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GENEALOGY
HERALDRY
VEXILLOLOGY
SOCIAL HISTORY
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NO POWER TO GRANT ARMS BETWEEN 1943 & 2005

On Wednesday 24th October 2007 a media statement issued by the Board of the National Library finally conceded the inevitable. The Board came under sustained media pressure over the decision to temporarily suspend its heraldic services. Articles appeared in the Irish and British print media and it was carried by several radio programmes. Clearly, neither the Minister nor the Board of the National Library could continue to ignore this internationally embarrassing heraldic mess and statements were prepared. The statement issued by **Mr. Gerard Danaher, SC**, Chairperson of the Board of the National Library, clearly endorsed the Society's position that the implementation in May 2005 of Section 13 of *National Cultural Institutions Act, 1997* plunged Irish heraldry into a serious crisis as it denied any legislative recognition to grants of arms made by the various Chief Heralds of Ireland since 1943. The Board of the National Library in its statement, in fact, unwittingly asserted that Ireland has the youngest heraldic authority in the world dating only from May 2005 when the 1997 Act was implemented by the then Minister, **Mr. John O'Donoghue, TD**. It also

recognised that serious doubts exist as to the legal status of all the Grants of Arms made by the Chief Heralds of Ireland from 1943 up to the implementation of the 1997 Act in May 2005. That's the overwhelming majority of Irish grants in existence. Grantees include individuals, corporate bodies, institutions and local authorities and of course, our President and other dignitaries such as former American President Clinton. The statement by the Chairperson of the Board of the National Library gives absolutely no comfort to these grantees as it directs any queries in respect of these grants to the Minister responsible. Far from resolving the heraldic problem, Mr. Danaher's statement left the overwhelming majority of the former clients of the Chief Heralds Office in considerable doubt as to the legal standing of the grants of arms they received from the Chief Heralds of Ireland acting, as they claimed, on behalf of the State. The National Library's media statement was followed by a more forthright statement by the Minister for Arts, Sport & Tourism, **Mr. Séamus Brennan, TD**, in answer to parliamentary questions raised by **Ms. Olivia Mitchell, TD**, in Dáil

Éireann on Thursday 25th October 2007. Minister Brennan admitted that the State had no power to grant arms up to 2005 when the *National Cultural Institutions Act, 1997* was finally implemented. The Minister advised the Dáil that amending legislation would be required to rectify this situation. Whilst, Mr. Danaher should certainly be commended for his swift and determined action on this issue, unfortunately the Irish heraldic establishment, including possibly some members of the Library's own *Genealogy & Heraldry Committee*, was extremely reluctant to accept that such an outcome was simply inevitable. Therefore, questions now arise as to whether or not this current Committee has the necessary objectivity to be a part of the solution to this heraldic problem. A full examination of all the grants of arms made by various Chief Heralds of Ireland in the period 1943 to 2005 will now be required in order to ascertain whether such grants are eligible for future legislative protection. The discovery of any grants that should not have been made, for whatever reason, will now require a thorough inquiry to restore the reputation of Irish heraldry.

New Legislation Required

Whilst, the Society would urge the Minister **Séamus Brennan, TD** to adopt the *Genealogy & Heraldry Bill 2006* and, if necessary, amend it accordingly, an interim measure is possible. **Professor Noel Cox** has provided such a solution on page 4 of this newsletter. Though, this may provide legislative recognition to the hundreds of Grants of Arms made by successive Chief Heralds of Ireland from 1943, it

does not represent a clear and unambiguous break with a past littered with controversy. Not only the scandal of the "bogus chiefs" but the granting of arms with a recognition of purchased feudal and manorial titles has brought the operation of the Genealogical Office into serious disrepute. The *Genealogy & Heraldry Bill, 2006* sought to legislatively dispel any and all of the fanciful notions that

emerged over the years regarding the powers and functions of this office by clearly establishing a modern heraldic authority for Ireland. This would have become a legislative model for other modern republics with a rich heraldic tradition. The Bill also proposed that heraldry could easily provide the State with a means to honour meritorious citizens for achievement, excellence and service.

