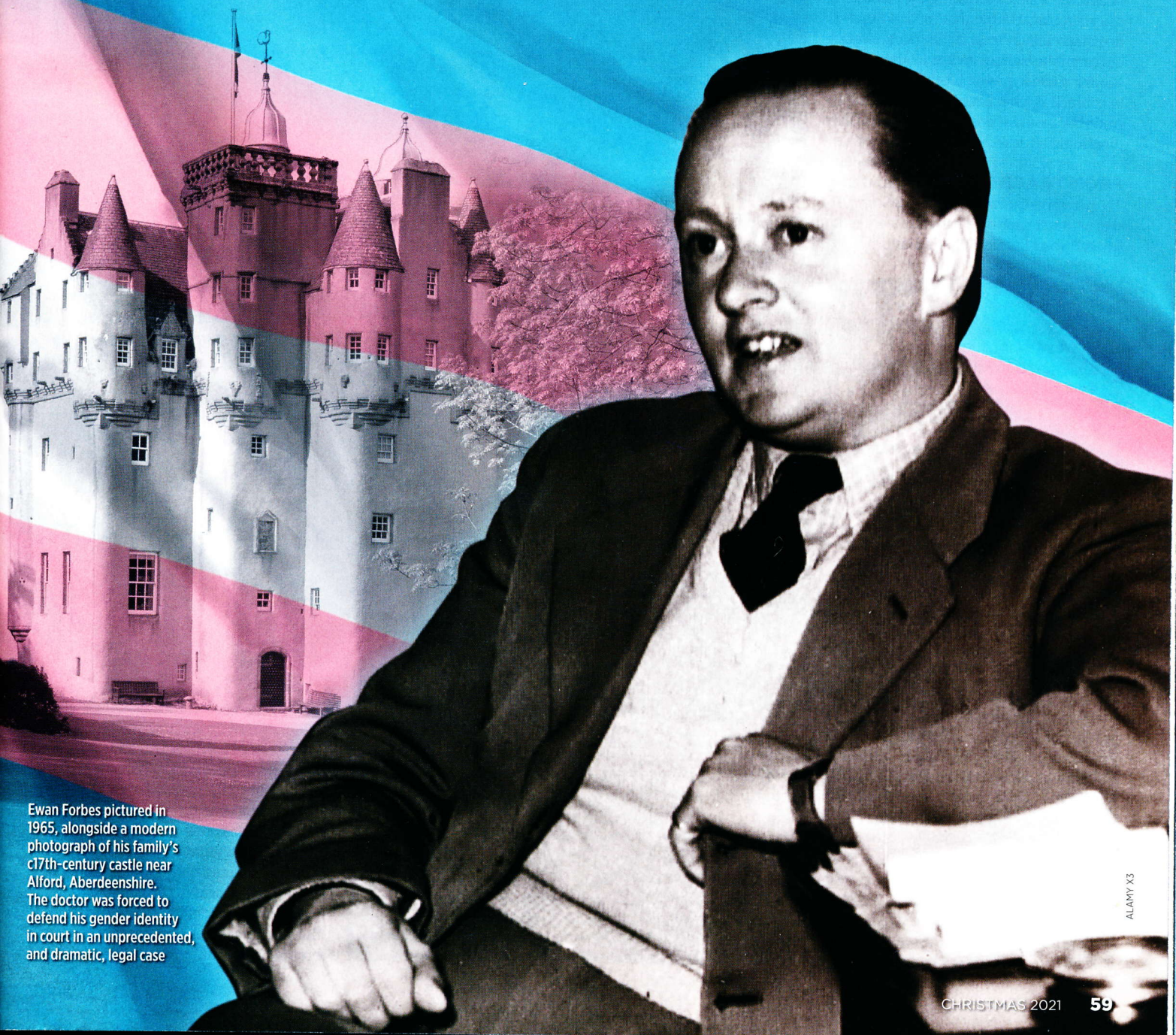


EWAN'S HIDDEN BATTLE

In 1965, a Scottish doctor named Ewan Forbes stood to inherit his family's baronetcy. But, as a transgender man, he would soon find himself embroiled in a top-secret legal case – with consequences that still affect the lives of trans people today. **Professor Zoë Playdon** examines a very different type of 'coming out' story...



