Submissions made by Tom Minogue on 20th March 2015

Venue: Court of Session Edinburgh

Presiding: retired law lord, Lord Philip

Pdf Pages 2 to 14 Title and Interest submissions

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Note: Pages 34 to 39 of special interest for Elgin blog readers

To respond to counsel for the Pursuer's submissions and his Note of Argument, that I have no title or interest to maintain my defences, it would be useful to look briefly at the background to my Claim and Defences in layman's terms, before addressing the Pursuer's legal submissions.

I have a long standing interest in a 4th Century BC funereal gold wreath going back as far as 2004, that is, long before the Pursuer took an interest in the fund *in medio* in 2010. [13/16, – 1]

In 2004, and again in 2009, I made formal, written, complaints to the Chief Constables of Fife Police, that funereal artefacts, looted from Greece in 1802, by Thomas Bruce, the 7th Earl of Elgin, were housed in Broomhall, the Elgin family mansion near Dunfermline. [13/1, 1 to 6]

I had seen photographs of the present, 11th Earl, posing there with Greek stele, or grave markers, decorating his study walls, and I gave the police details of this plunder, obtained by grave-robbing in the early 19th century.

The plunder was described in various editions of a publication entitled "Memorandum on Subject of the Earl of Elgin's pursuits in Greece" [13/3, 1 to 20].

This publication supported the Earl's petition to the Westminster parliament in 1811 and also supported my complaints to Fife Constabulary. [13/2, 1 to 5]

In 1816 a Westminster parliamentary committee, eventually bought some of the items the Earl offered for sale, –the Parthenon marbles-

but declined to buy other catalogued items, mainly funereal artefacts. [13/6, 1 to 5]

Included in the Memorandum was a contemporaneous, detailed, description of Elgin's party digging up a tumulus, a grave mound, Quote: ***"on the road that leads from the Port Piraeus to the Salaminian Ferry and Eleusis."*** and emptying out a funeral urn containing ashes, burnt human bones, a lachrymatory, that is, a sealed vessel that contained the tears of mourners, and discovering QUOTE **"a wreath of myrtle in gold, having beside leaves, both buds and flowers".** The grave was thought to be that of Aspasia (470-400 BC**)** [13/4, – 1]

An almost identical description of this grave robbing in the presence of the 7th Earl of Elgin and his wife, was given by Philip Hunt, Elgin's private secretary and sometime chaplain, in letters he sent to Elgin's mother- in- law at the time. [13/5, 9 to 10]

My complaints to the police in 2004 & 2009, which included details of this act were widely reported, and resulted in police reports to the Procurator Fiscal, but no charges. [13/17, – 1]

However, I have never wavered in my conviction that sacrilegious plunder obtained by grave-robbery is an affront to all norms of decency, and I remain hopeful – given changing attitudes by museums and others – that one day, artefacts obtained by violation of sepulchre will be classed as theft, regardless of when and where they were taken.

So it was of some interest to me, when, on the 4th of April 2014, a Legal Notice by Order of Lord Brailsford appeared in the Scotsman.

The notice was headed "**FORM OF ADVERTISEMENT FOR OBJECTIONS AND CLAIMS IN ACTION OF MULTIPLEPOINDING".** The text gave details of the fund *in medio* as being a 4th century BC golden wreath used as a funeral gift for royalty or nobility comprised of 92-93% pure gold. It listed the parties involved in the multiplepoinding and went on to invite: **"Any person who wishes to object to the condescendence of the fund must do so by lodging defences, and any person who wishes to make a claim on the fund must do so by lodging a condescendence and claim, by 1 May 2014 at the office of Court, Court of Session, 2 Parliament Square."** The advertisement was (Signed) Morton Fraser, Solicitor to Stephen House, QPM, Pursuer & Real Raiser.

This notice was the result of Lord Brailsford's interlocutor of 10th March, 2014 , which concluded: ***"all parties not otherwise cited may appear for their interests"*** [13/11, – 3]

I hadn't been cited, but did have an interest, and thought that there was a chance that the wreath described might be the one referred to in Elgin's Memorandum so I e-mailed Morton Fraser, the solicitor for the Pursuer asking if I could see this fund *in medio*, but they refused my request, as did the police who held the fund. [13/7, 1 to 2]

Keen not to waste the court's time, I wrote to Lord Brailsford, stating that I would like to know what type of leaf the fund *in medio* was fashioned in, explaining that I was not interested in making a

claim or lodging defences unless it was of myrtle in bud and bloom. [13/11, 1 to 2]

Lord Brailsford did not answer this question, but advised Kathryn Keir of the Supreme Courts that there was nothing in the rules to allow inspection, and she should advise me, that, if I thought I had a claim on the fund *in medio,* I should follow Rule 51.6.- 4 and join the process and then ***"enrol a Motion seeking authority to inspect"*** [13/11, 3 to 4]
Kathryn Keir relayed this message to me by letter. [13/11, – 5]

Because I knew that ill-gotten funereal relics, including a 4th Century BC gold wreath, were in this country, and some of them had been sold off by the Elgin's, I speculated that the Scotsman gold wreath might be the one that I was interested in.

The interest of the Turkish Republic and a person with a Turkish name suggested the Pursuer's condescendence might be based on flawed information.

Without having access to the court papers and with only the description in The Scotsman to go on, I tentatively lodged my condescendence & claim and defences.

I did so in accordance with Lord Brailsford's views given via Kathryn Keir; that is, in accordance with Court of Session Rule 51.6.-4 which states: ***"Where a person intends to-***
(a) object to the condescendence on the fund in medio, and (b) make a claim on the fund, he shall lodge defences and a separate condescendence and claim."

I believed that I was entitled to do both, in response to the advertisement, which, I assumed targeted those who believed they had a claim to the fund and also thought they were entitled to lodge defences if they objected to the condescendence of the Pursuer.

I joined the process on my understanding of the word, "entitled" as meaning to give a person a title, right, or claim to something they have a genuine interest in. In doing so, I simply followed the advice of Lord Brailsford's interlocutor, the Scotsman advertisement as Signed by the Pursuer's agents and also on the advice of Deputy Clerk of Session of the Supreme Courts, Kathryn Keir, who was advised by Lord Brailsford's advice note.

