

## Address to the Derbhine by Alasdair Roy MacAulay

Sir! (to Ross Herald) Fellow Members of the Derbhine, Fellow Members of Clan MacAulay!

“A chiefless clan, like an orphan family, is an imperfect group. Continuity under the bond of kin embodied in the perpetuation of the parental tie is the whole basis of the clan concept. A clan without an hereditary chief is a sorry organisation, alien to the whole idea of Celtic civilisation” ....” The question of succession to chiefship of, and chieftaincy in, clans, is therefore necessarily of the utmost importance and widest interest to Scotsmen.”

I quote from “Clans, Septs and Regiments of the Scottish Highlands” by Frank Adam and revised by Sir Thomas Innes of Learney.

Today marks a watershed in the fortunes of our Clan for we have endured some 250 years without a leader, without a rallying point, without a way to gather, without that which no clan is a clan; a Chief!

It is important to remember that our Clan has resurrected itself. It is a Movement, carried by the will of the members of the Clan, you and I my friends, to find one another, to join in kinship and friendship with one another, and it is focussed around one man, the man who has led us to this historic moment, the man whom we propose to present to Lyon as our Candidate, the man we want to be our Chief.

But before we reach this point there are a number of very serious questions to be answered because the proceedings of this ad hoc Derbhine will be weighed carefully in a Scottish Court of Law where the Rules of Evidence pertain and whose Judge, the Lord Lyon King of Arms, in his capacity both Ministerial and Judicial will decide if our petition is acceptable and legally sound.

The last Chief of our Clan died in the unhappiest of circumstances. Destitute but for the help of a very few loyal friends, his possessions and land sold to meet his debts. Debts that he inherited, and could not escape.

In fairness too I should say that the popular belief in the wastrel nature of our late Chiefs does not stand up to investigation, and further research will reveal a more honourable picture. Nonetheless, without having nominated, and I quote Adam again “as was his chiefly duty to do” a Tanist, meaning his successor. A ruin so complete that the once distinguished House of Ardencaple, the Chiefship of Clan MacAulay and with it the Undifferenced Arms fell into Dormancy.

This, from this distance in time might lead us to suppose that the matter rests there and that as no person has come forward with a claim through inheritance to the Undifferenced Arms before the deadline set by Lyon, the 1st of January, 2001, then the old Chiefly line is indeed extinct.

However, for the sake of clarity, now and in the future, I would like go deeper into the subject.

Common sense tells us that our last Chief, although he died without issue, need not have died without suitable heirs, and that an ancient lineage must produce, in the hundreds of years of its existence, many Cadets and collateral lineages, of brothers and sisters, of uncles, aunts and cousins.

This is indeed the case with Ardencaple, and much research has been done to establish family trees and to try to find living descendants. There are however a number of difficulties involved. In the case of there being no heir apparent or Tanist, then a clan, through its senior officers must seek a suitable successor who must be asked whether they are entitled to the honour and whether they are willing to accept it.

Such a person must reconstitute the Undifferenced Arms within a reasonable time. I quote Adam once more, “immediate reconstitution...is technically requisite in every case”

To quote Lord Lyon, Innes of Learney as to what might then be a reasonable time, in the case of MacNab as recorded in the Lyon Court Reports, 1957, “who did not then, and have not since, and the Interval would have been a markedly long one (from 1894 to 1954- 60 years) taken on the name....., which according to Sir Aeneas MacPherson, the heir-male must do within “due time” failing which the Chiefship passes to the next heir-male”.

Clearly 250 years is not a reasonable time. Further, in the case of non acceptance the principle of non apparentibus non existentibus applies(113) That is in plain English, who does not appear does not exist. For whatever reason, and we can only speculate on this, neither Ardencaple, nor any other member of his immediate family, nor indeed any member of the Clan registered or matriculated Arms in 1678 when they, and all Armigers in Scotland, were required to do so by Act of Parliament.

