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THE LAST SITTING OF THE COURT OF CHIVALRY: AN UNDISCLOSED CONFLICT OF INTEREST AMONGST OTHER CONFUSIONS

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Abstract

The last sitting of the Court of Chivalry in 1954 is perhaps best known for the fact that it confirmed its own legal survival. But its quarter-millennium desuetude had arguably caused it to lose something of its skill-set, for in its written judgment several areas of uncertainty were introduced in to the law. The judgment appeared to bring mottoes into the scope of the law of arms; indicated that future right of access to the Court should be restricted; created a distinction between the 'use' and 'mere display' of arms; suggested that the rightful owner of arms may not be entitled to grant permission for another to 'bear' those arms; and set the precedent that a dignity was a coat of arms. These sequelae to the judgment are bewildering and almost certainly arose because of the admitted ignorance of the surrogate judge, aided and abetted by his undisclosed conflict of interest.

Introduction

When the only court to have jurisdiction over a matter had not sat for over two centuries its determination, together with the deliberations which the court engaged in, were inevitably to be referenced whenever matters touching its competence are discussed. Furthermore, it is argued here, the judgment in the case of *The Lord Mayor, Aldermen and Citizens of Manchester* v *the Manchester Palace of Varieties Limited* [1] supplied little in the way of clarification, and instead created fresh uncertainties. That these areas of newly introduced confusion have gone without apparent notice by the community of heraldists is surprising, but perhaps is due to attention being given to what the court did clarify.

The substantial matters which the court confirmed were that it still had exclusive jurisdiction in matters armorial; that corporate bodies in possession of a grant of arms could bring an action just as natural persons could; and that the defendants in the instant case had acted contrary to the law of arms. Simultaneous with giving such judgments however the court initiated its own dismantlement and referenced other matters which

[1] *The Full Report of the Case of the Mayor, Aldermen and Citizens of the City of Manchester versus the Manchester Palace of Varieties Limited in the High Court of Chivalry on Tuesday, 21st December 1954*. Heraldry Society (East Knoyle, 1955); **hereinafter** Her Soc 1955. For those with legal training the relevant law reports are as follows: P 133, [1955] 1 All ER 387, [1955] 2 WLR 440, [1954–55] 1 ALR 238.

Figure 1: Lord Chief Justice William Edgar Rayner Goddard, Baron Goddard *(1877–1971). His portrait at Trinity College, Oxford.*

– and notwithstanding that they were made *obiter dicta* – have proven more influential than they might have been assumed at the time; even though various aspects do not withstand scrutiny. Much of the blame for all this, it is here contended, can be ascribed to the surrogate Lord Chief Justice Rayner Goddard[2] (**Figure 1**) who acknowledged that

[2] I. De Minvielle-Devaux *The Laws of Arms in England, France & Scotland* (2007) p.6 notes: "it has long been customary for … [the hereditary judge, the Earl Marshall] to appoint a lawyer as his surrogate or lieutenant to perform his judicial duties".

he knew nothing about the law he was adjudicating on and who appears to have had a conflict of interest.

The motto

Let us begin with the court's decision which found the defendants to "have displayed representations of the said arms crest motto and supporters in the manner in this case libellate … contrary to the will of the Plaintiffs and the laws and usages of arms AND WE INHIBIT AND STRICTLY ENJOIN the Defendants that they do not presume to display the said arms crest *motto or supporters or any of them*" (emphasis added).[3] This ruling was made despite the fact that the laws and usage of arms in England had never before – over centuries of practice – taken any regard of mottoes. The judgment however is now authority for mottoes being caught under the English law of arms.

Unlike other components of armorial bearings, mottoes, it is usually acknowledged, are not granted by any legal process in England. Nothing has prevented anyone at all from having – or not having – a motto and, consequently, individuals have been fully at liberty to change or discard their chosen motto as they have seen fit and without legal impediment. Nor has there been a requirement that a person's motto be unique to them. A motto, after all, is no more, in essence, than one or more words, and as words belong to the language, usage cannot be subject to legal delimitation – a point which was made by Woodcock and Robinson,[4] apparently oblivious to the fact that the High Court had indicated otherwise. The court's decision in *Manchester*, "that they do not presume to display the said… motto … or any of them" casts this time-honoured understanding of English heraldic practice into doubt as it seems to suggest the law could now intervene to prevent the display of another's motto.[5]

The decision on this matter made by Lord Chief Justice Goddard – who, after giving his judgment, is seen in the transcript of the case to have acknowledged to counsel for the plaintiffs: "You probably know something about the law of arms; I frankly admit that I know nothing"[6] – contradicts centuries of heraldic practice, and as such has the hallmarks of being made in error.