It should be noted that Lord Jones approved the late lodging of my Condescendence & Claim and Defences without demur. His interlocutor reads ***"The Lord Ordinary, on cause shown, allows defences and condescendence and claim lodged by Mr Thomas Minogue to be received late and marked numbers 11 and 12 of process."***

Again it should be noted that Lady Scott, when dealing with a Motion from the Pursuer that my objection was not in proper form, had nothing to say on my defences, or my right to object to the Pursuer's condescendence. Rather she ordered the Pursuer to make an Open Record within 14 days and thus allowed me to refine my defences by adjustment.

At no stage has it been suggested that I was not entitled to **object** to the Pursuer's condescendence of the fund *in medio,* by lodging **defences,** by anyone other than the Pursuer. His submission to the court today is the third time he has made this assertion; the first

time being on 28th May 2014, when, in a "without prejudice" letter to me he claimed that, QUOTE: ***"I had no title or interest to either defend or make a claim"*** in the multiplepoinding.[13/14, 1 to 2]

Then again on 5th June in a follow-up "without prejudice" e-mail, the Pursuer reiterated his view that I should drop my claim and defences. [13/15, – 1]

I should point out that certain grounds, on which the Pursuer relies in his Note of Argument are erroneous; namely, in stating at 1.2 : ***"He*** [that is me] ***asserts that the fund in medio is a funereal wreath, and accordingly must have been obtained by a breach of Scots law (violation of sepulchre),"*** and ***"cannot rightfully be retained by any individual for their personal enrichment" (p. 7C-E of the Closed Record)."***

That is incorrect. It is not what I say at paras 7 C-E of the Closed Record. What I actually state is: "***As a funereal wreath the fund in medio has <u>at some time</u> been obtained by violation of sepulchre, an offence at common and statute law in Scotland. As such it cannot rightfully be retained by any individual for their personal enrichment."***

I am well aware that it is not a crime in Scots law to dig up a grave in Greece, or Turkey for that matter. Fife Constabulary had made this clear to me in 2004 & 2009, and Law Professor Christopher Gane had confirmed this fact to me.

What I complained about to the police in 2004, regarding Elgin's graveyard booty, and what I am saying here today, is, that what

Lord Wheatley found to be a heinous **crime**, committed in Greyfriars Kirkyard, when two youths broke into the crypt of Sir George "Bluidy Mackenzie", and used his skull as a football, is just as heinous an **act** when committed in Greece in 1802. That is not to say it is a crime recognised in Scotland today. But anything arising out of such an act is corrupted by that act. It is not right.

The Pursuer is well aware of my position on this, because in my Condescendence & Claim I end my Plea in Law as follows: QUOTE ***"Though I cannot cite case authority or precedent for a law that covers violation of a sepulchre in a foreign country it is my submission that neither distance, borders or the passage of time lessens the heinous nature of this offence, which brings shame on our country and if the proceeds of such crime were dignified by the courts with granting title, this would compound our country's shame and bring our laws into disrepute."***

Another thing the Pursuer argues in his Note of Argument is that my position is that of an individual who: QUOTE ***"does not claim himself to be the owner of the fund in medio, nor to have any propriety right or entitlement thereto as an individual" and does not aver himself to hold any authority from the government of Greece to claim the fund in medio on their behalf",*** as if to imply that this, in some way, acts as a bar to my title or interest to maintain **Defences**.

The Pursuers stated view that I have no title to make a **claim** on the fund *in medio* is nothing new. As I explained, he has made this assertion, as if it were a matter of fact, once before, in writing. But he does not challenge my right to **claim** the fund in this court

today. Accordingly the right of claim, be it mine or the Greek government's, is not relevant to his challenge to my right, to lodge **defences.**

The Pursuer, in support of his submission that I have no title or interest to mount defences in the multiplepoinding, has quoted twelve court cases, three practice notes, a copy of the Court of Session Rules and three annotations to the Rules as authority. Three of the of case examples concern multiplepoindings and are of some age, 1870, 1878 and 1914 and the other nine deal with title and interest to sue or defend in various circumstances.

None of the Pursuer's case authorities deal with title and interest to defend in a multiplepoinding, the subject of his submission against me in this hearing. That is not surprising as the nine title and interest examples he cites are, unlike multiplepoindings, cases where there is no detailed provision within the rules for defences.

Notwithstanding that and although title and interest in Scots Law is in a state of flux one of the more recent cases cited by the Pursuer, Low v Scottish Amicable seems relevant.

In that case Jane Low, living in a house at 6 Winton Terrace, Edinburgh objected to the use, as a children's school, of an adjoining property, occupied by Miss Harriet Burgoyne Gillespie.

Jane Low claimed that such use would violate the restrictive title of the property, which limited the use of the house to that of a private residence, and she petitioned the Court of Session to interdict Miss Gillespie's school. She cited three defenders, The Scottish Amicable Building Society, Miss Gillespie and Henry Redvers Trotter, the

feudal superior who had sold the land, with conditions, to solicitors.

Miss Gillespie was the only respondent to the petition.

Miss Low claimed that in addition to breaching the restrictions on the building's use, Miss Gillespie had no title to defend the action, as such rights belonged to Scottish Amicable, that is the building society Miss Gillespie had her mortgage with.

Miss Gillespie opposed the petition and argued that she had both title and interest to defend the petition.

Lord Patrick found in favour of the petitioner, Miss Low, regarding Miss Gillespie's use of the house as a school, but in the course of his reasoning he dismissed Miss Low's argument that Miss Gillespie had no title or interest to defend. His lordship stated: ***"The petitioner objected to the title of the compearing respondent to defend, maintaining that the title to defend was in the Building Society. This plea is obviously bad. The cases in which the right of a person to defend has been questioned are cases in which someone, who has not been called as a defender, has desired to intervene in the process. A pursuer or petitioner cannot ask for a degree of Court against a party nominatim, and then say that the Court cannot hear that party in defence.***

In the Pursuer's Note of Argument and the list of authorities he relies on, he cites Maxwell, "**The Practice of the Court of Session"** where at the third paragraph of page 152 it states: ***"Title to state defences belongs to every person who has been called as a defender, and objection to such title cannot be taken by the party who called***

him*[2]*." A footnote gives 4 case authorities supporting this statement including "Low v Scottish Amicable".

