THE EARL MARSHAL'S COURT IN ENGLAND; COMPRISING VISITATIONS, AND THE PENALTIES INCURRED BY THEIR NEGLECT.

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Read 9th and 23rd February, 1893.

THE very important office and dignity of Constable of England was created by William the Conqueror, although there are traces of a similar official in Saxon times, and the title is supposed to have been derived from "Cyning staple," meaning the Stay and Hold of the King; spelled "Kwnstabl" in Cambro-British, that is, early Welsh.

Under the Roman Emperors there was an official styled "Comes Sacri Stabuli," and some would have us suppose that the title Constable was equivalent to Comes Stabuli, or Master of the Horse. I have seldom found much value in these etymological speculations. The duties entailed did not at all correspond with those attached to a Master of the Horse either in Roman times or in our own. That, too, is said to be an ancient office and title —the earliest mention of it that I happen to have found is 39 Elizabeth, cap. 7 [only 1596!] but I have not looked carefully into the point.

From the earliest times of the French monarchy the dignities of Constable and Marshal are found, with powers and duties similar to those exercised by these high officers in England; the "Heretog" is mentioned as apparently holding the same position under our Edward the Confessor, and he was, there is no doubt, the successor of others still earlier in date, who exercised similar official powers.—(Edmondson's *Heraldry*, i, 32.) It was a hereditary dignity; it descended, in default of male heirs, to females, and was continued until 13 Henry VIII (1521-2). It had proved so powerful an office as to be troublesome and dangerous to the Court, and was then allowed to lapse. In Hearne's *Curious Discourses* (1771 ed., 8vo, 2 vols.) may be found a great many particulars of the duties, privileges, and income attached to the office.

Perhaps I ought here to point out that the hereditary possession, by a subject, of the power to call out and command the militia of the realm (and independently of any Royal appointment!) was very dangerous to the stability of the government. Besides which, the fees and emoluments were extremely burdensome. Therefore Henry VIII determined to abolish the office, and this he did in 1514, by disclaiming to have the services any longer executed. (Dyer, *Reports*, p. 285*b*.) Edward Stafford, the Duke of Buckingham, who was then High Constable, was allowed to retain certain manors attached to the office; but on his attainder for high treason, on May 13, 1521, these were forfeited to the Crown, and so all semblance of the hereditary office ceased; since then Lord High Constables have been temporarily appointed as special occasions required.

Authority from the High Constable was delegated to Constables of Hundreds and Franchises. In the statute of Winchester, 13 Edward I, 1285, were

appointed, for the "Conservation of the Peace and "View of Armour," two Constables in every Hundred and Franchise, and under these in after times, when the increase of population required such an additional machinery, there were instituted in every town or district sub-constabularii, of a like nature, but inferior authority.

There were also Constables of places, such as of the Tower of London, of Dover Castle, of the Castle of Carnarvon, and many other castles; also Constables of the Forest, &c.; but I may not say that these offices sprang directly from the High Constable, although it seems right and proper that they should have done so.

Briefly, the duties attached to the office of High Constable were these:—He held the chief command in the army and had cognizance of all military offences; he regulated all matters of chivalry, such as tilts and tournaments and feats of arms; he was the supreme judge in the court of chivalry, in which he sat in conjunction with the Earl Marshal. In 13 Richard II (1389-90) a statute was passed to check the encroachments of their court upon the other courts of law, and its jurisdiction was restricted to "contracts and deeds of arms, and "things which touch war, and which cannot be "discussed or determined by the common law."

That other great officer of State, the Marshal of England, was termed, simply, Lord Marshal, until the title of Earl Marshal was bestowed on Thomas Mowbray, Earl of Nottingham, by King Richard II, in 1386. The patent, dated 12th January in that year, increased the powers attached to the dignity; he is therein authorised to preside in the Court of Chivalry, to summon the heralds to assist him, &c., &c.; previously he had only sat in conjunction with the constable. (Pat. Roll, 9 Richard II, part i, memb. 38. Dallaway, p. 93.)

In 17 Richard II (1393-4), were assigned by patent to the same Thomas Mowbray, as Earl Marshal, the privilege of using the arms of Edward the Confessor, also the grant of a crest, &c., &c.

Before this date they were styled Lords Marshal of England, or Marshal only. In the grant of Edward II, constituting Thomas de Brotherton Marshal (Nero, B. vi), he is called Marshal of England, "Thomam de Brotherton, Comitem Not-" tingham, Marescallum Angliæ." (See the initial letter of this grant, Strutt's *Regal and Ecclesiastical Antiquities*, pl. xiv, p. 27.) The office descended hereditarily through male or female heirs until the death, under attainder, of Roger Bigot, Earl of Norfolk, when it returned into the king's hands. Edward II, in 1307, then created Robert de Clifford Lord Marshal "*durante bene placito.*" To him succeeded Nicholas, Lord Seagrave, after whom it again descended in the hereditary line, but with several breaks. Thomas Holland, Earl of Kent and Duke of Surrey, was "*created*" Earl Marshal on the banishment, in 1398, of the Thomas Mowbray named above as the first Earl Marshal, who by that time had been advanced to be Duke of Norfolk. Then again, in 1400, Henry IV created Ralph Nevill, Earl of Westmoreland, Lord Marshal "*for life.*" In fact, there have been so many alterations in its descent and the tenure of the office, that a question might arise whether it be so strictly hereditary. Of course the answer is, that the power of the King and Parliament is sufficient to alter—or confiscate—the intended current of descent, whether in titles or lands; and attainder extinguishes all claims. In Burke's *Peerage*, the present Duke of Norfolk is described as "Earl "Marshal and Hereditary Marshal of England," which conveys the idea of two titles. His ancestor, Thomas Howard, Earl of Surrey—son to John,

Duke of Norfolk (attainted)—was "created" Earl Marshal and Duke of Norfolk 1st February, 1514; while his descent from the hereditary Marshals was through the female line. Lists of the Constables, also of the Marshals and Earls Marshal, are given in Dallaway's *Enquiries into the Origin of Heraldry*, Appendix L; also in Edmondson's *Heraldry*.

The Earl Marshal accompanied the Royal Court in its journeyings, and his jurisdiction extended for xii leucas (miles) beyond the verge of the court. This was confirmed by patent. (Pat. Roll, 13 Edward III, p. 2, memb. 33; and 36 Edward III, 3, memb. 23.) His court took cognizance of all matters relating to honour, arms and pedigree, and directed the proclamations of peace and war; it was the Curia Militaris or Court of Chivalry; during times of war it was with the army, and in times of peace sat in the Aula Regis, or King's Great Court; and when the ancient Aula Regis came to be divided among new branch courts, the Marshals appointed deputies—in the King's Bench, the Marshal of the Marshalsea, or Marshal of the King's Bench. In the Exchequer, the deputy was named Marshal of the Exchequer or Clerk of the Marshalsea of the Exchequer.

The Earl Marshal's Court, it will be seen, had a wide extension. It appears by Pat. 26 Henry III (1241-2), part 3, memb. 3, that he had the conduct and arrangement of the shipping whenever the King crossed the seas. Madox (*Hist. of Excheq.*, xxiv, sec. 6) says that the power of the Earl Marshal was in many cases equal to that of the Lord High Constable, and he specifies the fees due to him from prisoners within the verge of the court. A great deal more about this court, its powers and the extent of its jurisdiction, may be found in Gwin (Preface to his *Readings)*; also in *Fleta*, lib. ii, cap.

4 and 5; also in Spelman's *Glossary*, under "Ma-"rescallus," where a great many particulars will be found. Our interest in it centres more especially in the Court of Chivalry. It will be observed that the High Constable and the Earl Marshal were conjointly to preside in this court, which had cognizance of contracts touching deeds of arms and of war arising out of the realm, and of all appeals of offences committed out of the realm, and of matters within the realm relating to war, in cases where the courts of common law were incompetent to decide; and its proceedings followed the course of Roman law.

