

## AUTHORITY FOR THE USE OF THE ROYAL ARMS IN CHURCHES

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### 1. INTRODUCTION

In 1953 a number of parishes throughout England wished to commemorate the accession and coronation of Her Majesty the Queen by placing representations of the royal arms in their churches. As the introduction of such devices into churches may only be made with the authority of a faculty from the diocesan consistory court, a number of these petitions came to be considered judicially. Two judgments were reported.<sup>2</sup>

The consistory courts are bound by their own decisions,<sup>3</sup> but not by decisions of those of a consistory court in another diocese.<sup>4</sup> Decisions of other consistory courts are, however, persuasive, and these reported decisions have since been the principal authority relied upon for deciding such questions.

The reports however disclose a conflict. Chancellors Garth Moore and Macmorran, in the Southwark and Chichester Consistory Courts respectively, were at odds with the Home Office over the legality of displaying the royal arms without the consent of the Crown. The Home Office believed that its leave was necessary for the erection of royal arms. The Chancellors believed that if the royal arms were used to symbolise the royal supremacy, no leave, otherwise than by faculty,<sup>5</sup> was required.<sup>6</sup>

It is submitted that the matter was not as clear-cut as the learned Chancellors' then believed, due to the then state of knowledge of the Law of Arms.<sup>7</sup> The decisions ought to be re-examined in light of new learning stimulated by the almost contemporaneous decision of the long dormant High Court of Chivalry, in the case of *Manchester Corp v Manchester*

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<sup>2</sup>*Re St Paul, Battersea* [1954] 1 WLR 920, [1954] 1 WLR 920, Southwark Consistory Court; and *Re West Tarring Parish Church* [1954] 2 All ER 591, [1954] 1 WLR 923n, Chichester Consistory Court.

<sup>3</sup>*Bishopwearmouth (Rector & Churchwardens) v Adey* [1958] 3 All ER 441, *sub nom Re St Michael and All Angels, Bishopwearmouth* [1958] 1 WLR 1183, Cons Ct.

<sup>4</sup>*St Nicholas, Plumstead Re (Rector & Churchwardens)* [1961] 1 All ER 298, [1961] 1 WLR 916, Cons Ct.

<sup>5</sup>It is clear that such matters are not to be delegated to the archdeacons: see the Faculty Jurisdiction Rules 1992, SI 1992/2882, r 6, App A, which covers inter alia 'external or internal decoration or redecoration except where in the opinion of the [diocesan] advisory committee it will result in a material alteration either externally or internally to the appearance of the church' (App A, para 1 (iii), and repairs to movables (using matching materials) not including Royal Coat of Arms, unfixed hatchments, heraldic achievements, paintings, historic textiles, historic silver and base metal work' (App A, para 3 (ii)).

<sup>6</sup>*Re St Paul, Battersea* [1954] 2 All ER 595, [1954] 1 WLR 920, Cons Ct; *Re West Tarring Parish Church* [1954] 2 All ER 591, [1954] 1 WLR 923n, Cons Ct.

<sup>7</sup>The Law of Arms is regarded as a part of the laws of England, and the common law courts, and ecclesiastical courts, will take judicial notice of it as such: *Paston v Ledham* (1459) YB 37 Hen VI, Pasch. p 18 per Nedham J.

*Palace of Varieties Ltd.*<sup>8</sup> This case was heard on 21 December 1954 before the Earl Marshal and his Surrogate, Lord Goddard, then Lord Chief Justice of England. Both consistory court decisions were decided earlier, *Re West Tarring Parish Church*<sup>9</sup> on 30 March, and *Re St Paul, Battersea*<sup>10</sup> on 26 May, and both without the benefit of argument from the Home Office.

In *Re St Paul, Battersea*, the Chancellor of the Southwark Consistory Court, the Worshipful E Garth Moore, considered an unopposed petition for the grant of a faculty for the introduction into the church of various forms of decorations, including a number of heraldic devices. He held:

- (1) following *Re West Tarring Parish Church*, that the introduction of the royal arms, signifying the royal supremacy, was a matter within the jurisdiction of the consistory court, and that so long as the Crown claimed supremacy in the established church, it was unreasonable that the Crown should object to the badge of that supremacy being displayed;
- (2) that the use for decorative purposes of the first quarter of the royal arms as a device signifying the kingdom of England involved different considerations, and that the consent of their bearer, the Sovereign, should be sought;
- (3) that the arms of the borough of Battersea and of the London County Council could be introduced, both having consented to such use; and
- (4) that no consent was necessary for the use of either the arms of the diocese or the arms of the province, or St George's Cross, signifying the Church of England.