This was not the only area of confusion in which the law of arms was placed following the judgment, yet, ironically, Lord Goddard's proposed restrictions in accessing the Court in future would serve to limit further opportunity for clarifying the relevant law: "if this Court is to sit again it should be convened only where there is some really substantial reason for the exercise of its jurisdiction."[7]

[3] Her Soc 1955 p.69.

[4] T. Woodcock and J.M. Robinson *The Oxford Guide to Heraldry* (Oxford, 1988).

[5] In Scotland, a motto when depicted with a coat of arms can be subject to a legal grant, but there the grant only serves to associate the motto with a particular coat of arms. It does not absolutely seek to prevent anyone else from also using the same words, provided they do not attempt to associate the words – the motto – with another coat of arms; and always subject to matriculation.

[6] Her Soc 1955. p.61.

[7] ibid. p.59.

Use of arms

Lord Goddard in making his judgement apparently placed more emphasis on contemporary mores than necessarily on adherence to precedent. One instance of contemporary social conventions which Goddard referred to, and a point seemingly central to his decision, was his belief that modern society is not offended by unauthorised use of coats of arms if this merely relates to their display; he believed this was evidenced by the number of public houses whose signage depicted a coat of arms:

> *"I am by no means satisfied that nowadays it would be right for this Court to be put in motion merely because some arms, whether of a Corporation or of a family, have been displayed by way of decoration or embellishment. Whatever may have been the case 250 years ago must, I think, take into account practices and usages which have prevailed without any interference. It is common knowledge that armorial bearings are widely used as a decoration or embellishment without complaint. To take one instance hundreds if not thousands of inns and licensed premises throughout the land are known as the so and so Arms and the achievements of a nobleman or landowner are displayed as their sign…. It may be the line is extinct…"* [8]

In the biography of Goddard written by his clerk, one learns that his "love of history is second only to his love of law" [9] while an earlier biography noted that he was not averse to visiting "a public house … for a quiet drink." [10] Putting these facts together with his interest in Wiltshire (a circuit very familiar to him) one can reasonably suppose that he would have been aware of one or other (and very probably both) of the two pubs that operated as the Goddard Arms in that county. One, in the village of Clyffe Pypard, was previously known as the Polly Gale, and the other, Swindon's oldest, on the High Street, was originally brought by Thomas Goddard in 1621 and renamed in 1810 in honour of the Goddard family. Both of these displayed the arms of the Goddards of Wiltshire which the Lord Chief Justice, as we shall soon see, chose to adopt as his own (**Figure 2**). From his comments in *Manchester* it is apparent that Goddard had been unaware that in the case of both of the Goddard Arms pubs specific permission to use the arms for the inn signs had been obtained from the family to which those arms rightfully belonged. Indeed, contrary to matters which he referenced in his judgment, it was the norm for publicans to seek permissions from the rightful owner of the arms wherever possible; and the owner would often be flattered by such display.

Goddard claimed the defendant theatre had gone beyond merely displaying another's heraldic achievement without permission. As a corporate body could only act through their seal, the use of a representation of the council's arms on its seal suggested the theatre was 'using' the arms, not merely displaying them. It was this purported distinction which Goddard both introduced and made central to his judgment – and thereby allowed his own, somewhat irregular, use of arms to escape offending his new interpretation of the law of arms. Arguably, this indicates a conflict of interest had marred his judgment.

[8] ibid p.60.

[9] A. Smith *Lord Goddard: my years with the Lord Chief Justice* (London 1959).

[10] E. Grimshaw and G. Jones *Lord Goddard: his career and cases* (London 1958).

