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NAMES AND ARMS CLAUSES
Howard v *Howard-Lawson*

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When a testator wishes a gift to be made only on condition that the beneficiary adopts his surname and armorial bearings he may insert a 'name and arms clause' into his will to give effect to this. Such a condition will be legally binding so long as it is sufficiently clear and is capable of being performed.[1] Commonly found in nineteenth-century wills, when the courts developed much of the law on this subject, name and arms clauses are now rather more unusual.

In 2011 the Chancery Division of the High Court was asked to consider the validity of a name and arms clause in the case of *Howard* v *Howard-Lawson*.[2] The Defendant, Sir John Howard-Lawson, Bt., had sold the ancestral family seat of Corby Castle in Cumbria. The Claimant, his son, Philip William Howard, claimed his father lacked the authority to do so as he had failed to comply with the requirements of a name and arms clause in the will of his benefactor. The Corby estate had come into the hands of Sir John under the will of his great-grandfather Philip John Canning Howard ('the testator'), dated 19 February 1930, who died on 22 April 1934.

This branch of the Howards descends from Thomas Howard, 4th Duke of Norfolk (1536-1572) through his youngest son Lord William Howard (1563-1640) (see **Table 1**). The latter purchased the castle in 1625 (not 1611 as is often claimed) and it remained in the family's possession until sold by Sir John in 1994.[3]

Clause 8 of the 1930 will specified that any member of the family who had a claim to Corby Castle was required to 'use and bear the surname and arms of Howard' within one year of becoming entitled to inherit. Any claimant who was not a Howard would be required to 'apply for and endeavour to obtain the Royal Licence or take such other steps as may be requisite to authorise the user and bearing of the said surname and arms' (paragraph 11 of the judgment). Again this was to be done within one year of the beneficiary becoming entitled under the will. If he should 'refuse or neglect' to do this in the year he would forfeit his interest (paragraph 12).

The testator's only child was a daughter, Ursula, who married Sir Henry Joseph Lawson, Bt. Ursula died on 5 January 1960 and it was necessary for her son William

[1] *Re Croxon, Croxon* v *Ferrers* [1904] 1 Ch 252; *Re Neeld, Carpenter* v *Inigo-Jones* [1962] Ch 643.
[2] [2011] EWHC 63 (Ch); [2011] All ER (D) 172 (Jan).
[3] Cumbria Record Office, D HC 2/26/1; Land Registry, Title No. CU104621 (Corby Castle).

Lawson to comply with the name and arms clause in his grandfather's will. He declined to do so in the belief that the clause was invalid due to the uncertainty of its meaning. This itself became the basis of litigation, as the result of which Wilberforce J (later Lord Wilberforce) determined that the clause was valid and William Lawson had forfeited his right to the estate.[4]

Entitlement then passed to William's son, John Philip Lawson (later Sir John Howard-Lawson, Bt., the Defendant). The time for him to comply with the clause ran from 5 January 1961 until 5 January 1962, following his father's forfeiture. Wilberforce J's judgment was issued only on 29 March 1961, but an approach was made to Walter Verco, Chester Herald at the College of Arms, during the summer of that year.

An application was made to the Home Office in October 1961 for permission to lodge the formal petition for a Royal Licence and this was granted the following month. Unfortunately the process was held up by Denis Waterkeyn, the applicant's cousin, who had agreed to petition jointly with the Defendant (to save costs). He only supplied the necessary pedigree information in December 1961, apparently 'causing annoyance to the defendant [Sir John] and embarrassment to Chester Herald in his dealings with the Home Office' (paragraph 23).

The petition was sent to John Howard for signature on 15 February 1962 and returned to the College of Arms. Once Garter King of Arms (Sir Anthony Wagner) had given his approval this was forwarded to the Home Office. On 26 April 1962 the Royal Licence was signed and then issued on 3 May 1962. The change of name was announced in the London Gazette on 1 June 1962.[5] The exemplification of the arms, i.e. the issue of a document by the Kings of Arms establishing the arms to be borne, followed on 10 September 1962 and was recorded in the College of Arms.[6]

Thus the granting of the Royal Licence and the exemplification of arms both occurred after the expiry date of 5 January 1962 by which the clause required the change of name and arms. After succeeding to the Lawson baronetcy in 1990, Sir John took the name Howard-Lawson by Royal Licence dated 31 March 1992, which also entitled him to quarter the arms of Howard and Lawson, although this has no bearing on the present case.[7]

The Claimant, Philip Howard, asserted that his father had failed to comply with the name and arms clause within the specified time period, forfeiting his rights which then passed to Philip himself. If that view was upheld the Defendant would have lacked the power to sell Corby Castle.

