CORRESPONDENCE

The Last Sitting of the Court of Chivalry.

Dirk FitzHugh writes: There are several points which should be made in defence of Lord Chief Justice Goddard, who is much maligned in the Article in *CoA* no.236 (2019) pp. 98–108. Dr Humphreys alleges that "the Court initiated its own dismantlement" – this ignores the Judge's statement

1. "there is no way, as far as I know, of putting an end to it, save by Act of Parliament"
2. "it should be put upon a statutory basis, defining its jurisdiction and sanctions it can impose".

The author goes on to claim that "*various aspects do not withstand scrutiny – much of the blame for all this… can be ascribed to LCJ Goddard, who acknowledged he knew nothing about the law he was adjudicating on and appears to have had a conflict of interest"*. It refers to the transcript of the case published by the Heraldry Society quoting Lord Goddard as saying to Plaintiff's Counsel, George D. Squibb, "you probably know something about the Law of Arms; I frankly admit that I know nothing". If this was said, it was clearly a typical English understatement.

In the April 1954 *Coat of Arms*, Anthony Wagner, Richmond Herald, addressed the question "What is the Law of Arms now?" His reply was "It may not be answerable in detail or with certainty until the position has been tested by legal action in the Court of Chivalry. In the meantime, the opinion which will carry weight will be one which rests both on practical experience of the law and on knowledge of the records of this Court. In 1951… the College of Arms resolved to give Mr. G.D. Squibb access to the Records of the Court of Chivalry for the purpose of writing its history. His views are therefore, at the present time, the best available on the subject".The editors of "Cases in the High Court of Chivalry 1634–40" [2006 Harleian Society N.S. vol. 18 p. v.] acknowledge "the pioneering work of the late Mr G.D. Squibb QC, Norfolk Herald Extraordinary… His High Court of Chivalry remains an indispensable guide to the Court's history and procedures".

Lord Goddard will have recognised G.D. Squibb, Plaintiff's Counsel, as being the person who had most knowledge of the Court of Chivalry, rather than being probably someone who knew something about the Law of Arms. Lord Goddard, Trinity College, Oxford, would have known something about Roman Civil Law since such formed part of the law course at Oxford.

The Motto

Humphreys takes issue with Lord Goddard on the text of the Court's decision. The LCJ is criticised for the inclusion by Mr. Squibb of the word 'motto' in the Definitive Sentence. As a consequence "The decision on this matter made by LCJ Goddard contradicts centuries of heraldic practice and as such has the hallmarks of being made in error". The reasons given in the Article are "the fact that the laws and usages 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… a motto…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" [*The Oxford Guide to Heraldry* Oxford,1988] "apparently oblivious to the fact that the High Court had indicated otherwise".

It should be noted:

1. The Oxford Guide did not state that usage of words cannot be subject to delimitation. On the contrary, it states [p. 112] "control is exercised by the Kings of Arms, as they can refuse to issue a patent, on which there is a motto, of which they disapprove, even though it does not form part of their grant".
2. The Oxford Guide further states: "In England, it is considered that the Kings of Arms do not have power granted in their patents of appointment to grant legal property over a group of words. It follows that mottoes are very seldom mentioned in the text of a patent". The brief mention of the Manchester Case, without reference to mottoes is perhaps because the Oxford Guide treated the wording of the judgment as being unobjectionable. [See also letter by Richard D'Apice *CoA* no.237 (2020) p. 227].
3. Given the Kings of Arms have the authority to disallow certain words in mottoes, there is no reason why the Court of Chivalry, should not protect a motto included in a patent. The Oxford Guide merely states that "mottoes are very seldom mentioned in the text of a patent".

Michael Powell Siddons, in his Dictionary of Mottoes in England & Wales [2014 Harleian Society NS vol. 20, 2014] notes on p. xxvi "although mottoes are often shown with the arms on patents of Grants of Arms made by the English Kings of Arms, they do not usually form part of the grant, although sometimes also given in the text of the grant. Out of 23 such cases that have been found, nine are in Grants to London Livery Companies".The protection of mottoes can, therefore, fall within the authority of the Court of Chivalry.

Use of Arms

Humphreys seeks to counter Lord Goddard's example of non-actionable display on Inn signs by referring to two 'Goddard Arms' pubs in Wiltshire. "It is apparent that Goddard had been unaware that in the case of both 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".