It is respectfully submitted that the learned Chancellor was incorrect on findings (1), (2) and (4), for the reasons which will be shown.

## 2.THE NATURE OF COATS OF ARMS

The circumstances of both *Re St Paul, Battersea* and *Re West Tarring Parish Church* was the immediate aftermath of the coronation of Her Majesty the Queen. There was a desire in many parishes to commemorate this event in an appropriate, and permanent manner, by the erection of representations of the royal arms in their churches. In *Re St Paul, Battersea*, Chancellor Garth Moore was of the opinion, influenced by the earlier though almost contemporaneous judgment of Chancellor Kenneth Macmorran QC, that this was a matter solely for the consistory courts. But this view was not shared by the Home Office: 'So far as royal arms are concerned, I should have granted a faculty without more ado had it not been for the attitude adopted by the Home Office towards such applications. On April 2, 1953, that department circularized all diocesan registries claiming that the royal arms, the royal crown and the royal cypher are the personal emblems of the Sovereign and may not be reproduced without the Queen's consent, and that application for that consent should be made to the Secretary of State for Home Affairs'.<sup>11</sup>

<sup>8</sup>*Manchester Corpn v Manchester Palace of Varieties Ltd* [1955] P 133, [1955] 1 All ER 387, High Ct of Chivalry.

<sup>9</sup>*Re West Tarring Parish Church* [1954] 2 All ER 591, [1954] 1 WLR 923n, Cons Ct.

<sup>10</sup>*Re St Paul, Battersea* [1954] 2 All ER 595, [1954] 1 WLR 920, Cons Ct.

<sup>11</sup>[1954] 2 All ER 595 at 596, [1954] 1 WLR 920 at 921 per Garth Moore Ch. The circular (as quoted by Macmorran Ch in *Re West Tarring Parish Church* [1954] 2 All ER 591 at 591,

The Home Office had not, however, produced any authority in support of its claim.<sup>12</sup> Though given the opportunity, the Home Office was not present in court on either this nor any other occasion when faculties for the introduction of royal arms were heard. As a consequence, the learned judge was unassisted by argument. It is respectfully submitted that as a consequence, the decision was *per incuriam*, because it did not have all the relevant authorities referred to it before it gave judgment, and should not be followed.

The Chancellor began by outlining his view of the relevant part of the Law of Arms: 'There is in England- though not, I believe, in Scotland- so far as I know no legally recognised proprietary right in heraldic emblems. I carefully refrain from stating the matter more dogmatically than that, for it may still be a matter for argument before the Court of Chivalry. But, on that assumption, no one has an absolute right to prohibit the use of his arms, and it is a matter of discretion for the consistory court whether or not to grant applications for the introduction of heraldic emblems'.<sup>13</sup>

Armorial bearings,<sup>14</sup> as dignities, have legal standing.<sup>15</sup> But the Law of Arms is not part of the common law<sup>16</sup> and the common law courts have no jurisdiction over matters of dignities and honours,<sup>17</sup> such as armorial bearings,<sup>18</sup> or peerages.<sup>19</sup> In this respect the Law of

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592, [1954] 1 WLR 923n at 924, Cons Ct) stated that: 'An instance has recently come to our notice of the reproduction of the royal arms in a new stained glass window in a church, and we have reason to believe that the position regarding the reproduction of the arms and other royal emblems may not be fully appreciated. The position is that the royal arms, the royal crown and the royal cypher are the personal emblems of the Sovereign and may not be reproduced, in whole or in part, without the Queen's consent; such consent is also necessary in the case of emblems of past sovereigns. The Home Secretary is the Minister who advises Her Majesty on such matters, and application for permission should be made to him. Permission is, in fact, granted only in very exceptional circumstances, but where, for example, it is desired to install a stained glass window in a church in commemoration of a particular Sovereign or of a State occasion such as a coronation, it may be possible for the Home Secretary to recommend the grant of permission to reproduce the personal cypher of the Sovereign'.

<sup>12</sup>*Re St Paul, Battersea* [1954] 2 All ER 595 at 596, [1954] 1 WLR 920 at 921, Cons Ct, per Garth Moore Ch.