But it will be remembered that the permanent office of High Constable had been abolished on 13th May, 1521. It was therefore necessary to appoint one for the occasion when a high Court of Chivalry was held. In 1583 a curious instance occurred. It seems that the heir of one Dowtie—whose head Sir Francis Drake had taken off in parts beyond sea—brought an appeal of death against Sir Francis: Queen Elizabeth refused to appoint a High Constable, and so, remarks Lord Coke, "the appeal slept." Appeals from the Earl Marshal's Court could be carried into the King's Bench. (Dallaway, 95, 289.) Francis Thynne, Lancaster Herald, writing under date 3rd March, 1605 (Hearne's *Curious Discourses*, ii, p. 156), says: The Earl Marshal's Court had power to imprison and commit to the Marshalsea. The Constable and Earl Marshal have a law by themselves, and the common law takes cognizance of it and concurs; and just in the same way it concurs in ecclesiastical law.—See the judgment by Mr. Justice Needham, sitting with the Justices Ashton, Moyle and Prisott. Mr. Justice Needham pronounced, "Le comen Ley "prendera conizance de Ley de le Conestable et "Marshal: car en appelle de morte est bone justi-

" ficacione que le morte, luy appelle de Treasone " devant le Conestable et Marshal par qui ils com- " bateront la, et le defendant vanquisht le morte al " mort : Et c'est bone justificatione al comen Ley : " Et Ashton et Moyle concesserunt que comen Ley " prendra notice del Ley del Conestable et Marshal : " Tamen Prisott contra : Mes puis ques les trois " disont, ut supra : Prisott non negavit."

Now as to the date of this. John *Needham*, a judge 1457-1479, was created Chief Justice of the King's Bench 1471. Nicholas *Ashton* (who was one of our Lancashire family, Asshetons of Ashton) a judge in 1444 or earlier, was created Chief Justice of Common Pleas in 1461, and Foss says that the last fine levied before him was on 3rd Feb., 1466. Walter *Moyle* was a Justice of Common Pleas 1454-1470 : a patent for six months issued to him 1470-1, and was not renewed : he died between 11th Dec., 1479, the date of his will, and 31st July, 1480, when it was proved. John *Prisot*, created Chief Justice of Common Pleas 16th June, 1449, and continued to preside March, 1461, when he was not re-appointed. The above decision, therefore, seems to have been given before 1461. It is a pity Mr. Thynne did not give us the exact date—it is very interesting, shewing that the younger courts acknowledged the judgments of the Earl Marshal's Court.

We must remember that at its beginning the Earl Marshal's Court and Office related entirely to military and naval affairs, the ordinary law processes appertaining to the court—the arranging of ceremonies—the ordering of jousts and tournaments ; but as time developed, heraldry (originally restricted to a few) became much extended, and required some constituted authority for its regulation. We thus find that by patent, 9 Richard II (12 Jan., 1386), this court was enlarged to contain

the Court of Chivalry (Dallaway, p. 93), in which heralds appeared, much as barristers do in other courts. This Court of Chivalry was intended to settle and declare the requirements of honour, in the fiery disputes which were constantly arising when every man wore a sword; we cannot exactly say it was meant to stop the duello, because it might, as other courts did, decree trial by combat; it checked, however, much indiscriminate fighting.

If any "nobilis" came into the company of any other who displayed the same arms, a challenge to fight was the immediate result; but, according to the rules of honour, the smallest possible difference was taken to cancel the obligation. "If two "families bear the same coat, and it doth not "appeare by any circumstances which of these "gentlemen's ancestors were first entitled to the "same, then no battle is allowed, because that "neyther of them can prove that injurie is offered "by the one to the other. In such cases, whereas "there appeareth prioritie of time in the bearing of "the armes,—if it be on the defendor's side he may "refuse the combat offered, with averment that he "can and will approve, by record or otherwise, his "tytle more digne and auntient then is the right or "interest of the approver; and then no combat "shall be admitted. A small difference either in "the colours or placing of the selfsame signs, then "nather debate or combat between the bearers. If "the selfsame coat but differently described, such "as a doe or a hind, the paws of a tygre or lion, "then no combat. Pogius the Florentine gives an "instance. A captain of Genoa, *temp.* Edw. III, "King of England, who was hired by the French "King to scour the seas (which were very trouble-"some and dangerous by the English fleete), did "bear *Or* a beast's head *Gules;* which ensign

"espied by a French gentleman that the sign and "colours resembled his own, challenged the ensigne "to be his and appertaining to his ancestors, and "persuaded the Italian to accept of the combat. "The Italian came on the day in his ordinary "apparell, without weapons or armour; the French-"man sumptuously furnished for the battaille. The "Genoa captain enquired for what cause we two "are to fight this day? The Frenchman answered, "bycause that these armes which thou bearest are "mine and mine Auncestors before that thou and "thine Auncestors did so usurpe them. But, saith "the Italian, what then be thy armes? To whom "the Frenchman answered, I claime to beare in a "field *Or* the head of an oxe *Gewles*. Whereunto "replied the Italian, Oh, good sir, then I perceive "you are deceived; but Frenchmen know no differ-"ence between the head of an oxe and the head of "a cowe. I do beare in a feeld *Or* the head of a "cowe *Gewles*, and he beareth in a feeld *Or* the "head of an oxe *Gewles*; so that there is no cause "of battaile betwene us. Hereby not only the "combat was defeated, but also the brag of a "Frenchman was wittely deluded." (Sir John Ferne's *Blazon of Gentrie*, 1586, p. 304.)

There are two MSS. in the British Museum bearing upon the usages of this court, viz., those claimed by Thomas de Brotherton, in his office of Marshal, about 1315, in which he recites those claimed by Gilbert, Earl of Striguil, temp. Henry II, and also an abstract from the Red Book, touching the duties and fees of the Marshal. (Nero, B. vi.) The statutes and ordinances to be holden in the hoste, ordained and made at Durham, 18th July, 9 Richard II (1385); but these both refer entirely to military affairs. (Dallaway, p. 92.) They are printed in Edmondson's *Heraldry*, i, pp. 74 and 79, also in Hearne's *Curious Discourses*.

Many great causes, bearing entirely on heraldic matters, have come before this court. Dallaway, pp. 79, 80, notices as the most remarkable, Harding and St. Loe, 1312; Warburton and Georges, 1321 (Coker's *History of Dorset*, p. 25); Sitsilt and Fakenham, 1333 (Collins' *Peerage*, vol. iii, p. 108); Scrope and Grosvenor, 1389 (Dugdale's *MSS.*, Ashmol. Mus. Oxon; Sir N. Harris Nicolas published the Roll in 1832; *Herald and Genealogist*, vol. i); also Hugh Lord Maltby against Hamond Beckwith, for having assumed his arms, 1339. A mandate was issued 18th January, 1339, summoning Beckwith to produce such "evidence and records "of arms as we shall allow, and to appear before us "on 14th October." Beckwith proved his right to the satisfaction of the court, and received a certificate confirming to him the right to bear the disputed arms. There is also that very interesting case, Lovel versus Morley (Blomfield's *History of Norfolk*, i, pp. 6, 675; *Visit. Salop in* 1623, Harleian Society, p. 92). Sir Edward Burnell, temp. Edward I, bore: *argent*, a lion rampant, *sable*, crowned *or*. Sir Philip de Burnell bore these arms, and left a son, Sir Edward, who died s.p., and Maude his sister, who became eventually the sole heir. She married Sir John Lord Lovel, and left a son, Sir John Lovel, who on 20th October, 1395, prosecuted this plea of arms against Sir Thomas Morley.

The severest punishment which could be inflicted by this court was degradation from the honour of knighthood. This was entirely, I suppose, social and heraldic—there seems to have been no fine or money element—and it was decreed with the utmost reluctance. Only three instances remain on record, Sir Andrew Barclay, 1322; Sir Ralph Grey, 1464; and Sir Francis Michell, in 1621. Particulars of the last are given in *MSS. Coll. Arms*, lxv, p. 32;

Anstis' *Collections*, vol. ix, p. 409; Dallaway, 303; and it was "by sentence of Parliament"!

We must accept the statement of all previous writers that the Records of the Earl Marshal's Court cannot be found. There is (formerly in the Chapter House, Westminster, and now, I suppose, at the Record Office) one Roll, *Placita Exercitus Regis*, 24 Edward I (1295-6), which certainly belonged to the Lord Marshal's Court. It shows the pleadings began at Werke, in Northumberland, and is continued as the army proceeded through Scotland up to Aberdeen and back to Berwick, where they end. (See *Prynne on the Institutes*, the 4th, p. 337.) In the Bodleian Library certain proceedings in the case of Lord Reay and Mr. Ramsey, 1631, are reported.

