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## Origin of Jeofail

M. P. Furmston\*

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In their interesting note on the origin of "Jeofail",<sup>1</sup> Doctors Baker and Arnold suggest that the word is derived from jeu-faille (= game-fail) and say that "A 'game-fail' in chess was presumably a stalemate; neither party could win, so the game failed or ended."<sup>2</sup>

Since it has long been known that "jeopardy" has a chess origin<sup>3</sup> (either from the old French "jeu parti" or the Latin "jocus partitus" = game in the balance and hence an uncertain chance) this explanation has an obvious attraction. Indeed in view of the alphabetical work habits of lexicographers it is surprising that the suggestion has not been made before. (The two words are consecutive in the Oxford Dictionary of English Etymology).<sup>4</sup> Nevertheless the argument based on the analogy with chess is not free from difficulties. The definition of stalemate is inelegant for the modern version of the game but much more important it is very far from clear that in 1378 the result of a stalemate was that the game was drawn.

In the modern version of the game it is true that if neither party can win the game is drawn but this is not because the position is one of stalemate but either (as in all practical cases) because the players agree to a draw or (in the case of a player who refuses to accept the inevitable) because eventually the other player will be entitled to claim a draw since "at least fifty moves have been played by each side without a capture of a piece and without a Pawn move having been made".<sup>5</sup> The meaning of stalemate is much narrower viz "when the King of the player whose turn it is to move is not in check and such player cannot make a move."<sup>6</sup> So the normal lay usage of

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1. (1971), 87 L.Q.R. 166.

2. (1971), 87 L.Q.R. 166 at 167.

3. Oxford Dictionary of English Etymology (1966) 494.

4. It is striking too that whereas the earliest instance of jeopardy given in the O.E.D. is from 1369, the earliest of 'jeofail' is from 1541, an implausibly late date for the creation of a new word in law French.

5. The laws of chess (as authorized by F.I.D.E. at Gothenburg 1955 and subsequently amended) Article 12.

6. Ibid, article 12, section 1.

stalemate to mean a situation when neither side can make progress is based on a misapprehension of the chess rule.

The rule that a position of stalemate is a draw appears to be a relatively recent innovation. As H. J. R. Murray points out the most plausible hypothesis for the origin of chess is that it was a war game and the earliest rules of the game depended upon the parallelism between chess and warfare.<sup>7</sup> If this is correct then it is easy to see that the stalemate position provides no clear parallel since if the King is besieged within an impregnable fortress and unable to move many different military results may follow. The fortress may be starved into submission but equally the besieging force may become disheartened and go away. It is not therefore surprising to discover that many different rules have been adopted for the stalemate position. Thus a Constantinople manuscript copied in 1140 at Baghdad, and dating from the Ninth or Tenth Century compares the Persian and Indian rules and states that in India the player with the stalemate King won but that this rule was not adopted in Persia.<sup>8</sup> Much later we find Indian authorities stating various rules: that the player stalemated can remove the stalemating piece;<sup>9</sup> that the player stalemated can remove any enemy piece<sup>10</sup> or that it is forbidden to give stalemate altogether.<sup>11</sup> In early Persian and Arabic chess the stalemating player won.<sup>12</sup>

England at some stage adopted the rule that the player stalemated wins and retained this variant until the early nineteenth century but there appears to be no evidence of the entry of this rule into England before the late sixteenth century.<sup>13</sup> There is considerable evidence for the position in Mediaeval Europe. In sixteenth century Spain stalemate was an inferior kind of victory and only won half the stake.<sup>14</sup> According to the Cracow poem of 1422 stalemate was a draw.<sup>15</sup> Unfortunately there do not survive any Mediaeval English statements of the rules but if Serjeant Hanmer was referring to

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7. Though there are many references to "stalemate" in the index to his *History of Chess* (O.U.P. 1913), Murray's views are most clearly set out in his classic article in (1903) 23 *British Chess Magazine* 281.

8. Murray — *History* 57.

9. *Ibid*, 66.

10. *Ibid*, 84.

11. *Ibid*, 82.

12. *Ibid*, 229.

13. *Ibid*, 391.

14. *Ibid*, 461.

15. *Ibid*, 464; see too the Lombard assize, *ibid*, 462.

stalemate then his remark would be some evidence that the Mediaeval English version of the game followed the modern rule. This would confirm the speculations of Murray<sup>16</sup> but the matter is clearly not free from doubt.

Another possibility would be that Serjeant Hanmer was referring not to stalemate at all but simply to draws in general. There are difficulties with this view also. In most Mediaeval versions of the game one could win not only by mating the opposing King but by capturing all his pieces; a rule which greatly reduces the number of drawn endings.<sup>17</sup> Furthermore surviving Mediaeval literature is concerned much less with playing than with solving composed problems in which one side is to play and win.

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16. *Ibid.*, 466; and see the problems discussed in 609.

17. *Ibid.*, 267-270.