

**NOTES ON DIGNITIES  
IN THE PEERAGE OF  
SCOTLAND**

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Notes on Dignities in the Peerage of Scotland by William Oxenham Hewlett

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**WILLIAM OXENHAM HEWLETT**

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Notes on  
DIGNITIES  
IN THE  
PEERAGE OF SCOTLAND

WHICH ARE

Dormant or which have been forfeited.

BY

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CORRECTION.

Page 70, line 2—*For* "Wedderburn" *read* "Marchmont."



## INTRODUCTION.

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THE limitations contained in Letters Patent or Charters creating Scottish Titles of Honour vary so much, and special destinations are so numerous, that few of the Dignities in the Peerage of Scotland which appear at the present time to be either dormant through non-claim, or to be suspended in consequence of attainders for High Treason, can be in truth extinct. It has, therefore, been thought that short accounts of such Dignities might prove interesting.

In England claims to Baronies in abeyance, created by Writ of Summons to and sitting in Parliament, which are descendible to heirs general, are not unfrequent, though necessarily limited in number: but claims to titles above the rank of a Barony, can for the most part only arise on questions of disputed succession, or, as in the Devon and Wiltes cases, upon the construction to be placed upon limitations in Letters Patent, other than to heirs male of the body, or upon the validity of the destinations of the Peerage as limited in the Letters Patent, as in the Buckhurst case, or upon the question whether the Letters Patent confer a right to a seat in the House of Lords, as in the Wensleydale case: but in Scotland, where any Peer may impeach the title of another at the election of Representative Peers, and where the destinations of Dignities are so various, and before the Union were so constantly altered on the application of the Peer in possession, the heirs, whether heirs male, of line or provision, substitute or general,

must of necessity be extremely numerous, and claims must consequently be frequent.

The doctrine of abeyance did not prevail in Scotland, and there are not any co-heirs or heirs portioners in relation to Scottish Peerages, a Dignity descendible to heirs of line descending, failing heirs male of line, to the eldest daughter or her representatives.

All Scottish Dignities were in their origin territorial, that is, incident to or dependent upon tenure: and they appear to have gone to heirs general in cases in which the lands were destined to such heirs. This conclusion is supported by the law as laid down on the claims to the Crown of Scotland, the Crown having been awarded to Baliol, the eldest co-heir, in 1292; on which occasion the Lords Auditors declared that the principle of non-partition between co-heirs, which governed the descent of the Crown, applied also to territorial Earldoms.

Cases of the descent of Peerages in the female line occur in the succession to the Herries Peerage, the Barony of Balfour of Burley, constituted by Letters Patent in 1607, the Barony of Saltoun, recognized by King Charles the Second in 1670, in the Sempill case in 1685, and in the Sutherland case in 1771; and, indeed, wherever the facts prove a descent to a female, or to the representative of a female, a destination to heirs of line has been held to exist.

After the Sovereigns of Scotland ceased to create Dignities purely territorial, Peerages were created either by inserting words of creation in Charters granting or erecting territorial Earldoms or Lordships, by investiture only, or by special Charters or Letters Patent, accompanied by a solemn inauguration by Belting or Cincturâ Gladii, analogous to feudal investiture. (Earl-

doms of Home and Perth in 1605, Wigtoun Earldom in 1606, Buccleuch Barony in 1606, and Douglas Marquissate in 1633.) Investitures were, however, afterwards dispensed with by special dispensations from the Crown.

Previously to the accession of King James the Sixth to the throne of England, the creation of Peers of Scotland merely by Letters Patent was rare; but towards the close of his reign, grants by Letters Patent became the ordinary mode of conferring Dignities in Scotland. The grants were sometimes accompanied by the ceremony of investiture, sometimes they were declared sufficient of themselves, and sometimes the ceremony of investiture was dispensed with by express words. Creations by Writs of Summons were unknown in Scotland, for as there was only one Chamber of Parliament there could be no separate House of Peers. Prior to 1582 all the Members of the Parliament, whether they sat as Spiritual or Temporal Lords of Parliament, or as Tenants in chief of the Crown (*a*), or as Commissioners of the Royal Burghs, were called by a general summons to attend; and special Writs of Summons to any of the Lords of Parliament, although occasionally issued, were rare, and the Lords of Parliament sat under their right as Lords of Parliament and not by virtue of the Writs which might have been directed to them.

Although the Letters Patent creating Dignities generally made destinations of the Peerage conferred by them, it was by the law of Scotland competent to the Grantee

(*a*) Although the Act of 1427 (Acts of the Parl. of Scot. V. 2, p. 15, No. 2) authorized the Lesser Barons or Tenants in Chief of the Crown to elect Commissioners, the Act does not appear to have been acted upon, and there are no returns of Commissioners previously to 1587 upon record. The Lesser Barons sat in person and not by Representatives when they attended Parliament until the Act of 1587 was passed. (Acts of the Parl. of Scot. V. 3, p. 509, No. 120.)