Ewan Forbes pictured in 1965, alongside a modern photograph of his family's c17th-century castle near Alford, Aberdeenshire. The doctor was forced to defend his gender identity in court in an unprecedented, and dramatic, legal case

ALAMY X3

On 15 May 1967, the journalist George Watts attempted to report on a mysterious case being heard at the Court of Session in Edinburgh, Scotland's most senior civil court. But when he contacted the court officials for more information, he was met with a wall of silence. "There were clearly instructions 'from above' that we in the media were to be told nothing," he would later recall.

All Watts knew was that it involved a dispute over the inheritance of a baronetcy, and when the verdict was announced on 6 December 1968, he shared his anger at the lack of transparency in an article for the *Glasgow Herald*: "Disquiet over Forbes-Sempill case secrecy."

He may not have known it at the time, but Watts' short report would later prove vital in revealing the story of a secret legal battle that rocked the British establishment. Deliberately kept out of public sight, the case would have shocking consequences for many decades to come. But what exactly was it about? And why would it end up having such dire implications?

FROM PEACE TO PANIC

The person at the heart of the case was a transgender man named Ewan Forbes. Born in 1912, Ewan was the youngest child of one of Scotland's noble families, famous for being the owners of Aberdeenshire's iconic Craigievar Castle and its 20,000-acre estate. The family were certainly well connected: Ewan's grandfather had been an intimate friend of Queen Victoria, while his father had served as an aide-de-camp to King George V.

By the time he turned six, Ewan's mother – Gwendolen, the Lady Sempill – realised her child was really a boy, even though he had been registered as 'female' at birth. Rather than sending him to boarding school with his siblings, she decided to home-school him instead, letting him play as he wished and wear the kilt and riding breeches he preferred.

In the 1920s there were no 'puberty blockers' to buy time for trans children and their parents. However, research was being carried out into producing synthetic hormones, and in Berlin, the physician Magnus Hirschfeld was providing affirmative care for trans people at his Institute for Sexual Science. Gwendolen called into play her wide-ranging family connections, and when Ewan was 15, she took him on a series of visits to specialist doctors – in Dresden, Prague, Vienna, Budapest and Paris. As a result of these trips, Ewan became a guinea pig for



Ewan's brother, William, pictured as a child alongside their father and grandfather. Each man inherited the title Lord Sempill when the previous holder died



early testosterone treatment, giving him a "terrible plague of boils and pimples" followed by a "lusty growth of hair" on his chin, cheeks and chest as he went through male puberty.

During World War II, Ewan studied medicine at the University of Aberdeen and became a family doctor in his local town of Alford. He fell in love, and – so that he could get married – corrected

ABOVE LEFT: Ewan pictured during his time as a student at the University of Aberdeen

ABOVE RIGHT: The doctor's older sister, Margaret Forbes-Sempill, would later 'out' her brother

his birth certificate in 1952 to show his sex as male. This was straightforward to do; at the time, being trans was medically classified as a variation of sex development, an intersex condition, and trans people therefore had no legal penalties attached to their lives.

Ewan led an idyllic existence, but things changed in 1965 when his older brother William died, and the family

Arthur Corbett and April Ashley marry in 1963. The couple's acrimonious split would prove particularly traumatic for April



baronetcy became vacant. As with other hereditary titles awarded by the British Crown, the baronetcy was subject to primogeniture, an ancient convention that limited inheritance to first-born/eldest children, usually with a male preference. It was a tradition that also governed the monarchy itself, right up until the passing of the 2013 Succession to the Crown Act, which gave equal rights to princes and princesses (Elizabeth II only became queen in 1952 because there were no eligible males to take the throne at the time). In theory, Ewan should have been able to inherit the title with no questions asked, but upon William's death, a cousin – John Forbes-Sempill – mounted a legal challenge to gain the baronetcy for himself, on the grounds that Ewan wasn't a "real man".