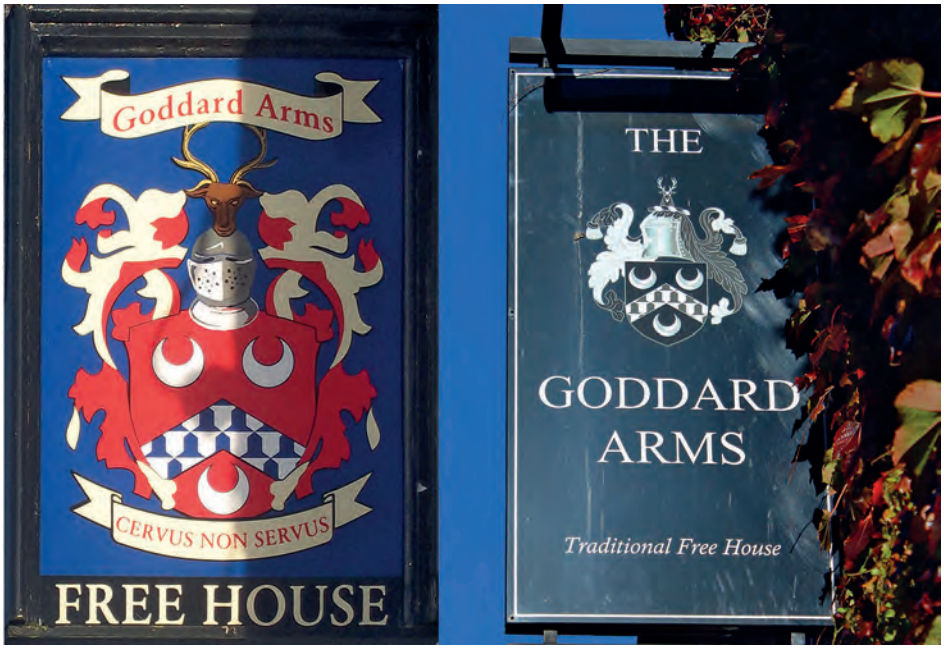

Figure 2: Inn signs from the Goddard Arms Pubs in (left) Clyffe Pypard and (right) Swindon. The coat of arms on the sign at Swindon in Goddard's day was painted in full colour. Photographs by Philip Robinson.

Goddard's own armorial use

When Rayner Goddard (d.1971) was elected Treasurer of the Inner Temple Inns of Court in 1952, in accordance with its traditions he was asked for a representation of his coat of arms for their wall display. To meet this request he offered a shield *Gules, a chevron vair between three crescents argent* (**Figure 3**). This was an old coat of arms which, Burke's *Armory* explains, belonged to the Goddards of Cliffe Pypard, Upham and Albourne, in Wiltshire.[11] **Figures 4** and **5** provide two examples of this family's arms from Clyffe Pypard church. Burke has it that these were "an ancient Saxon family, settled at a very remote period in cos. Hants and Norfolk, and Wilts since the time of King John." Lord Chief Justice Goddard was descended from a collateral branch of the family. From his comments in *the Manchester Case* it is clear that Goddard never made effort to confirm his entitlement to these arms, nor did he make application for his own grant of arms. In all likelihood this was, at least in part, due to his attitude that because he had no sons, so hereditary insignia were inappropriate for him. Bresler, Goddard's official biographer, tells us, for example, that Goddard declined a hereditary peerage on just these grounds.[12] However, and notwithstanding the usual rule in heraldry of 'one man, one coat of arms', it was the practice of all of the branches of the north Wiltshire Goddards to use the arms undifferenced. In this, Goddard may have had 'permitted usage' of the arms, but certainly

[11] Burke GA.

[12] F. Bresler *Lord Goddard: a biography of Rayner Goddard, Lord Chief Justice of England* (London, 1977).

Figure 3: Goddard's plaque at the Inner Temple Hall.

his own claims to complete ignorance of the law of arms would suggest he would not have known this. More likely is that (at least in 1952), Goddard may have believed the armorial depiction he presented to Inner Temple to be a mere signifier of his family background, an approximation of his ancestry, something with no legal signification.