In 1568, Thomas, Duke of Norfolk, then Earl Marshal, issued statutes and regulations as to the process of his court. These may be found at length in Vincent's *Precedents* (Coll. of Arms), p. 52 (Dallaway, p. 267), and are printed by Edmondson, i, 143. In the College of Arms are a good many abstracts of cases which came before this court, with the judgments upon them; these were the notes taken by various heralds for their private use. Here also are preserved Vincent's extensive and invaluable MS. collections for a history of the College, and primarily of the Earl Marshal's Court, to which the College was subservient. I now give, from Vincent's MSS., abstracts of a few cases, to show the practice of the court in causes relating to heraldry and heraldic defamation. (Dallaway, 125, 295.) The manner of proceedings in such cases is fully detailed in Hearne's *Curious Discourses*, No. xxxix, while a register or record of every particular was to be taken.

(1) 23rd May, 1598.—Edmund Withepoole Esq., of the towne of Ipswich, for a disgrace of the bastinadoe offered to Anthony Felton Esq.: it was decreed that Withepoole should acknowledge he had done wrong to Felton; that he should confess to the said Felton that he knew him to be a gentleman unfitt to be stroken or to have such disgrace offered to him:—that from henceforth he would maintain Felton's reputation against any that, in consequence of Withepoole's unadvised act, should seek to ympaire it,—and that what the said Withepoole now spake hee spake from his heart and would at all times and in all places avowe.—To which order Withepoole did submitt himself, &c. Whereupon Felton is declared to be free from all touch of disgrace, since at the time of the assault he drew his sword and as a gentleman offered to defend his reputation: and also till this day he hath bin restrayned by authoritie from seeking any means to right himself,—and now doth receive such satisfaction as the Earl Marshal & his assistants think to be fitt for the one partie to give and the other to receave.

(2) 21st Nov., 1637.—W. Baker, gent., humbly sheweth that having some occasion of conferrence with Adam Spencer of Broughton under the Bleane, co. Cant., on or about 28 July last—the said Adam did in most base and opprobrious tearmes abuse your petitioner, calling him a base lying fellow, &c., &c. The defendant pleaded that Baker is noe Gentleman and soe not capable of redresse in this court. Le Neve, Clarenceux, is directed to examine the point raised—and having done so, declared as touching the gentry of William Baker, that Robert Cooke, Clarenceux King of Arms, did make a declaration 10 May, 1573, under his hand and seale of office, that George Baker of London, gent., sonne

of Christopher Baker of Tenterden, sonne of J. Baker of the same place, sonne of Simon Baker of Feversham, co. Cant., was a bearer of tokens of honour, and did allow and confirm to the said George Baker and to his posterity, and to the posterity of Christopher Baker, these arms, &c., &c. And further, Le Neve has received proof that the petitioner William Baker is the son of William Baker of Kingsdowne, co. Cant., who was the brother of George Baker and son of Christopher aforesaid. The judgment is not stated. [The original Confirmation of Arms by Cooke, 10 May, 1573, may now be seen in the British Museum.—*Genealogist* for 1889, p. 242.]

(3) 30th Nov., 1637.—Sir Richard Blount *v.* Sir Francis Moore, for using the arms of Moore of Barcester. It appears that Sir Francis had no right, but was descended from the Moores of Barfield, co. Berks, whose coat he may lawfully bear without interruption.

(4) Simon Leeke, Esq., appellant, against Sir Thomas Harris of Salop, Bart., "as being a man "incapable of that degree, because not answeringe "to the conditions which are required in the Books "of Baronets, as of estate, life, but especially of "gentrie.—July 10, 1623." "The case of Sir T. "Harris, Bart., of Condover, co. Salop, in behalfe "of himself and for proof of his pedigree and "gentry now questioned by Sir Francis Kynaston, "Knt., and Captain Leeke." The Court was held on 24 Nov., 1623, and sat in great state "in the "painted chamber by the Parliament Chamber" in Westminster. Here follows a long description of the proceedings—Letters Patent from his Majesty under the Great Seale were read purporting a Commission authorising the said Earl Marshal (Thomas Howard, Earl of Arundel and Surrey, who had

been "created Earl Marshal" in 1621) to keep a court of himself *without a Constable.* The Earl Marshal then made a speech very pertinent to our present enquiry. He spoke of "the long discon- "tinuance of his office," and "his honor's intent "to revive that which had bin long in the dust"; also of his Lordship's care "to enable himself the "better for the performance of the place, had made "all searches hee possibly could into the precedents "of auncyent times, to the end that his Lordship "might not incroach upon other courts; and his "Lordship hoped that other courts would not in- "croach upon his." This long prologue, it will be noticed, had nothing to do with the case of Harris; it was the formal introduction to that generation of a long disused function! It also shows us that similar attempts "to collect and arrange all evi- "dences of the history and privilege of the Curia "Militaris with a view to reconcile the public mind "to the re-establishment of its jurisdiction" had been made prior to Dr. Plott's labours, which were undertaken at the request of the then Earl Marshal, and may be seen in Hearne's *Curious Discourses*, ii, 250—276, bearing no date; but as Dr. Plott addresses it in a letter to Sir John Somers, Attorney General, we know it was between May, 1692, and March, 1693. When the trial commenced, Harris handed in protests—1st, against the prosecutor; 2nd, against the jurisdiction of the court, standing much upon his patent of baronetshipp under the great seale then in the hands of Mr. Geo. Long. Then Harris took exceptions to the bill, and was unwilling it should be read, alleging it to be scandalous. The bill showed the arms used by Harris, "*Or*, 3 hedgehogs B.," and another showing quarterings. Harris was not prepared with his answer, whereupon the Earl Marshal said this was no new thing to him, the said Harris; nevertheless, he

should give him till the 1st day of Dec. to prepare his reply. The conclusion of this case is not given. I cannot trace clearly as to this Sir Thomas Harris; he appears once in the *Visit. of Shropshire*, 1623, p. 281, as "Tho. Harris de Boreaton in co. Salop, "Baronettus," having married Sara, dau. of Wm. Jones, Alderman of Shrewsbury. His patent bore date 22 Dec., 1622, as Harris of Boreaton, Shropshire. Judge Owen had bought Condover, and built the mansion there in 1598, and his descendants lived there in 1623, and still in the female line enjoy it. Sir Thomas Harris of Boreatton was a Master in Chancery, created, as above, a Bart. in 1622; and his arms are among Camden's Grants in Morgan's *Sphere of Gentry*, iv, 22. The baronetcy became extinct in 1685, so apparently Sir Thomas must have gained his case. Sir Francis Kynaston was of Oteley, Salop, and so would correctly describe Harris as "of Condover," although to us it appears curious and unaccountable, unless he happened to be a temporary tenant there. I can give the following further particulars:—*Originalia*, 5 part, 15 James, rot. 121 (1617-8).—Thomas Clive sold the Manor of Baschurch, Salop (of which parish Boreatton is a hamlet), to Thomas Harris, Esq., who in 20 James was created a baronet, his residence being at Boreatton. (*Originalia*, 6 & 7 James, rot. 9.) The King gave license to Sir Edward Stanley to alienate the Manor of Tong, Salop, to Thomas Harris, serjeant at law, afterwards knight and baronet; which Harris had issue one son and two daughters. The son died in his youth; the eldest daughter, Anne, married John Wylde of Droitwich, co. Worcester, and died in childbed, 6 May, 1624, in the sixteenth year of her age (Monument in Tong Church); Elizabeth, the other daughter, married William Pierrepoint, of Thoresby, co. Notts, the second son of Robert, Earl of Kingston, by whom she had

five sons. (*Originalia*, 6 & 7 James, rot. 9–1608-10.) —The King gave licence to Edward Grey, Esq., to alienate the Manor of Buildwas, Salop, to Thomas Harris, Jun., serjeant at law. From which we see that Harris acquired various properties in co. Salop.

(5) Fowke *contra* Barnfield, 1638.—Walter Fowke of Ganstan [Gunston], co. Stafford, libels against Richard Barnfield of Wolverhampton, for scandalous words—that he would blow or drive him out of the country, and that the said Fowke was never a soldier or captain before the Isle of Rhea voyage, where he was made captain, and that there the said Fowke ran away, and that he dared Fowke to go to a fencinge school with him, and fight it out, &c. Decree—the said Barnfield shall make submission and satisfaction as well to us and this court as to the said W. Fowke, and shall give security for his good behaviour towards the same, &c.; and also shall pay £10 as a fine to the use of our Sovereign Lord the King, and likewise £10 as damages, and 20 marks costs to Fowke, and to stand committed untill the performance of this our sentence.