And again in a text book cited by the Pursuer **"McPhail, Sheriff Court Practice"** at para 4.34 it states: **"Every person who is called as a defender has a title to state and be heard on defences to the action.[96] The pursuer's denial of his right to do so would be a denial of the pursuer's own interest to bring an action against him."** Again Low v Scottish Amicable is given as case authority.

From these examples it seems clear to me, as a layman, that I have title to defend and the Pursuer cannot object to this title, even if specific provision for defences in a multiplepoinding did not exist.

Regarding interest, at Maxwell, **The Practice of the Court of Session**, the fifth paragraph of page 152, "Interest to Defend", deals with the **interest** a defender must have as follows: ***"A party called as defender has title to defend, but in order to persist in his defence, he must also have an interest to do so[6], and for lack of interest a defence may fail[3].***

I accept that I have to demonstrate an interest in my defences to the condescendence of the Pursuer. I would submit that being involved in a multiplepoinding, as both claimant and defender, at the invitation of the Pursuer, whose condescendence forms an integral part of the process, gives me sufficient direct interest. That is, an interest to ensure that I am given a fair hearing in order to establish my rights in the multiplepoinding.

A fair hearing would surely allow me to question perceived incompetent acts and omissions in the Pursuer's condescendence, which is part of the multiplepoinding process?

It is not as if my examination of the Pursuer's condescendence found little of concern. My serious concerns are such that I will claim, amongst other things, malfeasance in public office on the part of the Purser, in my defences. Now these, very serious, claims by me, may be accepted or rejected on examination, but I must be allowed to be put them to the Court to pass or fail that test.

This test for a defender is cited by the Pursuer in **McLaren, Court of Session Practice**, a 1916 book, which begins Chapter VIII, Title and Interest to Defend, at page 260, with the words: ***"Every person who has been called as a defender has a title to state defences, although it may happen that the defences, when stated, are found to be irrelevant or insufficient to entitle the defender to prevail."*** I accept that I have to show that my defences cannot be irrelevant or without merit.

His lordship will be aware that, generally, the test for a litigant in Scotland to have title and interest to sue or defend is a judge made one, and as such is one of the matters that recently came under review by Lord Gill's panel which reported back to the Scottish Parliament in 2009.

In the Scottish Courts' synopsis of The report of The Scottish Civil Courts Review at page 7 it is stated with regard to: "***Judicial review and public interest litigation (Chapter 12)", "The current law on title and interest to sue is overly restrictive and should be replaced by a single test, namely, whether the petitioner has demonstrated a sufficient interest in the subject matter of the proceedings (see paragraph 25)."***

Dr Hood will be familiar with this matter as she represented the Faculty of Advocates on Lord Hodge's policy group, which helped to produce these recommendations.

The concerns on "standing" expressed in Lord Gill's 2009 review report were soon echoed in a decision, which changed the law on 12th October 2011, that is, following the ruling by the Supreme Court in the case of **AXA General Insurance Ltd v Lord Advocate [2011] UKSC 46.**

On the issue of title and interest, or standing, the decision brought Scots law into line with England and Wales, where a party can seek judicial review if that party has *"**sufficient interest**"* in the matter. In Scots law, by contrast, the test had been whether a party has *"**title and interest**"* and it had been applied strictly by the Scottish courts.

In AXA, both Lords Hope and Reed embraced the flexible attitude of the English Courts, and decided that the old phrase *"**title and interest**"* should no longer be applied in judicial review. Lord Reed says that *"**sufficient interest**"* should be the test in Scotland (para 171). Lord Hope says that a party should be required to show that he or she is *"**directly affected**"*, and added: *"**a personal interest need not be shown if the individual is acting in the public interest and can genuinely say that the issue directly affects the section of the public that he seeks to represent**"* (para 63).

I am aware that these changes to public law do not directly relate to private law, such as this one, but multiplepoindings have **specific provision in the Rules for defences** and over and above that, since becoming involved in the process, it has become apparent to me

that there are also important questions of public interest in this case.

These include the conduct of a senior public servant in charge of a public authority, allowing one party involved in a court action to set the agenda and subvert the court proceedings. As a member of the public who is a court user, and as such directly affected by the issue raised, I have an interest to see that these matters are aired.

There is also a question of actions involving the Turkish government in this case, that would appear to be more concerned with international politics than with justice, and I would submit that **over and above my rights to maintain defences**, there is a wider public interest question that needs to be addressed. Only an airing of all of the issues in this court will do these questions justice.

Plea in Law

I would submit that the Pursuer's first plea in law regarding my title and interest to maintain defences be rejected, as I have complied with Chapter 51 of the Court of Session Rules, in a matter, about which, I have a long-standing and genuine interest; an interest to put grave-robbery artefacts back where they belong, which is no different to the stated interests of the Second Defender.

I would also submit that expenses, in accordance with normal practice of costs following the event, should be awarded to me as Third Defender.

Defending my Defences

I reject the claim that my answers on record are irrelevant, as stated at **1.4** in the Pursuer's Note of Argument.

At **1.5** the Pursuer explains the stages of a multiplepoinding by reference to a **Court of Session Practice** publication. I accept that we are at the second stage of the process, but reject his assertion that this second stage is when: QUOTE ***"the extent of the fund in medio (being the property at issue which is to be divided or distributed), is determined."***

The Multiplepoinding process is governed by Chapter 51, ***"Court of Session Rules",*** Actions of Multiplepoinding. Nowhere in these rules does the word "extent" feature.

The Pursuer quotes ***Court of Session Practice (looseleaf)*** paras [2151] to [2250] as authority for his proposition that assessing the fund, to allow dividing and distribution, are the norm in this second stage.

In para [2151], the Introduction, at (1) makes it clear that the most frequent multiplepoindings involve multiple bequests from a deceased's estate, but it gives examples of other types of multiplepoindings where there will be no dividing of bequests.

