

NOTE ON PRELIMINARY ISSUE

in the Petition of

John Michael Baillie-Hamilton BUCHANAN OF THAT ILK and of ARNPRIOR

for

**Official Recognition of Change of Name and Confirmation of Chiefly Arms
with supporters and the grant of a standard and a pinsel**

For the Petitioner

Counsel: Sir Crispin Agnew QC, Rothesay Herald

Agents: Turcan Connell

1. The Petition was lodged with the associated Inventories of Productions on 5 December 2016.
2. After consideration of the productions on 26 October 2017, I set down a Preliminary Hearing for 22 November 2017 in George House, Edinburgh, on the following question:

“It appears that the Petitioner may not be the senior line. If this is the case, on what basis can I consider the Petitioner to have a claim to the chiefship?”

The productions were treated at the consideration, on the face of them, to be correct. The proof is to be at a later date.

3. In summary, Counsel for the Petitioner made the following submissions.
 - (a) The Petitioner represents the senior line that is able, in law, to claim the plain undifferenced coat of arms of Buchanan of that Ilk;
 - (b) Following the financial difficulties of John Buchanan of that Ilk in 1681, a substantial part of the chiefly estate was acquired by the Arnprior line indicating that they were the preferred line to succeed to the chiefship;
 - (c) In so far as the Buchanan-Jardines of Castle Milk Baronets may appear to represent a more senior line, the Petitioner contends that this line has no claim because:
 - (i) Following service of this Petition on the 5th Baronet (one) he has not entered process and (two) has not abandoned the double-barrelled surname Buchanan-Jardines and so is disbarred from claiming the plain undifferenced coat of arms and chiefship;
 - (ii) In any event neither John Buchanan Hamilton of Spittal and Leny, nor his son John Hamilton-Buchanan nominated Margaret Hamilton or her child to succeed to the Spittal and Leny estates. Further, in respect that (one) she retained and used the name Hamilton when she married and (two) neither she nor her child was nominated to succeed to the Buchanan estate, she and her child lost their entitlement to represent the chiefly line.

- (iv) The final submissions focused on the intention of John Buchanan-Hamilton or his son John Hamilton-Buchanan, who was potentially the last heir male of the Buchanan of Spittal line, having a potential claim to the chiefship and, in the absence of either of them, nominating Margaret Hamilton or her child to succeed to the Spittal and Leny estates.

It was submitted that because neither Margaret Hamilton nor her child was nominated to succeed to the Buchanan estate, she and her child lost their entitlement to represent the chiefly line.

I find the submission of interest, but not compelling. In any event it does not affect the outcome of this preliminary matter.

5. Finally, I considered the issue of a Clan being an incorporeal hereditament which should have a chief. I followed the case of *MacNab of MacNab* 1951 SLT (Lyon Ct.) 2 at 19 and accept that it is important that the intricate subject of chiefly succession should be smoothly and impartially dealt with by judicial procedure or in some circumstances Ministerial otherwise Prerogative (Pro Regal) Acts.

This reference to “Ministerial otherwise Prerogative (Pro Regal) Acts” gives me the prerogative power to recognise an appropriate person as chief where otherwise the Clan would be chiefless.

6. In accepting the position above, I concluded that the Petitioner should be seen, for the purposes of this Petition, to be of senior line and the only line willing and able to assume the chiefship of the Buchanan Clan.
7. The Petition shall now proceed to proof of that claim on the date previously set down.

Lord Lyon Morrow
Court of the Lord Lyon
Edinburgh

A handwritten signature in black ink, appearing to read 'Lord Lyon Morrow', written in a cursive style.

16 January 2018

PETITION

of

**John Michael Baillie-Hamilton BUCHANAN OF THAT ILK and of ARNPRIOR
(formerly John Michael Buchanan-Baillie-Hamilton of Arnprior)**

**Chief of the Name and Arms of Buchanan,
residing at Cambusmore, Callander FK17 8LJ**

for

**Official Recognition of Change of Name and Confirmation of Chiefly Arms
with supporters and the grant of a standard and pinsel**

FINDINGS AND REASONS

1. The Petition was lodged on 5 December 2016 with the various Inventories of Productions. The Petitioner seeks official recognition of Change of Name for himself and confirmation of the Chiefly Arms of Buchanan of that Ilk and also recognition of his entitlement to the coat of arms of Buchanan of Arnprior. In accordance with the Interlocutor dated 5 December 2016, service of the Petition was made on Michael-David Carrick-Buchanan of Drumpellier and Corsewall and Sir John Christopher Rupert Buchanan-Jardine of Castle Milk, Baronet, and advertisement of the Petition was made in The Herald, on the Buchanan Society website and on the Buchanan Society International Inc. website. The Interlocutor ordered any person claiming title or interest to lodge Answers within 42 days.
2. There were no Answers lodged at the end of this period.
3. On 26 October 2017, after consideration of the productions, I issued an Interlocutor that I required to be addressed at a preliminary hearing set down for 22 November 2017 at George House, Edinburgh. I required to be addressed on the following question:

“It appears that the Petitioner may not be the senior line. If this is the case, on what basis can I consider the Petitioner to have a claim to the chiefship?”
4. I issued my conclusions on the preliminary hearing in my Note of 16 January 2018.
5. In summary, my Note dealt with certain issues of law and the effect of my decision that, because no party had appeared or entered the process to oppose that Petition, the presumption *non apparentibus non existentibus presumuntur* applied.
6. I therefore determined that any Buchanan stirpes potentially senior to the Petitioner’s line of descent as set out in the Productions are deemed to be extinct.
7. Thereafter I set down a proof for 22 March 2018 to hear the evidence of the Petitioner’s descent and connection to the chiefly line.

