

THE DUNMAGLASS CLAIM

CHAPTER 1 EXTRACT



Jane S. Macgillivray

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J. Macgillivray
4 Wyndham Mews
London W1H 2PN

www.dunmaglass.com

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CHAPTER ONE

LITIGATION FOR DUNMAGLASS

Who were the heirs?

When John Lachlan, last of a long line of M’Gillivray chiefs, died heirless in Inverness in 1852, he left one year’s rental to his tenants, who included half a dozen of his name, and some £30,000 to charity and his wife’s relatives.¹ His main legatee was his long-term housekeeper, Charlotte Clark who, according to his will, should eventually be buried alongside him and his wife in the remote Highland cemetery at Dunlichity. There was surprised silence, then a clamour of claimants for John Lachlan’s lands which had not been disposed of in his will. He had been the only wealthy chief of a small clan that for centuries eked a mean living from cattle-rearing in the Highlands. But the previous century, two relatives had ventured to the New World; they had made fortunes in Georgia and Florida and made him their heir. Who now were John Lachlan’s own ‘heirs-at-law’; who would inherit the lands? This was the issue in a 10-year litigation conducted in the Edinburgh courts, and when the awards were eventually made after a lengthy procedure, they appear to have gone to the wrong people.

The long-held entailed lands of Dunmaglass and its 17,000 acres in Strathnairn, as well as the properties of Wester Lairgs and the Easter half of Gask could go only to a male M’Gillivray, while the equally vast estates that had been bought more recently with the American fortunes - Faillie, Wester Gask, half of Inverernie and Easter Aberchalder – would simply go to the nearest-of-kin, which could include descendants of a female M’Gillivray.

¹ The different ways of writing the name throughout the centuries - MacGillivray, McGill(i)vray, MackGillivray and M’Gillivray being the most common, with or without a capital G - have been standardised as M’Gillivray, the version adopted for the documents presented to the court. The variations depended on the scribe (even on brothers) and the period. Similarly, Mackintosh or McIntosh has been rendered M’Intosh.

John Lachlan had designated no heirs and apparently had no close M’Gillivray relations, so it was necessary to delve far back into the past to identify the nearest collateral branch with a male heir. The descendants of the 17th century brothers of John Lachlan’s ancestor, Alexander, whose male line had now died out, competed in the lawcourts for Dunmaglass and the attendant chiefship of the M’Gillivray clan. The successful claimant would necessarily descend from the next younger brother of Alexander, for this is how the law of inheritance worked. So the question seemed straightforward: Who was older, Donald or William?

The M’Gillivrays in Lonnie and Canada

Several generations previously in the 17th century, Donald the Tutor and William, younger brothers of Alexander M’Farquhar² of Dunmaglass, had secured their future and status by becoming owners of the woodland estate of Dalcrombie, to the south of Inverness. One brother took the western portion, the other the eastern, and thus both became landed proprietors, and their families known as ‘of Dalcrombie’, although they may not actually have lived in these remote lands above Loch Duntelchaig. Donald the Tutor looked after the affairs of the two orphaned children of his older Dunmaglass brother and of his elderly father who outlived him.

Donald had several sons himself, the most successful of whom was Farquhar who had moved from the Highlands to live in Lonnie in Petty, described as the lowest-lying farmlands in Europe, stretching along the beaches of the Moray Firth. Farquhar was usually titled ‘Aberchalder’ rather than Dalcrombie, after an estate taken over from a M’Gillivray owner who failed to repay his debts. He was the family banker, co-financing bills, lending money, buying and selling cattle.³ Most of the bonds or bills issued by Dunmaglass, or other members of the family, carry his name as cautioner or joint borrower. Yet like others at the time, he was never

² Alexander signed M’Farquhar, not M’Gillivray.

³ He may have been the Farquhar who engaged in the 1715 rebellion, was taken prisoner and escaped.

solvent. Bailie John Steuart, the Earl of Moray's factor, had business with Aberchalder but wearied of his continually precarious finances.

Aberchalder's son, Donald in Torbreck, apparently married Janet M'Gillivray, his Dunmaglass second cousin, and took over the Lonnie farmhouse when his father died in 1733, at about the same time as two of his cousins.⁴ Donald found that much money was owing to his father, and promptly sued the wives and children of his deceased relations for repayment. Donald did not engage in the second Jacobite rebellion, but was killed for his clothes by dragoons the day after the battle of Culloden.

