

**In the Court of the Lord Lyon**

**in the**

**PETITIONS**

**by**

**James Andrew Carruthers of Dormont**

**claiming to be entitled to recognition as Chief of the Name and Arms of Carruthers  
as “Carruthers of Holmains”**

**and**

**Dr Simon Peter Carruthers**

**claiming to be entitled to recognition as Chief of the Name and Arms of Carruthers  
as “Carruthers of Holmains”**

**FINDINGS AND REASONS**

**Introduction**

1. On 13 December 2017 James Andrew Carruthers of Dormont (hereafter “James Andrew Carruthers”) lodged a petition claiming the designation of Holmains and seeking to be Representer of the Name and Arms of Carruthers.
2. On 15 January 2018 the Lord Lyon appointed the petition to be intimated on the walls and granted warrant for service of the same upon Dr Simon Peter Carruthers (hereafter “Simon Peter Carruthers”), who was given 21 days to lodge Answers.
3. On 16 February 2018 the Lord Lyon on an unopposed motion by Simon Peter Carruthers extended the period for lodging of Answers until 9 March 2018. The Lord Lyon allowed the same petitioner a further extension of the period for lodging Answers until 20 April 2018.
4. A hearing was set down for 31 October 2018 in George House, 126 George Street, Edinburgh, for the petitioners to lead evidence of their claims.
5. Having heard submissions by the parties, the Lord Lyon issued an interlocutor:
  - (i) adjourning the hearing to a date to be fixed;
  - (ii) ordering the parties to agree and lodge with the Lyon Court a family tree in respect of the Carruthers of Holmains no later than 4 February 2019;
  - (iii) ordering the petitioner Simon Peter Carruthers to lodge with the Lyon Court and intimate to James Andrew Carruthers a copy of the speaking note to which he made frequent reference at the hearing on 31 October 2018, no later than 15 November 2018;
  - (iv) ordering the parties to lodge with the Lyon Court and intimate to each other copies of all documents which they were relying upon to prove their claims

and any connection with the estate of Holmains and which they believed was evidence that supported their claims, no later than 4 February 2019.

6. It should be noted that both parties were unrepresented at the hearing on 31 October 2018 and had not exchanged the documents upon which they were relying.
7. By interlocutor of 6 February 2019, the Lord Lyon fixed 19 March 2019 for a hearing in George House, 126 George Street, Edinburgh, and ordered each party to lodge a Note of Argument setting out the arguments advanced in support of that party's claim no later than 12 March 2019.
8. The following documents were lodged:
  - (i) Inventory of Productions and 2<sup>nd</sup> Inventory of Productions for Simon Peter Carruthers;
  - (ii) Note of Argument for Simon Peter Carruthers containing a list of references.
9. By the date of the hearing on 31 October 2018, Simon Peter Carruthers was represented by Sir Crispin Agnew of Lochnaw, QC, Bt, Rothesay Herald. The petitioner James Andrew Carruthers did not appear and had intimated he would not attend.
10. As noted above, each of the petitions before the Court sought recognition of the petitioner as Chief of the Name and Arms of Carruthers as "Carruthers of Holmains":
  - (i) The petition by James Andrew Carruthers claimed that, as heir male of John Carruthers 9<sup>th</sup> of Holmains, who matriculated c. 1672, he was entitled to the recognition;
  - (ii) The petition by Simon Peter Carruthers claimed that, as heir female through John Carruthers 12<sup>th</sup> of Holmains, the heir male of John Carruthers 9<sup>th</sup> of Holmains, he was entitled to the recognition.
11. The claim of James Andrew Carruthers is set out in his petition dated 13 December 2017 and can be summarised as follows:
  - that he was born on 15 August 1947, the elder son on Simon Francis Carruthers of Dormont, who was the third but only son leaving male issue of Francis John Carruthers of Dormont, heir of William Carruthers, second son of John Carruthers 5<sup>th</sup> of Holmains (died 1580) and his wife Blanche Murray of Cockpool;
  - that on 7 December 1993 arms were recorded in the Public Register of All Arms and Bearings in Scotland (**the Public Register**) (Volume 76 Folio 22) in the name of the petitioner; and on 29 May 1913 arms were recorded in the Public Register (Volume 22 Folio 9) in the name of his grandfather, Francis John Carruthers, wherein his grandfather's descent from the said John Carruthers 5<sup>th</sup> of Holmains is set forth;
  - that on 18 May 1854 John Peter Carruthers-Wade, the only son of John Peter Wade and his wife Rachel, daughter and heiress of John Carruthers of Holmains and Kirkwood (died 1809), in obedience to a Deed of Entail executed by his aunt, Mrs Elizabeth Maria Carruthers of Holmains, sister of the petitioner's mother,