<sup>13</sup>[1954] 2 All ER 595 at 596, [1954] 1 WLR 920 at 921, per Garth Moore Ch.

<sup>14</sup>These are variously styled coat armour, armorial bearings, arms, or coats of arms. They are by nature a form of personal insignia. Although their original function was to enable knights to identify each other on the battlefield, they soon acquired wider, more decorative uses. They are still widely used by countries, public and private institutions and by individuals.

<sup>15</sup>*Manchester Corp v Manchester Palace of Varieties Ltd* [1955] P 133; [1955] 1 All ER 387, High Ct of Chivalry, per Lord Goddard, Surrogate. As early as *Scroop v Grosvenor* (1389) Calendar of Close Rolls, Ric II, vol 3, p 586 it was established that a man could have obtained at that time a definite right to his arms, and that this right could be enforced against another.

<sup>16</sup>*R v Parker* (1668) 1 Sid 352, 82 ER 1151, *sub nom Parker's Case* 1 Lev 230.

<sup>17</sup>*Manchester Corp v Manchester Palace of Varieties Ltd* [1955] P 133, [1955] 1 All ER 387, High Ct of Chivalry, per Lord Goddard, Surrogate.

<sup>18</sup>*Duke of Buckingham's Case* (1514) 3 Dyer 285b, Keil 170, 72 ER 346.

<sup>19</sup>*Earl Cowley v Countess of Cowley* [1901] AC 450, HL.

Arms may be regarded as similar to the ecclesiastical law, which is a part of the laws of England, but not part of the common law.<sup>20</sup>

The exclusive jurisdiction of deciding rights to arms, and claims of descent, was vested in the High Court of Chivalry.<sup>21</sup> As the substance of the common law is found in the judgments of the common law courts, so the substance of the Law of Arms is to be found in the customs and usages of the Court of Chivalry.<sup>22</sup> The procedure was based on that of the civil law, but the substantive law was recognised to be English, and peculiar to the Court of Chivalry.<sup>23</sup>

Although the common law courts do not regard coats of arms either as property or as being defensible by action, armorial bearings are nevertheless a form of property.<sup>24</sup> Any dignity which is descendable- that is can be inherited by the action of law- is within the scope of the Statute of Westminster the Second 1285.<sup>25</sup> Such dignities are descendable as an estate tail and not as a fee simple conditional, although no place is named in its creation.<sup>26</sup> The estate in fee tail (also called estate tail) is limited to, and will be inherited only by, a person and the heirs of his body, or a person and the particular heirs of his body.<sup>27</sup>

Armorial bearings are incorporeal and imparible hereditaments,<sup>28</sup> inalienable, and descendable according to the Law of Arms.<sup>29</sup> Generally speaking, this means they are inherited by the male issue of the grantee, though they can be inherited by the sons of an heraldic heiress, where there is no surviving male heir.

To the common law real property comprises both corporeal and incorporeal hereditaments,<sup>30</sup> the term 'hereditament' simply meaning property which at common law descended to the heir on intestacy; real property as opposed to personal property. Although

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<sup>20</sup>*Bishop of Exeter v Marshall* (1868) LR 3 HL 17.

<sup>21</sup>*Scroop v Grosvenor* (1389) Calendar of Close Rolls, Ric II, vol 3, p 586. The High Court of Chivalry is the subject of a chapter by Sir Edward Coke, *Coke upon Littleton* (New York: Garland Publishing Inc, 1979) vol 4 chap 17. See also G.D. Squibb, *The High Court of Chivalry, a Study of the Civil Law of England* (Oxford: Clarendon Press, 1959)

<sup>22</sup>*Puryman v Cavendish* (1397) Close Rolls 21 Ric II p 1 m 5. The opinion among lawyers is good evidence of what the law is: *Isherwood v Oldknow* (1815) 3 M & S 382 at 396, 397, 105 ER 654, per Lord Ellenborough, applied in *Manchester Corpn v Manchester Palace of Varieties Ltd* [1955] P 133, [1955] 1 All ER 387 at 393, High Ct of Chivalry, per Lord Goddard, Surrogate.

<sup>23</sup>Cases were tried *secundum legem et consuetudinem curie nostre militaris*: *Puryman v Cavendish* (1397) Close Rolls 21 Ric II p 1 m 5. This was recognised by the common law courts; *Paston v Ledham* (1459) YB 37 Hen VI, Pasch. p 18, per Nedham J.