This raises several points:

1. Arms do not belong to a family. Was permission given by all entitled to those arms?.The entitlement to arms amongst descendants of the Grantee depends upon the terms of the grant. The question of cadency then arises. John Brooke-Little's *An Heraldic Alphabet* (1996 rev. edn) p. 83 notes that cadency is invoked "only where the use of a mark of difference is really necessary". This is likely to be the course of action adopted by the Court of Chivalry, given Lord Goddard's desire to take into account practices and usages which have prevailed without interference. The Garter Banner of Sir Winston Churchill was undifferenced.
2. Who would be the 'rightful owner' of these Goddard arms? DBA vol. II gives *Gules a chevron vair between three crescents argent* for Godherde FKII 356 i.e. late 15th Cent. Fenwick's Roll Pt II. The Article quotes BGA in attributing

these arms to "Goddard of Cliffe, Pypard, Upham and Albourne". No grant is identified.

Humphreys then refers [p. 101] to the distinction between the use of arms and mere display. "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". This reveals certain inconsistencies:

1. Lord Goddard allowed mere display for decoration and the like which had gone on for long without interference. There was no change in the interpretation of the Law of Arms.

2. The Article states [p. 105] "his judgment appears to have been influenced by his own (albeit merely ignorant) act and so, arguably points to him having had a conflict of interest" If he was ignorant of allegedly being in breach of the Law of Arms, there could be no conflict of interest.

Goddard's own Armorial Use

The Article states that Lord Goddard was descended from a collateral branch of the family to which the arms in question 'belonged'. Lord Goddard is then criticised: "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 [p. 102]". Why should he do either if his descent from the family was accepted by the Article?

He is then further accused: "His own use of arms had been without any reference to the Law of Arms he was now adjudicating on" His 'sin', if any, would appear to be the display of his arms in the Inner temple, without cadency marks. The Article had previously referred to the Oxford Guide but ignores the advice [p. 67] "*Cadency marks tend to be used as a matter of courtesy today rather than as a rule*". Then on p. 106: "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 its 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". What evidence is there that the Law of Arms has prevented mere display where such is not improper.

Overturned Understandings

According to the Article "Goddard, through his judgment, interfered with the practice whereby the permission of 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 its penultimate sentence of his judgment. It was a surprising notion … possibly influenced by his conflicted interest*"* Lord Goddard was justifiably not satisfied that "a Grantee of arms can himself authorise and permit another to bear them". Reference should be made to Colin Cole's clarification as to the distinction between use by bearing arms (as if entitled to them) and that by merely displaying them. A display can itself be unacceptable, as stated, if the implication is that there is an unwarranted connection, albeit not a claimed ownership, when, as the Article itself states, the arms are used "improperly" [p. 106].

The Article claims that as a result of the Manchester Case, "a sex shop could display the arms of the local Bishop" or anyone, apart from the Defendant "might henceforth display Manchester City Council's (or any) armorial bearings with impunity" : These inferences are contrary to the earlier reference to redress when "the arms are used improperly". On all the above grounds it must be concluded that Lord Goddard performed his functions as adequately as circumstances permitted without there being any evidence of potential conflict of interest.

Stephen Humphries responds: In support of my suggestion that the Court of Chivalry initiated its own dismantlement, my interpretation is that LCJ Goddard stated (1) he cannot deny the law exists, but (2) he finds it unsatisfactory because of uncertainties. I suggest that he then attempts to overcome his difficulties by proposing that the Court of Chivalry be effectively dismantled by a process whereby the litigant would have to seek additional permission to proceed and that this be permitted "only where there is some really substantial reason for the exercise of its jurisdiction" (p. 59). The extra hurdle to be surmounted by a would-be litigant being intended to try to prevent the court ever having to sit again.

I do not deny that Squibb had a unique knowledge of the Court of Chivalry: Goddard's unfamiliarity with the law of arms made him particularly reliant on counsel. I remain critical of the inclusion of the word 'motto' in the Definitive Sentence (Appendix. D, p. 69) and would point out that no mention of the 'motto' was given in the Earl Marshal's Case Citation (Appendix G, p. 73). Whether or not Woodcock and Robinson found 'the wording of the [*Manchester*] judgment as being unobjectionable' is impossible for me to say. These authors accepted that once a grant of arms has been made, kings of arms have no further say in the choice of motto, and "Kings of Arms do not have power granted in their patents of appointment to grant legal property over a group of words" (*Oxford Guide to Heraldry* p. 112). Mr FitzHugh fails to square this statement with his apparent contradictory position that the Court of Chivalry has jurisdiction over mottoes.