recorded in the Public Register (Volume 5 Folio 53) the Arms of Carruthers of Holmains quarterly, second and third, with the Arms of Wade;

- that Peter John Carruthers-Wade died without issue on 1 March 1873, when the succession opened to his nephew, William Mitchell-Carruthers, grandson of Susan Carruthers of Holmains, sister of the said Rachel and Elizabeth Maria Carruthers of Holmains;
- that the said William Mitchell-Carruthers received a grant of arms by Letters Patent dated 30 June 1876, recorded in the Public Register (Volume 10 Folio 15), allowing the Arms of Carruthers of Holmains to be borne quarterly, first and fourth, with the Arms of Mitchell;
- that the petitioner is heir male to the said John Carruthers of Holmains, whose greatgreatgreatgrandson John Carruthers 9<sup>th</sup> of Holmains recorded Arms in the Public Register (Volume 1 Folio 1-8) c. 1672;
- that no descendants of the House of Carruthers of Mouswald has recorded Arms in the Public Register;
- that James Andrew Carruthers is desirous to matriculate the Arms of Carruthers of Holmains without difference.

12. In a letter dated 13 April 2018, the petitioner James Andrew Carruthers gave written responses to the petition of Simon Peter Carruthers stating:

*“1. Without undertaking, at some expense, a search of the Register of Sasines I am unable to confirm the extent to which the lands of Holmains have changed ownership over the years but I hope you will allow me to make a number of observations viz:*

*(i) The land at Kirkhill farm, of which the lands at Holmains is a part, was sold by my grandfathers’ trustees in 1968. A wood in the northeast of the farm was sold to Messrs Bell Macdonald of Rammerscales (the neighbouring estate) and the remainder of the farm to The Lausen family.*

*(ii) I have, in my possession, an illustrated scroll gifted by the tenants of Dormont Estate to my great grandfather, William Francis Carruthers on his reaching the age of majority on 5<sup>th</sup> February 1888. Two of the signatories are James and John Hutchison of Kirkhill. You have a copy of this document.*

*7. It is my understanding that the Grant of Arms was by way of a new grant and not a matriculation as Carruthers claims.*

*8. Carruthers offers no proof that the heirs to which he refers exist. Carruthers refers to a 1934 publication by Messrs Carruthers and Reid but this can only be regarded as a guide.”*

13. In his email dated 5 February 2019, the petitioner James Andrew Carruthers stated that he did not intend to appear, that the information which he had already provided should be

considered in reaching a decision on this matter and that he would not attend the second hearing.