<sup>24</sup>They were generally described as *tesserae gentilitatis* or insignia of gentility.

<sup>25</sup>*De Donis Conditionalibus* (13 Edw 1, st 1).

<sup>26</sup>*Re Rivett-Carnac's Will* (1885) 30 ChD 136.

<sup>27</sup>Particularly meaning those who are specified in the words of the grant.

<sup>28</sup>For a discussion of corporeal and incorporeal property see an article by the author in (1997) 17 *New Zealand Universities Law Review* 379-401.

<sup>29</sup>Arms descend with due and proper differencing, to male descendants of the grantee in the first instance, and through females as heraldic heiresses in the event of the failure of the male line, as quarterings: *Wiltes Peerage Case* (1869) LR 4 HL, 126 at 153.

<sup>30</sup>See eg the Settled Land Act 1925 (15 & 16 Geo 5, c 18) s 67, replacing Settled Land Act 1882 (45 & 46 Vict, c 38), s 37.

the terms real property and hereditaments may for most practical purposes be treated as meaning the same thing, they are not exactly so.<sup>31</sup>

Corporeal hereditaments are those hereditaments which are actual physical things over which rights of ownership may be exercised, such as land, buildings, minerals, trees, and anything else which is either part of a piece of land or else affixed to it. Incorporeal hereditaments, by contrast, are not physical things at all, but rights affecting land which the common law treated as real property.<sup>32</sup>

As with all property, the rights of the owner include the right of control. Hence, the lawful owner of a coat of arms may prohibit others from using their property. Nor may coats of arms be used without the permission of the owner thereof. This principle was clearly stated in *Manchester Corp v Manchester Palace of Varieties Ltd*.<sup>33</sup> So, contrary to what the Chancellor believed, the lawful owner of a coat of arms does have an absolute right to prohibit the use of his arms.

### 3.THE INTRODUCTION OF THE ROYAL ARMS INTO CHURCHES

It is not enough for a consistory court to follow Garth Moore's judgment that: 'In general, I should be slow to grant such an application where a reasonable objection could be made by or on behalf of the bearer of those arms, and I shall in future normally require notice of any petition for the introduction of heraldic emblems to be given to the bearers of those emblems, at any rate where it appears to me that an objection could be reasonably entertained'.<sup>34</sup>

In all cases the permission of the owner of the armorial bearings must be sought and obtained. It is not a matter in which the consistory court has any discretion, though, even if permission is forthcoming from the owner, the court may properly decide to reject the petition for its own reasons.

Having unfortunately begun on a misunderstanding of the Law of Arms, by no means surprising given the lack of guidance from the Court of Chivalry in recent centuries,<sup>35</sup> the Chancellor considered the special position of the royal arms. 'The royal arms have been so displayed in churches now for about four centuries. There is ground for thinking that their introduction has sometimes been enforced at the instigation of the Crown. The matter has

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<sup>31</sup>Sir Robert Megarry and Sir Henry Wade, *The Law of Real Property* (4th edn), ed MP Thompson (London: Sweet & Maxwell, 1975), p 788, note 6.

<sup>32</sup>For other types, found in England, see Megarry and Wade, *A Manual of the Law of Real Property* (4th edn), p 789. 'Land' includes manor, advowson, rent, and other incorporeal hereditaments; real property which, on an intestacy might, before 1 January 1926, have devolved on an heir: Law of Property Act 1925 (15 & 16 Geo 5, c 20), s 205 (1).

<sup>33</sup>*Manchester Corp v Manchester Palace of Varieties Ltd* [1955] P 133, [1955] 1 All ER 387, High Ct of Chivalry.

<sup>34</sup>*Re St Paul, Battersea* [1954] 2 All ER 595 at 596, [1954] 1 WLR 920 at 921, Cons Ct, per Garth Moore Ch.