Search Operation for Missing Irish WW2 RAF Airman Begins in The Netherlands

On Monday 3 September excavations commenced at the village of Berkhout in northern Holland to try and recover the remains of Irishman RAF (British Royal Air Force) air-gunner **Sgt. John Edward Kehoe**, from New Ross, Co. Wexford, who was one of the four man crew of an RAF Hampden shot down by a German Messerschmitt fighter on 8 November 1941 while returning from a bombing raid over Essen. The bodies of the pilot and co-pilot were thrown clear of the crashed aircraft and were buried locally with the crash site being marked with a simple cross by German soldiers billeted in the village at that time. But the bodies of Sgt. Kehoe and the other crewmember **Stanley Mullenger** were not recovered and remained with the buried wreckage. Over 11,000 British RAF aircraft were shot down over Holland during World War 2, nearly half of them over northern Holland. In Holland the custom is to leave field graves undisturbed unless there is unexploded ordnance which pose a danger to the public. When remains are found, these are usually interred in one of the many war cemeteries dotted throughout Holland. Driving force

being the campaign to recover the body of Sgt. Kehoe has been his 88-year old sister **Mrs Peggy Walsh** who lives in Tullamore, Co. Offaly and her daughter **Mrs. Margaret Treacy** to fulfil Sgt. Kehoe's mother's dying wish that he receive a Christian burial and be laid next to her in consecrated ground. During her search to locate her brother's aircraft crash site, Peggy Walsh encountered many false leads and dead ends but with the assistance of DARE, a Dutch foundation dedicated to examining the history of air battles over Holland, the correct crash site for the Hampden was eventually located enabling the necessary authorisations for excavation of the crash site to be applied for. This included obtaining permission from the family of the British airman Stanley Mullenger whose remains are also trapped inside the crashed aircraft. The Hampden is buried about 15 feet deep in what was originally a potato field, later planted with tulips and used for pasture for sheep. Over a 5-week period a specialist team will search the crash site and then raise the wreckage of this aircraft to take about 5 weeks as part of a Stg€700,000 excava-

tion project. The villagers of Berkhout have been very supportive to Peggy Walsh especially the owners of the land on which the crash site is located. Peggy Walsh believes that her brother had on his person at the time of his death, a religious medal, rosary beads and personal photographs and that the former may help to positively identify his remains when found. Peggy Walsh's last memory of his brother is saying farewell to him as he boarded a bus in New Ross, Co. Wexford, to begin the journey to Belfast, Northern Ireland, to enlist in the British RAF.

James Scannell

TABLE QUIZ

The Society held a very successful fund raising Table Quiz on Thursday 25th October 2007 attended by around seventy members and friends in Weir's of Dún Laoghaire. The Board would like to thank all attendees for their generous support. Also, sincere thanks to Quiz Master, **Séamus Moriarty**, for setting the questions and to **David Paling** for correcting and collating the answer sheets. A very enjoyable night.

Family Histories Received

The Society's Archivist, **Séamus O'Reilly**, would like to thank **Richard d'Apice** of Sydney, Australia and **Bill Griffith** of Copacabana, New South Wales, Australia for their kind donations of family histories for the Society's Archive. Indeed, the piece in last month's issue on the collection of family histories has generated considerable interest. **Richard d'Apice** donated a beautifully bound volume on "*The Maher Family—Australia 1837-1997 - The story of the descendants of William and Honora Maher*" by Dorothy Deger. William **Maher** (1792-1837) and his wife Honora **Kenniffick** (1792-1840) came from County Cork and emigrated to Australia in 1836 with their six chil-

dren aboard the *Lady Macnaghten*. This excellently researched volume brings the reader through their harrowing journey to Australia, their family tragedies and then through successive generations down to the late 20th century. Biographies of each of the main subjects of this research make for fascinating reading as it is both a social and family narrative. With many photographs, Family Trees, source notes and fully indexed, this volume is certainly a treasure trove for anyone with connections to this Maher family from Cork. **Bill Griffith** donated two bound volumes on the Griffith family and copious notes on an number of related families. The information supplied on the Griffith line