Donald's son Farquhar, born in the 1720s, moved from Lonnie back to the family property at Dalcrombie. From here he ran an illicit distillery, administered the Scottish estates of cousins in America, and acquired a reputation for being the most wicked and rapacious man in Inverness. He engaged in successive litigations of dubious tenor, designed to enrich his family at the expense of others. Despite his legal skill and profiteering, his children had to make their own way in the world.

Farquhar's only son who left issue was John. *The Dictionary of Canadian Biography* states he was born in 1770, the *Encyclopaedia of Canada 1777*⁵ with a question mark; *The Inverness Courier* wrote that he died aged 84 in 1855 while his gravestone in Canada shows his birth as 1777. But there is little doubt about John's ancestry; when one of Farquhar's Dallas granddaughters moved to Canada, she was recognized as John's niece.

John moved to Canada and started working as a clerk in 1794 in the fur-trading North West Company that his relative William

⁴ Aberchalder's younger son Alexander, who died at Culloden, farmed at Lonnie and married Margaret, daughter of Alexander M'Intosh of Borlum at Termit, a successful trader with England and the continent like Bailie Steuart. Daughters: Elizabeth married Robert of the other Dalcrombie family a short walk away at Dalzeil, Marjory married Thomas Fraser of Garthmore in 1729 and Marie may have married Thomas Fraser, son of Farraline.

⁵ This could not be right; John witnessed a legal document with his brother Lachlan in 1787, an improbable duty for a ten-year-old. The *Encyclopedia* credits him with a brother Duncan and notes this Duncan is not to be confused with the brother of William of the NWC. Duncan does not appear in his father's will; he may have died by the time it was drawn up. 1771 is the year of birth of another John, brother of William of the North West Company in Canada; it is not known what became of him.

M’Gillivray had joined ten years previously, and like William, he had native children in the North West. When John was made a partner, an unkind contemporary commented that he was ‘too slow and unfit to conduct an opposition’ which may suggest that he was not as ruthless as some of his colleagues. He built a home in Williamstown, Glengarry County, Ontario and called it Dalcrombie. In 1816-17 he visited Britain with his young wife, Gaelic-speaking Isobel McLean. He received a small legacy from William M’Gillivray of the North West Company who described him as ‘cousin’ in his will. From 1839 to 41, he served on the Legislative Council of Upper Canada, and was known thereafter as the Honorable John M’Gillivray. When he retired from the Hudson’s Bay Company, it was with a ‘competent fortune’ according to the *Inverness Courier*.

Although many in Scotland doubted he could produce evidence in support of his claim to one of the M’Gillivray properties, Easter Aberchalder, the Hon. John had kept a valuable document, an old notarised contract of sale that his father had negotiated with a reversion clause to his own line; if Dunmaglass had no descendants, this property would come to his father’s branch of the family. The Canadian thus became the uncontested owner of Easter Aberchalder only months after John Lachlan’s death. But a greater possession was Dunmaglass. The following year, Neil John presented the second petition received at the Sheriff of Chancery’s offices ‘praying to be served nearest and lawful heir-male to the deceased John Lachlan’. Legal procedure was slow, and the Hon. John died a year or two later, so his claim was taken up by eldest son, Neil John, born in 1827. Neil John’s activities in Canada were clouded in rumours of financing, risky ventures and a bank that crashed. But the Canadian financier in his twenties was the most serious contender for Dunmaglass. He was the great-great-great-grandson of Donald the Tutor, the first M’Gillivray owner of Dalcrombie.

In the absence of any closer tie-in to the Dunmaglass family, Neil John’s entitlement seemed undeniable. He was descended from a ‘tutor’, traditionally an orphaned child’s oldest paternal uncle. As things stood, there did not seem to be much hope for the counter-claimant who descended from William, the other brother ‘of Dalcrombie’ who lived in the farm of Wester Lairgs near Moy.