(6) George Leigh, of Wotton-under-Edge, co. Gloucester, and John Snow and Thomas Snow, of the same parish, *per viam querelæ* (by way of complaint) 1637. That I the said Leigh and my ancestors is and have been descended of a family of gentry, and so commonly reputed, and that the said John and Thomas Snow, at such a time and place, said that I, the said Leigh, was no gentleman, but descended of the base stock of the whorehoods, &c., &c., thereby to provoke a duel. The decree is not mentioned.

(7) Lord Robartes *contra* John Samuell, for defamation, 1637. Fine, 100 marks and £10 costs.

(8) Edmund Kenn, of Uphill, co. Somerset, *contra* Henry Robyns, of Hinton, in same county. Trinity, 1637. Fine, £40, and costs, £20.—These three (Nos. 5, 7 and 8) show us that the court did levy fines, and very smart ones!

(9) Perrott *contra* Perrott. Thomas Perrott, of London, Esq., libells against Robert Perrott, of Moreton, co. Hereford, Herbert Perrott, of Gray's Inn, co. Middlesex, son of the said Robert, and Francis Perrott, of London, merchant, for using his coate of armes, not being of the same family. He sets forth that Sir Owen Perrott, of Hardlestone, co. Pembroke, Knt., had 4 sonnes only, and so sets forth his own descent from them, and says that the said Robert, Herbert, nor Francis are not nor were descended from that family, and which he proves by the bearings and the depositions of divers witnesses. No further particulars are given. The pedigree is entered in *Visitation of London*, 1633, vol. ii, p. 155 (Harleian Society). The Perrotts libelled continued to use the arms, and they appear on the seal attached to the will of the above Sir Herbert Perrott. No blood relationship is traced with the Haroldstone family, nevertheless that estate was left to him. (For particulars see *Heraldry of Worcestershire*, p. 426.)

(10) Wadham *contra* Cooke.—Nich. Wadham, of Saltash, Cornwall, Esq., against Thomas Cooke, of Liskeard, in the same county, merchant, *per viam querelæ*. That said Nicholas Wadham and his ancestors, for above 300 years past, is and have been gentlemen and soe commonly reputed. That the said Cooke before many persons said that Wadham was a base rogue and a base gentleman, and did often time challenge him to go into the field and fight with him, and said he was a better man than he, thereby to provoke him to a duel, &c. Nothing more is known of this suit.

Whether it was from the determination of the Earl Marshal—noted in his speech in Case (4)—"to revive that which had bin long in the dust," or from some current of public feeling, we find this Court in considerable activity about 1630 to 1650. In a little book, *Archeion*, by William Lambard, of Lincoln's Inne, gent., 1635, I find its jurisdiction described as an available court. "The Court of "the Constable or Marshal of England determineth "Contracts touching deeds of Armes out of the "Realme, and handleth things concerning Warre "within the Realme, as Combats, Blazon, Armorie, "&c.; but it may not deale with Battaile in Ap-"peales, nor generally with any other thing that "may be tryed by the Lawes of the Land," &c. No doubt the same will be found in other law books, but I quote from what I have at hand.

Dallaway, p. 293, says:—"Causes vexatious and "nugatory were multiplied to an excess very inimi-"cal to constitutional liberty, and the authority "which was at first submitted to without suspicion "of eventual abuse, was exerted scarcely less arbi-"trarily than that of the detestable Star-chamber." The Court in consequence lost its public influence, and we find Sir Edward Hyde, on April 16th, 1640 [he was created Earl of Clarendon in 1661], in the House of Commons proposing its dissolution as a public benefit. He acknowledged its former eminence and usefulness, but asserted its present incompetence and abuse; and he went on to instance a certain citizen of good quality, a merchant, who was by that court ruined in his estate and his body imprisoned because he had called a swan a goose! It is said that Hyde had some personal motives for this attack, which was however ineffectual. A near relation had been branded as a usurper of armorial distinctions at the Herald's Visitation in 1623, and this was his revenge. (Dallaway, 293.)

The latest case of a strictly heraldic nature, viz., Blount *versus* Blunt, occurred in 1737. The defendant was Sir John Blunt, Bart. He had been a scrivener, and was one of the projectors and eventually the chairman of the South Sea Bubble. Full details are given in Edmondson's *Heraldry; Heraldry of Worcestershire*, xxiii; Noble's *History of the College of Arms*, p. 373; Lower's *Curiosities of Heraldry*, 1845 ed., p. 241. In Wotton's *Baronetage*, published 1741, against the note of Arms, we find—"In suspence: though borne on Sir John's "coach." The trial had, it appears, dragged its slow length along for some years; Dallaway says, p. 294, it was begun in 1720. The whole business was imprudently entered upon and unskilfully conducted, and as a result we find families whose name happens to be Blunt, and who are totally unable to show any genealogical connection, still using the time-honoured arms of Blount of Sodington, formerly a family of great distinction.

Shortly after this, namely in 1749, the College tried to coerce one of its own members—John Warburton, Somerset Herald—for that he had published a map of London and Middlesex showing the armorial bearings of the principal families. The Deputy Earl Marshal required him to "desist from "taking any subscriptions for arms, and from ad- "vertising or disposing of any maps, until the right "of each person respectively to such arms was first "proved to the satisfaction of one of the Kings of "Arms." Warburton himself tells us he thought proper to submit his proofs rather to the "impartial "publick" than to the determination of "a person "so notoriously remarkable for knowing nothing at "all about the matter." The book accordingly was published in 1749, under the title, *London and Middlesex Illustrated*. But the interest to us centres in the college divided against itself! I can quite

understand it was somewhat irregular for a herald to publish arms in this way; but there are endless instances, both before and since, of heralds doing the same.

Next we have to notice the remarks of Sir William Blackstone. I suppose he wrote them about 1764. His *Commentaries* were published in that year. He says of the Earl Marshal's Court:—"As "it cannot imprison, and as by the resolutions of "the superior courts it is now confined to so nar- "row and restricted a jurisdiction, it has fallen into "contempt and disuse." Evidently, in the battle of the incroachments alluded to in the Earl Marshal's speech in 1623, case (4), his court had been worsted! Other jurisdictions had absorbed all the business excepting only heraldic matters, which could not be divorced from the Court of Chivalry.

Edmondson (i, pp. 143, 151) gives as the causes for the decay of the Court of Chivalry the incompetent men who held offices, the dissensions and animosities and controversies between Garter and the Provincial Kings and Heralds about prerogatives and precedents, privileges and fees—Barker, Garter, against Harvey, Clarencieux; Sir Thomas Withe, Garter, against Benoilt, Clarencieux; Sir William Dethick, Garter, against Robert Cook, Clarencieux—which kept the college in a continual ferment; the head officials were at open war, while the heralds and pursuivants formed factions between them. The work was neglected, the books embezzled, and the office work discontinued. In these circumstances, Queen Elizabeth appointed as a commision, to enquire into the matter, the Lord Treasurer Burghley; the Lord Howard of Effingham, Lord High Admiral; and Lord Hunsdon, the Lord Chamberlain; and they deputed Sir Edward Hobby and Sir George Carew to view the present state of the college, and to make

statutes and ordinances for its future regulation. This book was drawn up on 28 September, 1596, and the exordium sets forth all the above, and further states that they found Derby House in great ruin through want of due reparations, and the office discontinued for many years. Directions are given for its future due administration. Edmondson, p. 160, gives as a further reason "the frequent pro-" hibitions granted by the King's Bench to stop " proceedings in the Curia Militaris or Earl Mar-" shal's Court."

Nothing came of all the attacks upon this most ancient court: it has never been abolished or superseded: the Earl Marshal exists as a very living power. A temporary Lord High Constable could be appointed whenever occasion required—if such was considered necessary after that patent of 12th January, 1386. It is only because public feeling and requirements have drifted away from the subject—and this venerable jurisdiction, finding itself not wanted, is taking a long sleep! If, in the course of our history, we develop again the keen interest in heraldry and genealogy which we see increasing with the wealth and growing with the growth of the republican United States—the judge and officials are ready to start up again, refreshed by their slumbers; and perhaps then, with a view to increase business, they will head their bills and advertisements, "established over a thousand "years!" There are already indications towards such a movement. Fortunate traders who have acquired wealth and position do not now consider it honest to steal and use those heraldic distinctions which were borne by ancient and perhaps now depressed families. The growth of intelligence acknowledges the fact that such bearings are personal, and belong only to lineal descendants of the original holder, and may not be partaken of by any

one whose accidental surname happens to correspond with, or at any rate may bear some resemblance to that of the lawful owners. We see many men now-a-days, and not necessarily all wealthy, who honestly acquire and pay for a grant of Arms which "they and their posteritie" can "have, "occupie, and inioye" as their own and their children's: they have not robbed anyone, or stolen it with secrecy, after choosing the prettiest coat; there is no occasion for shame, or the fear of being found out. No! The constituted authority has granted and confirmed it, and recorded their names in the indelible Book of Chivalry. The first step has been honestly taken in planting the family tree, and long and honourably may it flourish!

