

The following article was written by Hugh Peskett, Consultant Editor for Scotland, Burke's Peerage, Baronetage & Knightage, and was published in Burke's Peerage (107th Ed.), 'East Lothian Life', Autumn 2003, p. 17 and at <http://www.hughpeskett.co.uk/008BARONY/BARONY.HTM>.

FEUDAL BARONIES

Scottish feudal barons are the lowest rank of the Scottish aristocracy, barones minores, but they are an ancient rank, for they existed before Scotland had dukes, marquesses, viscounts or baronets (bearing in mind that in pre-Union (1707) Scotland the equivalent to the English rank of Baron was a Lord of Parliament, and that it is a solecism to style such Lords as Barons). The antiquarian (10th) Duke Niall of Argyll opined that Bachuil was 'the oldest peer in the realm, being a Baron of the kingdom of the Scots of Dalriada'. (Dalriada was the Gaelic kingdom founded in the late 5th century in the southwest Highlands and united with the Pictish kingdom under Kenneth Macalpin in the mid-9th century.)

Essentially, however, they are a product of the feudal system, and derive authority from the Crown. Barons held their lands and barony from the Crown in chief, and exercised jurisdiction through the baron court. Until forthcoming changes take effect (discussed below), these are the essential features of a feudal barony, involving nothing less than tenure of lands from the Crown in chief, with as root of title a Charter under the Great Seal erecting the barony, and granted under the royal sign manual. There are some rare exceptions, deriving from the ancient power exercised by the earls of the seven ancient earldoms, and by the Lords of the Isles, to erect baronies (a power which they still have and which was exercised into the 1990s*). In those cases they are held of the successors to the ancient earls. Examples are Colly (held of the Earl of Erroll, 1450), Torboll (held of the Earl of Sutherland, 1363), Newdosk (held of the Earl of Crawford, 1407) and Bachuil, previously referred to, a 'Barony of Argyll and the Isles', deriving from the Lords of the Isles and now held by charter from the Dukes of Argyll, their successors in that capacity. Many 'Earls' Baronies' have been superseded by later charters from the Crown, but a few were transferred by the Crown to the superiority of an Earl.

Feudal barons used all to sit as Lords Temporal with the Three Estates in the unicameral Scots Parliament, but the travel and neglect of their territorial holdings that this involved proved a financial burden, for they were generally the smaller landowners, and they were relieved of the obligation to attend Parliament in 1587, electing a number of representatives instead. A survival of this is the way the few barons who today are heirs and successors of those who sat in Parliament before 1587 are entitled to augment their Arms with Supporters. Other feudal barons are entitled, on application, to a chapeau or cap of maintenance, a feudo-baronial mantle and a standard. The chapeau, for a baron in possession of his fief, should be Gules doubled ermine; barons who are representers of baronial houses but no longer in possession of their fiefs have a

chapeau Azure doubled ermine and barons of Argyll and the Isles and the old Earldoms replace the ermine with vair or contre-ermine (distinctions which are likely to have increasing significance in the future ? see below). Needless to say, Lord Lyon will only grant these if he is first satisfied that the petitioner has good title to a barony.

What chiefly distinguishes feudal barons from other peers is that their baronies are in *commercio*, that is, they can be bought and sold, the title of 'Baron' passing with the property. Formerly the Crown needed to give at least the formality of consent to change of ownership of a barony, and before the conveyancing reforms of the mid-19th century a Charter under the Great Seal in progress was usual. Historically, baronies were conveyed as significant estates of land, with, usually, a *caput* or principal house where the baron courts could be held, although other examples are a named field (Cowbin, 1466) a tree (Cragis, 1505) or a standing stone (Killunquhane, 1506), which disprove any contention that a barony needs a house as its *caput*.

The powers of the baron courts, which in some cases included 'pit and gallows' (execution by drowning women and hanging men), were greatly reduced by the Heritable Jurisdictions Act 1747, and baronies lost their economic significance. When estates were sold or broken up and entails were terminated, conveyancers all too often consigned baronies to history, and neglected to convey them with the land to which they were attached. Thus many have fallen through cracks in the floorboards of lax conveyancing, making proof of good title often tortuous and sometimes impossible.

It is only relatively recently, inspired particularly by the late Sir Thomas Innes of Learney, Lord Lyon 1945-1969, that interest in baronies has revived, and with this interest a corpus of legal practice and decisions has evolved. Quite small tracts of land without any buildings have been accepted as adequate to carry a good barony title, an essential principle being ownership of a tract of land that is part of the original barony, with valid progress of title to 'the Lands and Barony of X', and held of the Crown in chief, with, sometimes, prescription repairing the sins of omission of past conveyancers.

Forthcoming Changes

The Scots Parliament has passed the Abolition of Feudal Tenure etc (Scotland) Act 2000, and this will come into effect on 'the Appointed Day', 28 November 2004. The immediate and essential facts of this are that Baronies will be separated from their former lands, will become 'incorporeal hereditaments', i.e., heritable but intangible rights, and that title to baronies will no longer be registered. The last point raises the particular problem of proof of ownership of a barony; unless a substitute register in lieu can be established, proof of title to baronies will presumably revert to English conveyancing practice before the Law of Property Act 1925, when there was no register and you proved your title with a bundle of yellowing deeds carefully preserved from fire, mice and theft.

At the time of going to press there have been proposals, counter-proposals, much debate, but no decisions.

ENGLISH AND IRISH FEUDAL BARONIES

The existence of these has been suggested. Feudal baronies are baronies by tenure, i.e., by possession of the pertinent land. There was in medieval England a class of barony by tenure, but this is academic as it was ruled in the Fitzwalter case in 1670 that baronies by tenure had been discontinued for many years and were not to be revived, nor any right of succession based on them. In the Berkeley Case in 1861, an attempt was made to claim a barony by tenure, but the House of Lords ruled that whatever might have been the case in the past, baronies by tenure no longer existed, and any which had existed were converted into Baronies by Writ by the Tenures Abolition Act 1660. There are also the three Reports of the Redesdale Committee in the early 19th century that reach the same conclusion. It is probable that the same applies to Ireland, by a similar Tenures Abolition Act; in any event it would be difficult to augment a list of Irish peers by tenure beyond the twelve barons by tenure summoned in 1489 and subsequent years, and their heirs, who sat in the Irish House of Lords together with the original three earls and other peers created by patent. No others holding by tenure sat, and an alleged baron by tenure who never sat in the Irish House of Lords would prima facie lack credibility.

*The Barony of Skelbo was [re-granted by the Countess of Sutherland in 1996](#).