However, Proudman J, judging the case in the High Court, found that Sir John (the Defendant) did not refuse or neglect to make the application to obtain the licence. As she goes on to state, 'in my judgment all that the clause requires is that the beneficiary should apply within the year and thereafter genuinely pursue the application' (paragraph 54). This is precisely what Sir John did.

[4] *Re Howard's Will Trusts* [1961] 1 Ch 507.
[5] *London Gazette*, Issue 42694, p. 4436.
[6] CA record Ms Grants 125/159.
[7] *London Gazette*, 6 April 1992, Issue 52884, p. 6121.

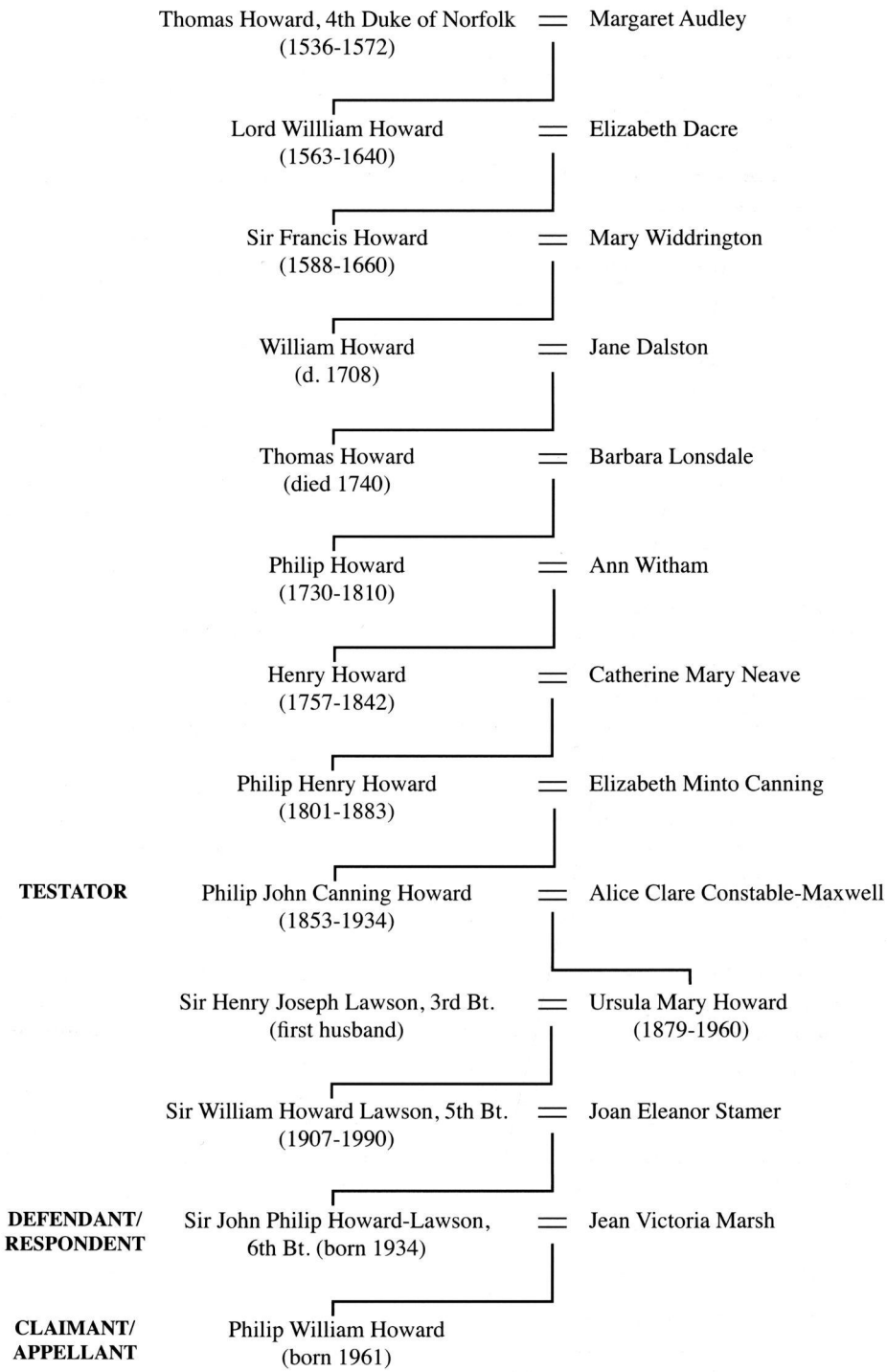

Table 1: Descent of the testator, claimant and defendant in *Howard* v *Howard-Lawson*

