

**THE BRITISH  
HISTORICAL SOCIETY  
OF PORTUGAL**

TWENTY FIFTH ANNUAL REPORT  
AND REVIEW 1998

Quinta Nova  
Carcavelos  
2777 PAREDE

## THE BARONY OF MULLINGAR

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I am asked to advise on the above Barony and also as to the procedure for establishing a claim. It seems that on 28 June 1661 a grant was made to Luis Conçalo De Sousa De Macedo, the Barony of Mullingar or Molingaria.

In relation to this grant, there are three questions which require to be answered - 1) Whether a peerage dignity was granted in 1661; 2) What was the effect of the grant of 1661; and 3) Is it possible now to prove a right to any peerage granted.

1) It seems sensible to start the examination by considering what was held by the Pettit family before the Cromwellian invasion. If as is suggested the title originated in a grant made by a palatine power, then by its very nature this would not grant a peerage dignity. In fact there would be a grant of a particular caput with, of course, the feudal powers normally granted (i.e. a right to hold a Court etc). It is also likely that the barony was granted in return for some service to the grantee, possibly knight service. That service would not be due to the Crown but to the palatine overlord.

A survey of all available records finds only one reference to a Pettit in connection with any dignity and that is in a writ of 23 February 1302 to John Wogan, Lord Justice of Ireland asking him to convene and treat with the Earl of Ulster, nobles and others to assist in an intended expedition against the Scots. In the list of those called there is a "Peter Le Petit" but he is not connected with any particular barony.

It is my view at present that what was held by the Pettit family before the Cromwell confiscation was probably the lordship

of lands in the Barony of Mullingar, as was pointed out by the Chief Herald of Ireland, such feudal palatine jurisdictions were abolished in the late 16th and early 17th century, which it should be noted indicates that such baronies had probably been abolished before the date of the Mullingar grant. Therefore, the Pettit family in my view did not hold any peerage dignity either in the English or Irish peerage.

2) With the confiscation of land by Cromwell, and its subsequent return to the Crown, it is clear that in one sense the barony was available for granting, certainly the lands would have been available. It is clear from the papers that I have seen that at least the physical barony of Mullingar was granted to Luis Conçalo De Sousa De Macedo. There is, however, still some doubt as to whether a peerage dignity was granted. The evidence is to some extent contradictory. In favour of the proposition that an hereditary peerage was granted is the following:-

i) the obvious intention of Charles II to reward a family which had been of great help to the Royal cause before the Restoration. In this connection it should be noted that it was not unusual for the King to create a peerage for this reason.

ii) The Privy Seal writ, which on the face of it refers to a creation '*et heredes masculos a inso legitime progenitos titulo Baronis de Molingaria in perpetuum guudera volumus.*'

iii) The fact that (it is alleged) Professor Edgar Prestage saw the Letters Patent.

On the other hand there is also evidence that what was granted was not intended to be an hereditary peerage in the Peerage of Ireland, but only a grant of lands of the Barony of Mullingar.

i) The Privy Seal writ could be read as conferring physical barony only, particularly as the usual form of words used in Irish peerage creations about this time, is not used. These were -

*'Volumus etiam vos et heredes vestros masculos de corpre vestro legitime exeuntes barones ..... comitatu .... existere.'* This form of words was used as it was known that any summons to parliament would not, in Ireland, create an hereditary peerage. It seems likely that there would be even more reason to use the particular words when granting to a foreigner, who would not in any event be able to receive a writ of summons.

There is some support for this view in, the extract from Notes and Queries which specifically draws attention to this having been a patent out of the usual form. It may well be, of course, that the patent was in different terms to the Privy Seal writ quoted in the Notes and Queries extract.

ii) A second factor which points towards a grant of lands only is the fact that attempts were made to sell the barony in 1665 and later in 1668. It would be well known in 1665 that it had been held by the House of Lords in 1640 in the Grey de Ruthyn Case 'that no peer of this realm can drown or extinguish his honour, (but that it descends to his descendants) neither by surrender, grant, fine, nor any other conveyance to the King.' This finding was emphasised in the Purbeck Case in 1678. Although both these cases were cases of attempt to surrender peerages to the Crown, during the judgement in the Purbeck Case the Court is reported as pointing out that the whole nation had an interest in a peerage and that it could not be altered in its descent other than by Act of Parliament. It seems likely, therefore, that if the holders of the Barony of Mullingar felt able to offer it for sale, it was not a peerage dignity.

iii) It appears when the title was examined by the Editors of the Complete Peerage it was considered doubtful (a box entry) and there is no reference to Letters Patent. Further, it is clear from this entry that no effective claim was made until 1815 and it does not seem that that claim was pursued.

Indeed, as was pointed out by Mr Howe in his letter to the Chief Herald of Ireland of 4 February 1985, it is likely that any title the Pettits may have had was lost with the land. It is submitted that a

similar situation could exist in relation to the lands granted in 1661. It is arguable that the grantees must have accepted this as they tried to sell the barony and must have known that they could not do this if they had been granted a peerage.

3) Notwithstanding anything said above, if a claim for the peerage dignity of the Barony of Mullingar is thought to be sustainable then there is a procedure by which members of the Irish peerage can claim their titles. The claim to a peerage of Ireland is made by petition to the Crown, which is referred to the Lord Chancellor to report. He then lays his report before the House of Lords and, if satisfied that the peer has made out his claim, reports 'The said ..... has established to my satisfaction his succession to ..... and his right to vote at any elections of representative peers for Ireland which may be held in future under the statutes in force relating thereto'.

Such reports have been laid before the House of Lords in 1946 (Viscount Dillon) and 1953 (Viscount Bangor) and a number of Irish peers are currently following this procedure.

### Conclusion

It is my view that although the evidence is somewhat contradictory regarding the creation of a peerage dignity in this case, the probability is that no peerage was granted. In any event any claim in order to have any chance of success would need to produce the Letters Patent and that without such evidence the claim is likely to fail.

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**Ed. Note:** According to some peerages this Irish title was created in 1661 by King Charles II in favour of D. Luis Gonçalo de Sousa Macedo, 1st Baron da Ilha Grandes de Joanes. According to historians the title was in fact in honour of his father António de Sousa Macedo who had been Minister in London (1641-1645) and an important figure in arranging the marriage of the King and Queen Catherine of Braganza and indeed in all the Restoration process. The family become Viscondes de Mesquitella (1754) and Condes de Mesquitella in 1818. However the creation of this Barony of Mullingar (which, incidentally, is the only case of a Portuguese receiving a British title) has been the object of some controversy. We publish here a legal opinion of Mr. R.P. Gadd, a Barrister-in-Law issued in 1985. Mr. Gadd is the author of the Peerage of Ireland published by the Irish Peers Association.