Although his birth certificate showed his sex to be male, as a doctor, Ewan knew that trans people were starting to be being reclassified by medicine. In 1962, the world's first gender identity clinic had opened at the University of California, Los Angeles, claiming that – together with its counterparts in other American states – it could 'cure' gay and trans people with electro-convulsive therapy, frontal lobotomy, aversion therapy and psychotherapy. In fact, something of a turf war had broken out between the fields of endocrinology and psychiatry, meaning that the original, affirmative model of trans healthcare used by endocrinologists was increasingly being replaced by a punitive one developed by US psychiatrists.

Ewan thus faced a daunting prospect: if the courts accepted the latest medical 'science', he could end up being reclassified as female, with he and his

wife redefined as lesbians who had committed a perjured marriage – a crime that carried a penalty of two years' imprisonment. (Although same-sex couples can now legally marry in Britain, knowingly providing false information is still liable to the same punishment.)

The events that followed were dramatic, tragic and stranger than fiction. Having begun legal proceedings, John used the courts to force Ewan to undergo a highly intrusive medical examination, secured by a damning letter penned by Ewan's estranged sister, Margaret. Not only did this traumatic ordeal 'prove' that Ewan was female, but things then took another shocking turn when Margaret – feeling remorse for her actions – was killed in a car accident while travelling to reconcile with her brother.

Grieving, and exposed to humiliating, prurient questions in court, Ewan and his wife, Patty, were forced to mount an imaginative defence, aided by the UK's most senior psychiatrist, Professor Martin Roth. But thanks to Roth's expertise, they won the case, successfully arguing that Ewan's "psychological outlook" was male, and that it was therefore only reasonable to classify him as a man.

For Ewan, it was a stunning victory – but the verdict inadvertently triggered a constitutional crisis. Securing the succession to the Crown is the prime directive of constitutional law, and

at that time, the British monarchy was also subject to male-preference primogeniture. If a trans man was able to inherit a primogeniture baronetcy, it meant that a trans man was able to inherit the Crown, too – and there would be no certainty as to who the next monarch in line would be.

A BACKWARDS STEP

Conveniently for the British Establishment, on the same day that Ewan went into court – 15 May 1967 – another aristocrat filed for divorce from a trans woman. In Gibraltar, the Honourable Arthur Corbett had gone through a ceremony of marriage with a fashion model named April Ashley; their relationship had failed, and April sued Arthur for maintenance.

Crucially for that case, though, April had not corrected her birth certificate: she was still legally male, and her 'marriage' was declared void from the start. Arthur could have ignored April's maintenance claim, for she had no legal relationship to him, but instead he began divorce proceedings. The judge, Lord Ormrod, had heard a similar case a few months earlier, *Talbot v Talbot*, which had been settled immediately since "there plainly was no marriage". But instead of doing the same thing for April and Arthur, Ormrod's court subjected April to a series of humiliating medical examinations. ▶

"Ewan faced the threat of being reclassified as 'female', with he and his wife redefined as lesbians who had committed a perjured marriage"



A surgeon performs a lobotomy on a patient at a British mental hospital, 1946. Within a few years, similar treatments were being recommended in order to 'cure' trans people

MAIN: Ewan pictured with his wife, Patty, on their wedding day in 1952. The couple would remain married until Ewan's death in 1991

RIGHT: Lord Ormrod annulled Arthur Corbett and April Ashley's marriage on the grounds Ashley did not 'qualify' as a woman

FAR RIGHT: Ashley pictured in 1962, two years after undergoing gender reassignment surgery



“Silently, without debate in Parliament or new statutes being passed, trans people were deprived of their civil liberties”



TRANSGENDER TRAILBLAZERS

Three other figures who made an impact on the fight for trans rights...

