

FB's Column in *Justice of the Peace* (No. 1)

Olla Podrida

An Occasional Medley of Legal Snippets

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This is the first instalment of a new column in which I propose to lay before readers a miscellany of short topical pieces about the law. I can best explain the title by recalling that in chapter 81 of *Don Quixote* Miguel de Cervantes has the Don's henchman Sancho Panza ask for a bowl of *olla podrida*, "wherein all sorts of good things are stewed". There will be some imaginative touches here and there, but I will strive to make all the legal facts given true and accurate.

How Can A Mister Be A Lord?

My friend Igor, a White Russian Prince whose family were driven out by the Bolsheviks, is always asking me awkward questions about the British constitution. In 1917 his family managed to get most of their vast wealth out of Russia just ahead of seizure by the revolutionaries, so Igor has time on his hands. He spends a lot of it studying our law for his own amusement.

Igor tells me that Lord Scott of Foscote, a retired Law Lord, has declared the Constitutional Reform Act 2005 to be unconstitutional. Igor does not know on what grounds His Lordship says this, but one thing he does know about the Act. "What's that?" I ask. "Well", Igor says, "It has a lot of provisions about a Lord called the Lord Chancellor but they've appointed a Mister to be Lord Chancellor and he still calls himself that, Mister Jack Straw. How can a Lord be a Mister?" I confess to Igor that I don't know the answer to that, just as I don't know how a Mister can be a Lord.

"Is Mr Straw what is called a Jack in office?" Igor asks. I say he very well might be.

Not Quite What One Intended

When drafting the Consumer Credit Act 1974 I did not foresee one curious outcome. It was made known in a 2008 case before His Honour Judge Simon Brown QC, sitting as a Judge of the High Court. The case was on five related claims concerning a Mr and Mrs Rankine and their financial affairs¹.

His Judgment makes clear that at the hearing Judge Brown was sorely tried by the conduct of the Rankines. The Judgment says they represented themselves, and were granted the usual indulgences to litigants in person by the court and the advocates appearing for the financial institutions. However the Rankines "misused those indulgences . . . by producing blizzards of lengthy, argumentative and incoherent pleadings and witness statements". In their evidence they were "perversely and deliberately untruthful". They used arguments that were "pure sophistry" and made submissions "totally without factual or legal merit". In a blast at Mrs Rankine Judge Mason says:

"In my judgment, Mrs Rankine was deliberately seeking to be perverse and untruthful in seeking to avoid a substantial debt despite having all the benefits of equipment she

¹ The claims were Nos. 8BM40009-13.

expects the credit company to pay for on her behalf. Her behaviour in Court was perverse, argumentative and obstructive.”

That was not all. Many litigants in person plague the courts in the manner described. What was new to me was the final allegation that Judge Mason levels at Mr Rankine.

“Recently eight (I believe) claims arrived in various courts in the Birmingham Civil Justice Centre about the Rankines’ financial affairs. These are just five of them and an undisputed schedule of debts amounts to £20,231.50 and £17,334.80 in the cases of Mr and Mrs Rankine respectively. During evidence. Mr Rankine boasted to the Court that they had managed to wriggle out of a further £65,000 of similar debts by raising Consumer Credit Act legal technicalities, leaving the financial institutions to write them off as bad debts rather than take the trouble and expense of litigating for dubious reward by enforcement against two individuals who are apparently on income support and exempt from paying court fees.

It also emerged during evidence that Mr Rankine was seeking to make a business out of this by offering his services to others for percentage reward as a credit card buster with a website and publicity generated in the media about his ‘victory’ in the Court of Appeal in one of his cases against MNBA.”

This sort of thing was not what was intended by those responsible for the enactment of the CCA. As Judge Mason points out, the Act was introduced to protect the individual who is unsophisticated in financial affairs and contracts with unscrupulous and sophisticated financial institutions. “It was not designed to help individuals in the financial services business make money out of financial institutions through exploiting its undoubted technicalities.”

Well that was rather what I thought too, having I fear created many of the said technicalities.

Is An Oath Meant To Be taken Seriously?

Igor has given further study to the Constitutional Reform Act 2005 and comes back to me with another awkward question. “It is reported that for 2008 there is a £90 million budget deficit in the financing of the courts” he says. “Isn’t that very serious?” I reply that it seems to me to be a very grave matter indeed. “Well”, asks Ivan, “What will they do to the Lord Chancellor Mr Straw? Will they lock him up in the Tower of London?”

I say that this is unlikely, whereupon Igor says that they

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ought to because of the oath the Act requires. What oath? I ask. Igor says the Act requires a Lord Chancellor to swear an oath to “discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible”.

Ivan seems to think that the Act is meant to be taken seriously, so that breach of the Lord Chancellor’s oath should have harsh consequences. If they won’t lock Mr Straw up in the Tower of London, what punishment will they give him? I confess I don’t know. Probably none at all I would like to add, but refrain from doing so. I dread the tirade of puzzlement such an answer would cause to descend on me from Igor.

Government Grandiloquence

Modern governments often display delusions of grandeur. This is another way of saying that the fairly ordinary men and women who nowadays constitute the cream of our parliamentary contingent are prone to entertain such delusions. An example is the 2007 Green Paper titled *The Governance of Britain* (why not just “Government”). This has led to the draft Constitutional Renewal Bill (more grandiloquence) which is presently being considered. The Green Paper is said to have been based on four “key goals”:

- To invigorate our democracy;

- to clarify the role of government, both central and local;
- to rebalance power between Parliament and the Government, and give Parliament more ability to hold the Government to account; and
- to work with the British people to achieve a stronger sense of what it means to be British.

