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The Case of Ewan Forbes

Curiously, all records of his case seem to have disappeared

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Article appeared in Polare magazine: May 2004 Last Update: October 2013 Last Reviewed: September 2015



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It has always been assumed that Ormrod's decision in *Corbett v Corbett* (1970) was the first to be made about the legal status of people treated for transsexualism. However, it now appears to have been pre-dated by another case, that of Ewan Forbes, who is well-known in the transsexual community as a female-to-male transsexual who had his Birth Certificate corrected in the early 1950s. Curiously, though, all records of his case appear to have disappeared.

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The obituary of Sir Ewan Forbes of Craigievar, Bt, says: He was born on 6th September 1912 and baptised Elizabeth as the third and youngest daughter of the 18th Lord Sempill, head of the Forbes-Sempill family, a long-established Scottish dynasty holding a 15th century Barony and a Baronetcy of Nova Scotia, created in 1630.

On the death of her father, the 18th Lord Sempill, in 1934, both the barony and the baronetcy passed to her elder brother, who entrusted the management of his Fintray and Craigievar estates to his sister. In 1945 she took up practice in the Alford district and it was from this point onward that Elizabeth Forbes-Sempill looked and behaved like the man she knew she really was. Dr. Forbes-Sempill went about her change of gender in the quietest possible manner. She applied to the Sheriff of Aberdeen, and acquired a warrant for birth re-registration.

Then, on 12th September 1952, there appeared a notice in the advertisement columns of *The Press and Journal*, Aberdeen, which stated that henceforth Dr. Forbes-Sempill wished to be known as Dr. Ewan Forbes-Sempill. Some three weeks later the doctor announced that he was to wed Isabella ("Pat") Mitchell, his housekeeper.

It was a fairly quiet ceremony. On the death of his brother, the 19th Lord Sempill, in 1965, the barony passed in the female line to the 19th Lord's eldest daughter. It was assumed that the barony would pass to Ewan Forbes-Sempill but his cousin, John Forbes-Sempill (only son of the 18th Lord Sempill's youngest brother, Rear-Admiral Arthur Forbes-Sempill), challenged the succession to the baronetcy.

The case was taken to the Scottish Court of Session. The court ruled in favour of Ewan Forbes-Sempill, but when his cousin continued with his challenge the dispute was taken to the Home Secretary, in whose office the Roll of Baronets is kept by Royal Warrant.

The Lord Advocate was consulted by the Home Secretary, James Callaghan, and eventually, in December 1968, Mr Callaghan directed that the name of Sir Ewan Forbes of Craigievar (he had dropped the name of Sempill) should be entered in the Roll of Baronets. There were no children of Sir Ewan's marriage.

His cousin, John Alexander Cumnock Forbes-Sempill, born 1927, has now succeeded to the baronetcy. ^[1]

The law concerning the correction of Birth Certificates in Scotland for people treated for transsexualism was decided by the case of X in 1965 where "a person correctly registered as a male at birth subsequently changed sex, a petition to correct an error presented under the Registration of Births, Deaths and Marriages (Scotland) Act 1854 (c80) (repealed) was refused". ^[2]

Clearly, Forbes's correction of Birth Certificate and subsequent marriage in 1952 pre-dated the case of X. According to the press of the day, he had carried out a "registration of birth and change of christian name" by obtaining from the Sheriff of Aberdeen "a warrant for birth re-registration". ^[3]

His succession to the baronetcy, however, came after that and although the decision in X was clear that the regulations for correcting birth certificates did not give "any sanction for recording changes which have subsequently occurred" unless "the sex of a child" as

indeterminate at birth and was later discovered when the child developed that an error had been made. [4]

Of course, the current medical viewpoint is that just such an error is made and that people treated or transsexualism are sexually indeterminate at birth. [5]

What then, were the arguments that found favour in the case of Ewan Forbes's succession to the title of Lord Sempill in 1968? The difficulty is that no records of the case appear to be available. There is no record of the hearing in the published volumes of the Court of Session.