<sup>35</sup>*Manchester Corp v Manchester Palace of Varieties Ltd* [1955] P 133, [1955] 1 All ER 387, was the first sitting of the High Court of Chivalry since 1737. For the last cases heard before then, see Squibb, *The High Court of Chivalry* pp 107-117.

always been within the faculty jurisdiction of the consistory court and has never till 1953, so far as I know, been treated as the concern of the Home Office'.<sup>36</sup>

This was a case where the owner of arms had, in effect, refused permission for their use. Had the Chancellor correctly stated the law with respect to the rights of property in arms, the matter might have ended here. The Chancellor was, however, also strongly influenced by the judgment of the Worshipful Kenneth Macmorran QC, Chancellor of the Diocese of Chichester in *Re West Tarring Parish Church*.<sup>37</sup>

That latter case also concerned an unopposed petition for a faculty to authorise the display of the royal arms over the vestry door in the parish church. This also was not a proposal to use the arms for mere artistic embellishment. It was simply to implement the desire to display the royal arms as such, to commemorate the coronation.

In a succession of letters between the Home Office and Chancellor Macmorran, the Home Office made its position clear. In a letter of 29 May 1954, its spokesman stated that:

The Home Secretary appreciates that the arms of previous Sovereigns are displayed in many parish churches, and he would not wish to raise any objection to the renewal or restoration of existing coats of arms. It appears, however, that the practice has very largely fallen into desuetude during the past hundred years, and the Home Secretary does not feel that the existence of this practice should be regarded as overriding the general consideration that since the royal arms and other emblems are personal to Her Majesty, it is only proper that her consent should be obtained for their reproduction in any form. It is observed that the applications to which you refer in your letter of May 4 both relate to proposals to place the royal arms in churches in commemoration of the coronation, and the Home Secretary feels that in these circumstances the application ought to be dealt with as applications for a new use of the royal arms rather than as a revival of the practice of exhibiting royal arms in churches.<sup>38</sup>

While the Home Office acknowledged that royal arms had formerly been used in churches, its belief was that they had now fallen into desuetude. Chancellor Macmorran contended that the display of the royal arms in churches had not fallen into disuse, and that: 'as I read the law, the authority to decide whether any furniture or ornament is to be admitted to consecrated buildings is the ecclesiastical court. In my view, therefore, the opinion of the circular letter I have quoted above is an unwarranted interference by a department of State with a court of competent jurisdiction'.<sup>39</sup>

It is respectfully submitted that the learned Chancellor was mistaken. Whilst it is within the jurisdiction of the consistory court to decide whether or not any armorial bearings will be put in a church, this must be subject to the consent of the owner of such arms. This is analogous to the court saying that it is within its jurisdiction to approve the placing of a piece of stolen artwork within a church. The court has no positive duty to introduce any armorial bearings, and must exercise its discretion whether to do so or not in light of the external circumstances. The court must abide by the general law, as well as ecclesiastical law. Whether a special case might be made for the royal arms is a question which can now be addressed.

<sup>36</sup> *Re St Paul, Battersea* [1954] 2 All ER 595 at 596, [1954] 1 WLR 920 at 922, Cons Ct, per Garth Moore Ch.

<sup>37</sup> *Re West Tarring Parish Church* [1954] 2 All ER 591, [1954] 1 WLR 923n, Cons Ct.

<sup>38</sup> [1954] 2 All ER 591 at 592, [1954] 1 WLR 923n at 924, per Macmorran Ch, quoting the Home Office letter of 29 May 1954.

<sup>39</sup> [1954] 2 All ER 591 at 592, [1954] 1 WLR 923n at 924.

#### 4. THE ROYAL SUPREMACY

The matter might be dealt with simply by stating that the requisite royal consent was not forthcoming. But the matter is not quite so simple. The royal arms had indeed been used for centuries in churches, to symbolise the royal supremacy. But that does not mean that the royal arms were not used without the approval of the Sovereign. In the past such consent was implied, and at times the display of the royal arms was actually required.<sup>40</sup> But the Home Office made clear its view that such blanket consent would not now be forthcoming. Further, it is doubtful whether there is any basis in the claim that the display of the royal arms *in a church* has any special status, as both learned judges believed. Chancellor Garth Moore stated that:

their presence in a church, in the manner desired in this case, seems to me to be on a par with their presence in a court of law. In both cases it signifies the highest temporal authority. So long as the Crown claims supremacy in the established church, it seems to me to be unreasonable that it should object to the badge of that supremacy being displayed ... For this reason, though for a time at least I shall continue the practice of requiring notice of these applications to be served on the Home Office so that the Crown may continue to have an opportunity of appearing and arguing its case, until some valid argument is presented which will persuade me that these applications should not be granted, I shall in the absence of special circumstances grant them as I grant this one.<sup>41</sup>