would be the envy of many a researcher in that Bill begins his Irish line in the early 1600s with Sir Morris Griffith son of William **Griffith** of Carnarvon and Margaret **Wynne**. Information on each of the generations is accompanied by very detailed biographies. The second volume deals with the "distaff lines" and is equally detailed covering many Anglo-Irish families. Copies of "*The Journal of Charles James Griffith*", "*The Diary of Charlotte Burgh*", "*Notes on Charlotte Burgh's Diary*", "*Thomas Denning, Native of Longford & His Life in Australia*", "*The O'Flynn Family*" and "*Henry & Francis (alias Richard & Elizabeth Griffith)*". Many thanks again to Richard & Bill.

Dorothy Macardle—A Life

Another wonderfully presented and expertly researched volume published by **The Woodfield Press** is certainly going to find its way on to many a Christmas gift list. "*Dorothy Macardle—A Life*" by **Nadia Clare Smith** profiles the life and times of this fascinatingly enigmatic lady, a historian, journalist, playwright, novelist, political activist and a student of the occult. The latter may surprise many because of her close association with the archetypical conservative Irish Catholic, Eamon **de Valera**. Macardle's role in the War of Independence, in the

Civil War on the anti-Treaty side and in the foundation of Fianna Fáil in 1926 provide a surprising portrait of an unlikely revolutionary, the daughter of the wealthy businessman, Sir Thomas Macardle. Her excellent and very talented writing skills were certainly appreciated by the icons of the republican movement, including Erskine **Childers**, Seán T. **O'Kelly** and the various editors of "*The Irish Press*". In 1933, Macardle co-founded the Irish Women Writers' Club with the poet Blanaid **Salkeld**. This Club was open to non-fiction writers, such

as historians and journalists, as well as novelists and poets. Macardle was a feminist and a civil libertarian which at times naturally put her at odds with the establishment in Fianna Fáil. Her friendship with left-wing republicans such as Frank **Ryan**, George **Gilmore** and Peadar **O'Donnell** was possibly only political flirtation as she didn't share their socialist commitments. Though, many only associate Macardle with her most enduring 1937 work "*The Irish Republic*"—there was so much more to this lady! Price €19.95 See:-www.woodfield-press.com

James Scannell Reports....

BATTLEFIELDS SURVEY

The Department of the Environment, Heritage and Local Government has advertised for a contractor to verify more than 100 reputed battlefield sites. The successful applicant will be provided with a list of 130 battle sites together with a list of 63 battlefield records from the Archaeological Survey of Ireland, some of which may overlap. Working from this material the contractor will draw up a 'defined' list of sites which is expected to include the 1690 Battle of the Boyne, the 1691 Battle of Aughrim, Co. Galway and the 1798 Battle of Vinegar Hill, Co. Wexford in addition to lesser battles such as the 1580 Battle of Glenmalur, Co. Wicklow. Each of the sites will be authenticated on the basis of the battle location, folklore and other evidence. Geophysical impacts will assist the contractor draw up an individual report on each of the battle sites on this list, which will include images and maps. The project will be overseen by the State Chief Archaeologist and experts drawn from the National Monuments Service. This project is undertaken against a

backdrop of planning and development issues that will have an impact on the way in which battlefields are managed.

LAST SURVIVOR DIES

On 2nd October the death took place in the St. Louis Nursing Home, Tralee, Co. Kerry, following a short illness, of 105-year old **Dan Keating**, the last survivor of the War of Independence (1919-1921). Born in Ballygambon, Castlemaine, Co. Kerry, on 2 January 1902, Keating joined the Fianna Éireann in 1918, and then the IRA two years later, serving in the Farmers Bridge unit. He participated in the Castlemaine, Co. Kerry, ambush on 1st June 1921 in which 5 members of the Royal Irish Constabulary were killed. According to Richard Abbott in "*Police Casualties in Ireland 1919-1921*" (Mercier Press) a police cycle patrol was returning from Tralee to Killorglin when it was ambushed around 5 p.m. on the Milltown side of Castlemaine by the Kerry Brigade IRA Flying Column. Four members of the R.I.C. were killed outright and one died later from his