Nor is the case recorded in the Court of Session's Minute Book, [6] its Extracted Processes, [7] or its Unextracted Processes kept at the Scottish Records Office. [8] A telephone inquiry to the Court of Lyon in Edinburgh established that, according to their file notes, the decision on the challenge to Forbes's succession was given by Lord Hunter at the Court of Session on 29th December 1967. [9]

However, they have no documentation which is in the public domain. [10] A postal inquiry asking for a copy of the Lord Advocate's decision in the case brought no reply from his Department at the Crown Office in Edinburgh. [11] A telephone inquiry to the Registrar of the Baronetage at the Home Office in London, asking if they could provide a copy of the direction given by the Secretary of State or advise where it might be viewed was similarly unsuccessful. [12]

It is as if the case had been deliberately removed from the public domain. At the time, a similar concern was expressed by legal practitioners of the day. The *Glasgow Herald* reported the "exceptional and disquieting circumstances in which the case was heard": Not only were the proceedings taken before a judge in chambers but his judgement was never issued to the press and court officials were placed under orders of the strictest secrecy.

Inquiries by journalists at the time brought them against a wall of silence. The most that could be learned was that the judge and his clerk heard the case not even in Parliament House but in a solicitor's office and that no papers in connection with the case were filed at the office of the court. In the official register of petitions kept in the office it was recorded that a petition had been lodged in the name of Forbes-Sempill for a hearing under Section 10 of the Administration of Justice (Scotland) Act, 1933 but the columns which would normally contain a record of subsequent stages in the proceedings were left blank.

Section 10 provides for summary trial hearing in which the parties may select their Judge. There is no right of appeal and the Judge may "on cause shown, hear and determine in chambers any dispute or questions submitted for his decisions."

Summary trial is not permitted in cases affecting the status of any person and is usually employed where a quick decision, with no appeal, is required.

The fact that the new baronet had to be enrolled in a public register ensured that the case could not be kept secret and tends to confirm the anxiety felt by some legal practitioners, who knew about the Court of Session proceedings at the time, about whether official measures to hush up the case went too far.

The terms of Section 10 are certainly extremely wide, and it has been suggested that Parliament never intended they should be used for this type of case.

If so, there may be good reason to amend the provision so as to meet the need of the public interest that justice shall be seen to be done. The simple answer, provided by a leading lawyer in Edinburgh, was that this was a clear case for reference to the Scottish Law Commission. The 1933 act would have to be amended, he said, to prevent its future misuse for secret hearings in cases which the Act was never intended to cover. [13] The issue of the need for justice to be done in the case of people treated for transsexualism has been raised powerfully in the case of *P v S* and Cornwall County Council, where reporting restrictions were imposed on the case so that the woman concerned might bring it without finding that her personal safety was threatened. [14]

Their secrecy concerned only one item - the current name of the applicant - and all other circumstances were fully reported by the court and the press. The same full reportage has accompanied all other similar cases, both before and after that of Ewan Forbes: his alone remains the exception. It is difficult not to conclude that his distinguished ancestry - the title is the oldest in Scotland and the seat, Craigevar, one of the finest - somehow gave Forbes privileges to which others did not have access.

Similarly, it is impossible not to speculate whether the decision in *Corbett v Corbett* might have been different if the full processes and arguments of the Forbes case had been available for use, or whether the cases to restore equal civil status to people treated for transsexualism, which have been brought before the High Court and the European Courts since then, would have been necessary. Certainly, one set of processes - the High Court case for birth certificate correction [15] and the Private Member's Bill brought by Alex Carlile *M.P.* [16] with the same end in mind - would seem to be redundant in the face of the birth certificate issued for Ewan Forbes.

The document, easily available from the General Register Office in Edinburgh, gives his name as "Ewan Forbes-Sempill", his sex as "M" for male and the small print at the bottom states "The above particulars incorporate any subsequent corrections or amendments to the original entry made with the authority of the Registrar General". [17]

Even if the circumstances of his case are to be kept secret, for whatever reason, there is apparently no reason why the benefits its precedent provides - a corrected birth certificate and equal civil status - should not be enjoyed by everyone else in the U.K. who, like him, has been born with the condition of transsexualism.