Is not such an advance a hopeful sign of the times? I think so! People may call us a nation of traders—so were the ancient and most heraldic Venetians, who had the oldest nobility in Europe! —and our honesty will be proved by these little things; if it is allowable to describe it as "little" when a man deliberately pushes himself forward and strives to build up his position by false pretences, and by appropriating the property of others with the covert insinuation that he descends from some one of honourable name,—when in fact, and within his own certain knowledge, he is just as much descended from the King of the Cannibal Islands!

To signalise the having reached a certain pitch of prosperity by a fraud is not the way to make that position honourable and lasting for himself and for his children after him. It is the first step, that people should feel it to be a fraud: the honest independence of Englismen will do the rest! I find in the return to the House of Commons moved for by the late Mr. Roebuck, that the College of of Arms in thirteen years — 1850 to 1862 — had

made 430 new grants of arms, and 26 to wives and spinsters; also 170 grants in consequence of royal licenses (change of name); also eighteen grants of quarterings and three of crests. Many people are not aware that the blood in our heraldic heart has so healthy a circulation. I feel no doubt whatever that such statistics, if continued for the last 30 years, would show a very great and an increasing increase. The public now realises that heraldic distinctive arms are private property, entailed upon the lawfully-begotten descendants from the one original grantee; and they leave the picking and stealing to—South Sea bubblers!

I feel it is now desirable, although it seems going back in our dates, to explain to you a part at least of the internal history of the College of Arms at the close of the sixteenth century; it is a mere glance: folio volumes could be filled with the details. It will enable us to comprehend the collapse which followed; and indeed, when we see the College split up into factions, eager to bite and devour one another, the wonder is that anything survived! There must be some great vitality, approaching to a natural law, involved in the history of honourable actions in the past, and the honourable distinctions by which they are recorded. Public opinion must have agreed in the extreme value of such a recording institution; indeed we may boldly say that such an interest is ingrained in human nature! We now see around us what has assuredly ever been: that when some fortunate man has attained a certain assured position—when he has gained a foothold on the sands of time, and is able to raise up his head above the level of the flat sea in which all his fellows are struggling—it becomes his strongest desire to fix his name on the page of History: to record it in some way, so that it may remain chronicled for futurity.

The more we read of the perils of the College of Arms—torn by internal dissensions and interfered with and hampered by rival jurisdictions, while its own legal processes were mismanaged and abused —the more distinctly rises the conviction that nothing but such a law of Nature can account for its survival: the natural craving of man after historical distinction or, at any rate, record;—it seems inseparable from our civilization, and imbues every individual when he emerges from doubts and cares about his daily bread.

We see that successive sovereigns were anxious to protect the college—to correct its faults, and to inject new life into its venerable constitution. Philip and Mary, by charter, 18 July, 1555 (pat. 1 & 2, Ph. & M., p. 2, memb. 35, dorso, which is printed in Rymer's *Fœdera*, xv, 423), re-incorporated the Kings, Heralds, and Pursuivants; and to the intent that they might reside together and consult and agree amongst themselves, for the good of their faculty and for the depositing and secure preservation of their records, inrolments, and other documents, &c., granted to them "Derby House, "in the street leading from the south door of St. "Paul's Cathedral to Paul's Wharf, late in the "tenure of Sir Richard Sakevyle, Knt., but '*then-*" '*tofore*' parcel of the possessions of Edward "Earl of Derby," and to be by the said Corporation held in free burgage of the City of London.

Queen Elizabeth also was greatly desirous to restore it to its former efficiency and vigour, and it was by her express command that the following ordinances and statutes were drawn up by Thomas Duke of Norfolk, Earl Marshal, bearing date 18th July, 10 Elizabeth (1568). These will be found in Edmondson, i, 143, also Add. MS. 14,294, fo. 118. The introductory portion sets forth that they shall be observed and kept by the several officers of arms,

not only binding them to observe their duties to their prince and country, according to their several oaths taken at what time as they were created and made officers of arms; but also further to enjoin them to such orders to be observed and kept among themselves, as every one of them may do their duties one to another according to his place and ancientry in the said office of arms, &c., &c.; and for the taking away of sundry abuses and discords which are and do daily increase among the said officers of arms; and for the better increase of learning and knowledge, &c., &c., and to the intent that they may be more able to serve well in their vocation and calling.

Then follow these statutes—

I.—Darby House, now the College of Heralds, shall be severally divided among the Kings, Heralds, and Pursuivants, in such sort as they themselves shall agree upon in their chapter by the most voices;—provided always that the lower room, lying on the south side of the gate (wherein at present the records of the office do remain) shall so still continue as a library or office for the safe custody and preservation of the said records.

II.—Records, rolls, books, and pedigrees now there, or hereafter to be brought to the same, shall remain as records of said office, not to be taken thence by any of the said officers of arms, nor any one of them, without the consent of the 3 Kings of Arms, or two of them at the least, whereof Garter to be one, EXCEPT it shall be lawful to take forth at times of Visitation such books and records as may be necessary for such Visitation—the said officers being bound to return them immediately thereafter.

III.—No person to have entry or recourse into the said library without one officer of arms to be there present with him: and to avoid inconvenience certain of the Company of the office shall continually give attendance in said office by the month—in this manner, &c., &c. None of those so attending shall enter any record, or alter any record, without the consent of the 3 Kings of Arms, or of one of them at the least. Fees received to go into a common chest and be divided every month. No pedigree to be set forth in the office or without the office without the consent of the 3 Kings of Arms, or two of them at least, of whom Garter to be one. *But* Clarencieux and Norroy may in their Visitations make or set forth, in paper only, such matches of

descents, &c., as they shall take notes of in their Visitations—so that they do not subscribe their names thereto.

IV.—Precedence and the several duties of officers specified.

V.—Chapters for discussing points that may arise.

VI.—Forms of their proceedings in Chapter.

VII.—Clarencieux and Norroy's privileges in their own provinces.

VIII.—Garter to have ordering and marshalling of burials, &c., of the titular peerage, and shall take Clarencieux and Norroy to serve with him.

IX.—All of lower degree to be of the privilege of Clarencieux and Norroy, according to their provinces, with orders as to their working together.

X.—Every King, Herald, or Pursuivant officiating at any funeral shall bring into the office of arms a certificate, under the hands of the executors and mourners that shall be present, setting forth, &c.

XI.—No new arms henceforth to be granted without the consent thereunto of the Earl Marshal. But Garter, Clarencieux, and Norroy may jointly together grant crests as heretofore, and no patent of arms to be granted unless the hands of the 3 Kings of Arms be thereunto subscribed.

XII.—That yearly, within one month after the feast of St. Andrew the Apostle, the 3 Kings shall bring and deliver to the Earl Marshal one book containing a true copy of all such patents and arms as have been granted by them within that one year.[1]

XIII.—The 3 Kings may appoint each other to be deputies during times of absence.

XIV.—All previous statutes, orders, and decrees heretofore had or made, to be cancelled upon the dating of these present orders.

Statutes V and VI shew that the college had an educational character. It was not to be a recording institution only: or, in another view, simply the door by which entry was obtained to all grades of rank. It was intended to train up its own men for the work! This will, I am sure, be considered

[1] I have made every enquiry about these yearly books—they are not in the possession of his Grace, the present Earl Marshal—nor can any trace of them be found; and it is supposed that statute xii was never carried out.

so interesting that I venture to transcribe their exact wording :—

V.—Item, "It is ordered and decreed by the said Earl Mar-"shal that for the better increase of learning and knowledge to "be henceforth had and continued in the said office of arms and "fellows of the same : and to the intent that they thereby may "be more able to serve well in their vocation in times both of "peace and war : It is therefore decreed, that the 3 Kings of "arms, as occasion shall serve, shall hold and keep a chapter for "the only debating and discussing of such doubts, questions, and "controversies as by possibility may rise and grow, not only upon "the bearing, using, pailing, or quartering of any arms or ensigns "of honour, or upon the descents or pedigree of any noble or "gentle personages ; but also of the right, usage, and ceremonies "to be observed at coronations, creations, funerals, and all other "such like solemnities and assemblies of honour and worthiness ; "and of the laws, ordinances, and orders of the field ; and of the "summoning of towns and holds ; the taking, using, and ran-"soming of prisoners ; as also of their doing of messages, or "giving of defiances ; as of their behaviour and demeanor in the "proclaiming or uttering of any thing that may be given them in "charge to declare, utter, pronounce, or do to any foreign poten-"tate ; as also the receiving, entertaining, placing, and service of "ambassadors, or any other foreign estate ; and generally of all "other things appertaining to their office : in which chapter this "order shall be used and kept."