The royal arms are displayed in a court of law to symbolise that fact that the judges are the Queen's judges, and the courts are the Sovereign's courts. However, a church is not subject to the Crown in such a way. True, the Sovereign is supreme head of the Church of England,<sup>42</sup> but it would be dangerous to read too much into this. The royal supremacy was confirmed by the Act of Supremacy 1558 which declared the Queen to be: 'supreme Governor of this realm ... as well in all spiritual or ecclesiastical things or causes as temporal and authorised the Crown to nominate by letters patent persons to exercise on its behalf all manner of jurisdictions ... touching ... any spiritual or ecclesiastical jurisdiction ... and to visit, reform, redress, order, correct and amend all ... errors, heresies, schisms, abuses, offences, contempts and enormities whatsoever'.<sup>43</sup>

This idea was repeated in the *Thirty-Nine Articles*, enacted in 1562, and confirmed in 1571.<sup>44</sup>

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<sup>40</sup>In 1660 an Act of Parliament required the royal arms to replace any example of the arms of the Commonwealth in churches, but there was no requirement for the use of the royal arms where they were not previously displayed.

<sup>41</sup>*Re St Paul, Battersea* [1954] 2 All ER 595 at 596, [1954] 1 WLR 920 at 922, Cons Ct.

<sup>42</sup>Act of Supremacy 1534 (26 Hen 8, c 1), repealed by the See of Rome Act 1554 (1 & 2 Php & M, c 8), and the repeal confirmed by the Act of Supremacy 1558 (1 Eliz 1, c 1), s 4.

<sup>43</sup>Act of Supremacy 1558 (1 Eliz 1, c 1), ss 8, 9.

<sup>44</sup>Articles of Religion, art XXXVII, 'Of the Civil Magistrate': 'The King's Majesty hath the chief power in this Realm of England, and other his Dominions, unto whom the chief Government of all Estates of this Realm, whether they be Ecclesiastical or civil, in all causes doth appertain, and is not, nor ought to be, subject to any foreign Jurisdiction.'

But this was merely an assertion of royal supremacy over the spiritual as well as the temporal state. The ministers of the Church were in no sense servants of the Crown. It followed that they could only use the royal arms in the same circumstances that any other subjects of the Crown might. But as they were not servants of the Crown, they could not display the ensigns of the Crown without express permission.

## 5. OTHER COATS OF ARMS

Different considerations applied in respect to the arms of the kingdom of England. Their introduction was not sought in order to signify the royal supremacy, but rather as part of a general decorative scheme. As Chancellor Garth Moore said: 'Their use in the circumstances strikes me as harmless and appropriate, but the consent of their bearer, that is, the Sovereign, has not been given or, indeed, sought, and on the principle which I have enunciated, I think that this should be a condition precedent to their introduction'.<sup>45</sup>

As the principle that armorial bearings are the exclusive property of their bearers has already been stated, it need merely be observed that the consent of the owner of any arms must always be sought. It is not merely a matter of courtesy, but of recognition of an exclusive property right.

Indeed, it can also be argued that the arms borne by the Sovereign, both the full royal arms, and parts thereof, are distinct from ordinary armorial bearings. They are borne as an attribute of the royal prerogative, and the consent of the Sovereign for their use is doubly necessary.

The local borough and county had both consented to the use of their arms, and their armorial bearings might lawfully be introduced into the church, if the consistory court granted a faculty. Chancellor Garth Moore then considered the position of the arms of the province and diocese: 'With regard to the arms of the diocese and the arms of the province, no permission for their introduction has been sought; but the church is part of the diocese and of the province, and I cannot conceive the refusal of consent or any reasonable grounds on which such refusal could be based. I, therefore, grant permission for their introduction'.<sup>46</sup>

This also is based on the initial misunderstanding of the nature of property in armorial bearings. The consent of the archbishop and diocesan bishop respectively must be sought before a faculty is sought for the introduction of such arms into a church.