The M'Gillivrays in Dalzeil, the Carolinas and Jamaica

This William of Dalcrombie had two sons, John and Donald. The latter remained in the remote Highlands near Dunmaglass and in turn had two sons, Lachlan and John. Lachlan was sent a prisoner after the 1715 rebellion to the Carolinas where he later became a trader. A registered will in Charles Town in 1733 shows that he had assets to leave to his father, brother and cousin Archibald. But there are no more records that show Donald's line.

William's son John married at least twice; his last wife, Janet M'Intosh, was sister to two successive clan chiefs. He lived next to his cousins, the Lonnie M'Gillivrays, on the handsome farmstead of Dalzeil and then Tullich, and appears to have led the same busy life of cattle-breeder and Inverness financier as his cousin Aberchaldier, also conducting business with the Earl of Moray's factor, Bailie John Steuart, at nearby Castle Stuart.

He had several sons and daughters. According to descendants, his son Alexander was attainted in the 1st Jacobite rebellion, and his half of the family property of Dalcrombie passed to the Lonnie cousins as being next of kin. In fact, Alexander's father John was still owner at this time, and was doing business with Bailie John Steuart at the end of 1716. The property seems to have changed hands after a straightforward sale several years later. But Alexander did end up in the Carolinas, and may have been sent there a prisoner, perhaps with his older brother William. Their brother Farquhar was still in Scotland in 1721, but reportedly died abroad. Did John of Dalcrombie visit his son or sons in America? Simon Fraser Mackintosh, who set out the genealogies of the M'Gillivray family in the 19th century, wrote (but then heavily crossed it out) that John worked in a Mercantile House in Carolina, where he resided some time before returning to Scotland. When John died in 1733 (we do not know where, but coincidentally at the same time as his nephew in America and his Lonnie cousin), his widow Janet M'Intosh was cited in a legal summons together with only two of her children, Robert and Anne. The other children had married and left home or were in America.

Alexander, described as of the Carolinas and a wealthy man, immediately returned to Scotland on his father's death, and married

in 1736. He stayed for a while in Dalzeil, but brought up his children either in America or in Scotland, and at one time lived on the farm of Knocknagael, near Inverness. But it was Alexander's younger brother, Archibald, who developed with Alexander or inherited from his cousin Lachlan what in the 1730s was the largest trading company in the Carolinas. It had twenty pack-horsemen and one hundred and twenty three horses.⁶ Their brother Robert, who had stayed in Scotland, married twice and looked after the farm of Dalzeil.⁷ When the battle of Culloden raged at his doorstep, he died valiantly with the blood of many Hanoverians on his sword, and when the sword broke, he went on fighting with a cartwheel. Simon Fraser Mackintosh wrote that he was much the strongest man at Culloden.

Despite Archibald's success as a trader, he did not remain in Carolina, but followed Alexander back to Scotland, probably arriving in the middle of the rebellion. Another member of the clan, Lachlan, had taken his place in Charles Town and was starting out on a route that would lead to even greater success and wealth. Archibald had apparently come home to settle for he soon married Lucy, a daughter of the Kyllachy M'Intoshes and leased the farm of Daviot, near Inverness, from his uncle, the M'Intosh chief.

Archibald's ties with the New World remained strong: three sons, John, James and Lachlan, returned to America and worked for their relations. Lachlan took their slaves to Jamaica when the Loyalists had to leave. He is found here with one white dependant in 1786, and had two children aound the turn of the century, then returned briefly to Scotland in 1807 where he married Ann Kennedy, the daughter of an Inverness doctor. It was their son, another Lachlan, now in his forties, who was counter-claimant against the Canadian M'Gillivray.

Rev. Lachlan had come a long way for this inheritance, together with his family, and had now hired a pay-if-you-win lawyer. He was

⁶ An early but older partner was Daniel Clark, who had also left the Dalzeil homestead for the Carolinas; yet another Dalzeil youth who came over was James Macqueen of Corrybrough

⁷ He had issue but the names are not known. Daughter Ann, married to Hendry, was sole heir to her mother in 1805. Robert's sister Ann married Alexander M'Gillivray of Aberchalder and moved to that farm near Dunmaglass.

not displeased about returning to his homeland: in Australia, where he had emigrated as a young man and where he gave 'divine service', his principal and rather unsatisfactory occupation was as a minor civil servant. Against all odds, he judged his prospects to be brighter in Scotland.