14. At the hearing on 31 October 2018, James Andrew Carruthers relied on the petition he had lodged and the information provided to the Court.
15. The petitioner Simon Peter Carruthers was represented by Rothesay Herald, who lodged a Note of Argument and made the following submissions:
  - (i) that the estate of Holmains might originally have been settled on heirs male in terms of a Crown Charter of 1699;
  - (ii) that John Carruthers 12<sup>th</sup> of Holmains resettled the estate and the Name and Arms on his heirs, in particular his daughters, in terms of (1) a Crown Charter of 1755 and (2) his Marriage Contract with Charlotte Laurie of 1762;
  - (iii) that family portraits and library passed to the unmarried daughter of John 12<sup>th</sup> of Holmains, Charlotte, and the family charter chest (plus charters) passed to Christian, daughter of John 12<sup>th</sup> of Holmains, and then to William Mitchell Carruthers, which is indicative of the family heirlooms being settled on this branch of the heirs of John 12<sup>th</sup> of Holmains in circumstances where the estate had already been sold by his creditors by that date;
  - (iv) that the charter chest and charters ultimately passed to Douglas Carruthers and the charters were deposited in the Scottish Record Office.
  - (v) that the custody of the Title Deeds usually passes to the person with the chief interest in the property and to the eldest heir-portioner (coheir), which again supports the position that the right of succession of the Holmains estate (had it not already been sold) and hence the coat of arms passed to the person having the custody of the family Title-Deeds;
  - (vi) that Simon Peter Carruthers is now the heir descending from Susan Carruthers, third daughter of John Carruthers 12<sup>th</sup> of Holmains, and entitled to succeed as Chief of the Name and Arms of Carruthers, the senior line of heir and succession from John Carruthers 12<sup>th</sup> of Holmains being extinct.
16. There were further submissions with regard to the petition of James Andrew Carruthers:
  - (i) that the claim of James Andrew Carruthers is excluded (1) by the settlement of the estate and the Name and Arms of John Carruthers 12<sup>th</sup> of Holmains to his heirs and to his daughters and their heirs by the 1755 Charter and (2) by his Marriage Contract and the subsequent settlement of the family heirlooms on his daughters Christian and Charlotte and the custody of the family charters;
  - (ii) that James Andrew Carruthers, who descended from John 5<sup>th</sup> of Holmains, has not extinguished their male lines with prior claim;
  - (iii) that if the destination of the Crown Charter of 1699 of the lands of Holmains to George Carruthers 10<sup>th</sup> of Holmains and his male heirs, which failing to his heirs and assignees whatsoever, is construed as meaning to the “heirs of the

male body”, then it is submitted that James Andrew Carruthers is in any case excluded because the heirs of George 10<sup>th</sup> of Holmains would have a prior claim upon the extinction of the heirs male of the body;

(iv) that insofar as the Dormont line may have bought some of the Holmains land when it was sold by the creditors of John Carruthers 12<sup>th</sup> of Holmains, this is irrelevant as it was purchased on the open market after the creditors had put it on the market. He did not succeed to the estate. In any event there is no evidence of what was purchased or when. Insofar as James Andrew Carruthers claims to maintain the access (over someone else’s land) to the restored churchyard and Carruthers graves, this does not give him a right to the chiefship;

(v) that if James Andrew Carruthers had a right to make a claim, through his failure to make the claim since 1809, when John Carruthers 12<sup>th</sup> of Holmains died, and his matriculations in 1913 and 1993 as Carruthers of Dormont, he has lost the right to make a claim now, particularly having regard to the 1854 Carruthers-Wade and the 1876 Mitchell-Carruthers matriculations which were not challenged.

17. Before I deal with each of the claims in turn, I turn to the Joint Minute of the parties which was submitted to the Court and sets out the agreed genealogies, inviting me “on the basis of the agreed genealogies, and having regard to the other documentation lodged and to be lodged, to determine which of the Petitioners is entitled to the representation of the Carruthers of Holmains in succession to John Carruthers 9<sup>th</sup> of Holmains who matriculated the ensigns armorial of Carruthers of Holmains in the Public Register of All Arms and Bearings in Scotland c. 1672 and thereafter, if necessary and so advised, to require any further genealogical proof from that Petitioner”.
18. It is accepted by the parties that the descent of James Andrew Carruthers from John Carruthers 5<sup>th</sup> of Holmains (died 1580) is set out in (1) the petitioner’s 1993 matriculation and (2) the 1913 matriculation of Francis John Carruthers of Dormont.
19. The parties also accept that Simon Peter Carruthers’ descent as heir of John Carruthers 12<sup>th</sup> of Holmains is established by the documentation lodged, which shows that–
  - (a) Simon Peter Carruthers is the heir male of William Mitchell-Carruthers (matriculated in 1876);
  - (b) William Mitchell-Carruthers was the heir of John Carruthers 12<sup>th</sup> of Holmains through his grandmother Susan, third daughter, the eventual heir of John Carruthers 12<sup>th</sup> of Holmains as set out in the 1876 matriculation;
  - (c) as such, Simon Peter Carruthers is heir of the said John Carruthers 12<sup>th</sup> of Holmains; and
  - (d) the said John Carruthers 12<sup>th</sup> of Holmains was the heir male of John Carruthers 9<sup>th</sup> of Holmains. who matriculated the ensigns armorial of Carruthers of Holmains in the Public Register c. 1672.