If he had ever had such a naive belief however, he could not have sustained it beyond his sitting in the Court of Chivalry. This is evident for example in an exchange when counsel for the plaintiffs explained that during heraldic visitations, wherever unauthorised use of arms was detected, the same could be struck down or defaced. This told Goddard that 'use' of arms included mere 'display.' Counsel next further explained that grants of arms always came with limitations as to who in the family could inherit the arms, and so informed Goddard that the law of arms recognised that certain family members might be precluded from adopting the family's arms. Goddard sought clarification:

> *"The Surrogate: I suppose where a Grant of Arms is made to a commoner all his sons have got the right to bear those arms?*
>
> *Mr Squibb: Certainly; with marks of what is called cadency.*
>
> *The Surrogate: I do not know what they are.*
>
> *Mr Squibb: They are additions to the shield to indicate the position of the sons in the family.*
>
> *The Surrogate: Is that something different?*
>
> *Mr Squibb: Yes. There are differences because it is a mark of cadency. Marks of cadency are additions made to an existing coat."*[13]

Admittedly Squibb is doing a poor job of clarifying matters, but still the judge is told that the right to bear arms is subject to cadency.

From these exchanges Goddard is to understand that ancestral arms should only be borne by someone who is not excluded by the grant of arm's limitations, and provided cadency is observed. Given that when Goddard accepted that he was to act as the surrogate judge in this case, amongst other things that will have entered his awareness would have been the fact that only a couple of years earlier he had supplied Inner Temple with a representation of 'his own' coat of arms. It would be difficult to believe that as he heard submissions in this case that he would not have considered his own related behaviour.

His own use of arms had been without any reference to the law of arms he was now adjudicating on. Indeed, his use of the arms in 1952 had been in complete ignorance of the existence of any law of arms and he acknowledges his ignorance of the law up to this point to counsel in *Manchester*. Yet having learnt of the law's existence – and perhaps that a grant of arms came with limitations about who could lawfully inherit them, and that different heirs should difference their arms by cadency marks – his judgment had to respect that law, not least because of his position as Lord Chief Justice of England. He must have at least wondered if he had personally flouted it, and he knew that ignorance of the law could not be an excuse. He should have realised the awkwardness of his position. By indicating that his reasoning would be set out in writing at a later date he gave himself time to consider how his judgment should accommodate his own – potentially illegal – armorial practice.

[13] Her Soc 1955 p.54.

Figure 4: Arms on the memorial to the Revd Canon Edward Goddard, FSA (d.1947) who was vicar of Clyffe Pypard from 1883 to 1935, in Clyffe Pypard church. Photograph by Philip Robinson.

In his eventual reasoning, Goddard made a distinction between the 'use of arms' and their mere display. This distinction allowed Goddard to find the defendants in breach for *using* a representation of the Council's arms on their seal ("a deed sealed with an armorial device is thereby authenticated as the act and deed of the person entitled to bear arms"[14]) whilst indicating that if the matter was just about 'display' (the Corporation's arms had been placed on a theatre pelmet) then that could not, he claimed, be regarded as a legitimate subject of complaint in contemporary society.

This ruling was made despite the fact that it was the unauthorised *display* which triggered the court case, and no instance of the seal causing confusion had been alleged. Goddard took it upon himself to create the distinction: it was a distinction that would circumvent any suggestion that his own mere display, in providing a representation of his ('Goddard') arms to Inner Temple, amounted to a breach of the law of arms. In making this distinction, his judgment appears to have been influenced by his own (albeit

[14] ibid p.60.

merely ignorant) act, and so, arguably, points to him having had a conflict of interest. A suggestion of a conflict of interest does not of itself indicate anything about wrongful intent of course, but where a conflict of interest becomes apparent, action should be taken to ensure there cannot be any subsequent suggestion that the decision in a case might have been, consciously or subconsciously, influenced because of it. Here there does appear to have been a potential conflict of interest, and it was one which was unlikely to have escaped Goddard's notice given his recent donation to the Inner Temple of a representation of arms. He should have considered recusing himself, or, given the stage at which he may have realised the potential conflict of interest, ought at least to have discussed the matter with the representative counsel.

It is the possibility of there having been a conflict of interest which causes one to question whether the written judgment was in all respects a correct one. The possibility casts doubt over the judgment, and could explain why the law of arms was no longer to offer to protect against the 'mere display' of another's coat of arms.