8. On 22 March 2018, Senior Counsel for the Petitioner (Sir Crispin Agnew of Lochnaw Bt, Rothesay Herald) led evidence from Mr Hugh Peskett, who is a genealogist and record searcher. Mr Peskett's CV was lodged with the productions and Senior Counsel took me through the extensive experience which Mr Peskett had in the field, including being an expert witness in claims to Scottish peerage and to clan chiefships and research into baronies. Mr Peskett had worked in Scottish Records research for decades. I accepted that Mr Peskett was for this Petition an expert witness.
9. I also accepted Mr Peskett's evidence that he had been involved in extensive research over many years into the Buchanan genealogies.
10. Having considered all the evidence before me and taking into account the written submissions of the Petitioner's Senior Counsel of 6 June 2018, I found the following facts to be established:—
 - (i) that the 1953 Lyon Court matriculation by the Petitioner's grandfather, John Edmonstone Buchanan-Baillie-Hamilton (Document 7 of the Productions) sets out the descent of the Petitioner from John Buchanan 1st of Leny (charter of Leny 1392);
 - (ii) that the Lyon Court matriculation by John Buchanan of Achleshie and Arnprior dated 18 August 1810 (Document 284), wherein he is described as "representative of the Ancient family of Leny and Arnprior", demonstrates that he is representative of the first house of Buchanan of Leny and not the second house of Buchanan of Leny from which the Buchanan-Jardines of Castle Milk claim descent. This demonstrates that their genealogical link with the first house of Buchanan of Leny was broken;
 - (iii) that the 1953 matriculation of the Petitioner's grandfather above makes the Petitioner the representor of John Buchanan 1st of Leny;
 - (iv) that the evidence of Mr Hugh Peskett, which I accept, narrated with the Genealogical Abstract in the productions, demonstrates that the succession to the second house of Leny line is extinct;
 - (v) that the Petitioner's descent and that of his son and heir apparent, Angus John Buchanan of that Ilk younger (born 2 January 1996), are proven by the relevant birth, death and marriage certificates produced as Documents 290 to 298;
 - (vi) that, for aught yet seen, any branch or stirpes of the Buchanan of that Ilk family, including the principal chiefly line that ended with the death of John Buchanan of that Ilk, 22nd Chief who died without male children before 6 September 1681, that might be senior to the original Leny/Arnprior line of the Petitioner are extinct as a matter of fact, as well as law;
 - (vii) that the Petitioner for aught yet seen is entitled to have, ratify and confirm the undifferenced coat of arms of Buchanan of that Ilk in his name.

11. I have reached these findings in fact for the following reasons:

- (i) The productions contained in the Inventories of Productions satisfy me that all other senior lines of the family other than the Petitioner's are extinct, in law and in fact.
- (ii) The documentary and oral evidence of the expert witness, Mr Hugh Peskett, on the balance of probabilities, substantially supports the Petitioner's claim. I found Mr Peskett's evidence to be reliable and I also found his expert status to be well supported by his CV contained in the productions.
- (iii) I found the matriculations contained in the Lyon Court Registers, in particular the 1953 matriculation, to be supportive of the Petitioner's claim.
- (iv) Whilst not definitive, there is supportive merit that the Petitioner has associations with the chiefly lands of Strathyre and still occupies some of the lands. This is a strong indication, along with the other evidence and following the Jeffrey principle contained in *Cunninghame v Cunyngham* (1849) 11 D 1139, that the Petitioner should be recognised as Chief of the Name and Arms of Buchanan.
- (v) The evidence is convergent that the Petitioner is willing and able to assume the chiefship;
- (vi) The evidence in its totality, for aught yet seen, has proven the Petitioner's descent from the chiefly line, accepted by the 1953 matriculation, and that the Petitioner represents the first principal family to break off from the chiefly line in the 14th century and now the senior line.

12. Accordingly, I allow the prayer of the Petition and find the Petitioner entitled to (i) be recognised in the name, style and title as John Michael Baillie-Hamilton Buchanan of that Ilk and of Arnprior, Chief of the Name and Arms of Buchanan and (ii) maintain, ratify and confirm the plain undifferenced coat of arms of Buchanan of that Ilk, with supporters, in his name.

13. The Petition is **allowed**. I put the Petition out by order to discuss the blazon of a badge, standard and pinsel for which the Petitioner also seeks a grant



Dated: August 2018

Joseph John Morrow CBE QC LLD
Lord Lyon King of Arms