VI.—"That every Pursuivant and Herald of arms (beginning "with the youngest of the said office, and so proceeding in due "order, at one chapter a Pursuivant and at the next a Herald) "shall, after the officers of arms assembled and set in their places, "standing before them, put forth 3 cases or questions, which by "possibility may chance to happen upon any of the aforesaid "matters ; and after the cases or questions so propounded, and "by them heard and well understood, the Kings of arms shall "choose and appoint whether of the 3 cases they will have argued "and debated in that chapter : whereupon the said Herald or "Pursuivant that putteth the said cases shall first of all plainly "and distinctly declare what he thinketh thereof, and what rea-"sons and authorities have moved him to be of that mind and "opinion, and then every Pursuivant, Herald, and King of arms "(beginning at the youngest and so proceeding in due order) shall "in like sort declare what their opinions are in the same case : to "the intent that being thus exercised by conference and consulta-"tions among themselves, they may, as good officers, be the more "able and ready to do their duties and service to their prince and

"country; upon pain that every of the officers of arms making "default of such meetings, assemblies, or exercise of learning, "and not being lawfully letted by prince's service or other cause "reasonable, shall forfeit such sums of money as shall be thought "meet in their said chapter."

The great expectations formed upon the promulgation of these statutes were doomed to meet with disappointment. Dissensions, quarrels and hatreds continued among the three Kings of Arms; the collegiate arrangement—designed to improve the working of the corporation by giving greater facility of communicating and the more readily consulting with each other—proved only a cause of strife (see Anstis' *Register of the Garter*, ii, p. 367, notes), and the whole establishment was kept in a ferment. The culminating point, perhaps, was the quarrel between Sir William Dethick, Garter, and Robert Cook, Clarencieux, complaints on both sides being laid before the Queen. Cook, however, died in 1593, and so ended that controversy. But fresh disputes and law-suits continued with great vehemence; and eventually, in the year 1595, Sir William Dethick, Garter, was cited in the Star Chamber before the Commissioners for the Earl Marshal, for that he had allowed to George Rotherham the arms of the Lord Grey de Ruthin, which belonged to Henry, then Earl of Kent. It was adjudged that Dethick (Garter) and Rotherham had both manifestly done wrong to the complainant, the Earl of Kent, and the Commissioners revoked and annulled the bearing of the arms as a quartering by Rotherham, and determined the pedigree made by Garter to be unlawful.

Again, a commission of enquiry into the affairs of the College was issued by Queen Elizabeth in 1596, and Sir Edward Hobby and Sir Geo. Carew were appointed to draw up a report. Their book—dated 28th September, 1596—begins with declaring

the present state of the Office of Arms, commonly called Derby House, in London. They found the house itself to be fallen into great ruin, through want of due reparations and habitable use; the office discontinued, and in "as great decay for lack "of books and general exercise therein; Garter "and Clarencieux in open wars for their livings and "profits; and the Heralds and Pursuivants—fac-"tions between them, daily arresting, suing and "undoing one another. Their opinions, therefore, "were, that there could be no speedier reformation "of all their errors and abuses than the re-estab-"lishment of the general office, according to the "true extent of their charter and corporation, "which appointed one place, one common seal, and "mutual consent for all their doings; and to be "governed by the Earl Marshal or Marshals for "the time being, as has been accustomed. Out of "whose ordinances, statutes and decrees heretofore "made, they, Sir Edward Hobby and Sir George "Carew, had also gathered a method or form of "government, which they held very expedient and "necessary."

After setting forth certain episodes in the history of the college and its various settlings—concluding with that just quoted by Philip and Mary in 1555—the report proceeds:—"All which being for many "years discontinued, through great disorders among "themselves and the non-residence of the late Earl "Marshal, whereby many gross absurdities and "abuses had been engendered and committed; it "was now Her Majesty's will and pleasure that they, "the said Commissioners, should inquire, see into "and reform," &c., &c. The ordinances proposed then follow, viz.:—

I.—The scite of the house.
II.—Records to be safely kept.
III.—Daily attendance in the office.

IV.—Prerogative and Office of Garter.
V.—Burials, &c., for Garter.
VI.—Office of Provincial Kings.
VII.—Burials, &c., for Provincial Kings.
VIII.—Arms to be given with the consent of the Earl Marshal.
IX.—None to trick or publish arms to posterity without the privity of the office.
X.—Chapters to be holden for learning, knowledge, and doubts.
XI.—Allowance of Pursuivants.
XII.—Avoiding of controversies, the gall hitherto among them.
XIII.—How far authority is yielded to the Kings' Chapters.
XIV.—Power in visitations.
XV.—Oath for performance and due keeping of these statutes.

It is quite irritating to be obliged to record that dissensions and squabbles still continued, and further orders had to be issued by the Commissioners for executing the office of Earl Marshal, dated 22nd October, 1597.

There seems no doubt, now that we can quietly look into it, that Dethick was quite unfit for the office he enjoyed; and indeed the Commissioners declared that, upon some approved misdemeanours committed in the execution of his office of Garter, he should be put from it, and that Sir William Segar, Norroy, should be created into that office. A bill passed the signet to this effect in January, 1603, but some difficulties seem to have been experienced in getting rid of Dethick; and we find Segar, on 23rd June, 1603, stiled "Rex armorum ordinis," and sent with Garter on a mission to the King of Denmark. It was not till 11th December, 4 James I (1606), that the patent recording Dethick's resignation and the cancelling of his appointment as Garter is recorded. The arraignment of Dethick before the Lords Commissioners concludes with these pregnant words: "I leave to the judgement of your lordships, being "in myself fully persuaded, that times have been "that a greater man for a lesser fault might very

"easily have lost his head." These treasonable faults were his improper behaviour when on missions as a herald to foreign courts.

The caging together of a lot of strange heraldical beasts in one house had certainly not produced a "happy family"! I must forbear from further discussion of this painful matter; it seemed an incurable disease, making the College, from the fault of its own officers, contemptible and untrustworthy. In 1604-5, complaints were made to His Majesty King James, that the heralds had committed diverse errors, to the dishonour of the nobility and chivalry, and to the disgrace of sundry families of ancient blood—bearing the arms of their ancestors—in assigning their ancient arms, badges and crests, to men that are strangers in blood to them and not inheritable thereto; and likewise that, for gain and other affections, those heralds had appointed arms, crests and badges for some other persons of base birth, as also to many of mean vocation and quality of living, which were meet for persons of good birth and lineage. In reply, the King ordered another special Commission, 2nd February, 1605. (Pat. 2, Jac. I, p. 23, mem. 24, dorso; printed Rymer, xvi, p. 608.)[2]

I turn aside here to quote from Add. MS. 14,294, fo. 110 (in British Museum), a curious record of business done by the College about this time:—

	Are about
The number of Arms and Creasts granted by Sir Gilbert Dethick Garter singly from y^e^ 5^th^ yeare of Edward y^e^ VI^th^ an'o 1551 unto y^e^ 10^th^ yeare of Eliz. An'o 1568 - - - - - - - - - -	57

[2] I must here enter a protest as to the habit now prevailing of granting to "novi homines" the arms of ancient families to whom they of right exclusively belong—but with some altogether trifling difference, and which on seals or carriage panels can be depicted on so small a scale as to be invisible. Such is a breach of the honourable contract made by the College that these arms should be restricted to the ancient holders and their lawful descendants for ever. Why does not the present College frame entirely new arms for new men? Arms belong to families, and not to mere names!