References

- [1] The Daily Telegraph, 1st October 1991, p. 19.
- [2] The Laws of Scotland, vol. 19 (Edinburgh: Law Society of Scotland & Butterworths, 1990), paragraph 1424
- [3] The Press and Journal, 12th September 1952, p. 1
- [4] Sheriff Court of Perth and Angus at Perth, X - Petitioner, Sheriff Court Reports, Scots Law Times News (Edinburgh: Green, 1957), p. 62.
- [5] D de Cegli, J Dalrymple, L Gooren, R Green, J Money, Z.J. Playdon & R. Reid Transsexualism: The Current Medical Viewpoint (Manchester: Press For Change, 1996)
- [6] Scottish Records Office, Court of Session: Minute Book (CS17//18718812)
- [7] Scottish Records Office, Court of Session: Index of Extracted Processes
- [8] Scottish Records Office, Court of Session: Index of Unextracted Processes
- [9] Telephone conversations with Mrs Rhodes, Clerk to the Lord Lyon, 29th February 1996, 5th March 1996.
- [10] Telephone conversation with Mrs Rhodes, Clerk to the Lord Lyon, 11th March 1996.
- [11] Letter from Dr Z.J. Playdon to the Lord Advocate's Department, 6th March 1996.
- [12] Telephone conversation with Mrs Bright, Registrar of the Baronetage, 6th March 1966.
- [13] "Disquiet over Forbes-Sempill secrecy case", The Glasgow Herald, 6th December 1968, p. 23
- [14] P v S and Cornwall County Council, Interim Decision of the Industrial Tribunal (Truro: 16th-17th November 1993)
- [15] R v Registrar General for England and Wales Ex parte P & G, *ibid.*
- [16] "The Gender Identity (Registration and Civil Status) bill", Hansard, 2nd February 1996, vol. 270, no. 42, cols. 1282-1290.
- [17] "Extract of an entry in a Register of Births", Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Edinburgh: General Register Office).

Ewan Forbes

Edited from Wikipedia:  Born in 1912, Sir Ewan Forbes of Craigievar was the 11th Baronet of Craigievar from 1968 until his death in 1991, as well as a general practitioner and farmer. At birth, he was christened Elizabeth Forbes-Sempill, and officially registered as the youngest daughter of Lord Sempill. After an uncomfortable upbringing, he began living as a man at the start of his medical career in 1945. He formally re-registered his birth as male in 1952, adopting the name of Ewan Forbes-Sempill, and was married a month later.



In 1965 he stood to inherit his elder brother's baronetcy, a title that passed through the male line, together with a large estate. This inheritance was challenged by his cousin, who argued that the re-registration was invalid; under this interpretation, Forbes would legally be considered a woman, and thus unable to inherit. The legal position was unclear, and it took three years before a ruling by the Court of Session was finally upheld by the Home Secretary, granting him the title. The case was held in great secrecy, with the effect that it was unable to be considered in other judgments on the legal recognition of gender variance, but has become more widely known since his death in 1991.

The Forbes' was a well-established Aberdeenshire family, holders of both a baronetcy and a peerage. The baronetcy had been bestowed in 1630, and passed down the male line of the family; in 1884. William Forbes, the eighth baronet, inherited his cousin Maria's title as Lord Sempill, and took the surname of Forbes-Sempill. On William's death in 1905, the titles passed jointly to his eldest son John. John Forbes-Sempill, newly 18th Lord Sempill and 9th Baronet, was a landowner and soldier, who had served with the Lovat Scouts and then the Black Watch in the South African War ... [visit the Wikipedia page for more](#) .

Polare Magazine is published quarterly in Australia by The Gender Centre Inc., which is funded by the Department of Family & Community Services under the S.A.A.P. program and supported by the N.S.W. Health Department through the AIDS and Infectious Diseases Branch. Polare provides a forum for discussion and debate on gender issues. Unsolicited contributions are welcome, the editor reserves the right to edit such contributions without notification. Any submission which appears in Polare may be published on our internet site. Opinions expressed in this publication do not necessarily reflect those of the Editor, The Gender Centre Inc., the Department of Family & Community Services or the N.S.W. Department of Health.

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