Overturning understandings

Goddard through his judgement interfered with the practice whereby the permission of the rightful owners be sought for a display of arms. He went so far as to suggest that it may be against the law of arms for the owner of arms to permit such a display. We see this in the penultimate sentence of his judgment. It was a surprising notion – not least because the court had found that the defendants had acted "contrary to the will of the Plaintiffs…" – and he appears to have introduced the notion in his writing-up, possibly influenced by his conflicted interest in the matter. Certainly, Manchester council had explained that they had been in the habit, over a number of years, of granting permission to some who wished to display representations of the city's coat of arms, and declining such permission to others. The point was not argued, and is unsettled, but now the case of *Manchester* provides grounds for arguing that this time-honoured practice might be impermissible under the law of arms in England. This despite the fact that 'mere display' goes to the essence of the armigerous ambition: the *raison d'etre* of the law of arms having always been about protecting the right to control the display of particular coats of arms.

The net effect of his deliberations meant that anyone (apart from the Palace of Varieties Ltd) might henceforth display Manchester city council's (or any) armorial bearings with impunity – as it would only be when the arms are used improperly, and not just for 'mere display', that legal redress might be contemplated. It would allow, for example, the Palace of Varieties to display any other coat of arms, or a sex shop to display the arms of the local bishop, and in both instances claim in defence 'mere display'. Similarly, tradesmen might wish to 'display' their local authority's coat-of-arms on their vehicles:

Dignities

One other aspect of the Manchester case which has caused subsequent confusion and has, arguably, led to errors in law concerns the nature of a dignity. In the hearing stage, Goddard expressed the view that an armorial bearing could not be regarded as property:

Figure 5: Goddard impaling Fettiplace on the memorial to Elizabeth Goddard née Fettiplace in Clyffe Pypard church. Photograph by Philip Robinson.

> *"I think it is more of a dignity, because if it was property, I should have thought that the ordinary Courts would have taken cognisance of it."*[15]

He elaborated on this point in his judgment:

> *"The right to bear arms is, in my opinion, to be regarded as a dignity and not as property within the true sense of that term. It is conferred by a direct grant or by descent from an ancestor to whom the arms had been originally granted."*[16]

[15] ibid p.42].

[16] He concluded "There is authority that a dignity which descends to heirs general or to heirs of the body is an incorporeal hereditament whether or not the dignity concerns lands – see *in re Sir J. Rivett-Carnac's Will"* ibid pp.56–57. Neither the statutes referred to, nor the case of *re Rivett-Carnac* (which related to a baronetcy) are authority for saying that coats of arms are dignities.

At no point did the court ask itself what a dignity was, and so no definition of 'dignity' was made. A dignity is, essentially, a form of social status, while a coat of arms can be evidence that the owner has been recognised as having dignity. As Gayre explained in *The Nature of Arms*,[17] nobility is synonymous with dignity and once created, is effectively immortalised and transmitted through the generations. An inherited coat of arms would evidence this. Even today, the College of Arms will only make a grant to someone who can demonstrate dignity, and this is done by reference to an applicant's attainments (especially of office or education, either of which can be regarded as having benefited society).[18]

The *obiter* remarks did not make any of this clear, and have proven misleadingly influential in several pieces of legislation. For instance, in the House of Lords' debates concerning the then Human Fertilisation and Embryology Bill on both the 6th[19] and 20th March 1990[20] the *obiter* remark was accepted as authoritative and the term 'dignity' taken to mean 'coats of arms'. This despite argument advanced by Lord Teviot that the term had never previously had such a meaning, and that if the matter was not then recognised a future challenge on the point would have an uncertain outcome. It is clear that the remarks are likely to be referenced again whenever coats of arms are discussed in a legal context. This is troubling because such deliberations rest on unsafe foundations.

Conclusion

The High Court of Chivalry's last sitting was surely its most provocative and self-destructive. All of the comments made *obiter dicta* appear to evidence a wrongful understanding of the law of arms as its community of practitioners had understood it. Perhaps a suitable phrase to summarise the case would be '*per incuriam*'. In the absence of anything more authoritative though, those comments retain an element of judicial weight which now fetter the English law of arms: another case to clarify these points would not be overdue.

[17] R. Gayre *The Nature of Arms* (Edinburgh 1961).

[18] H. Paston-Bedingfeld and P. Gwynn-Jones *Heraldry* (London 1993).

[19] *Hansard* 6 March 1990 vol 516 cc.1128–57.

[20] *Hansard* 20 March 1990 vol 517 cc.198–255.