Examples of cases such as ; **"*Metal Industries* (*Salvage*) *Ltd v Owners* of *ST Harle* 1962 SLT 114",** a case involving multiple claims on a ship that was cut up for scrap, and **"*Chief Constable, Strathclyde Police v Sharp 2002* SLT (Sh Ct) 95",** which concerned three defenders claiming the same Porsche motor car, that the Pursuer, the Chief Constable, had seized.

I am not suggesting that the fund in this present case be cut up, like the Steam Tug, Harle, rather I believe it is like the Porsche motor car, which was awarded by a sheriff, in one piece, to the First Defender, then awarded to the Second Defender by the Sheriff Principal on appeal.

At issue in that case, like this case, was not the **extent**, in a strictly quantitative sense, of the fund *in medio,* but all of the circumstances surrounding how it came to be seized by the Pursuer and who the court should return it to.

I simply make the point that the second stage of a multiplepoinding need not involve any extent to be determined, divided and distributed.

The Court of Session Practice gives guidance to those involved in the most common types of multiplepoinding, but this case is anything but that.

At **1.6** The Pursuer repeats his narrow definition of the second stage, of a multiplepoinding, again emphasising the extent of a fund *in medio*, by reference to selected extracts from the Court of Session Practice, where the language is all about the extent of the fund in a quantitative sense.

In response, I would refer to the Court of Session Rules, CHAPTER 51, ACTIONS OF MULTIPLEPOINDING where it can be seen at 51.6.-(1) that ***"An objection to a condescendence of the fund in medio shall be made by lodging defences",*** and at 51.6.-(4) that ***"Where a person intends to- (a) object to the condescendence on the fund in medio, …he shall lodge defences."*** This is where we are now,

determining my objections to the Pursuer's Condescendence of the fund *in medio,* rather than solely determining the extent of the fund *in medio*, as the Pursuer would have it.

Perhaps the Pursuer is confused, because his condescendence does, as it must, include a description of the fund *in medio*, but a condescendence is much more than that, as can be seen from the **Court of Session Practice** notes, which at para [2162], gives the following definition of Condescendence:

"In ordinary actions, the word condescendence is used to describe the part of the summons in which the facts on which the pursuer relies is set out. In an action of multiplepoinding, 'condescendence' is used not only in this sense, but also in two further senses. It is used to refer to the description of the contents of the fund in medio which is lodged in court, known as the 'condescendence of the fund in medio'. The condescendence of the fund in medio may be contained in the summons (where the pursuer is the holder of the fund)" …

And goes on: ***"The word condescendence is also used in relation to the part of pleadings of a claimant which set out the factual basis of his claim on the fund, even where the claimant is a defender[2].***

The contents of the summons raising the action of multiplepoinding will depend upon who is bringing the action. It will set out the facts upon which the pursuer relies as the basis for the action. Where the person bringing the action is the holder of the fund in medio, the 1994 Rules of Court provide that a detailed statement of the fund must be set out in the condescendence of the summons[3]. By this is meant a statement of the property which is the subject matter of the dispute,

and not other property[4]. <u>The purpose of the statement is to focus the extent of the fund in medio'</u>.

So in addition to providing a detailed description of the fund, a Pursuer's condescendence tells us the facts on which he relies, and the basis on which he brought the action.

To be clear, my defences are not objections to the competency of the multiplepoinding. I believe that it is right that in this situation a multiplepoinding should have taken place, but my defences are in the main, objections and questions as to the propriety of the Pursuer's acts, or omissions, in determining the facts he relied on in his condescendence; facts he believed warranted this court action, were, in my view, wrongly arrived at.

At **1.7** The Pursuer correctly identifies the fact that I do not dispute that the fund *in medio* is a gold wreath, seized from the First Defender and retained by him. However, his conclusion that a fair reading of my answers goes no further than disputing its origins and ownership, is well wide of the mark.

To explain just how wide of the mark, it is necessary to look at the background to my Defences, which the Pursuer takes issue with.

In fact this is the third time that The Pursuer has argued that my Defences are deficient.

As I have already explained, (in the background to my title and interest to lodge defences) I was quite prepared to abandon my action if the gold wreath in question was in the form of anything other than myrtle.

Similarly, my initial, rather vague view, which led me to object to the Pursuer's Condescendence, was based on an impression that there seemed to be a belief that the wreath was of Turkish origin.

I could see no reason for this impression, other than the fact that the possessor of the wreath, who had been trying to sell it, the First Defender, was Turkish, and the Second Defender was the Republic of Turkey.

But I would have been willing to abandon my **Defences,** if given a satisfactory explanation about the apparent Turkish origins of the wreath, just as I would have been willing to abandon my **Claim** if the wreath had been oak-leaf & acorn.

However before I could properly consider the Pursuers' condescendence, he wrote to me in a very aggressive manner.

He stated, in relation to my belief that the wreath may be from Greece, that: QUOTE ***"Regardless of whether that is correct, you have no title or interest to either defend or make a claim in this action."*** [13/14, 1 to 2]

His letter went on, stating that my intention to return the wreath to Greece, if successful in my claim, was insufficient to give me: QUOTE: ***"title or interest in this action".*** The Pursuer said that only the Greek Government could make such a claim.

Then he went on to state that the wreath does not come from Greece, but, QUOTE: ***"comes from what is now within the Republic of Turkey."***

The letter explained the Pursuer's certainty, that I was wrong and he was right with regard to the origins of the gold wreath, as coming from the report of the Second Defender, the Turkish Government, which he described as: QUOTE *"**expert evidence that makes it very clear that the wreath does not come from Greece**"*

Then the Pursuer's letter invited me to withdraw. This was more of an ultimatum, reinforced by a seven-day deadline, and a threat that if I didn't, I would suffer the costs of a court action brought by the pursuer, Stephen House, who of course has the backing of the public purse. The letter ended by stating that it was written without prejudice to the Pursuer's rights and pleas and could not be founded upon.

I rejected, what I perceived to be a bullying and misguided attempt by Stephen House, the Pursuer, to have me out of the multiplepoinding.

