointed day’ ... and must be recognised officially by the Government through its appropriate Officers, in particular by the Lord Lyon King of Arms for the purpose of granting the (armigerous) Officers of Baron Courts official insignia of office.

FINDINGS OF THE BARONS COURTS

On 13th July 2004 the Barons Courts of Prestoungrange and Dolphinstoun *pronounced* the following interlocutor:

Finds in fact:

- 1) That the capacity to hold a Baron Court is principal among “any quality or precedence associated with” the ‘dignity of baron’ re §63(4) of the ACT relating to the ‘noble element’ of baronies

concerning the social and ceremonial and armorial aspects of baronies, including the appointment by the holder of the 'dignity of baron' in the minor Baronage of Scotland of the following Officers and Personnel of such Baron Courts:

- Baron-Baillie
 - Clerk of the Baron Court
 - Baron-Sergeant or Officer
 - Dempster
 - Procurator Fiscal
 - Keeper of the Castle and Fortalice
 - Burlaw Men
 - Lacqueys or Pages
 - Halberdier Guard
- 2) That a minor baron in the Baronage of Scotland is the *Chef de Famille* and Hereditary Representer of his barony whose original jurisdiction was patriarchal, derived *ut baro* from the incorporeal dignity of baron, as chief of the clan over his 'following' organised horizontally as a territorial clan about his barony and that such patriarchal and familial jurisdiction is the same *captaincy of communities* enjoyed by the Chiefs of Scots Clans who are also 'barons' exercising *personal jurisdictional rights* derived *ut baro* from 'the dignity of baron' over their Clans
 - 3) That the erection of lands *in liberam baroniam* conveys separately (1) patriarchal jurisdiction derived *ut baro* primarily from 'the dignity of baron' itself rather than from lands erected *in liberam Baroniam*, forming the essence of patriarchal or 'chiefly' jurisdiction over his local tribe formed 'horizontally' around his barony; and (2) Civil and Criminal territorial Jurisdiction re exercise of the King's Justice based upon statutory authorisation in which part of the King's Justice was conferred upon Baron Courts – most of which was repealed in 1746 following the '45: A minor baron in the Baronage of Scotland is *Chef de Famille* and Hereditary Representer of the territorial Clan formed around his Barony in precisely the same manner that the Chief of a Clan or Name is the patriarchal chief of the personal Clan formed genealogically of all those who bear his Name or the Names of related Septs.
 - 4) That because the Baron Courts of the minor Baronage of Scotland as entities function primarily as a non-judicial local council for self-government having primarily non-judicial local social, economic, and cooperative communal functions as one of the few remaining local institutions for local popular self-government to promote the common welfare of a local 'communal community' with the Baron acting constitutionally upon the advice and consent of heads of houses for the management of non-judicial local internal affairs in accordance with the rulings of the local folk; ... the *continuing* social, economic, cooperative and ceremonial family related functions of the Baron Courts **far out weigh** the theoretical exercise of the few remaining vestigial civil and criminal **judicial functions** – which will lapse upon the 'appointed day' of 28th November 2004 pursuant to §63(1) of the ACT.
 - 5) That in present day Scotland Baron Courts continue to so function in their primary non-judicial capacity as the organizational vehicle for charitable, clan and family, and historical associations (often in the form of registered charities) providing a structured framework for the promotion of 'cottage industries' for those living in and associated with the Barony-in-question as well as for the historical preservation of the traditions and folk-life of that Barony; and that the functions of the traditional Officers of such Baron Courts have been accordingly transformed to serve as the 'executive' managing these charitable and non-judicial affairs of such Baronies.

Finds in Law:

