



20 June 2016

## PRESS SUMMARY

### **In the matter of the Baronetcy of Pringle of Stichill [2016] UKPC 16**

*Referral under Section 4 of the Judicial Committee Act 1833*

*Privy Council Reference No 0079 of 2015*

**JUSTICES:** Lord Neuberger, Lady Hale, Lord Mance, Lord Clarke, Lord Reed, Lord Hughes and Lord Hodge

### **BACKGROUND TO THE APPEAL**

On 5 January 1683 Charles II granted the Baronetcy of Stichill (“the Baronetcy”) to Robert Pringle of Stichill “and the male heirs of his body”. The eighth baronet was Sir Norman Robert Pringle, who lived from 1871 to 1919. He married Florence Vaughan, who gave birth to Norman Hamilton Pringle (“Norman Hamilton”) and subsequently to two more sons, the first of which was Ronald Steuart Pringle (“Ronald Steuart”), who died in 1968. Norman Hamilton was enrolled without opposition as the ninth baronet. When he died in 1961 his son Sir Steuart Robert Pringle (“Sir Steuart”) was enrolled without opposition as the tenth baronet. Sir Steuart died in April 2013.

The two claimants in this matter are Sir Steuart’s son, Simon Robert Pringle (“Simon”), and Norman Murray Pringle (“Murray”), son of Ronald Steuart. Following Sir Steuart’s death, both Simon and Murray registered claims to succeed to the Baronetcy. Simon’s claim is made on the basis that, as Sir Steuart’s male heir, he is entitled to be enrolled as the 11<sup>th</sup> baronet. Murray, however, claims that Norman Hamilton was not the legitimate son of the eighth baronet and that accordingly the true ninth baronet was his late father, Ronald Steuart. Murray thus claims to be the true tenth baronet.

Murray’s claim relies upon DNA evidence obtained as part of “the Pringle Surname Project”. This was founded by Murray to determine the chieftainship of the clan Pringle, and the late Sir Steuart provided his DNA for the project. Expert opinion on the totality of the DNA evidence was that it provided “very strong support” for the view that the eighth baronet is grandfather to Murray but not Sir Steuart. Simon does not dispute the DNA evidence, but he raises four arguments as to why it should not be admitted on public policy grounds. By this reference the Board is required to advise Her Majesty as to (i) who is entitled to be entered on the Official Roll of the Baronetage as the Baronet of Pringle of Stichill and (ii) whether the DNA evidence should be admitted in order to determine the first question.

### **JUDGMENT**

The Board finds that there is no legal ground for excluding the DNA evidence, which demonstrates to a high degree of probability that Norman Hamilton was not the son of the eighth baronet. The Board therefore concludes that (i) Simon is not the great grandson of the eighth baronet and is not the heir male of the first baronet; and (ii) Murray is the grandson of the eighth baronet and is, as the heir male of the first baronet, entitled to succeed to the Baronetcy. Lord Hodge gives the opinion of the Board.

### **REASONS FOR THE JUDGMENT**

Although the Board refers to English law, its advice ultimately rests on Scots law (as this governs questions as to entitlement to the Baronetcy). The Board proceeds on the basis that the relevant domicile of the eighth baronet was Scotland, but the question of domicile is not important because (a)

the central issue is not the legitimacy of Norman Hamilton but his paternity, which is a question of fact, and in any event (b) unless the DNA evidence is to be excluded, it is of sufficient strength to rebut an evidential presumption of paternity under either Scots or English law [24-26].

The Board notes that under Scots law, a title of honour vests “iure sanguinis” (i.e. by right of blood) in the heir specified in the grant. The true question on the death of the eighth baronet was “who was the male heir of the first baronet?” The question now is the same [27-29].

The Board observes that Scots law long had a strong presumption of paternity; in earlier times when illegitimacy carried social stigma, proof beyond reasonable doubt was required to rebut the presumption. Now, however, the Law Reform (Parent and Child) (Scotland) Act 1986 provides that the presumption of paternity may be rebutted by proof on the balance of probabilities [30-31]. In the past, when many landed estates were entailed, there was a strong policy of ensuring social stability by keeping together titles of honour and land. Similarly, there was an anxiety to protect the reputation of noble families. Challenges to a person’s right to inherit were decided on the evidence, but a heavy onus lay on the challenger. Long delays would further increase the onus owing to evidential difficulties. However, developments in science mean that evidence can now be used to establish paternity to a high degree of probability. Such evidence, if admissible, can readily rebut evidential presumptions and DNA evidence in particular is widely accepted as a reliable means of ascertaining a person’s identity in civil and criminal matters [32-35 & 42]. The position is similar under English law [36-41].

#### *Admissibility of the DNA evidence*

The Board rejects Simon’s four arguments as to why the DNA evidence should be excluded:

- (1) Murray’s claim has not been extinguished as a result of the passage of time by the Scottish law of prescription. Prior to 1973, the law of positive prescription did not protect the titles of the ninth and tenth baronets (i.e. Norman Hamilton and Sir Steuart) because it protected only heritable property (and not merely heritable titles) [43-49]. From 1973, and consistently with the prior law, the right to succeed to an honour was confirmed as imprescriptible by paragraph (h) of Schedule 3 of the Prescription and Limitation (Scotland) Act 1973 [52-61].
- (2) Murray’s claim is not barred by the defence of mora, taciturnity and acquiescence, owing to the failure of Murray or his father (Ronald Steuart) to claim the Baronetcy sooner. First, the defence is a personal bar directed against the claimant, so the inaction of Murray’s father is irrelevant. Secondly, Murray did not know of the illegitimacy of Norman Hamilton until he received the DNA results. Thirdly, the defence operates as a shield and not as a sword; even if it succeeded to defend Murray’s claim, it could not establish Simon’s claim [62-64].
- (3) Murray did not breach an obligation of confidentiality owed to Sir Steuart, or misuse Sir Steuart’s DNA. In providing his DNA for the Pringle Surname Project, Sir Steuart must have been aware that if his DNA excluded him from a claim to be the clan chief, it might also form the basis of a challenge to his entitlement to the Baronetcy [65-68].
- (4) Even if Murray’s use of Sir Steuart’s DNA amounted to breaches of the statutory duties owed by data controllers under the Data Protection Act 1998, it would be a disproportionate response to exclude evidence of such probative quality from consideration [69-79].

Having found the DNA evidence is admissible, the Board concludes that it is sufficient to rebut the evidential presumption that Norman Hamilton was the legitimate son of the eighth baronet [80-82].

*References in square brackets are to paragraphs in the judgment*

**This summary is provided to assist in understanding the Committee’s decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: [www.jcpc.uk/decided-cases/index.html](http://www.jcpc.uk/decided-cases/index.html)**