I didn't understand his aggressive stance, as he was simply the Holder of the fund and Real Raiser in the action, by virtue of the fact that he was prevented from handing the wreath over to one of the three people who claimed it.

I thought that Stephen House's role should be that of an impartial observer, acting fairly. A safe pair of hands, prepared to hand over the wreath to whoever the court decided was the appropriate person. Instead, he was acting like a sentry, a guard at the gates of the Court stopping me from entering. Or, since I was already in the court action, a bouncer, throwing me out.

Stephen House's, hostile, "without prejudice" letter, refused to allow me to see the police photographs of the fund, but instead attached a copy of a report prepared by, and for, the Second Defender, which contained grainy, monochrome, photocopied, images of the wreath.

I wrote back to the Pursuer stating that I found his veiled threats quite distasteful, and reiterating my willingness to avoid court action if the gold wreath in question was not the one I had an interest in, adding that the photos in the Second Defender's report were so bad that I couldn't see whether I was looking at a gold wreath or a pile of cornflakes.

Even at this stage, the pursuer was still refusing to allow me to have sight of the fund *in medio* or the police photographs of it. [13/14, 3 to 4]

The Pursuer's "without prejudice" e-mail of reply reiterated his desire that I should drop my defences and claim, but provided me with a new, clear, coloured, set of photocopies from the Second Defenders' report. He also, at last, relented, and agreed to allow me to view the police photos of the fund, by appointment, at Fettes Police HQ. He still refused my request to see the fund "in the flesh". [13/15, – 1]

I made an appointment and, in the presence of two detectives, viewed the photos at Fettes Police HQ, and I also obtained a copy of the Pursuer's Condescendence from the General Office of the Court of Session. After careful consideration, of both items my belief that I had valid claim and objections to the Pursuer's Condescendence, was strengthened.

With regard to defences, I was now sure that the Pursuer's certainty about the fund's Turkish origin was based on his acceptance of a false premise in the Second Defender's report.

Then, despite the fact that The Pursuer had not complied with the provision in the Court of Session rules to compile an Open Record and allow adjustment, he made good on the threat in his letter and e-mail, and petitioned the court by way of a Motion to have my Defences rejected. The Pursuer argued that my Defences were, Quote: ***"not in a proper form and do not disclose an objection to the condescendence of the fund in medio".***

I opposed this Motion successfully. Lady Scott found in my favour and ordered the Pursuer to produce an Open Record within 14 days of the hearing.

Given time to study the Pursuer's Condescendence and make adjustments, my Defences went from being brief, and vague, to being specific, serious and numerous.

From the Pursuer's Condescendence it is clear that on November 12th 2010, that is, just 38 days after the police took possession of the wreath on 5th October, a letter was sent from the General Directorate of Cultural Heritage and Museums, in Ankara, Turkey, to an Assistant Professor of Archaeology at Selcuk University, a state-owned, higher educational institution in Konya, asking him to compile a report on a wreath seized in Edinburgh. [7/1, – 13]

To think that a police chief in Edinburgh, a city endowed with one of the world's foremost universities, allowed an academic to either

come from Konya, a town in Turkey I had never even heard of, to inspect evidence in a suspected crime in Edinburgh, or to have police photographs sent to him to allow him to do this, astonished me.

The resultant examination of the wreath by the Assistant Professor, acted as a reference point against which the fund *in medio* was compared to wreaths from museums all over Turkey. This ***"archaeological analogy"*** spawned a report dated 25th November 2010. [7/1, 13 to 22]

N.B. It is stated that the report is of 10 pages, but there seems to be only 9 in the process. [7/1, – 13]

The Assistant Professor's 2010 report concluded, that it was ***"possible to associate the Edinburgh wreath to the Milas Tomb"*** and in summary stated: ***"the Edinburgh wreath dates to 350 BC."*** [7/1, – 19]

Also from the Pursuer's Condescendence it can be seen that later, in November 2011, a senior police officer and the head of the Organised Crime Division of the Crown Office, visited the Turkish Embassy in London. At which time, the Turkish government claimed ownership of the wreath. These two actions suggested to me that there was a political dimension in the justice process.

Again from the Pursuer's Condescendence it can be seen that in December 2012, the Lord Advocate advised the police there would be no prosecution in relation to the gold wreath and it should be returned to its owner.

According to the Pursuer, this left the police in a quandary, as both the First Defender, Mr Aksakalli and the Second Defender, the Turkish Republic claimed that they owned it.

Next the Pursuer's Condescendence reveals that some time later, at a time when the Ministry of Tourism and Culture of the Turkish Republic, was listed as Second Defender on the Pursuer's draft summons, but almost a year before they formally entered the process, the Lord Advocate, instructed the police to allow the wreath to be sent to Turkey for examination by agencies of the Turkish government. [13/12, 1 to 3]

This examination took place between 15th and 20th March 2013 and the gold wreath was said to have been returned to the police on 21st March 2013.

If, as Lord Brailsford advised the Deputy Clerk of Session of the Supreme Courts, there was no provision within the Court of Session Rules for inspection of the fund *in medio,* by any means other than to join the process and Quote: ***"enrol a Motion seeking authority to inspect",*** the Pursuer, on the instruction of a politician, the Lord Advocate, has allowed the Second Defender privileges that gave them an unfair advantage, long before November 2013, when they eventually entered the process.

I say an unfair advantage, because by allowing them privileges that are not in the court rules, they are seen to be treated as a special case, as favourites. To be consistent, the Pursuer had to treat the prospective Second Defender in the same way as he treated me, when I was the prospective Third Defender.

The special privileges accorded to the Department of Tourism & Culture of the Republic of Turkey, allowed them to take the gold wreath to Turkey, and do with it as they wished. In the event this led, allegedly, to the discovery of traces of soil deposits inside the

pipe section and on the surface of the gold wreath [7/1, 1 to 3 & 7/1, – 46].

A discovery made important by the fact that these soil deposits were claimed to exactly match the soil in the area where the Assistant Professor had first speculated the wreath was stolen from, in his analysis by analogical comparison report of 25th November 2010.