- 1) That the explicit statutory declaration made in §63(4) of the Abolition of Feudal Tenure (Scotland) 2000 ACT [hereinafter the 'ACT'] that “In this section- ... “dignity” includes any quality or precedence associated with, and any heraldic privilege incidental to, a dignity” **statutorily transformed** all such referenced ‘qualities’, ‘precedences’ and ‘any heraldic privilege’ associated with or incidental to the ‘dignity of baron’ **into particular individual concrete acquired legal rights of intangible property** ‘vesting’ personally in the owner or holder of the ‘dignity of baron’ as “incorporeal heritable property” under §63(2) of the ACT as such existed upon the day of Royal Assent to the ACT: 9th June 2000.
- 2) That use of the verb “**includes**” in §63(4) of the ACT **statutorily incorporates** all such particular individual concrete acquired legal rights of property ‘vesting’ in the owner or holder of the ‘dignity of baron’ – specifically, “any quality or precedence associated with, and any heraldic privilege incidental to” the ‘dignity of baron’ – as an integral ‘bundle’ of such component acquired legal rights of property **into** the **essence** or the **very fabric, fibre and substance** of the ‘dignity of baron’ as incorporeal heritable property” under §63(2) of the ACT as such existed upon the day of Royal Assent to the ACT: 9th June 2000.
- 3) That when the *savings clause* in §63(1), 2nd clause, of the ACT that “**nothing** in this Act **affects** the dignity of baron or *any other* dignity or office (whether or not of feudal origin)” ... is read in conjunction with the statutory transformation of “any quality or precedence associated with, and any heraldic privilege incidental to” the ‘dignity of baron’ effected by §63(4) of the ACT into particular individual acquired legal rights of intangible property ‘vesting’ personally in the holder of the ‘dignity of baron’ ... and the statutory incorporation by use of the verb “**includes**” in §63(4) of the ACT of all such particular individual concrete acquired legal rights of property into an integral component ‘bundle’ constituting the essence or the very fabric, fibre, and substance of the ‘dignity of baron’ as “incorporeal heritable property” re §63(2) of the ACT; ... the *savings clause* in §63(1), 2nd clause, of the ACT **statutorily bars** the *change in legal status* of baronies or of “any other dignity or office (whether or not of feudal origin)” – this refers to the Baron Courts and their Officers – worked by the abolition of feudal tenure in the ACT from ‘**affecting**’ these particular individual acquired legal rights of intangible property ‘bundled’ as integral components constituting as a ‘whole’ the actual ‘dignity of baron’ (or Officers of Baron Courts):
 - A. Pursuant to the *savings clause* in §63(1), 2nd clause, of the ACT, **only** Parliament possesses the **competence** to change, to alter, to abolish, to ignore, or to refuse to recognise **any** of the particular individual acquired legal rights of intangible property encompassed within the meaning of §63(4) of the ACT and statutorily incorporated by use of the verb “**includes**” in §63(4) of the ACT into integral components constituting the *essence* of the ‘dignity of baron’: This encompasses the ‘standing’ or legal capacity of the Holder of the ‘dignity of baron’ to hold a Baron Court for non-judicial purposes as well as to appoint the Officers and other Personnel of that Baron Court.
 - B. The manifest *Parliamentary intent* of the *savings clause* in §63(1), 2nd clause, of the ACT is **to preserve unaltered** the particular ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ *associated with* or *incidental to* “the dignity of baron or any other dignity or office (whether or not of feudal origin)” statutorily transformed by §63(4) of the ACT into individual acquired rights of intangible property vesting in the ‘dignity of baron’ as well as in the Officers and Personnel of Baron Courts in their capacity as “any other dignity or office (whether or not of feudal origin)” re §63(1) of the ACT ... as well as **to bar any type of change whatsoever** by any Government agency or official, including the Lord Lyon, to such acquired rights of incorporeal property statutorily incorporated by use of the verb “includes” into an integral ‘bundle’ of components forming the ‘dignity of baron’ as well as in the Officers and Personnel of Baron Courts in their capacity as “any other dignity or office (whether or not of feudal origin)” re §63(1) of the ACT.

C. The *savings clause* in §63(1), 2nd clause, of the ACT **statutorily removes** whatever capability the Lord Lyon might *otherwise* have possessed *before* the ACT to alter, abridge, change, ignore, abolish, or refuse to recognise **any** of those matters encompassed by “any quality or precedence associated with, and any heraldic privilege incidental to” the ‘dignity of baron’ **and** the dignity of Officers and Personnel of Baron Courts in their capacity as “any other dignity or office (whether or not of feudal origin)” re §63(1) of the ACT ... which were *statutorily transformed* by §63(4) of the ACT into particular individual concrete acquired legal rights of intangible property ‘vesting personally in the owner or holder of the ‘dignity of baron’ **as well as in** the dignity of Officers and Personnel of Baron Courts in their capacity as “any other dignity or office (whether or not of feudal origin)” re §63(1) of the ACT ... and which were also *statutorily incorporated* by use of the verb “includes” in §63(4) of the ACT into a ‘bundle’ of integral components constituting the ‘dignity of baron’ **as well as** the ‘dignity’ of Officers and Personnel of Baron Courts in their capacity as “any other dignity or office (whether or not of feudal origin)” re §63(1) of the ACT

