
LETTERS TO THE EDITOR

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Inheritance of Baronies

Dear Sir,

It is an established fact under Scottish feudal law that baronies are (or were until November 2004) impartible hereditaments, that is they cannot be divided. This meant that on succession by daughters the lands were divisible but the barony itself and other impartible elements passed to the eldest daughter. According to Sir Malcolm Innes of Edingight ('The Baronage of Scotland: The History of the Law of Succession and the Law of Arms in Relation Thereto', The Scottish Genealogist, June 2000) these impartible elements included the superiority, the caput of the barony, the baronial jurisdiction, the Principal Mansionhouse (seat of the family), any titles of honour and any heraldic additaments (chapeau and supporters).

On the other hand I M Sanders (1960) in his 'English Baronies' (p.v) states that '*the fractions of a baronia which was divided between co-heirs maintained their identity [as baronies]*' and that '*the tenure of even the smallest fraction of a barony conferred baronial status on the lord of these lands*'.

If both the above are accurate I am curious as to how such a fundamental difference between the feudal laws of England and Scotland could have arisen. It appears that under English feudal law the number of barons must have increased inexorably with the failure of male issue, which I believe was around 25% per generation.

Yours sincerely,

Graham Senior-Milne (formerly Milne)

FMG member Chris Philips comments:

It would be interesting to know exactly what aspect of baronial status Sanders had in mind when he wrote that it could be conferred by the tenure of a small fraction of a barony. The question of the inheritance of baronies was discussed at length by H Arthur Doubleday (1916) in CP 4, Appendix H. His conclusion was that while the lands of a barony could be partitioned between coheirs, '*the eldest daughter had a preferential claim to the esnesia, that integral part of the tenure which carried with it, according to the nature of the fief, either the right to the name of an earl or the right or duty of representing all the service due from the barony of a baron*' (p.676). Elsewhere it is emphasised that the *caput* of the barony was not partible (p.685). So the situation in England in the thirteenth century (the period which Sanders was discussing) seems entirely similar to that described by Innes. Of course, the much later doctrine of 'abeyance' in peerage law also expressed the impartibility of the title of a baron, though in that case rather than passing to the eldest daughter the title would go into suspension for as long as there remained more than a single heir.