As if that wasn't coincidence enough, the Assistant Professor's **dating**, by looking at the wreath, or photographs of it in 2010, which had resulted in statements by him, that the wreath was: ***"definitely to the mid-4th century BC."*** and then concluded that it ***"dates to 350 BC".*** [7/1, – 15 & 7/1, – 19] were corroborated by the 2014 report, where it was dated ***"between the years BC360-340".*** [7/1, – 3]

Also, both reports' datings coincide exactly with the 61-year Hecatomnid dynasty in Caria (395-334 BC). Caria being the region, in which the capital Milas, housed the empty, robbed, tomb, discovered by the authorities in 2010. The one the Assistant Professor first speculated the wreath may have been stolen from.

How very prescient of the Assistant Professor. For him, to simply look at the wreath, or police photographs of it, and be able to deduce that it was manufactured in one specific year and might come from one small site in the whole of Anatolia – a region with land area of over three times that of Britain – and have his view confirmed in Turkey by academic analysis, dating, and soil sample tests, three years later.

The March 2013 examination, which resulted in the February 2014 report compiled by the former Assistant Professor, now an Associate Professor, only dealt with Anatolian comparisons. Rather

surprisingly it ruled out the possibility that the wreath could have come from anywhere else, by stating in its Conclusion that the wreath could **not** come from ***"almost every region around the Mediterranean Sea."***

It is hardly surprising that when the Associate Professor viewed his 2010 assessment, together with the 2014 evidence of the Turkish Atomic Energy Authority and a committee from the Museum of Anatolian Civilizations, he concluded the wreath ***"can be localised to Milas site, is supposed to be removed from illegal excavations"*** echoing his own earlier, 2010 archaeological analogy report. [7/1, – 47]

The soil sample analysis allowed the Associate Professor to go further than time and place by adding theft to the wreath's attributes, when he concluded in (para 2) his second report of 2014 that, QUOTE ***"a solid opinion has been reached that the artefact might be a burial gift stolen from the Milas Hecatomnos Tomb plundered by illegal excavations"*** [7/1]
And going further, added that: ***"congruence of soil analyses have proved that the Edinburgh wreath was found by illegal excavation in Milas."*** (para 10) [7/1, – 2]

And going further yet says: ***"the exact identicalness"*** of the soil from the Milas tomb area with ***"the soil residues detected in the tube part of the Edinburgh wreath as well as the analogies/comparisons and stylistic assessments by the experts from the Museum of Anatolian Civilizations on similar examples make certain that the aforesaid wreath is one of the artefacts within the tomb gifts of the tomb monument of the Hecatomnos Dynasty in Milas."*** (para 19) [7/1, – 3].

All this, despite the fact that there had never been any prior suggestion or evidence that the empty, looted tomb, found by the authorities in Milas in 2010, had ever housed a gold wreath. In fairness, the Assistant/Associate Professor never claimed that there had been, his speculation that it was a possibility was based on polychrome wall decorations showing a man having a cover of mantle fabric on his head, with a wreath motif and leaves that are ***"thin-long and with pointed end just like our sample."*** [7/1, – 18]

Mere speculation of a stolen wreath in the first report was gradually replaced by degree through possibly, probably then certainly in the second report, thanks to the soil samples.

It seems to me that the Second Defender has simply taken advantage of a privileged position in this multiplepointing to have his staff members compile a voluminous report in which they made the fund *in medio* come full circle to fit a narrative of what they wished it to be in the first place. A limited scope report, that considered no possible place of origin other than Anatolia, and an assumption that the Edinburgh wreath had been stolen from that area.

I am neither an archaeologist nor a historian, but even I know that gold wreaths have been depicted or found in graves since the 7th century BC, up to the last Roman Emperor, Julius Nepos, in 475 AD. So for the best part of 1,200 years at least we know of these gold wreaths.

They were worn by officials, soldier, artists, rulers and given as funeral gifts in the Roman, Persian, Greek and Macedonian empires, which controlled land from Britain to India, where gold antiquities from these empires are still being found.

As a result any proper examination of the fund *in medio* cannot be confined to the Anatolian region or a very limited range of dates.

As someone with a lifetime's experience in dealing with proper, independent reports, I was shocked by the lack of standards in the Pursuer's actions in allowing an obviously biased report to be compiled.

In order to highlight how unethical this report procedure was, I conjured up, in my mind's eye, an analogy of my own. I imagined if the person trying to sell the gold wreath had been one of the many tenant farmers on the Earl of Fife's estates, instead of a Turkish restaurateur?

The police would have confiscated it as possible Treasure Trove and investigated it's provenance by calling on the services of the Crown's representative in Scotland, who deals with ownerless property, The Queen's and Lord Treasurer's Remembrancer.

He in turn would have called on the services of The Scottish Archaeological Finds Allocation Panel (SAFAP), whose role is to advise the Crown on Treasure Trove.

This body (SAFAP) has a formal Code of Conduct a Chair and six members, including academics from different Scottish Universities, all appointed by, or on behalf of, Scottish Ministers.

What the police **would not have done** was to give the Earl of Fife photos of, or access to, the gold wreath, found by his tenant, from which he could have his Estate Manger compile a report. Then, later, after a meeting with the Earl in his London residence, the police would allow other members of his staff to take the gold wreath

away, test it in their own laboratories, and have their findings combined with the findings of the first report to form a new, comprehensive report by the Estate Manager, which the police would have accepted as kosher.

Given the obvious anomalies in the Pursuer's Condescendence, which appeared to show bias to the Second Defender, I tried to make some sense of it all, by having sight of the correspondence that the police, COPFS, and the Scottish Government had had with the Turkish authorities.

I wanted to ascertain what reasons there could be for favouring the Turkish government. Was there something I didn't know about? Something, about which, if I were told, would enlighten me and explain the anomalies, thereby allowing me to drop my defences to the Pursuer's Condescendence, because if good reason for his pro-Turkish stance and actions could be shown, I would have no reason to continue.

I thought that this was a reasonable request. After all, the Purser's counsel had sought just such information, which he said was necessary to allow him to produce the summons. [13/12, – 3]

But, my attempts to find a satisfactory explanation were stone-walled. My requests under the Freedom of Information Act for sight of correspondence with Turkish authorities, from Police Scotland, COPFS, and The Scottish Government were all met with refusals and The Scottish Government stated that there had been none.