Taking Siddons' examples of grants to livery companies which include mention of mottoes, and FitzHugh's assertion that "The protection of mottoes can, therefore, fall within the authority of the Court of Chivalry", I contend that this is a non sequitur. Siddons does not explicitly identify the cases he refers to but, having previously managed to examine the wording of a number of surviving grants of arms to the livery companies I believe I have identified the companies concerned. They prove interesting examples of how heralds, as masters of their art, have been clever at manipulating their own rules, and some of the older grants were worded rather ambiguously. For example, the Worshipful Company of Scriveners' grant dated 11 November 1634 included supporters "standing upon a Scroll beneath the Arms, also bearing the Motto [*Scribite Scientes*]." Here the patent for the Scriveners' achievement of arms places a particular form of words (in this case, their motto) on a scroll. The grant does not prevent the Scriveners from adopting other mottoes, but does require that they show the agreed set of words whenever they wish to display their authorised achievement. But this is not really evidence of mottoes (as a class) being granted, it is simply a case of incorporating a design into a grant of arms. It is only when a motto is granted in this circumlocutory way – very specifically via a design component- that the heralds (and thus the Court of Chivalry) can retain

a theoretical control of it – but their control is of the design, not of the motto per se. And even then, there is nothing which would prevent another armiger (or indeed any non-armigerous individual) from adopting the same motto: the Prince of Wales, as heir-apparent, traditionally takes the motto *Ich Dien* but so does Norfolk County Council.

I rather agree with FitzHugh's next point, which seems to suggest that it may never be possible to obtain permission to use some arms. My point about cadency marks was that from the point when mention of them was made in the hearing (p. 54) Goddard must have become (i) aware that under the law of arms there was no difference between 'use' of arms separate from their 'display' and (ii) reminded of his act of providing a shield for display. If Goddard had remained ignorant of having a conflict of interest before this point in proceedings I suggest such ignorance could have not been sustained from this point in proceedings. (I do not argue that Goddard was wrong in not providing a cadency mark – usual practice in England has for some time not to take such trouble.)

Should Goddard have bothered to confirm his personal entitlement to the arms? The answer, of course, is that he probably would not have felt any need to do so. FitzHugh further argues that "Lord Goddard allowed mere display for decoration and the like which … was not [a] change in the … Law of Arms" but ends his letter by stating that "Lord Goddard was justifiably not satisfied that 'a Grantee of arms can himself authorise and permit another to bear them." However, FitzHugh does not tell us how this distinction – 'display', 'bear', 'use' – is to be made following *Manchester*.

I suggest that as a result of the *Manchester* case, anyone can display another person's armorial bearings with impunity because it would have to be proven that the use was not for mere display, but rather that the display or use was 'improper'. In *Manchester* Goddard suggested that 'mere display' was acceptable – if it was just a matter of display in the auditorium, Goddard indicated, then he would have been inclined to dismiss the case; it was the 'use' of the arms on a seal that did it for the theatre company as its use implied "the act and deed of the person entitled to bear the arms" (p. 60).

An Engraver's late-seventeenth-century Heraldic Sketchbook,

CoA no.237 (2020) pp. 23–53.

Dirk FitzHugh writes: The section dealing with the Hoare family (p. 29) requires some clarification: Dorcas, Lady Ashfield, is described as kinswoman of the banker, Sir Richard Hoare (1649–1719) – whilst she is the daughter of the Comptroller of the Mint, James Hoare, (died 1696), these two Hoare families are not related according to current published evidence. The author of the article quotes, as his source, Capt. Edward Hoare's Account of the Families Hore and Hoare (1883), which shows James and Sir Richard Hoare as descendants of a common Devon ancestor. Anthony Wagner, in his English Genealogy (Oxford, 1960, p. 375 Addenda) states 'the common ancestry with the Hoares of Hoare's Bank, attributed to this family in Edward Hoare's Family of Hore and Hoare 1883 was disproved by a pedigree recorded in the College of Arms in 1923, which takes its ancestry back to 1526 at Green's Norton, Northamptonshire. Since Burke has shown the two families having separate descents: the Irish Baronets of Annabella, Co Cork, (created 1784) descended from the Hoares of Green's Norton and the English Baronets (created 1786) descended from the Banker. The author's reference to the armorial seal