It is surprising that Reverend Lachlan should have bothered to enter the fray. The Canadian claimed to descend from the brother known as 'the Tutor', who would take precedence over his own ancestor. In addition, as Reverend Lachlan himself admitted in his condescendence, one of the American relations had entailed Dunmaglass to Neil John's grandfather if John Lachlan had no issue.

Reverend Lachlan M'Gillivray was great-great-grandson of William of Wester Lairs.⁸

A secret deal

There was a third claimant competing for Dunmaglass and its lands, but he did not stay in the running for very long. Alexander M'Gillivray was a labourer on the Urquhart estate of Patrick Grant, sheriff-substitute of Inverness and one of John Lachlan's trustees. Although first to enter his claim, he may never have been a real contender but rather the means to put Dunmaglass into the hands of a receiver, an office that his landlord's son soon occupied. Alexander's claim was later dropped. This is the only glimpse we have of him and nothing is known about his relationship to the Dunmaglass family.⁹

Although the case had taken years to prepare, the actual hearings in 1857 in Edinburgh were brief. The jury was supposed to decide which was the elder of the two brothers born in the 17th

⁸ He presented himself as the eldest son of Lachlan of Sunflower Estate, Jamaica, youngest son leaving issue of Archibald of Daviot, second son leaving issue of John, portioner of Dalcrombie (the male descendants of Robert being extinct, the sons of the first marriage of John died unmarried except his third son Alexander, who died leaving one son, John, who died in America unmarried and with no issue).

⁹ The census shows he was 52 and born in Daviot; the closest Alexander in the old parish baptism records is the son of a Donald M'Gillivray and Ann M'Gillivray, born in 1797, with siblings Catherine and Margaret.

century, but the issue seemed rather to be who the late John Lachlan considered his heir. According to papers deposited by Neil John's lawyers at the National Archives of Scotland, there was a jury of twelve - a grocer, tailor, veterinary surgeon, spirit dealer, druggist, dairymaid, two boot makers, farmers and engravers - none of whom bore a Highland name. They must have eyed these Scots from abroad with astonishment and curiosity. Although they were inexperienced in matters of clan genealogy, their job was to listen to elderly Gaelic-speaking witnesses and choose 'the nearest and lawful heir-male of John Lachlan M'Gillivray of Dunmaglass, deceased'. *The Inverness Courier* reported:

'Many of the witnesses being veteran Highlanders, aged from seventy to eighty years, considerable difficulty existed in eliciting answers. The Reverend T. M'Lachlan, of the Gaelic church, attended as interpreter. But whenever the witnesses knew any English at all, the Court requested them to answer directly in that language, apparently repugnant though it was to them. Some of the replies thus given to questions imperfectly understood created great merriment in Court. One old farmer having been asked his age, he said about seventy. How long is it since your mother died? Fifteen years ago. How old was she? Between forty and fifty - (Laughter. The witness was thus older than his mother before her death). Do you mind the date of your father's death? - Not exactly; I took no notice of it. (Great laughter)'

The proceedings are described differently in three typewritten pages deposited at the Lyon's Office in Edinburgh. No source is cited, but they seem to be extracts from a book, now lost, supposedly in the possession of Neil John's son when he died. According to these pages, the Canadian Neil John had powerful support for his claim: that of Aeneas M'Intosh, brother to the chief, also from Canada. Aeneas' uncle had been involved in a similar inheritance case in 1820 on his return from Jamaica. To prove his claim to the M'Intosh lands, he had produced elderly witnesses who remembered his father's pedigree. Now Aeneas recalled his conversations with John Lachlan, his riding companion; they were both 'fond of horses'.

'I was in the way of visiting him, and was very intimate with him. He frequently spoke about his heir in the years 1840 to 1850;

he said he was in America, that it was one of the Dalcrombie family – he had no near relatives in this country.’