The genealogies agreed by the Joint Minute were set out in an annex.

## **Petition of James Andrew Carruthers**

### **Findings in Fact**

20. Having examined the totality of the evidence and taking into account the submissions and material produced by this petitioner alongside the Joint Minute of agreement on the genealogies, I find the following facts in the petition of James Andrew Carruthers to be established:

- (i) The petitioner was born in Dumfries on 15 August 1947 and is the elder son of Simon Francis Carruthers of Dormont;
- (ii) The petitioner lives at Dormont, Lockerbie, Dumfriesshire, DG11 1DG;
- (iii) The petitioner is the descendant of John Carruthers 5<sup>th</sup> of Holmains (died 1580);
- (iv) The petitioner's descent in relation to the above is set out in (1) the petitioner's 1993 matriculation and (2) the 1913 matriculation of Francis John Carruthers of Dormont recorded in the Public Register;
- (v) The petitioner, who descends from John Carruthers 5<sup>th</sup> of Holmains, has not extinguished the heir males with any prior claim within the agreed genealogy;
- (vi) The destination contained in the Crown Charter of 1699 of the lands and barony of Holmains to George Carruthers 10<sup>th</sup> of Holmains, namely "and his heirs males, which failing to his heirs and assignees whatsoever", is to be construed as meaning "heirs male of the body". Accordingly, this excludes the petitioner, as the heirs of George 10<sup>th</sup> of Holmains would have a prior claim upon the extinction of all his heirs male of the body;
- (vii) The petitioner's statement that his line had bought some of the Holmains lands when it was sold by the creditors of John Carruthers 12<sup>th</sup> of Holmains provides no foundation for a claim to the Name and Arms of Carruthers of Holmains, as the lands were purchased on the open market after the creditors had put the lands on the market. The petitioner did not succeed to the estate, as there is in general terms no evidence of what the purchase was or when it took place.

By way of comment, whilst admirable, the petitioner's claim to maintain access to the restored churchyard and Carruthers graves cannot in any sense be seen to give him any right to the Name and Arms of Carruthers of Holmains.

- (viii) I do not find, on the basis of the petitioner's claim and family genealogy from the third but second surviving son, William Carruthers 1<sup>st</sup> of Dormont, as set out in the genealogy attached to the Joint Minute and also in the matriculations of 1913 and 1993, that the other male descendants of John

Carruthers 5<sup>th</sup> of Holmains with potential claims to be the heir male are extinguished. There are other descendants who require to be extinguished before the petitioner can establish his right.

### **Reasons for decision**

21. Having considered all of the evidence before me, including all the material provided to me by this petitioner and his submissions at the first hearing, I have reached the conclusion that the petitioner has not proved his case on the balance of probabilities, and accordingly his petition cannot succeed. There is insufficient evidence to be able to establish the links which he wishes to make in his claim to the Name and Arms of Carruthers of Holmains and there are considerable gaps in the evidence relating to his genealogy. I have given some indication of these above, noting in particular that the heirs of George 10<sup>th</sup> of Holmains would have a prior claim upon extinction of his male heirs of the body and that the Joint Minute of genealogies does not satisfy me that all other male descendants of John 5<sup>th</sup> of Holmains have been extinguished. I am not persuaded that the fact of some of the Holmains lands being under the ownership of the petitioner has any relevance to the petition for the Name and Arms of Carruthers of Holmains to be granted to the petitioner.

### **Decision**

22. The petition of James Andrew Carruthers is refused.

### **Petition of Simon Peter Carruthers**

23. The genealogy and succession of this petitioner is set out in the Joint Minute, namely that he descends from John 9<sup>th</sup> of Holmains (matriculated c. 1672) to John 12<sup>th</sup> of Holmains, after which through Susan (fifth child and third daughter), who married Major W St Leger Mitchell. As proof of this descent from John 9<sup>th</sup> of Holmains, it was submitted that the succession of John 12<sup>th</sup> of Holmains as male heir of John 9<sup>th</sup> of Holmains was established by:

(i) Retours of Service (1<sup>st</sup> Inventory, Nos. 1, 2 and 3);

(ii) the 1755 Crown Charter (1<sup>st</sup> Inventory No. 5) which infefts John 12<sup>th</sup> of Holmains in the Barony, to which he would only have been entitled as the proper heir – the charter refers to the Barony being incorporated for George Carruthers of Holmains in 1699 and that “which lands now pertain in heritage to John Carruthers” and were resigned for a new grant;

(iii) Marriage Contract of John 12<sup>th</sup> of Holmains and Charlotte Laurie (1<sup>st</sup> Inventory Nos. 8 and 9) and the fact that the contract is all on the basis that John 12<sup>th</sup> of Holmains was infeft in the Land and Barony of Holmains.