wounds, one member of the ambush party was wounded. Keating was said to have been also involved in an ambush a Castleisland on 10 July 1921 in which four members of the Royal Irish Constabulary were killed, one of the last military actions by the IRA before the Truce (*suspension of hostilities between the IRA and Crown forces*) came into operation on 11th July 1921 to allow political talks to take place which ultimately resulted in the signing of the Anglo-Irish Peace Treaty on 6th Dec. 1921 which obtained independence for 26 counties of Ireland (present day Republic of Ireland). But there is no mention of this ambush in Abbott's work. During the Irish Civil War (1922-1923) Keating took the republican side and took part in a number of operations before capture by the Irish Free State army in Co. Tipperary. He was later released from the Curragh internment camp in March 1923. After working in Great Britain in the 1940's he returned to Ireland and worked in a number of Dublin public houses. Returning to Ballygambon in 1978 where he lived with a nephew and his wife following the death, the previous year, of his own wife.

Précis of the October Lecture

On Tuesday October 8th **Mary Kelleher**, Archivist at the Royal Dublin Society's introduced members to the archives of the RDS as a resource for the genealogist. With the aid of a Powerpoint presentation, Ms. Kelleher explained the history and purpose of the Royal Dublin Society and gave a brief biography for each of its illustrious fourteen founders. The RDS, she explained, was established in 1731 as the *Dublin Society for the Improvement of Husbandry, Manufacturing and Other Useful Arts*. Primarily the Society promoted the development of agriculture, industry, science and art. In 1820 the Society became the "*Royal Dublin Society*" after King George IV consented to

become its patron. The Society amassed a considerable library which later became the nucleus of the National Library of Ireland in 1877. The archives of the RDS contain many items of interest to the genealogist besides many published works, there are papers on agricultural works, surveys, improvement schemes etc. Drawings, paintings and photographic material are also held by the RDS Archives. Ms. Kelleher distributed an impressive list of publications held by the RDS Archives which would be of genealogical and heraldic interest. Finally, Ms. Kelleher outlined the accessibility of these resources for the researcher, however, the best advice is to contact the RDS before you visit.

GSI LECTURE PROGRAMME

The coordinator of the Society's Guest Speaker Programme, **Séamus Moriarty**, MGSi has arranged the following programme. On Tuesday November 13th **Seán Connolly**, Royal Dublin Fusiliers Association will speak on tracing a family member who fought in World War 1 and finally, on Tuesday December 11th **Steve Butler**, Elder, Church of Latter Day Saints will present an overview of the genealogical records of the Church of Latter Day Saints. Séamus Moriarty is always looking for speakers for future programmes. Any suggestions contact Séamus by e-mail at Gazette@familyhistory.ie

Membership Renewals Due Next Month

Membership fee renewals will fall due next month. The Board of the Society at its November 2007 meeting conducted the normal annual review of the **Membership Fee** structure and under **Res: 07/11/573** the Board adopted the following equalised Membership Package for 2008:- **Ireland & Overseas**: Offering ordinary membership of the Society, Membership Card, voting rights, use of the Society's Archive, monthly newsletter by mail, Annual Journal by mail, and the right to purchase the Society's publications at Special Members' prices of up

to 50% off selected publications. This also includes an optional second Membership Card for a household member, including voting rights, for an all inclusive cost of just €40.00 per annum.