4) That the basic premise of the Abolition of Feudal Tenure (Scotland) 2000 ACT is concerned *solely* with land tenure, and that the ACT is framed so as not to affect abolish or abrogate any right, title, honour, or dignity of feudal origin, which specifically includes the Officers and Personnel of Baron Courts implicitly preserved by the *savings clause* in §63(1), 2nd clause, of the ACT that “nothing in this Act *affects* the dignity of baron or **any other dignity or office (whether or not of feudal origin)**”

5) THAT In the first clause §63(1) of the ACT Parliament intended to abolish only the outmoded criminal and civil functions of Baron Courts – not the primary *non-judicial* social and ceremonial functions of the Baron Courts as the *organisational mechanism* of the territorial or ‘horizontal’ clan formed around the Barony nor the *patriarchal jurisdiction* consisting of the ‘moral authority’ of the Baron as the *Chef de Famille* and ‘Hereditary Representer’ of the clan community organized around that Barony:

A. The first clause §63(1) of the ACT operates to abolish only the explicit Civil and Criminal territorial Jurisdiction re exercise of the King’s Justice statutorily conferred upon Baron Courts – most of which has already been repealed by the Heritable Jurisdictions (Scotland) Act 1746 following the 1745 Jacobite Rebellion.

B. The first clause §63(1) of the ACT does not affect the original patriarchal jurisdiction or ‘moral authority’ of the minor Baronage of Scotland derived *ut baro* from ‘the dignity of baron’ from which patriarchal or ‘chiefly’ jurisdiction originated, per se, rather than from lands erected *in liberam Baroniam*.

C. The surviving patriarchal jurisdiction or ‘moral authority’ of the minor Baronage of Scotland is identical to that still retained by the Chiefs of Clans and Names over their followers, adherents, and clan members following the Heritable Jurisdictions (Scotland) Act 1746

6) THAT the *savings clause* of §63(1)), 2nd clause, of the ACT that “**nothing** in this Act *affects* the dignity of baron or **any other dignity or office** (whether or not of feudal origin)” ... when read in conjunction with §63(4) of the ACT that “In this section- ... ‘dignity’ includes any quality or precedence associated with, and any heraldic privilege incidental to, a dignity” ... operates to preserve statutorily past the ‘appointed day’ the ‘standing’ or legal capacity of the Holder of the ‘dignity of baron’ in the minor Baronage of Scotland (1) to appoint the Officers and associated Personnel of his Baron Court in their statutory capacity as ‘**any other dignity or office (whether or not of feudal origin)**’ re §63(1) of the ACT and (2) to hold a non-judicial Baron Court for the social and ceremonial purposes as the *organising mechanism* of the clan formed around that barony, constituting an integral part of ‘the social, ceremonial and armorial aspects of baronies’ forming the ‘noble element’ in baronies referenced in ¶2.40 of the “Report on Abolition of the Feudal System” (SCOTS LAW COM 168) constituting the *legislative history* of the ACT.