Another witness was Mary M’Intosh, niece of the late Provost John of Inverness, and second cousin to Rev. Lachlan. Despite this connection, she gave evidence that was prejudicial to his cause: ‘I am daughter of the late Charles M’Intosh, W.S. He died in 1818. He was seventy-two years of age. He had charge of Dunmaglass property. I have often seen John Lachlan, the late proprietor. I never heard of any person acting for Dunmaglass but my father. (...) I recollect seeing a relative of his coming from Canada. It was young M’Gillivray of Dalcrombie. (...) I have heard my father say that he was astonished that Dunmaglass could let him go away. My father thought that Dalcrombie was next heir. He regretted that Dunmaglass had no heir, and that Dalcrombie was heir. I paid little attention at the time. I have heard my father repeatedly talking in that way. I heard others talking in the same way.’

The third witness that Neil John cited was Lachlan M’Intosh, who was agent for some of the heirs-female in the litigation for different M’Gillivray lands. He confirmed that his research showed there were no male heirs who were closer than Neil John.

Eight other witnesses were examined for Neil John, including three of the name M’Gillivray; their ages ranged from sixty four to seventy two. Sadly what they said was not noted. Five more witnesses were cited, but not examined.

Rev. Lachlan’s papers have been printed in bookform and are held in the Charles Fraser-Mackintosh Collection at Inverness Library. They include old family letters, a letter from one of John Lachlan’s curators, and two wills that we shall see later. In his condescendence to the court, Rev. Lachlan admitted that Colonel John, one of the wealthy M’Gillivrays his father had worked for, had executed a disposition and conveyance of the properties in favour of Neil John’s grandfather if the Dunmaglass line failed, and this decret of adjudication had been properly recorded in the Record of Abbreviates in 1787. But Rev. Lachlan claimed that Colonel John had done this without having acquired any title to the estates.

Two years previously, Rev. Lachlan’s lawyer Thomas Thomson had concluded that Farquhar of Aberchalder’s legitimacy was

questionable, and more importantly that Donald the Tutor was older than William, Rev. Lachlan's ancestor. Thomson then wrote: "The weakest part of the case is the evidence that Donald and William were sons of Farquhar McAllister but that applies to your case as well as your opponent'sWere I in your situation I would give up the case as hopeless; it is so in every sense as I am sure I have exhausted all the sources of proof and got not a single fact in favour of your claim."

But something had come up to make him change his mind, for both Rev. Lachlan and his lawyer had stayed the course. What Lachlan argued in court was not recorded although according to an early 20th century issue of *Celtic Monthly* he denied that Donald was the next eldest son, and attempted to cast doubt on the Hon. John's marriage in Canada. This was reported with some indignation: 'The Canadian marriage of Mr. Neil John M'Gillivray's father was fully established by witnesses who knew his father and mother; and the documentary proofs left no doubt as to Donald the Tutor's position in the pedigree.'

The court had difficulty understanding the Highland witnesses, who must have been distressed at the outbursts of mirth and hilarity their answers caused. Fortunately for them, this affront did not last long. On the very first day, there was a surprise recess in the proceedings. The two sets of lawyers retired, returning with a joint statement that Rev. Lachlan was withdrawing from the competition. What was not reported was that the claimants had in fact come to an arrangement whereby, in exchange for his withdrawal, Rev. Lachlan would receive financial compensation, namely the accumulated rent on Dunmaglass since John Lachlan's demise, which was estimated at about £3,000. Rev. Lachlan's lawyer would later refer to the research he had undertaken and the skilful use he had made of this at the trial, which had resulted in this prize.

We do not know what the lawyer and Rev. Lachlan's £3000 trump card was, and whether the witnesses themselves were a real liability for the claimants. Whatever Thomson had unearthed, it wouldn't win his client the case. But given the all the evidence showing that Neil John had by far the stronger case, it was clearly significant enough to prejudice his total success.

The witnesses were dismissed. Now all the jury had to do was pronounce on the accuracy of Neil John's ancestry. The latter was duly found acceptable and, the claim being uncontested, Neil John became heir to Dunmaglass, Wester Lairgs and the Easter half of Gask, as well as chief of the M'Gillivray clan.

'Let the lawyers say what they would'

When the Canadian laird finally set foot on his remote lands in the autumn of 1858, there was great rejoicing. His tenants and neighbours prepared a banquet, danced and toasted him all night because Neil John was the better option; for some reason, they had not wanted Reverend Lachlan to succeed. The lawyers though voiced doubts about the outcome; they did not believe that Neil John was the true heir to Dunmaglass and Wester Lairgs.

