

**Opinion from *Burke's Peerage & Baronetage*
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The newly published *World Orders of Knighthood and Merit* published by Burke's Peerage and Gentry (2006) includes an article on the Convention of the Baronage of Scotland. In the first place it has to be questioned whether the Convention should properly be listed as the representative organisation of the baronage of Scotland, as it has apparently abrogated that status by closing its ranks to new members. This is unlike the concomitant organisations listed in this section of the book, such as the Standing Council of the Baronetage and the Imperial Society of Knights Bachelor, which admit everyone eligible to membership.

Unfortunately the article, written by Niall Livingstone of Bachuil, needs substantial revision. A particularly glaring fallacy is Mr Livingstone's assertion that the Honours (Prevention of Abuses) Act 1925 prohibits the sale of Scottish baronies, which is quite wrong.

The 1925 Act makes it an offence to either make or offer or obtain or attempt to obtain any gift money or valuable consideration "to procure the grant of a dignity or title of honour".

In the first place this refers to grants, that is *new* grants, not transfers of existing previously granted dignities or honours. In the second place a feudal barony is not a title of honour. That was settled by the House of Lords in the Berkeley case in 1861 [8 HLG 21]. In that case the petitioner claimed to possess an English feudal barony, and that this entitled him to a seat in the House of Lords. He challenged the established case law that English feudal baronies had ceased to exist following the abolition of feudal law in England by an Act of 1660, citing a clause which exempted titles of honour from its provisions, and claimed that a feudal barony was a title of honour. The House of Lords ruled that feudal baronies were not titles of honour, and therefore not exempt from the 1660 Act (which applied only in England).

To quote authority “**Titles of Honour.** By convention the monarch’s powers in relation to honours are exercised on the advice of the Prime Minister. The monarch enjoys the sole right of conferring all titles of honour, dignities and precedence, and no subject can acquire a new title or dignity except by grant from the Crown, unless it be conferred by Act of Parliament, or acquired by marriage (in the case of a female), or obtained by prescription, which, however, presupposes a lost grant.” [*Halsbury’s Laws* vol 8(2) para 831.]

The abolition of feudal law in Scotland by the 2000 Act abolished the Crown superiority over feudal baronies, and therefore abolished any theoretical requirement for Crown charters in progress on transfer of baronies, and the absence of theoretical or real Crown charters means that the 1925 Act cannot apply.

Mr Livingstone cites in support of his argument the Spynie charter of 1590 [*Reg Mag Sig* V.1727] which is singularly inappropriate, as this charter is a particularly atypical exception in its structure, about which experts debate and which arguably created a peerage. [*Scots Peerage* vol VIII pp.96-97; Riddell *Peerage Law* vol II p.656; proceedings in the Earldom of Annandale case 1985, etc.] This charter does not support his argument in any way.

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Members of the Baronage of Scotland should ignore Mr Livingstone’s assertions.