The modest increase in the Membership Fee, which hadn't changed since 2004, was unavoidable as costs continued to rise sharply. The production of a biannual Journal became prohibitive when printing and postage costs were taken in to account. Any savings that were to

accrue in the change from a quarterly to a biannual journal were completely lost through huge increases in postage rates especially. Unlike many other similar organisations faced with the same problem, the Board decided to keep publishing the Society's journal but as an annual publication only. The Membership Fee is now in line with similar organisations in Ireland. However, in many respects our Membership Package, offers considerably better value for money. Remember you can renew on line on the Society's website—www.familyhistory.ie/shop

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www.familyhistory.ie/shop**DIARY DATES**

Tuesday Nov. 13th & Dec 11th 2007

Evening Open MeetingDún Laoghaire College of Further
Education

Cumberland Street, Dún Laoghaire

20.00hrs—22.00hrs

Weds. Nov. 28th 2007 & Jan. 23rd 2008

Morning Open MeetingWeir's, Lower George's Street, Dún
Laoghaire

10.30hrs—12.30hrs

Contribution €3.00 p.p.

(Coffee/Tea included at Morning Meetings)

NO MORNING MEETING IN**DECEMBER**

In Search of the Barlows

Australian **Lefayre Palmer** had been researching her Irish ancestors for many years without much success until recently she had a breakthrough. She enquired of Yale University Library whether any of the books by Jane Emily **Herbert** held by the library had any inscriptions within. She was lucky as the library staff advised her of the following very informative inscription in one of the books. "To my widowed mother and her brothers **Arthur Craven Barlow** and **Thomas William Barlow Esq., of Dublin** this volume is affectionately inscribed" **JEH**. This was wonderful news as her ancestor was the widowed mother, Jane Barlow, whose granddaughter Matilda Elizabeth Herbert married James Pease **Heslehurst** at Brisbane, Queensland in 1866. This breakthrough opened up her research to include the Barlow family who were prominent legal practitioners in Dublin in the mid 19th century. Both of the Barlow brothers mentioned above married into the **Jeffares** family of Wexford. **Arthur Craven Barlow** had a 99 year lease on Saunders Court, Wexford and at a place called Mt. Anna. His wife apparently died the year after the marriage and Arthur remarried. The children of Arthur's second marriage emigrated to New Zealand. While, many of the children of **Thomas William Barlow** emigrated to Melbourne, Australia. According to Lefayre, a number of Jeffares family also went to New Zealand, one marrying **Rev. Thomas Scott** of Rathfriland, Co. Down. One of the sons of that marriage became the legendary bushranger **Captain Moonlight**. The daughters of **Henry Arthur Herbert**, Jane's son, ended up in Queensland, Australia. Jane appears in an 1804 Bond List as pledged to **Henry Moncton Herbert**. The children of Jane and Henry Herbert were Henry Arthur, master mariner; Elizabeth; George, publisher of Dublin residing at "Rockingham" in Dalkey, Co. Dublin; Jane Emily who married **Thomas Mills**, and Thomas William, vicar of St. John's, Southend-on-Sea, Essex, England. Jane and Arthur Craven along with their siblings were baptized in St. Thomas' Parish in Dublin city with their parents listed as Arthur and Elizabeth Barlow. Elizabeth's maiden name was Scott as indicated by the marriage license, indeed, according to Lefayre, the name Scott has been used as a given name by the descendants of Jane and Henry Herbert. To confuse matters, the *Saunders Newsletter* gives Arthur Barlow, the son of Counselor Barlow married "Jane" Scott in November 1777, the exact date for the license for Arthur and Elizabeth. Lefayre would like to hear from anybody with connections or information on these families. **Lefayre Palmer** can be contacted by e-mail on fayre@ozemail.com or by ordinary mail: "Palmhurst", 4, The Knoll, Miranda, NSW, 2228, Australia.

The Continuing Saga of Sections 12 & 13 of the National Cultural Institutions Act, 1997

by Noel Cox

The Attorney-General has expressed his opinion that the National Cultural Institutions 1997 does provide sufficient authority for the granting of arms by the Board of the National Library of Ireland. The purpose of the Act was undoubtedly to bring the powers and functions of the Genealogical Office into the National Library of Ireland ("for the avoidance of doubt", since this had already been done by the Allocation of Administration (Genealogical Office) Order 1943). But since the powers to grant arms did not exist prior to 2005 (when section 13 was brought into effect, and as the Attorney-General concedes), the implementation of the new Act could not create such a power, unless clearly and expressly stated.