The Inverness Courier reported that the dinner and ball was a great success. Below are extracts:

'(Neil John's) accession to the estate gave sincere satisfaction in Dunmaglass, where Mr. MacGillivray was to some extent personally known and whither very favourable reports of his character and disposition had preceded him. In order that all might have an opportunity of meeting him and in order also that they might show respect to the heir of the Dunmaglass family, the tenantry on the estate invited Mr. MacGillivray to a dinner at the Mains farm, which took place on Friday last. The day was fine, and besides the tenantry, many other friends of Mr. MacGillivray were present. On his approach to the Mains, some 200 persons met the carriage and having unyoked the horses, they dragged the vehicle to the scene of the banquet, preceded by pipers and loudly cheering all the way. Materials for a large bonfire had been previously collected on the top of Mamour and towards evening a large party assembled around the pile which they set on fire; and having drunk to the health and prosperity of the laird, they danced around the fire, then returned to join the dinner party. (...) After dinner and toasts to the Queen, the Prince Consort, the rest of the family, the Army

and the Navy, Mackintosh of Mackintosh, the chairman called for a special bumper to the health of their esteemed guest - the laird.

We have met, he said, to give a welcome to Mr. MacGillivray on his arrival in our country, to take up his abode on the estate of his ancestry, and I am sure I speak the sentiments of all when I say that he receives a most sincere and hearty welcome. Neither he nor his family are strangers to us, and many an anxious wish during the litigation did we all express that he should be, as I rejoice to say he is, now among us. We felt satisfied, *let the lawyers say what they would, and let the issue be what it might*, that our honoured guest was the true heir of Dunmaglass and no other could have received a hearty welcome or been acknowledged as our chief.

I would not in the presence of Mr MacGillivray expatiate on his many virtues, but I may be permitted to say that from all we have seen and known of him, as well as from what we have learnt regarding him, he will be a good and honoured landlord. *He has sprung from a good stock.*¹⁰ His father and mother had been well-known to the tenants, and had been as universally esteemed as known: and I doubt not the Laird will keep alive those pleasing recollections of the parents.

The chairman concluded by calling on the company to join him in wishing Mr MacGillivray long life, health and happiness in the enjoyment of his property. The toast was drunk with Highland honours, and immense cheering.'

The young Canadian from Williamstown was very flattered. When it was his turn to speak, he declared: 'I fear I shall not be able to realize all your high expectations regarding me, but the honour which you have done to me today as well as former kindnesses shown to my family, will impel me to do my duty; and if I am not as good a landlord as your hopes lead you to expect, believe me the fault will be of the head and not of the heart.'

¹⁰ Our italics

Parts of the newspaper report are astonishing: 'He has sprung from good stock.' Yet an Inverness worthy, Mr. Fraser-Tytler, would later write that Neil John's grandfather was a murderer who had fled to Canada, the MacGillivray clan book that he was arrogant, callous and cruel, and Charles Fraser-Mackintosh, 19th century historian and Member of Parliament, that he was the most wicked man in Inverness together with Macpherson in Ballachroan. Perhaps there was more to Neil John's ancestry than meets the eye, but as the welcome-home speech made clear: 'Let the lawyers say what they would, and let the issue be what it might - our honoured guest (Neil John) is the true heir of Dunmaglass!'

What had the lawyers been saying? Who did they think was the true heir? Was Neil John's lawyer among those who doubted the legitimacy of the outcome? What was the complication that led the chairman of the evening's celebrations to declare: 'Let the issue be what it might...?' These were not questions at the time. The answers were known to the whole company assembled at Dunmaglass that night, and to the readers of the *Inverness Courier* also, but not to a single soul today.

Despite Neil John's good resolutions, charm, 'good stock' and being a far better Highlander than his predecessor - the last of the old line, as the *Celtic Monthly* described John Lachlan - Neil John had no head for business or for running an estate as he himself admitted. The court case and settlement had been costly, and although he drank and danced, he had already sown the seeds of his own destruction. His mounting debts would mean the end of the M'Gillivray possessions in Strathnairn. Very soon the lands that had been home to the Scottish clan for centuries would be fully mortgaged and irretrievably lost.