There was also the question of whether Sir John did 'use and bear' the name and arms of Howard within the one-year period. For this to be resolved the Court had to determine whether using the arms and using the name were two separate requirements both needing to be performed (as the Claimant argued) or whether they were two aspects of a single obligation. The judge noted that once lawful authority for the assumption of the name and arms had been obtained, use of them became two separate requirements (paragraph 46). However, Sir John could not have used and borne the Howard arms before the Royal Licence was granted and the arms exemplified at the College of Arms since these formalities were not completed until the months following the expiry of the one-year period. It would have been an offence under the Law of Arms to use the Howard armorial bearings without the necessary authority.[8] Consequently, the trial judge held that Sir John had satisfied the clause by attempting to obtain the Royal Licence and the 'use' of the surname and arms were not necessary in this case (paragraphs 44-45).

Of interest to armorists, Proudman J also considered the ways in which arms might be 'used'. These included 'carving the arms into furniture or having them engraved on a signet ring or writing paper', as had been held in the earlier case of Croxon.[9] However, she considered that the beneficiary might now 'digitally represent them on a mug, tea towel or table mat' (paragraph 42). Furthermore, she stated (paragraph 43):

> Now that arms are no longer borne in battle, there is no formal occasion on which the Howard arms could be borne prior to such exemplification. They could not be published in the Peerage and Baronetage or painted up in the hall of a Livery Company or Inn of Court. Significantly, if the person concerned already had a coat of arms, he would not be able to use the Howard arms instead of or quartered with his own. Until exemplification only his own arms would appear in the reference books and all such other formal places where such arms could be said to be used and borne.

The case was referred to the Court of Appeal and was heard by Arden, Black, and Kitchin LJJ on 5 October 2011. Their judgment was issued on 18 January 2012.[10] The appeal concerned two questions, namely

a) whether the formalities for a change of name and arms had to be completed within the time limit set by the will or merely applied for; and
b) whether use of name and use of arms were two separate processes, both of which had to be complete to satisfy the clause, or whether they were two aspects of a single entity.

On the first point, the Appellant (Philip William Howard) argued the requirement to 'apply for' a Royal Licence meant to present the petition, though it was noted that the College of Arms handles the petition: once the beneficiary has applied to the College of Arms he has discharged his duty. Arden LJ (giving the judgment of the Court) held that 'there is no obligation to take up the name if an application for a Royal Licence

[8] *Manchester Corporation* v *Manchester Palace of Varieties Limited* [1955] P 133; *Halsbury's Laws of England*, 5th edn., vol. 79 (Peerages and Dignities), paras 872, 875-877.
[9] *Re Croxon, Croxon* v *Ferrers* [1904] 1 Ch 252.
[10] [2012] EWCA Civ 6.

is made but not granted within the year' (paragraph 28 of the Appeal judgment). Consequently, Sir John did not refuse or neglect to take the name of Howard and did not forfeit his claim to the Corby estate.

As to whether the use of name and the use of arms were discrete requirements or not, the Court held that 'when the heir takes the Royal Licence route, the name and arms are, as the judge [Proudman J] held, a "single entity"' (paragraph 23 of the Appeal judgment). It followed that the obligation to use the surname of Howard was not separate to the use of the arms when a Royal Licence for change of both name and arms had been applied for (paragraph 25, ibid.).

Following the reasoning of Proudman J, the Court of Appeal found that the act of applying to achieve a change of name and arms sufficiently demonstrated Sir John's intention to comply with the clause. Since he later completed all the formalities he was considered to have performed what was required of him, even though the process was unfinished when the time limit expired.

The significance of *Howard* v *Howard-Lawson* is that a Court will not require a Royal Licence for change of name and the assumption of arms to be issued nor the exemplification of arms at the College of Arms to have been completed within the time limitation set by the name and arms clause. This particular point seems not to have been addressed by the senior courts, but the Court of Appeal has now determined that the position is as follows. As long as steps have been taken to apply to the correct authorities – in this case the Home Office and the College of Arms – within the time limit, the beneficiary of the will does not forfeit his right to the property. The applicant will need to ensure all the formalities are completed within a reasonable time, otherwise he will be in danger of forfeit.