The parish is subordinate in a hierarchical sense to its bishop, and to the archbishop. But each is a distinct legal entity. In the parish, the churchwardens are a quasi-corporation for the management of church property. The incumbent is a corporation sole, and the parish itself merely the circuit of ground committed to his charge. Neither incumbent nor churchwardens

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Where we attribute to the King's Majesty the chief government, by which Titles we understand the minds of some slanderous folks to be offended: we give not to our Prince the ministering either of God's Word, or of the Sacraments, the which thing the Injunctions also lately set forth by *Elizabeth* our Queen do most plainly testify; but only that prerogative, which we see to have been given always to all godly princes in holy Scriptures by God himself; that is, that they should rule all estates and degrees committed to their charge by God, whether they be Ecclesiastical or Temporal, and restrain with the civil sword the stubborn and evil-doers ...'.

<sup>45</sup> *Re St Paul, Battersea* [1954] 2 All ER 595 at 597, [1954] 1 WLR 920 at 922, Cons Ct.

<sup>46</sup> [1954] 2 All ER 595 at 597, [1954] 1 WLR 920 at 923.

are entitled to use the arms of their bishop without his consent. The same may be said for the archbishop.

However, the Chancellor, in his capacity of Vicar-General, would have the jurisdiction to give consent on behalf of the bishop, and this might be the appropriate method for dealing with that particular aspect of the petition. The appropriate metropolitan would have to be approached for his consent for the use of the provincial arms, though this consent might also be given on his behalf by the provincial vicar-general.

Chancellor Garth Moore continued: 'With regard to St George's Cross these arms, so far as I am aware, do not in any sense belong to anybody. Among other uses to which they are put is that of signifying the Church of England. I see no reason, therefore, why they should not be introduced and I give permission for their introduction'.<sup>47</sup>

Unfortunately, this view also is not wholly correct. St George's Cross is used by, among others, the Royal Navy, in which it is used to indicate the presence of a full admiral. It is thus subject to control by the Crown. The same may be said of the Union Flag, the so-called Union Jack. But while it has been stated that the Sovereign has no objection to her subjects flying the Union Jack,<sup>48</sup> nothing has been said about the use of the St George's Cross.

It would be extremely unlikely however for the Crown to object to the use of the St George's Cross, in view of its status as a national flag, by churches in England, though what the position might be in Wales or elsewhere is uncertain. As a national emblem, St George's Cross is in a different position to the royal arms, which have always been personal to the Sovereign, as well as emblems of dominion.

## 6.CONCLUSIONS

Thus, in *Re St Paul, Battersea*<sup>49</sup> and *Re West Tarring Parish Church*<sup>50</sup> the respective Chancellors were in error, and their judgments, though only persuasive in consistory courts other than Southwark and Chichester respectively, ought not to be followed. It may be concluded:

- (1) that the introduction of the royal arms, signifying the royal supremacy, is a matter within the jurisdiction of the consistory court, *but that the permission of the Crown must still be sought and obtained as a condition precedent to the granting of a faculty*;
- (2) that the use for decorative purposes of the first quarter of the royal arms as a device signifying the kingdom of England involves different considerations, but that the consent of their bearer, the Sovereign, *must* be sought;
- (3) that the arms of the local councils, corporations, or individuals can be introduced, if they have consented to such use;
- (4) that consent *is always* necessary for the use of either the arms of the diocese or the arms of the province;
- (5) that consent is not necessary for the use of St George's Cross.

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<sup>47</sup>[1954] 2 All ER 595 at 597, [1954] 1 WLR 920 at 923.

<sup>48</sup>Its use at sea is, of course, subject to greater restrictions.

<sup>49</sup>*Re St Paul, Battersea* [1954] 2 All ER 595, [1954] 1 WLR 920, Cons Ct.

<sup>50</sup>*Re West Tarring Parish Church* [1954] 2 All ER 591, [1954] 1 WLR 923n, Cons Ct.

Although the consent of the Crown must be sought for the display of the royal arms, Chancellor Garth Moore was correct to observe that: 'So long as the Crown claims supremacy in the established church, it seems to me to be unreasonable that it should object to the badge of that supremacy being displayed' ...<sup>51</sup>

What is reasonable, and what is lawful, are often divergent. Given the long tradition of the display of the royal arms in churches, it would be desirable if the responsible Ministers of the Queen were to advise Her Majesty to confer permission upon the Church of England to display her arms whenever faculties were granted for such use- in effect, to delegate responsibility to Her Majesty's judges in the consistory courts.

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<sup>51</sup>*Re St Paul, Battersea* [1954] 2 All ER 595 at 596, [1954] 1 WLR 920 at 922, Cons Ct.