CASE 129

Trans pioneer Case 129 (we do not know her actual name) was a physician who gave psychiatrist Richard von Krafft-Ebing a long account of her “metamorphosis” into a woman, which he used in his landmark medical work *Psychopathia Sexualis* (1886) to ensure trans people were protected from prosecution for “perversion”.

‘P’ FROM CORNWALL

After being dismissed from her job as a teacher for being trans, ‘P’ mounted the landmark case *P v S and Cornwall County Council*, which defeated the UK government at the European Court of Justice in 1996. The verdict restored trans employment rights in Britain, and ushered in an era of successful trans activism – both at home and overseas.

MICHAEL DILLON

◀ Trans man Michael Dillon instituted the annual side-by-side Women’s Boat Race in 1936 while a student at an Oxford women’s college. Subsequently, he became a ship’s doctor, and after being outed by the press, retreated to become a Buddhist monk, taking the name Lobzang Jivaka, until his death in 1962.



Michael Dillon pictured during his rowing days. A qualified doctor like Ewan Forbes, he would later write a treatise on the treatment of trans people

◀ Before she went into the courtroom, April was taken to Ormrod’s chambers, where she was shown Ewan Forbes’ case and verdict, and told that she could not refer to it; everyone who knew about the matter was bound to secrecy, with all records concealed from the public eye. As April’s solicitor Terrence Walton would recount, there were some interests that were “more important to protect than the rights of individuals”.

Because of this technicality, the same expert medical evidence that had previously been used by Ewan was rejected. Instead, Ormrod drew on the latest developments in pseudo-medicine to form a circular argument that declared April – and all trans people – to be mentally ill masqueraders. From that point on, if a trans man tried to inherit a male primogeniture title, he could be declared delusional and “floridly psychotic” (as the medical term put it), and thus not eligible to receive it.

April thought the verdict just meant she wouldn’t be able to marry again. But silently, without debate in Parliament or new statutes being passed, trans people were deprived of their civil liberties. Suddenly, they lost their employment rights and could no longer correct their birth certificates, marry their partners or adopt any children. More chillingly, if they couldn’t so much as pay a parking fine, they might end up being sent to the wrong sex prison, where the rape of trans women was all too common – and not even classed as ‘rape’.

REOPENING THE CASE

Throughout the 1970s, 1980s and early 1990s, trans people in Britain were subjected to social abjection, pillorying by the press, and an NHS regime that included compulsory sterilisation. In 1996, however, there was a positive step forward when the European Court of Justice restored trans people’s

employment rights – the first time anywhere in the world that case law prevented discrimination because of someone’s gender identity.

Meanwhile, in the same year, April Ashley’s solicitor finally disclosed the existence of Ewan’s ordeal, and George Watts’ short report in the *Glasgow Herald* enabled the details to be tracked down. Following the intervention of the home secretary, its proceedings were finally made public in 1998.

Despite a great deal of progress, trans people have not lived in complete legal equality since the Ewan Forbes case. The 2004 Gender Recognition Act still excludes trans people from the inheritance of hereditary titles, and following the 2013 Succession to the Crown Act, six parliamentary bills seeking a wider end to male primogeniture (which would also resolve the issue) have all failed.

After leaving medicine and spending much of his life as a rural landowner, Ewan Forbes passed away in 1991, aged 79. Ironically, his baronetcy was then inherited by John Forbes-Sempill – the same cousin who had tried to take the privilege away from him all those years earlier. Neither man could have predicted that their legal battle, fought in strictest secrecy, would go on to have such a seismic impact. ☉

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GET HOOKED

LISTEN

Zoë explores the case of Ewan Forbes on the HistoryExtra podcast: [historyextra.com/ewanforbes](https://www.historyextra.com/ewanforbes)

Protesters gather outside Downing Street to campaign for better support for Britain’s trans community, 2021. Before the Ewan Forbes case, trans people lived in complete legal equality with everyone else – but their rights were soon eroded

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