The trial judge found the name and arms clause in the *Howard-Lawson* case to be 'tortuous' (it is given in full in the Appendix below). The precedent for the clause in the testator's will was taken from a nineteenth-century work.[11] Although such clauses do not feature prominently in the relevant modern practitioner texts, there is one recent precedent for a requirement for the adoption of arms by a beneficiary. The suggested formulation is much simpler, directing that the person inheriting shall within one year of becoming entitled either use the prescribed surname and arms or 'endeavour to procure the Royal Licence to take such name ... and to use such arms either alone or quartered with his or her own arms and if such application be successful shall thenceforth use such name and arms for all purposes'.[12] Given the judgment in this case, the requirement that the beneficiary make application for a Royal Licence 'within the year and thereafter genuinely pursue the application' (Proudman J at paragraph 54) could be helpfully included in the drafting of any such clause in the future.

[11] *Davidson's Precedents and Forms in Conveyancing* (Dublin 1860), vol. III.2, pp. 1141-4: Precedent XXXVII.

[12] *Williams on Wills*, 9th edn. (London 2008), vol. 2, p. 992.

Appendix

Extract from will of Philip John Canning Howard, dated 19 February 1930, clause 8

I DECLARE that every person (other than Lady Lawson or a peer or peeress) who under the limitations hereinbefore contained becomes entitled as tenant for life or as tenant in tail male general by purchase to the possession or to the receipt of the rents and profits of my settled estates or any part thereof and does not at the same time of becoming so entitled use and bear the surname and arms of Howard shall within one year of becoming so entitled or (being an infant) within one year after attaining the age of twenty one years and also every person (other than ... Sir Henry Joseph Lawson or a peer) being the husband of a woman becoming so entitled shall within one year after his marriage or within one year after his wife becomes so entitled or if he be an infant then within one year after attaining the age of twenty one years (whichever of the three last mentioned events last happens) unless in any case prevented by death take use and bear and every person becoming so entitled who already uses the name of Howard shall continue to use and bear in all deeds and writings which he or she shall sign and upon all occasions the surname of Howard as to every such person who shall also for the time being be entitled to the possession or receipt of the rents and profits of the Lawson family Estates in the County of York and elsewhere or upon whom the Baronetcy held and enjoyed by ... Sir Henry Joseph Lawson shall devolve in conjunction with the surname of Lawson and so that the surname of Howard shall immediately precede the surname of Lawson and as to every other such person without any other surname and shall also use the arms of Howard As to every such person who shall also for the time being be entitled to the possession or the receipt of the rents and profits of the Lawson Family Estates aforesaid or upon whom the said Baronetcy held and enjoyed by ... Sir Henry Joseph Lawson shall devolve quartered with the Lawson Family arms and as to every other such person without any other arms and every such person if not having already borne and used the surname and arms of Howard shall apply for and endeavour to obtain the Royal Licence or take such other steps as may be requisite to authorise the user and bearing of the said surname and arms

AND FURTHER that in case any person or the husband of any person becoming so entitled (other than Lady Lawson and ... Sir Henry Joseph Lawson and not being a peer or peeress) and not having already taken or used and borne such surname and arms should refuse or neglect within the time aforesaid to take use and bear the same respectively or to take such steps as aforesaid or if any person or the husband of any person so entitled and using or bearing such surname and arms should discontinue to use and bear the same (except in the case of a woman upon marriage) then and in every such case immediately after the expiration of the said term of one year or immediately after such discontinuance as aforesaid as the case may be if the person who or whose husband shall so refuse or neglect or discontinue as aforesaid shall be tenant for life the estate for life of that person shall absolutely determine and if the person who or whose husband shall so refuse neglect or discontinue as aforesaid shall be tenant in tail male or in tail general then the estate in tail male or in tail general of that person shall absolutely determine and my settled estates shall immediately go to the person next in remainder under the limitations hereinbefore contained in the same manner as if in the case of a person whose estate for life is so made to determine that person were dead or in the case of a person whose estate in tail male or in tail general is so made to determine that person were dead or there were a general failure of issue of that person inheritable to that estate which is so made to determine.