I didn't accept this and made further representations to the government on the basis that the Lord Advocate, or someone at government level, must have had involvement in a commission

rogatoire sent by the Public Prosecutors Office in Milas, Turkey, mentioned in the Second Defender's report. [7/1] & [7/1, – 29]

Eventually The Scottish Government revised their previous position and admitted that ministerial communications had take place. They also apologised for misleading me on this, but insisted that they still could not release this information, as it was exempt on the basis that it contained communications between Scottish Ministers. [13/13, 1 to 5]

Then, there was then an apparent change of heart by Police Scotland, who, at the 11th hour, when I was already at the stage of an appeal to the Freedom of Information Commissioner, decided to release some so-called "intelligence". This turned out to be nothing more than publicly available posts from the internet by Turkish government agencies and Turkish tourist sites. [13/9, 1 to 12]

To summarise; my belief that the gold wreath was the one I was interested in was strengthened by seeing photos of it, but my belief that the fund *in medio* was from the 4th Century BC, as advertised in The Scotsman, was shattered by the events surrounding the biased report the Pursuer had confidence in.

As a result of my dissatisfaction with the Pursuer's Condescendence, my answers, after the period of adjustment, objected, in some degree, to almost every one of his 12 points.

At **Answer 2**, I reject the date of manufacture, chemical composition, and value of the gold wreath. I accused the Pursuer of withholding information from me that was available to another party in the process. I also accused the Pursuer of colluding with the Turkish government authorities and depriving me of information that would

have allowed me to make a measured decision as to the propriety or otherwise of his condescendence.

I also made reference to the fact that the "intelligence" of the police is nothing more than a series of articles from Turkish government and tourist agencies, which is highly inappropriate, given that the Second Defender is the Ministry of Tourism for the Turkish Republic. This qualification is repeated on all my other answers.

At **Answer 3**, I dispute that the fund *in medio* is of Turkish origin.

At **Answer 6**, I contend that the funereal wreath, the fund *in medio*, has at some time been obtained by violation of sepulchre, an offence at common and statute law in Scotland. As such it cannot rightfully be retained by any individual for their personal enrichment.

At **Answer 7**, I contend that the Pursuer has made it clear, that he relies on the veracity and authority of a biased and highly speculative report, compiled for, and by, the Second Defender. I also accuse the justice authorities (including the Pursuer) of having acted in contravention of the Court of Session Rules, by allowing a foreign national, not involved in the process, to have access to the fund *in medio* to the benefit of the eventual Second Defender and the detriment of a fair multiplepoinding.

At **Answer 10**, I claim that the justice authorities (which include the Pursuer) and the Lord Advocate acted in contravention of the Court of Session Rules by allowing the fund *in medio* to be transported to Turkey. This was to the benefit of the Second Defender and the detriment of a fair multiplepoinding. **N.B.** To clarify my answer at 10 in the Closed Record; at time of writing this answer the Scottish Government had denied any involvement of the Lord Advocate as a

politician, but later did a U-turn on this. I thought my Answer to the Pursuer was amended to reflect this, but it seems it has not. In my answers The Lord Advocate is said to have acted in his role as head of COPFS which is not the case. I would ask for this amendment to be made now.

At **Answer 12**, I submit that the Pursuer, by his bias in favour of the Second Defender and hostility towards me and by his actions in favouring the Turkish authorities, has negated any semblance of impartiality as an intermediary the court can have confidence in.

So, while the Pursuer in his Note of Arguments attempts to trivialise my defences as being little more than a difference between us in that **I** feel ***"unable to accede to a precise description of the item at issue"*** and **I** ***"dispute its origins and ownership",*** in fact my answers to his condescendence go much further.

By definition my answers can not deal with the Pursuer's omissions, but they are serious. He has failed to state how he established the age of the fund *in medio.* The Court of Session Practice guidelines state that a Pursuer's Condescendence, must, according to the 1994 Rules of Court provide that a detailed statement of the fund must be given as well as details of the facts on which he relies.

I would submit that to comply with these requirements the Pursuer's Condescendence was obliged to state by reference to reputable, independent and qualified, indigenous sources, a detailed account as to how he arrived at the date of the wreath, failing this, he was obliged to say why he chose to do otherwise.

Scotland is blessed with universities ranked among the top for archaeology in the world, and ideally qualified for this task, yet the

Pursuer appears to have relied on an obscure Turkish university to categorise the fund *in medio* as being 4th Century BC. Or, did he simply guess at its age?

The same goes for the soil samples, allegedly taken from the wreath in Turkey. The Pursuer was obliged to have examined the wreath in Scotland and called in forensic specialists to look for evidence of soil traces, which might have indicated where it came from.

Again, Scotland is blessed with having, in the University of Aberdeen, the only university in the UK that offers undergraduate courses for degrees in Soil Science. Another Aberdeen based soil-research facility, the Soil Forensic Unit of the James Hutton Institute, is currently working with the Crown Office on many cold cases, such as the World's End murders and is said to be a world leader in this field.

The Pursuer was obliged to make a detailed statement in his Condescendence as to why he chose to let scientists from another continent, let alone another country, have the job of analysing soil deposits on the wreath and why he chose to do this, when Scottish-based forensic scientists work with the police and COPFS on a daily basis.

I submit that the Pursuer was obliged to state in his condescendence why he allowed a non-EU, foreign country, with a poor record on justice and human rights to have a crucial role in a Scottish court process.

It is my submission that the Pursuer has also admitted that there was a "commission rogataire" raised by the Turkish authorities, but this admission only came after I had raised the fact that the Second

Defender's report made reference to it. It is not as if he wouldn't have known about it, as the Turks claim that it was the reason the gold wreath was sent to Turkey. [7/1, – 29]

I would submit that to compile a "detailed statement" in accordance with the 1994 Rules and Court of Session Practice guidelines, the Pursuer was obliged to state the details of this rogatory letter in his original condescendence, and elaborate on the terms of it.

