

In the Petition of
Sir John Christopher Foggo Montgomery Cuninghame of Kilmaurs,
Baronet of Corsehill

1. The above Petition was opposed by the Respondent, William Robert Bontine Cunninghame Graham of Gartmore, who answered the Petition.
2. The case was decided by Lord Lyon Sellar in favour of the Petitioner.
3. The Petitioner lodged a Motion (as amended by the Petitioner's Senior Counsel) in the following terms:-

"In the light of the Interlocutor of the Lord Lyon dated the 18th December 2013, (1), to find the Respondent liable to the Petitioner for the expenses occasioned by the Respondent's opposition to the petition and (2) for sanction of Senior Counsel."

4. I heard submissions from both parties and considered the document lodged by the Respondent's counsel "Declaration of Leslie M. Kenyon dated 8th September 2014."
5. I note that the Petition was concerned with the recognition of the Chief of the Name of Cuninghame. It is also clear that this case is a claim in relation to Arms which are heritable property in law.
6. In reaching my decision I followed the established Lyon Court practices in relation to expenses namely:-
 - (i) That, in general, expenses follow the successful party.
 - (ii) That the Lyon Court, so far as possible, follows the rules of the Court of Session.
 - (iii) That the appropriate scale of fees for the Lyon Court is that of the Court of Session.

The above three practices have been used for many years in the Lyon Court and reflect the specialist nature of the Court and its Scotland-wide jurisdiction.

7. In considering the points made to me in submission by both parties representatives, and in particular, the submission of Respondent's counsel that the Respondent's claim was arguable and that resolution was sought at one stage in the process, I am persuaded by the Petitioner's Senior Counsel's submissions that there are no features in this case that would warrant consideration of the departure from the principle that expenses should follow success. There are no circumstances before me which persuade me to depart from this view. In considering the submission from the Respondent's counsel I fully examined the productions provided with the Petition. I carefully considered the Respondent's submission that I should exercise discretion, which I have in relation to expenses, and that there were a range of options available to me in deciding this Motion including awarding a proportion of any expenses due. Again, I cannot identify from the material before me any circumstances that would warrant any exercise of such discretion. In short compass there are no reasons I accept to exercise discretion on this matter. These, then, are the reasons for finding that the Respondent is liable for expenses at the restricted level as given in the amended Motion before me.

8. I now turn to the question of the sanction of the Petition as being suitable for Senior Counsel. The case in my view is suitable for such sanction for the following reasons:-

(i) It is a complex case which arose out of claims for recognition as Chief of a clan. This is specialist area of law.

(ii) It involves complex and specialist Peerage Law.

(iii) It involves the application of the 18th century Law of Entail.

(iv) The case also involves the consideration of the effect of a recorded matriculation in the Lyon Court Register in the Petition.

I have also concluded that not only do the above issues make the case complex, they also reflect the specialist expertise required by those who act as representatives of the Lyon Court.

9. Therefore, I allow the Petitioner's amended Motion.

Joseph J Morrow

Lord Lyon

17 September 2014