

NOTES ON THE STYLE OF THE LAW

Navigating Past Titles
by

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— judicial titles — post-nominals — Crown — King's
Counsel — temporality —



UPON the Demise of the Crown, all of Her Majesty's Counsel (learnèd in the law) became His Majesty's Counsel (learnèd in the law).¹ The general rule is that the title conferred by silks' patents is ambulatory, meaning that a silk ought to be referred to by their present title rather than adjusting for the past and mixing 'QC' and 'KC' depending on who was on the Throne at any given time. This is analogous to referring to, say, the childhood of Sir Isaac Newton, despite the fact that Sir Isaac was not a knight as a child. Thus, we generally refer to people by the title they bore at their death. This convention is occasionally so strong it gives rise to error. A pamphlet on Sir Edward Marshall Hall's life from the Hon.² Soc. of the Inner Temple claims that Marshall Hall 'was appointed King's Counsel in 1898'.³ The convention of referring to Sir Edward Marshall Hall KC is so strong that the learnèd librarians forgot that in 1898 was during the reign of Victoria, and thus Marshall Hall, though firmly a KC in public imagination, was in fact initially appointed *Queen's* Counsel!

The recent case of *Margulies v Margulies*⁴ provides a useful study of a tricky edge case: judges. *Margulies* is a useful case because, thanks to the rather unusual facts, it is part of a line of probate litigation dating back to 1990, which has spawned no less than six distinct proceedings.⁵ Thus, when referencing previous proceedings in 1998,⁶ the judgment mentions 'Mr Terence Etherton QC' and 'Mr Geoffrey Vos QC'. Both of

1 Prior to the Demise, I wrote about these issues at greater length for the *ICLR Blog*.

2 It is well-known that the *soi disant* 'Honourable' used by the Inns is a most doubtful appellation with no authority other than the Inns claiming to be so, but as a matter of custom and tradition I use it anyway.

3 Inner Temple Library, 'Edward Marsh[all Hall]', 2013.

4 [2022] EWHC 2843, Ch

5 *ibid*, paras 1 and 12 *per* Sir Julian Flaux C

6 Court of Appeal, 16 Mar 2000, unreported

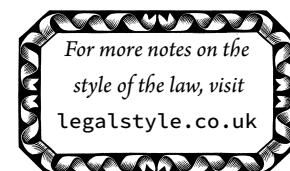
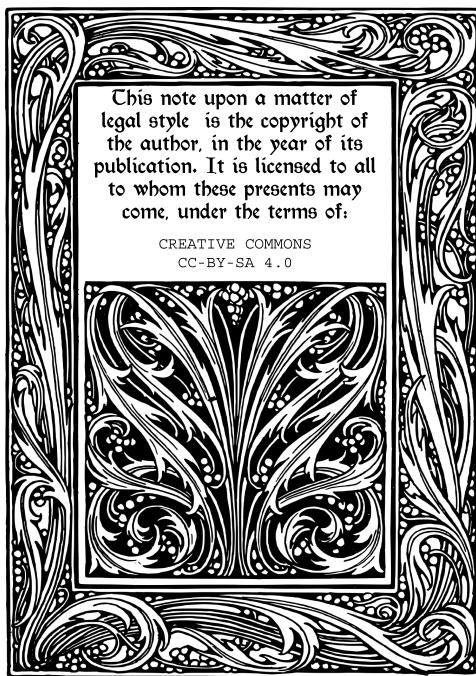
the barristers mentioned, as the reader may know, subsequently ascended to the judiciary, with Sir Geoffrey Vos the current Master of the Rolls,^d and the Lord Etherton the immediately previous occupant of that august and ancient office. This promotion means that, with great respect, Sir Julian Flaux C was in error not to add ‘(as he then was)’ following the names of these two great judges, particularly given his Lordship correctly uses this tag when referring to Lewison LJ’s youthful dalliances as a High Court judge. It is always important to inform readers, who may be reading this judgment centuries from now, or even reading it today with no knowledge of the ranks of the judiciary, of these little facts which provide context and life to cases. These pieces of context help come alive in the mind of the reader and aids in forming memories of the precedent.

While the need for ‘(as he then was)’ is straightforward, the trickier question relates to the use of the title ‘QC’. As noted *supra*, the title is usually ambulatory, and the present title is applied even to past instances. If the two people in question had not become judges, then it would have been straightforwardly correct to use ‘KC’ to refer to them in the context of the past proceedings. However, the question of to what extent judges and former judges retain the title of King’s Counsel is a vexed and difficult one, and it is a plausible argument that appointment to the Bench ends one’s status as a KC. However, in this regard, I defer happily to the learned reasoning of Prof Graham Zellick KC, who concluded after a thorough examination that the title of KC does indeed persist during judicial tenure in the senior courts and after retirement.⁷ This reasoning means that, although it admittedly seems strange, application of the standard rules yields the following as the proper way to write out the titles:

Mr Terence Etherton KC (as His Lordship then was); Mr Geoffrey Vos KC (as he then was)



⁷ Prof G Zellick KC, ‘QC or not QC: A Judicial Conundrum’, *NLJ* (23 Nov 2018).



Published in the City of Westminster by



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