Subsection 2 of section 13 is crucial. It states that: — (2) The Board shall, from time to time as occasion requires, designate a member of its staff to perform the duty of researching, granting and confirming coats of arms and such member shall use the appellation Chief Herald of Ireland or, in the Irish language, *Príomh-Araí na hÉireann* while performing such duties.

This appears to confer an express authority to grant arms, and this would seem to be the interpretation adopted by the Attorney-General. However, the "duty" of "researching, granting and confirming coats of arms" is assigned, but no express authority is stated for the power to grant or confirm arms. This is perhaps a slight distinction, but is nonetheless legally significant — especially so in light of the prior confusion over heraldic authority, and its probable absence prior to 2005.

The original wording of section 13, when a Bill, not merely disestablished and restored the Genealogical Office as a new institution within the National Library, but also provided (in s 13(2)) that "the Board of the

Library shall, in relation to the functions assigned to it by section 12, perform the functions heretofore performed by the Genealogical Office including the duty of granting and confirming coats of arms under the style of heraldry." This clearly indicates that the source of the granting and confirming authority lay, not in section 13, but in section 12.

The limitation in the wording in s 13(2) is echoed in s 12, which describes the functions of the Board of the National Library of Ireland. This provides, *inter alia*, that: (2) The Board shall have all such powers as it considers necessary or expedient for the performance of its functions under this Act including, but without prejudice to the generality of the foregoing, the following powers: (c) to facilitate, encourage, assist and promote the granting and confirming of coats of arms,

This could be the requisite source for authority to grant or confirm arms — and should be, were the section drafted more carefully and with greater awareness of the preceding controversy over heraldic powers. However, it does not expressly authorise the granting of arms. The provision "such powers as it considers necessary or expedient for the performance of its functions" is insufficiently precise, being too broad. Indeed section 12 seems to suggest that the ultimate authority for grants lies elsewhere than in the hands of the Board of the National Library of Ireland. The expression "facilitate, encourage, assist and promote" could describe the role of an independent heraldic agent, and is insufficiently clear as a source of authority to grant arms. The section as originally drafted did not even mention heraldry or coats of arms, which was ever more unsatisfactory.

The learned opinion of the Attorney-General may constitute the best official advice available to the

Government, but is not itself law. If the advice is uncertain, or is subject to controversy or contradiction by other legal experts, then it does not constitute a sufficiently robust basis upon which to proceed.

As suggested in my paper, "The Law of Arms of Ireland — a lingering question of authority" (2006) 7(2) *Journal of the Genealogical Society of Ireland* 75-103, s 12(2) could be amended as follows (new text in italics). (2) The Board shall have all such powers as it considers necessary or expedient for the performance of its functions under this Act including, but without prejudice to the generality of the foregoing, the following powers:... (c) to grant and confirm coats of arms in accordance with the Law of Arms of Ireland,

Section 13 could become **13.**—(1) For the avoidance of doubt, it is hereby declared that the Genealogical Office is a branch of the Library, and is the successor in law to all the rights, privileges, powers and immunities of the Office of Ulster King of Arms as existed prior to 1st April 1943, and for the further avoidance of doubt the Genealogical Office shall be deemed to have existed since 1st April 1943 and to have enjoyed the said rights, privileges, powers and immunities without interruption since that date.

This provision would ensure that the grants of arms made prior to 2005 would be valid.

The **Genealogy and Heraldry Bill** should be pursued, but in the meantime the above simple amendments would put to rest the deplorable saga of legal uncertainty which has done much to harm the standing of Irish heraldry internationally.

Noel Cox, LL(M)(Hons) MTheol PhD Auckland MA Lambeth LTh Lampeter GradDipTertTchg AUT FRHistS, Barrister of the High Court of New Zealand, and of the Supreme Courts of the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, and Victoria. Professor of Constitutional Law, Auckland University of Technology, New Zealand.