Nor was any tailzie or destination recorded in the name of MacAulay Neither then nor at any point between then and the demise of the Chiefly line. Indeed, up until the second half of the last century no clan member, let alone any person claiming direct descent, has approached Lyon with a petition to matriculate Arms.

This has the effect that such persons as might have been eligible are untraceable in the normal way. Further, on the death of the last Chief, no heir apparent, no tanist, no cadet, no armiger came forward, no effort was made to establish a successor and no ad hoc Derbhine was held which is necessary in the case of intestate succession, and no-one took on the name.

This has left us with a situation where we can only say that this line is lost, for in not coming forward, for not matriculating in the intervening two and a half centuries, and not presenting themselves to Lyon before the first of this year, they, should such persons exist, have become invisible to the law; Non apparentibus, non existentibus.

In this sense we can state that the chiefship is de jure vacant.

We know that the last Chiefs sister was married to Smollett of Bonhill and that Bonhill held much of the estates debts. Further, that an attempt was made by Bonhill to establish a line of succession in seventeen forty two, some 20 years before the Chiefs death. We have the clear refusal of Alexander MacAulay of Dublin to preserve, quote "the Designation and Estate of my ancestors" to take over the honour and the debts, which would have placed him, as cadet to Ardencaple next in line.

By doing so he became "conventionally dead"(186) in terms of succession to the undifferenced arms and therefore both he and his heirs are ineligible and cannot be considered by the Derbhine. In that we know that one cadet was approached we can infer that others were also approached. Further, Bonhill's wife was herself capable of matriculating the undifferenced arms, for in Scotland females may also inherit. In such cases, to avoid confusion, the husband of the heretrix is expected, within a reasonable time, to take on the name. (184) This did not take place.

Therefore we must conclude that they rejected the honour and they and their heirs are also in this sense, "conventionally dead".

And in this sense we can state that the chiefship is, de facto, vacant.

It is important today that we consider these facts carefully. We must, with a clear conscience be able to state that, to the utmost of our knowledge, the now dormant line of Ardencaple is utterly lost, that it is indeed extinct.

I think we can in all fairness do this. Then we may proceed to nominate from amongst ourselves that person whom we hold most suitable to be presented as our candidate, to Lyon. I have put forward arguments which I believe clearly prove that on the death of the last Chief all those who were in a position to take on the responsibility were fully aware and fully informed, and chose not to do so and that this is and was an abdication, not only of responsibility, but an abdication with definite legal consequences in relation to the Chiefship of our Clan.

To quote Sir George MacKenzie, "Chief succeeds Chief in his hereditary honours as they would succeed to a crown" (154)

Some persons hold that we are over eager to settle the dormancy and present a candidate to Lyon as suitable to be the "representer of our community" and I will now address myself, also on behalf of the Derbhine, to these persons by quoting from "Clans, Septs and Regiments" again. (158) "Chiefship of an honourable community is....a title and dignity....held of the Crown, and anyone who "challenges forth any name of tittle or honour or dignitie" (Nisbet) must justify the same by the Law of Arms.....and Lyon, in 1672 held that an "assumption of chiefship without his permission was unlawful".

Further "no-one is entitled to attack a Right of Arms he does not himself claim" (580) Persons who may feel entitled to the undifferenced arms after this ad hoc Derbhine should, amongst other things, consider this, and persons who diffusely support unmade claims should do their homework. The rules governing succession are clear and were not followed. The path was open and they chose not to take it. Once again to quote Sir Thomas Innes of Learney, " the cataclysm that befalls any clan or family when it's Chiefship falls dormant should be so far as possible avoided by the ancient machinery, which has come down in Lyon Court and Office for preserving these important social institutions". It is the intention and in the spirit of the law that dormancy should not continue indefinitely, and that is why we are here today.

Therefore the Undifferenced Arms should formally return from whence they came, to the Crown, and be at the disposal of the Sovereigns Supreme Officer of Honour, The Lord Lyon King of Arms.

Thank you, Sir (Ross Herald) Thank you for your patient attention.