	Are about
Armes and Creastes graunted by him y^e^ yeare 1568 unto y^e^ yeare 1572 joyntly with y^e^ provinciall Kings of Armes - - - - - - - - - -	40
And in that tyme, being little above foure yeares, he besides granted singly about - - - - - -	5
And from y^e^ 14^th^ to y^e^ 26^th^ of Queene Eliz. An'o 1584 he again granted singly about - - - - -	80
Robert Cooke Clarencieux, delivered Patents of Armes synce y^e^ tyme that George Earle of Shrewsbury was Earle Mareshall of England An'o 1573 unto y^e^ yeare 1580 y^e^ 26^th^ of Queen Eliz. singly unto divers of them of very good condition and quality to y^e^ number of - - - - - - - - - -	40

I have no doubt we see here a document originally compiled for use in the quarrels between Dethick and Cooke. One great complaint was that Sir Gilbert Dethick encroached on the privileges and emoluments of Clarencieux and Norroy by granting arms singly and reaping fees to which he had no right.

I have already so fully discussed the matter of Visitations *(Introduction to Visitation of Shropshire in* 1623, Harleian Society) that we have only now to treat of the pains and penalties, as to which we all seek information.

The first proclamation directly bearing on this portion of our subject was on 2nd June, 1417, whereby King Henry V enacted that no man should assume to bear arms but must make it appear to officers to be appointed—by whose gift they enjoyed such arms—excepting only those who had fought with him at Agincourt. Shakespeare knew this too, and puts these words into King Henry's mouth on the eve of that great battle, (Act iv, scene iii) :—

> "We few, we happy few, we band of brothers ;
> For he to-day that sheds his blood with me
> Shall be my brother ; be he ne'er so vile,
> This day shall *gentle his condition.*"

The College of Arms was not formed into a corporation till 1485.

The Heralds' Visitations always resulted from a commission under the Great Seal commanding the same—and these most interesting and important documents are carefully preserved at the College of Arms—they authorised and directed and warranted throughout the actions of the heralds.

The earliest of these was issued 20 Henry VIII (1528-9) to Thomas Benolte, Clarencieux, and empowered him to visit his province as often as he should deem it necessary, and to convene before him or his deputy all persons that do or pretend to bear arms, or are styled esquires or gentlemen, and to require them to produce and show by what authority they claimed the same. It further gave him powers to enter all houses, castles and churches, and to survey all arms or other devices of persons within his province, and he was to pull down or deface all arms unlawfully assumed, whether on plate, jewels, paper, parchment, windows, tombs, or monuments, and to make infamous, by proclamation, all offenders; with a great deal more verbiage, which included full powers to destroy all heraldry falsely assumed, wherever it could be discovered, and "to make infamous" by proclamation all and all manner of persons that unlawfully or without just authority, vocation, or due calling had usurped or taken upon him or them any manner of title of honour, dignity, or worship, as esquire, gentleman, or other.

The next commission seems to have issued in 1555, to Thomas Hawley, Clarencieux, containing similar directions and powers—whereby it was also provided that all such as disobey the same should answer thereunto, upon lawful monition to him or them given, *before the High Marshal of England.*

In the 5th and 6th of Philip and Mary (1558) another commission, with the same authority, was delegated to William Harvey, Clarencieux, who was further empowered *to levy fines against delinquents at his will and pleasure.* (Dallaway, p. 189.)

In the proclamation of 1583, printed with the Staffordshire Visitation for that year (William Salt Society, iii, p. 13), the wording is: "Upon such "further paine and perill as by the Earle Marshall "of Englande is to be inflicted or layde upon them"; and the form of summons to appear before the Earl Marshal is printed at p. 11.

Such citations must have entailed a very considerable expense on the persons disregarding the herald's delegated authority, as well as the fear of a court which, as Dallaway says, p. 293, was dreaded as much as the detested Star Chamber!

So late as 1709, we find the members of the Heralds' College, with regard to some other business then in hand, submitting to the Earl Marshal "whether it might not be proper to revive "an order of Henry, late Duke of Norfolk and "Earl Marshal, dated 21st June, 1684, requiring "each of the Kings of Arms within their respective "provinces, to pull down and deface all such at-"chievements, escutcheons, &c., as were or should "be set up for any person or persons not having a "right to the same." *(Heraldry of Worcestershire*, p. xxiv.)

In Scotland, Lyon King of Arms has still the power to restrain the improper assumption of arms, and has lately exercised it, causing a quantity of surreptitious heraldry to be removed from the windows of Glasgow Cathedral. Mr. Grazebrook, in his *Heraldry of Worcestershire*, p. xxvii, quotes some apposite lines, published in *Blackwood's Magazine* in June, 1865, the subject being "How "to make a Pedigree":—

"But I'll give you here a hint,
Your ambitious views to stint—
There's a limit that a wise man will not pass;
You may safely vaunt and vapour
While it's only done on paper,
But you'd better keep from panel and from glass.
For if there you lay a brush,
It may put you to the blush,
Should the Lyon at your 'scutcheon make a dash:
If your arms, so well devised,
Are not 'duly authorised,'
All your quarters may some morning get a smash."

In Ireland, powers to blot out and deface were extended by the Lords spiritual and temporal, in the Irish Parliament assembled, so lately as 6th February, 1758. (*Annual Register* for 1758, p. 82).

If you will refer to Lord Herbert of Cherbury's *History of Henry VIII*, p. 626, you will find that the Duke of Norfolk acknowledged himself "guilty "of high treason" for using a coat of arms appertaining only to the king—a pretty severe penalty for the breach of heraldic laws! The fact is, this was only one link in the indictment for high treason; but it shows to us what a serious offence it was then considered (1546) to assume without proper authority heraldic bearings (Dallaway, p. 184, &c.), "which I know and confess to be high treason by "the laws of this realm. (Signed) T. Norfolk."

We see by the above quotations that the heralds on their Visitations had full powers to do many things, and among other punitory measures to inflict fines and penalties; but on this point they seem to have been peculiarly forbearing. I have not so far been able to trace one instance, and I believe that at the College of Arms they have no record of a money fine levied by the heralds on Visitation. A little consideration will show that it would not be convenient to send out delegates to levy money fines indiscriminately and without the

check of the central authority. (See also what is said of the position of a herald undertaking a Visitation, in the *Visit. of Shropshire*, 1623, p. xxix.)

Such penalties, however, could be inflicted in other ways, although they appear to have been very sparingly applied. A monition before the Earl Marshal would entail heavy expenses as well as costs. In Harl. MS., fo. 69—among a quantity of heraldic matter, copies of warrants and summonses for the guidance of the heralds on Visitation—is the following form:—

"To M^r R. B. of N. Gentleman these to be delivered / M^r R. B. "for asmuch as yo^u have Refused to make yo^r apparance before "me at N. where I latelie sate for the Registringe of the gentle- "men w^thin the Wapentake of A. according to such warning as "was given yo^u by the Baylife of the same Wapentake I am of "dutie to proceede as my Comission appointeth in such Cases of "Contempt. These are therefore to Require yo^u and in the "Queen's Ma^ties name to Charge and Comaund yo^u to appeare "personally before the Right honorable George Earl of Shrews- "bury, Earl Marshall of England on the first day of October "next ensuing to answer unto and yeild a Reason of that yo^r "Disobedyence and Contempte: hereof faile yo^u not as yo^u will "avoyd *the forfeiture of X^li to her Ma^ties use*, and the further "peryll and trouble that may ensue.—Written at B. the 19^th daye "of N. An^o 1591

"By me Rougecrosse Marshall
"for Clarencieulx King of Armes."

You will observe that this is an advance upon the form of 1583, which does not mention the amount ten pounds as the fine. In an order made by Charles Brandon, Duke of Suffolk, Earl Marshal, as to the granting of arms to various ranks in the Church—"and also to temporall men, which be of "good and honest reputacion, able to mayntayne "the state of a gentleman," and that none shall "enterprise to beare anie signs or tokens of arms, "&c., withoute they be authorised so to do by "Clarenceulx King of Arms [therefore this was "addressed to his province] uppon paine of im- "prisonment and to fyne at the king's pleasure:

"provided that after the said King of Armes, his "Marshal of Armes shall not geve nor graunt armes "to any vyle or dishonest occupation in any wyse" —there is then given the following list of the charges for all patents of armes:—Every byshoppe that shall be enobled, £10; abbots and pryors of great possessions, £10; abbots and pryors of meane possessions, £6 . 13 . 4; deanes and archdeacons, £6 . 13 . 4; men of the Church having benefices, 100M., or about by the yere, £6; every Crafte being in corporation, £10; every temporall man having 100M. by the yeare in land or fees, £6 . 13 . 6; all other being of substance under the same valour in lands or goods, £6; of them which be worth in moveable goods 1000M., or above £6; of them that be worth in land and goods 1000M., £5. Signed, Charles Suffolk, Earl Marshal. (Anstis' *Collection of Heralds*, vol. 2, p. 552.) Charles Brandon, Duke of Suffolk, was created Earl Marshal in 1524, and resigned the office in 1533. (Hearne's *Curious Discourses*, vol. ii, p. 251.) It will be noticed that the forfeiture of x^li. for contempt is more than the charge for a new grant; but it could not be evaded in this way, because it was required that due qualifications for the rank must be established, and upon this point the heralds were very strict, under the fear of being themselves punished. Sir William Segar, Garter, was imprisoned for having granted arms improperly and without due enquiry; and the *Domestic State Papers* in the Record Office (Charles I, vol. ccccxvii, No. 3) mention that John Philipot, Somerset, and Sir Henry St. George, Garter, were fined in 1639 for a similar default, the details of which occur in *Domestic State Papers*, Charles I, vol. xiv, No. 71. You will observe, also, that "shall be enobled" means admitted into the rank of "nobilis." There are no records of receipts and payments at the College of Arms

which might show when such fines were inflicted. These would form part of the muniments of the Earl Marshal's Court, now unhappily lost.