24. It was submitted that the succession as heir of John 12<sup>th</sup> of Holmains through Susan Carruthers to William Mitchell-Carruthers was established as follows:

- (i) the succession first passed to Rachel, second daughter of John 12<sup>th</sup> of Holmains, as established by the 1854 matriculation of John Peter CarruthersWade (2<sup>nd</sup> Inventory No. 2) – that this line is extinguished is proven by the 1876 matriculation, which records that the only descendant of Rachel died without issue;
  - (ii) the 1876 matriculation of William Mitchell-Carruthers, grandson of Susan Carruthers, narrates his descent from William St Leger Mitchell and “Susan his wife and third daughter and coheir of John Carruthers of Holmains and Kirkwood”. The matriculation also refers to John Peter CarruthersWade, (son of Susan’s elder sister Rachel) who died without issue (1854 matriculation, 2<sup>nd</sup> Inventory No. 2) thus establishing that Susan’s descendant was the eventual heir of her elder sister, Rachel. Accordingly, there is a clear reference to the Holmains Arms matriculated c. 1672 and the licence to use them.
25. The petitioner’s case is that the matriculation confirms that William MitchellCarruthers in 1876 was confirmed as the heir entitled to the Carruthers of Holmains Arms matriculated c. 1672 as descended from Susan, third daughter.
26. It is the position of the petitioner that his descent from William Mitchell-Carruthers and the extinction of Alexander Douglas Carruthers and Malcolm William Carruthers (elder brothers of the petitioner’s grandfather Nigel Laurie Carruthers) is established by the documents contained in the productions F1/2(a) to 6(g). It is also his position that when looking at these documents it should be noted that neither the petitioner nor his father used the name Mitchell at birth, but saw themselves as ‘Carruthers’.
27. Senior Counsel, Sir Crispin Agnew QB Bt – Rothesay Herald – lodged a Note of Argument for the petitioner, and in oral submissions he drew the Court’s attention to the following matters:
- (i) The Will of Elizabeth Mary Carruthers or Harding, although referred to in the 1854 and 1876 matriculations, does not affect the succession to the Name and Arms of Carruthers. She was a younger sister of Susan Carruthers. It is clear that the petitioners in 1854 and 1876 wanted to claim the Name and Arms of Carruthers of Holmains in order to benefit from her Will, but her Will would not have given them any right to claim the Name and Arms. Rothesay Herald submitted that the matter which must have been dealt with was the right as successor to John 12<sup>th</sup> of Holmains, that it was clear from the 1876 matriculation that Susan is described as “coheir” and that this gives the right to matriculate the Carruthers of Holmains Arms which were matriculated in 1672. He also submitted that in Scotland, while sisters are coheirs (heirsportioner), the eldest takes the property that is indivisible like a coat of arms alone as *praecipuum* or by settlement (reference to Bell’s *Principles* 10<sup>th</sup> Ed. paragraphs 1083 and 1084). He submitted that it was clear from the documentation that John 12<sup>th</sup> of Holmains changed the destination of the Lands and Barony of Holmains from “heirs male” to “heirs” and, in consequence and

having regard to his Marriage Contract, resettled the Name and Arms of Carruthers of Holmains on his daughters and their heirs. He submitted that, while the estate of Holmains was sold on the public market to meet a debt to the creditors of John 12<sup>th</sup> of Holmains arising from a failure of the Heron Bank in which he had invested, this did not alter the resettlement of the Name and Arms on his heirs. He submitted that the fact of the family charters being passed to these heirs supported this position (Bell's *Principles* 10<sup>th</sup> Ed. paragraph 1085).