Similarly, the correspondence between Government Ministers is also something that he would have known about and should have been explained in a detailed statement to comply with the requirements of a proper condescendence. It should not have been left to me to try and prise this information from the various authorities. As a member of the public seeking justice I was entitled to know the facts of these matters to allow me to make an informed decision.

The Court of Session Practice Notes defining a condescendence end the description of a detailed statement by stating: ***The purpose of the statement is to focus the extent of the fund in medio'.*** Surely, by failing to tell us everything relevant about how he arrived at the facts he relied on as the basis for the action, the Pursuer has, by these omissions, obscured rather than focused?

Moving on to the Pursuer's stated position outwith the Closed Record; in particular his letter of 28th May and e-mail of 5th June, which are very revealing, because, by comparison with his condescendence, it can be seen that his stated position to this court, is, in fact, deliberately misleading and displays contempt for the court and this process.

For example in his condescendence at **11,** the Pursuer tells this court that: **"The Reports of Associate Professor Ertekin Doksanalti, and Hatice Karakuzu, are referred to for their terms, beyond which no admission is made."**

Yet the Pursuer after supplying me with a copy of the Second Defender's 2014 report, tells me the very opposite, namely, that: ***"Separately, there is expert evidence that makes it very clear that the wreath does not come from Greece but comes from what is now within the Republic of Turkey."***

Then again in his condescendence at **11,** the Pursuer tells this court that: ***"The pursuer is neither biased towards, nor hostile to, any defender in the current action."***

Yet the Pursuer tells me, with regard to my claim that the fund *in medio* was from Greece: ***"Regardless of whether that is correct, you have no title or interest to either defend or make a claim in this action."*** [13/14, – 1]
Surely Stephen House, the Pursuer, is taking it upon himself to be judge and jury in my claim, before I have even reached the second stage of the court proceedings?

There are other shortcomings in the Pursuer's Condescendence such as at **12**, where he denies that he had refused me sight of the fund and makes a virtue of the fact that he had allowed me sight of police photographs of it. It is a matter of record that I had sought sight of the fund *in medio* repeatedly before I entered the process, and immediately on entering the process. [13/7, 1 to 2]
These requests were refused, and only on the 5th June when I had been in the process for some weeks, did the Pursuer permit me to

make arrangements to have sight of the police photographs, while still refusing me sight of the fund in medio. [13/15, – 1]

I don't even know for sure if the gold wreath ever returned to this country from Turkey.

Again at **12**, The Pursuer states ***"Explained and averred that there is no record of the third defender having made complaints to Fife Police regarding a missing gold wreath."***

This simply isn't true. My complaints to Fife Police in 2004 and 2009 did just that, and are matters of record, to the police, the Procurator Fiscal and the press [13/16, – 1], [13/17, – 1].

In fairness to Stephen House, on this point, the well documented record-keeping problems, since Police Scotland took over, may explain his ignorance of these matters.

Given all of the shortcomings of the Pursuers actions, which all show bias against me and bias in favour of the Second Defender I am left to conclude that I have no confidence in the terms that describe the fund *in medio,* the basis on which I joined the action of multiplepoinding. Namely that the fund *in medio* is a 4th Century BC funereal wreath.

There is not one scrap of evidence to suggest that this date is accurate, or obtained from objective, independent, expert sources and much evidence pointing to the fact that the Pursuer has relied on the untested evidence of a subjective report, from, and by, a party to the proceedings. A party with a vested interest, the Turkish

government, which has been allowed to set the parameters of the fund *in medio*.

I would have no confidence in continuing with my claim if the Pursuer's Condescendence is accepted by this court. Accordingly I would ask the court to have the fund *in medio* assessed for its age and origin by experts from Scottish Universities and institutions and the results verified by the court, before the Pursuer's Condescendence is accepted.

Given the failures of the Pursuer in his duties as Holder and Real Raiser, I would ask the court to reject his second plea in law regarding relevancy; decline his application for approval of his condescendence pending further investigations, and award expenses to me in the normal manner, that is, that costs follow the event.

PUBLIC INTEREST.

I would now, with the permission of the court, like to say a few words about a question of public interest, that is, over and above my personal interest in this case.

I believe that the court should examine the actions of Stephen House, the Chief Constable of Police Scotland acting as Pursuer, and holder of property confiscated in the line of his duty.

I don't know of the rights and responsibilities involved in such a role, but cannot believe they would include allowing a prospective party to a multiplepoinding, The Turkish Republic, to examine

evidence in a possible criminal case in order to compile and submit "expert" evidence, in support of their own impending claim.

Nor can it be right that such evidence was taken as fact by the Pursuer.

Nor can I believe it appropriate that the Pursuer should allow the same party to take police-confiscated property, no longer the subject of criminal proceedings, but then part of an impending civil action, out of the country to another, non-EU country, even if instructed to do so by the Lord Advocate.

In this case the Pursuer assisted in removing a portable antiquity, the proceeds of a police confiscation, as far as possible from the proper domestic resources for impartial evaluation. He then, used the findings of a so-called expert report by a foreign government, as authoritative and accurate evidence in a civil action.

To me this raises serious questions of public concern as to the role of the police and government in the administration of justice.

The Scottish Court Service are adamant they were not involved in any communication with the Turkish Government, so it seems as if a matter that should have been put before the courts, namely, the removal of police-confiscated property to another country, has been decided by individuals with no regard for process or law.

This is a serious matter, especially as it involves a non-EU country such as Turkey, whose record on human rights and the lack of proper access to justice, is such, that the Commissioner for Enlargement of the EU recently met the Turkish Justice Minister to

try to develop a new strategy to achieve acceptable standards, before Turkey's EU accession can even be considered.

I would submit that the failings of the Pursuer, Stephen House, in not taking proper, independent steps to attribute a date and place of origin to the fund *in medio*, when taken together with his bullying behaviour towards me to pressurise me to withdraw from this action, as evidenced in his letter and e-mail, amounts to malfeasance in public office.

I would submit that these are serious matters that the public ought to know about, as they would stimulate debate on a matter of public concern, in that, the administration of justice in Scotland could be improperly influenced by policemen, politicians and a foreign government, unbeknown to the people of Scotland.