Well I have stared at these four so-called goals, over and over again. I have held them upside down and shaken them. I have squinted at them sideways. Still I can't make any sense of them. Words like "hot air", "flatulence", and "puffed up" float around my brain. In the end I can't improve on the word I started with. Grandiloquence. The Oxford English Dictionary defines a grandiloquent person as "characterized by swelling or pompous expression". Yes, that'll do.

Is There Really A Courts Deficit?

I decided to investigate Ivan's story that there is a £90 million budget deficit in the financing of the courts, having just seen a news report that the deficit is really £3 billion. There was nothing about it on the HM Courts Service (HMCS) website, where one would expect to find such things. I tried calling the HMCS Senior Press Officer Vincent Burke. I gave him my name and said I was a member of the Bar who was writing an article about the alleged deficit. He demanded particulars. Where had I read news of the deficit? What paper was I writing for? What was the address of my Bar practice? After he had run out of inappropriate, indeed impudent, personal questions Mr Burke gave me an official statement from the Justice Minister Lord Hunt:

"There is no a black hole in Her Majesty's Courts Service budget. There will be no impact from efficiency savings on the service provided to victims and witnesses or to the effective delivery of justice. As with any other Government department or agency there is a duty to ensure taxpayers' money is spent efficiently, and Her Majesty's Courts Service is committed to ensuring this happens."

Pressed on this, Mr Burke said it was the only information that was being released on the matter of the alleged deficit. I said that "black hole" was mere slang, and that I wished to know whether or not there really was a budget deficit and if so what is its amount and what period does it cover?

Mr Burke replied "we have no further publicly available information on this matter". He suggested I speak to Simon Steel in the Ministry of Justice Press Office if I wished to discuss it further. I did this, without result. Mr Steel merely repeated that Lord Hunt's statement was all the Government were prepared to say. If I wanted more I would have to ask the Press Office of HM Revenue and Customs. I decided to give up at this point.

As well as being Lord Chancellor, Mr Straw is also the Secretary of State in charge of the Ministry of Justice. Is it not remarkable that his own Press Officer declines to answer properly an inquiry concerning Mr Straw's alleged failure to carry out his statutory duty? Frustrated by this I decided to probe the story further.

I discovered from the internet that on 4 September this year the London *Times* published a report headlined "Courts face closure as judges are told of £90m shortfall in collection of fees". There was no mention of Lord Hunt's "black hole", but the report began:

"The criminal courts are facing their biggest cash crisis in decades after a warning to judges and magistrates of a £90 million shortfall in the budget for the justice system. Judges and magistrates in England and Wales have been told of the emergency, which is likely to result in trial delays, cancelled court sittings and redundancies."

Surely such a report in the prestigious *Times* ought to be taken seriously, and answered properly, by the minions of the Ministry of Justice? I asked Mr Burke when Lord Hunt's statement was made, as he had omitted this information. He replied:

“Lord Hunt’s statement was made on 3 September in response to press enquiries on the subject. It was not made in the House of Lords and so there is no Hansard reference.”

The dates suggest that the “press enquiries” emanated from the *Times*. Yet its report did not mention Lord Hunt’s statement. All very mysterious.

Living With Bats

I occasionally buy collections of old letters from bookshops or at auction sales. They cost next to nothing and invariably include interesting missives. The other day I acquired a collection of copy letters from the recent past. Each is headed “From the Rt. Hon. Earl Forsooth K.G.”. The address shown is Montmorency Castle, Rutland. I suspect the name to be a pseudonym because I can’t find it in *Debrett*. However I have checked that the letters deal with

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actual events, so I decided to publish some of those that are of legal interest in this column. Here is the first.

31 July 1997

Mr Magnus Magnusson

Dear Mr Magnusson,

Living with bats

I am writing to you about the item in today’s *Daily Telegraph* concerning the Chief Constable, Mr William Wilson, who was driven from his home by an infestation of thousands of bats. You are mentioned as chairman of Scottish Natural Heritage, which complained to the Procurator-Fiscal about Mr Wilson’s wholly understandable rejection of these unpleasant creatures. You must be held responsible for the most bizarre action against a householder I have heard of in years.

The bats roosted in the roof of the house, and in the end occupied every room. Because he naturally attempted to eject these repellent reptiles, Mr Wilson fell foul of a ludicrous statute which protects them even in such circumstances. Nothing objectionable to Mr Wilson would have been done about this if your busybody organization had not reported him to the authorities. The newspaper item says of Mr and Mrs Wilson-

“The couple have been living with bats for the past five years, and sought the advice of Scottish Natural Heritage two years ago when the animals came indoors. During hot weather earlier this month the smell in the £140,000 house became unbearable. Scottish Natural Heritage has reported Mr Wilson for failing to follow its advice not to disturb the bats. He was told that the animals would leave once their young had been taught to fly.”

Have you not heard that under our law a man’s house is his castle? This ancient, sensible principle was even known to Roman law. It is expressed in the Latin maxim *domus sua cuique est tutissimum refugium* (a man’s house is his safest refuge). I’m sure that must have come up in “Mastermind”.

The least you can do now is resign from this absurd organization calling itself Scottish Natural Heritage. First however you should give it a good telling-off and see that the excellent Mr Wilson is suitably compensated.

Yours faithfully,

Forsooth