- (ii) The 1699 Charter of the Land and Barony of Holmains is to George Carruthers 10<sup>th</sup> of Holmains (son of John matriculated c. 1672) “and his male heirs, which failing to his heirs and assignees whatsoever”, which lands were erected into a barony by Charter in 1673 in favour of John 9<sup>th</sup> of Holmains. It was submitted that “heirs male” in this context means “heirs male of the body”.
- (iii) In 1755 the Crown Charter of the Land and Barony of Holmains is to John Carruthers 12<sup>th</sup> of Holmains “and his heirs and assignees heritably and irredeemably”. It was drawn to the Court’s attention that the sasine followed in 1779 after his marriage to Charlotte Laurie in 1762.
- (iv) It was submitted that the Marriage Contract between John Carruthers 12<sup>th</sup> of Holmains and Charlotte Laurie dated 19 August 1762 (1<sup>st</sup> Inventory No. 8 and Transcript No. 9) provided that he should resign the land and barony for new infefments in favour of–

*“himself and the heirs male of his body to be procreated of this marriage and the heirs whatsoever of their bodys Whom Failing the heirs male to be procreated of the said John Carruthers of any other marriage and the heirs whatsoever of their bodys Whom Failing to the Daughters of this marriage and the heirs whatsoever of their bodys Whom Failing to the said John Carruthers his other heirs and assignees whatsoever the eldest daughter or heir female during the whole course of succession, always succeeding without division...”.*

It was submitted that the petitioner is the heir in terms of this destination because (1) there is no heir male of this or any other marriage, which (2) brings in “whom failing to the daughters of this marriage”, that being Rachel and Susan, and (3) the succession opens to “their heirs”, of which the petitioner is now that heir.

The said Marriage Contract went on to provide–

*“Provided and declared that the whole heirs before specified both male and female shall after their succession to the said Estate be Bound and Obligated to retain assume and use the Sirname and Designation of Carruthers of Holmains as their first and principal sirname & designation and bear the arms of the said family...”.*

- (v) Rothesay Herald submitted that the 1755 Charter, and more particularly the Marriage Contract which required the person succeeding to the estate to take the Name and Arms of Carruthers of Holmains, amounted to a nomination of that series of heirs to succeed to the Name and Arms of Carruthers of Holmains and the estate, and that, as the estate and the coat of arms are separate items of heritable property, the nomination must apply to each separately, particularly when the estate is lost to the family.

In this regard, Rothesay Herald referred the Court to the following authorities:

*Mackintosh of Mackintosh* 1950 SLT (Lyon Ct) 2;

*Macpherson of Pitmain. Petitioner* 1977 SLT (Lyon Ct) 18;

*Oliphant of that Ilk* 2004 SLT (Lyon Ct) 14; and

*Cunninghame of Kilmaurs v Cunninghame Graham of Gartmore* 2015 SLT (Lyon Ct) 17 paragraphs [6] to [9].

- (vi) Rothesay Herald submitted that the Marriage Contract could equally be viewed as a nomination of the daughters and their heirs to succeed to the Name and Arms of Carruthers of Holmains and that the heirs of the daughters of John 12<sup>th</sup> of Holmains took up the Name and Arms of Carruthers and Holmains (the 1854 and 1876 matriculations). He submitted that the family charters (Title-Deeds) being in their possession confirms that this was the nominated succession.

- (vii) It was further submitted that the fact of the charter chest plus charters being passed to John 12<sup>th</sup> of Holmains' daughter, Christian, and then to William Mitchell Carruthers and his descendants, was indicative of the family Heirship Moveable being settled on this branch as the heirs of John 12<sup>th</sup> of Holmains and indicative of the chiefship or representation of the family being settled on that person. It was submitted that this is particularly important in the situation where the family estate has been lost to the family. The Court was directed to *Mackintosh of Mackintosh* 1950 SLT (Lyon Ct) 2 at 4 and to Bell's *Principles* 10<sup>th</sup> Ed. paragraph 1084.

- (viii) Rothesay Herald also submitted that Lord Lyon (Sellar) has held that the occasional use of a double-barrelled surname does not bar a claim to the chiefship or plain undifferenced arms. In the present case, it was accepted that the Carruthers Wade and the Mitchell Carruthers matriculations were in those names, but the latter's heir, Douglas Carruthers, largely dropped the Mitchell in his public and professional life. The petitioner always used 'Carruthers' alone as the family surname.