As for the "usurpers of Armes" who disclaimed, it does not appear that anything else was done: nor could it well be otherwise! These disclaimers had each signed the declaration that they were not entitled to bear arms. Here is what Dallaway says (p. 317):—"Lists of these Disclaimers, with "their own signatures, now appear attached to "Visitations preserved in the College of Arms, and "are considered as absolute renunciations of he-"raldic honours, and binding upon their posterity." I have seen a great many of these lists, signed by the heads of the families disclaiming. Edmondson, i, 160, says the same thing—"Were obliged, *under "their own hands*, to disclaim all pretence or title "thereunto for the future." Considerable pressure must have been brought to bear on these persons, and it must have taken this form:—"SIGN your "renunciation, OR be cited before the Earl Marshal" —and when they had accepted the alternative and signed, there was an end of the matter for that time. "Binding on posterity" is absolute nonsense. A coat of arms was to the grantee and to his lawfully-begotten offspring "in sæcula sæculorum": it was only necessary to prove legitimate descent, generations after, to regain the right to a property inalienable; even the formal and most rare process of "Disgrace" from knighthood applied only to the individual. An owner of estates might as well be supposed by his single act to alienate the inheritance entailed for three generations after him; indeed this supposition is even less absurd than the other—a coat of arms is entailed for ever! "To "the said William Swayne and to the yssue & pro-"creation of his body lawfully begotten in all wor-

"ship and gentleness *everlasting*." (*Visitation of Shropshire*, 1623, xxv.) Every grant of arms declares the same thing, but I quote this on account of the quaint wording. Here is what Francis Thynne, Lancaster Herald, says, writing on 3 March, 1605 (Hearne's *Curious Discourses*, vol. 1, p. 141):— "Arms cannot be alienated, so long as any of the "male line hath being, &c. So long as any male "of the line is living, none can sell the arms of "his family," and he refers to Cassanœus.

I would not at all seek to lessen the grave disaster of being disclaimed; it would immensely increase the difficulties of substantiating an after-claim, because it argues a distinct flaw, for which there was some reason at the time. See all that is said on this point in the *Visitation of Shropshire*, p. xxx *et seq*.

It is very common to find noted against the arms in visitation books, "respited for proof," and sometimes with the addition, "but no proof given," or "but nothing done." In this way the disgrace of being publicly disclaimed was avoided. After a delay of some months the declaration process would probably be over, and the claim to arms remain for future settlement. (See *Shropshire Visitation*, p. 27.) In the Hereford Visitation, 1634, "John Philips, "of Ledbury, to be disclaimed at our next 'sizes "because he was not disclaimed at our being in "that county, being respyted for proofe, but cannot "make any proofe." The next Visitation would probably be in 30 years' time!

Of course the heralds would only allow a respite if a plausible appearance to the claim was put before them. Here is a case exactly in point. I quote from William Salt Society, vol. v, p. xi:—"It ap-"pears from a correspondence preserved in the "College of Arms, between Mr. Amphlett and one "of the officials, that the coat he exhibited was * *

"and that it was objected to as being the arms of "a family named Hastings. Mr. Amphlett's reply "was that he would furnish the necessary proof at "Easter then next, when he contemplated visiting "London." No arms were given in the visitation book; but there is a memorandum, "Respite taken "for shewing and proving the arms, but nothing "performed therein," and Mr. Amphlett does not appear among the disclaimed.

Fortunately for us, in this our enquiry, Sir William Dugdale kept a diary, which has come down to us, and by which we learn how he searched diligently, according to the letter of his commission, and pulled down and destroyed throughout his province all falsely-assumed heraldry, wherever it could be found. This diary is the only record we have of his zealous performing of the duties imposed upon the heralds. How sincerely it is to be regretted that similar diaries kept by Thomas Benolte, 1528; Thomas Hawley, 1555; William Harvey, 1558; and the other delegated heralds, are not available! Inasmuch as "new brooms" proverbially sweep the cleanest, I make bold to say we should find them more vigorous in the performance of the directions of the Earl Marshal—the representative in this matter of the King—and that it was done in a more ruthless manner; also that the law, being quite clear, was submitted to without a murmur. A thief convicted acknowledged himself a thief in those days; but when Dugdale visited Lancashire and Cheshire (say 1664-5) it had just emerged from a time of the most confusing experiences: for one period under no constraint whatever, every man did what he liked; then a term of limitless despotism would supervene, and one party, whichever it happened to be, was crushed into abject slavery—their goods and their persons in the absolute power of others, who were a law unto themselves, and ac-

countable only to the opposing party! It required say 15 years of such utter confusion to produce "convicted thieves," who grumbled at the punishment, and whenever danger was over resumed their ill-gotten gains. We read that Dugdale had to remove a second time arms again set up; and we know from many sources that the disclaimers—although they had signed their names to these documents—went on just as usual, using the heraldic honours to which they had just declared they were in no way entitled. (*Visit. of Shropshire*, 1623, p. xxiv.) They in fact hoped to brazen it out!

But we must not think that this "making infamous" was by any means a small punishment: the sense of the word is considerably changed in our days. These persons claimed a certain fame or position—viz., "that they were 'nobiles' or gentlemen." The herald primarily took away that reputation, and declared them ignobiles or no gentlemen.

It will be noticed how the cases cited above, from the proceedings of this court, all turn upon defamation; and although some declare actual violence, they all—with orbits varying in width—seem to circle round a centre which we may describe as "heraldic defamation." The court, after enquiring of the heralds, contented itself with declaring the facts of the case. In those times, to say a man was "no gentleman" was understood to imply he had no right to bear arms—the badge and proof of the social rank of gentleman—and was a real injury and insult. It is somewhat difficult now to place oneself into the mode of feeling which obtained in the seventeenth century and earlier; the rank of gentleman (nobilis) in those times was real, and not a mere claim to good manners or a certain income, as we now seem to consider it. We may see the same social state still surviving in Germany or Russia, where the "noble," that is,

the bearer of coat armour—the equivalent to the English "gentleman"—stands in quite a different position from the unarmorial class.

How true to the social feelings of the time is that scene in "Lorna Doone" (chap. 68) where Mr. Blackmore makes John Ridd ask, as the greatest reward he could hope for, that he might have a coat of arms, and so be "a gentleman"! That word originally came from gentle—"nobilis"—a rank: as we read "gentle or simple"; but the moralisers took it up as a weapon and etymologised it into a qualitative term (mitis or blandus), and so we of this generation, having had a false interpretation foisted upon us, are quite confused as to the real meaning of the word!

Alexander Pope *(Essay on Man*, ep. iv, line 203) writes—

> "Worth makes the man, and want of it the fellow;
> The rest is all but leather or prunello."

It will be noticed that he does NOT write it "gen-"tleman," nor is it so expressed in "manners "makyth man," which I take to be earlier than Chaucer; it was chosen by William of Wykeham as the motto for Winchester College, when he founded it, in 1393.

To a new man who had purchased lands and was fighting his way on, and pretending to the rank of gentleman, the being forced to disclaim must have been a severe and bitter blow, and I think examination would show that many, at any rate and by far the larger proportion of those who were "pro-"claimed at Chester high crosse after sound of a "Trumpett by a bayley of the county of Chester," in 1613, and their "names being wrytten on a sheet "of papere with fayer great letters," was posted up for the information of all men—as given us in Mr. Rylands' long and valuable Lists of Disclaimers—belonged to this class.