- 7) THAT the ‘standing’ or legal capacity of the Holder of the ‘dignity of baron’ in the minor Baronage of Scotland to hold a Baron Court and to appoint its Officers and Personnel after the ‘appointed day’ are both specifically included within the meaning of “**any quality** or precedence associated with, and any heraldic privilege incidental to” the ‘dignity of baron’ *statutorily transformed* by §63(4) of the ACT *into* particular individual concrete acquired legal rights of intangible property ‘vesting’ in the Holder of the ‘dignity of baron’ and *statutorily incorporated* by use of the *very* “**includes**” in §63(4) of the ACT as a ‘bundle’ of such acquired rights of property *into* integral components constituting the *essence* or the *very substance, fabric, and fibre* of the ‘dignity of baron’ as ‘incorporeal heritable property’ under Sec. 63(2) of the Act.
- 8) That, the following Officers and other Personnel of a Baron Court constitute “any other dignity or office (whether or not of feudal origin)” preserved by the *savings clause* of §63(1) of the ACT past the ‘appointed day’:
- Baron-Baillie
 - Clerk of the Baron Court
 - Baron-Sergeant or Officer
 - Dempster
 - Procurator Fiscal
 - Keeper of the Castle and Fortalice
 - Burlaw Men
 - Lacqueys or Pages
 - Halberdier Guard
- 9) That in their legal capacity as “any other dignity or office (whether or not of feudal origin)” preserved by the *savings clause* of §63(1) of the ACT – that “**nothing** in this Act *affects* the dignity of baron or **any other dignity or office** (whether or not of feudal origin)” – the (armigerous) Officers and other Personnel of Baron Courts possess a legal right of property to be granted past the ‘appointed day’ the official heraldic insignia of their offices by the Lord Lyon in his judicial capacity ... when read in conjunction with §63(4) of the ACT that “In this section- ... ‘**dignity**’ includes any quality or precedence associated with, and **any heraldic privilege incidental to, a dignity,**” which *statutorily transforms* “any heraldic privilege incidental to” the ‘dignity’ of the Officers of Baron Courts *into* particular individual acquired legal rights of intangible property ‘vesting’ in the ‘dignity’ of such Officers of Baron Courts and by use of the *verb* “**includes**” in §63(4) of the ACT *statutorily incorporates* acquired legal property consisting of “any heraldic privilege incidental to” the dignity of the Officers of Baron Courts *into* an integral component of that ‘dignity’:
- A. Baron-Baillies: A Cap of Justice environed by two guards of braid in the livery colours of the feudal baron to be placed on the top of the Baron-Baillie’s shield as per Lyon Register 51/115 and 61/37 also 82/90
- B. Baron-Sergeants or Officers: Official insignia of a horn and white wand one ell long statutorily designated as official insignia by the old Scots Parliament in A.P.S., II, 22, c. II
- C. Keeper of the Baronial Caput: A Key proper in bend to be placed behind his shield as per Lyon Register 48/58

HELD:

The Barons Courts of Prestoungrange and Dolphinstoun may properly move upon the weightily and sufficient grounds of both fact and law existing, as set forth above, to issue the following Orders, and for the future all manner of like orders as may be proper under its continuing authority:

[E II. 53. 2004 P&D. 08/01] Our Order re-constituting the combined Barons Courts of Prestoungrange and Dolphinstoun after the Appointed Day of 28th November 2004 as the sole non-judicial organizational vehicle to provide the structural framework for charitable and historical preservation activities taking the legal form of the existing registered Scottish Charity hereby proclaimed in this Our Crown Baronial Charter passing their Great Seal this twenty seventh day of July, 2004 [appendix].

[E II. 53. 2004 P&D. 08/02] Our Order formally establishing the right of passage in perpetuity across the Baronial Foreshore requiring that proper Notices to that effect be placed at each end of the foreshore, and conformance with The Byrlaws aet down below [appendix].

[E II. 53. 2004 P&D. 08/03] Our Order establishing protocols for the proper protection of the ‘dignity of baron’ in the Baronage of Scotland and the Officers and personnel of Barons Courts *in their statutory capacity* as “any other dignity or office (whether or not of feudal origin)” re §63(1) of the ACT as well as “any quality or precedence associated with, and any heraldic privilege incidental to” both the ‘dignity of baron’ and the Officers and personnel of Barons Courts *statutorily transformed* by §63(4) of the ACT into particular concrete acquired legal rights of intangible property and *statutorily incorporated* by use of the *verb* “includes” in §63(4) of the ACT into integral components of such ‘dignities’

[E II. 53. 2004 P&D. 08/04] Our Order establishing a Biennial Scholarship for the Evaluation and Further Advancement of Traditional Feudal Values within the original Crown Baronies of Prestoungrange and Dolphinstoun to be funded by the Barons Courts established with benefit of Our Crown Baronial Charter [E II.53.2004 P&D.08/01]; and its research analyses and conclusions published to ensure the widest possible dissemination of findings on each occasion to coincide with the celebration of Barons Day on November 28th [E II.53.2004 P&D.09].