- (ix) It was submitted that the *Jeffrey* principle can be said to apply in this case because, but for the financial problems of John 12<sup>th</sup> of Holmains, the Holmains estate would have descended to the daughter and the heirs of John 12<sup>th</sup> of

Holmains as the coat of arms was confirmed to have done in the 1854 and 1876 matriculations.

### **Findings in Fact**

28. Having considered the oral and written evidence before me alongside the submissions of Rothesay Herald and given the above findings in fact, I find the following facts in the petition of Simon Peter Carruthers to be established:

- (i) The petitioner seeks, as heir through John Carruthers 12<sup>th</sup> of Holmains, the heir male of John Carruthers 9<sup>th</sup> of Holmains, to be recognised as Chief of the Name and Arms of Carruthers of Holmains;
- (ii) The Joint Minute of James Andrew Carruthers and Simon Peter Carruthers established both their descents within the Carruthers family;
- (iii) The estates of Holmains were originally settled on the heirs male in terms of the Crown Charter of 1699;
- (vii) John Carruthers 12<sup>th</sup> of Holmains resettled the estate and the Name and Arms on his heirs, in particular his daughters, in terms of (1) a Crown Charter of 1755 and (2) his Marriage Contract with Charlotte Laurie of 1762;
- (iv) The family portraits and library passed to the unmarried daughter of John 12<sup>th</sup> of Holmains, Charlotte, and the family charter chest (plus charters) passed to the daughter of John 12<sup>th</sup> of Holmains, Christian, and then to William Mitchell Carruthers; this was indicative of the family heirlooms being settled on this branch as the heirs of John 12<sup>th</sup> of Holmains. The charter chest and charters were ultimately passed to Douglas Carruthers and were lodged in the Scottish Records Office;
- (v) The estates of Holmains were sold by the creditors of John 12<sup>th</sup> of Holmains;
- (vi) The custody of the Title-Deeds in usual practice passes to the person with the chief interest in the property and the eldest heirs-portioner (coheirs) supports the position that the right of succession of the Holmains estate (had it not been sold) and hence the coat of arms passed to the person having the custody of the family Title-Deeds (cf. Bell's *Principles* 10<sup>th</sup> Ed. paras. 1083 and 1084).
- (vii) The petitioner Simon Peter Carruthers is the heir descendant from Susan Carruthers, third daughter of John Carruthers 12<sup>th</sup> of Holmains;
- (viii) The senior lines of heirs in succession from John Carruthers 12<sup>th</sup> of Holmains are extinct;
- (ix) John Carruthers 12<sup>th</sup> of Holmains changed the destination of the land and barony of Holmains from "heirs male" to "heirs" and, in consequence and having regard to his Marriage Contract, resettled the Name and Arms of Carruthers of Holmains on his daughters and their heirs;

- (x) The Marriage Contract dated 19 August 1762 between John Carruthers 12<sup>th</sup> of Holmains and Charlotte Laurie (1<sup>st</sup> Inventory No. 8 and Transcript No. 9) provided that the said John Carruthers 12<sup>th</sup> of Holmains resign the land and barony for a new infetment in favour of–

*“himself and the heirs male of his body to be procreated of this marriage and the heirs whatsoever of their bodys Whom Failing the heirs male to be procreated of the said John Carruthers of any other marriage and the heirs whatsoever of their bodys Whom Failing to the Daughters of this marriage and the heirs whatsoever of their bodys Whom Failing to the said John Carruthers his other heirs and assignees whatsoever the eldest daughter or heir female during the whole course of succession, always succeeding without division...”*;

- (xi) The petitioner Simon Peter Carruthers is the heir in terms of this destination to the Name and Arms of Carruthers of Holmains.

### **Reasons for decision**

29. Given the above findings in fact, I have reached my decision for the following reasons:

- (i) The documentary evidence provided by the petitioner, Simon Peter Carruthers, was all supportive of his claim and provided the necessary proof to the required standard of balance of probabilities to establish his claim.
- (ii) I was particularly persuaded by the evidence provided in relation to the succession of John 12<sup>th</sup> of Holmains as the male heir of John 9<sup>th</sup> of Holmains contained in the Retours of Service (1<sup>st</sup> Inventory, nos. 1, 2 and 3), the 1755 Crown Charter (1<sup>st</sup> Inventory No. 5) and the Marriage Contract of John 12<sup>th</sup> of Holmains and Charlotte Laurie (1<sup>st</sup> Inventory Nos. 8 and 9).
- (iii) Thereafter the succession through Susan Carruthers as heir to John 12<sup>th</sup> of Holmains to William Mitchell Carruthers is established by the succession first through Rachel, second daughter of John 12<sup>th</sup> of Holmains, established in the 1854 matriculation of John Peter Carruthers Wade (2<sup>nd</sup> Inventory No. 2). I was also persuaded by the evidence before me that the line of succession through Rachel was extinguished.
- (iv) I am satisfied that the 1876 matriculation of William Mitchell Carruthers, grandson of Susan Carruthers, established that Susan’s descendants succeeded her elder sister, Rachel, whose descendant John Peter Carruthers-Wade died without issue.
- (v) The 1876 matriculation also confirms that William Mitchell Carruthers was the heir entitled to the Carruthers of Holmains Arms matriculated c. 1672 as descendant from Susan third daughter.
- (vi) I am satisfied on the basis of the productions and submissions that Simon Peter Carruthers is descended from William Mitchell Carruthers and that the

extinction of Alexander Douglas Carruthers and Malcolm William Carruthers (elder brothers of Simon Peter Carruthers' grandfather, Nigel Laurie Carruthers) is established by the documents contained in productions F1/2(a) to 6(g).

- (vii) The genealogies contained in the Joint Minute establish that Simon Peter Carruthers is the present heir to the Name and Arms of Carruthers of Holmains.
- (x) I am satisfied on the basis of the documentary evidence before me and the submissions made to me that the 1755 Charter, and more particularly the Marriage Contract which required the person succeeding to the estate to take the Name and Arms of Carruthers of Holmains, amounted to a nomination of that series of heirs to succeed to the Name and Arms of Carruthers of Holmains. I am also satisfied that it is legally sustainable that the estate and the coat of arms are separate items of heritable property, as has been the situation throughout history and must remain so when estates are lost to a family. In the case of *Mackintosh of Mackintosh* 1950 SLT (Lyon Ct) 2, it is noted that there can be a settlement of the coat of arms alone and that in many cases, where there is a proper settlement of heritage with a Name and Arms clause, effect has been given to the Name and Arms clause by rematriculation. The Court in *Mackintosh* went on to hold that the settlement of the estate implies that the coat of arms should go with the estate. By extension, this is the position in the present case, when applied to the 1755 Crown Charter, the Marriage Contract and the transmission of the family charters,
- (xi) In the present case and in the context of all the evidence before me – and by no way to set any principle – it was submitted that the Marriage Contract can equally be viewed as a nomination of the daughters and their heirs to succeed to the Name and Arms of Carruthers of Holmains, and I accept that in this petition that is the case. It was further submitted, however, that the possession of the family charters confirmed that this was a nominated succession and, while I accept that this may be the case, this is not a definitive factor but only an adminicle of evidence to support what was sought in this petition.
- (xii) By way of observation, I would confirm the position taken by Lord Lyon (Sellar) that the occasional use of double-barrelled surnames does not bar a claim to the chiefship or plain undifferenced arms. I accept that this is the position in this particular petition. Simon Peter Carruthers and his father have consistently used only the surname 'Carruthers'.
- (xiii) After considering the totality of evidence before me and the relevant case law, I have concluded that the petition should be allowed.

## **Decision**

30. I allow the prayer of the petition of Simon Peter Carruthers and find the petitioner entitled to (i) be recognised in the name, style and title of “Simon Peter Carruthers of Holmains, Chief of the Name and Arms of Carruthers” and (ii) maintain, ratify and confirm the plain undifferenced Arms of Carruthers of Holmains matriculated c. 1672.
31. The petition of Simon Peter Carruthers is allowed. I put his petition out by order to discuss the grant of additaments.



.....

Dated: **19<sup>th</sup> August 2019**

**Joseph John Morrow, CBE QC LLD**  
**Lord Lyon King of Arms**