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A TREATISE
ON THE LAW CONCERNING
NAMES AND CHANGES
OF NAME

ARTHUR CHARLES FOX-DAVIES

AND

P. W. P. CARLYON-BRITTON

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NAMES AND CHANGES
OF NAME

BY

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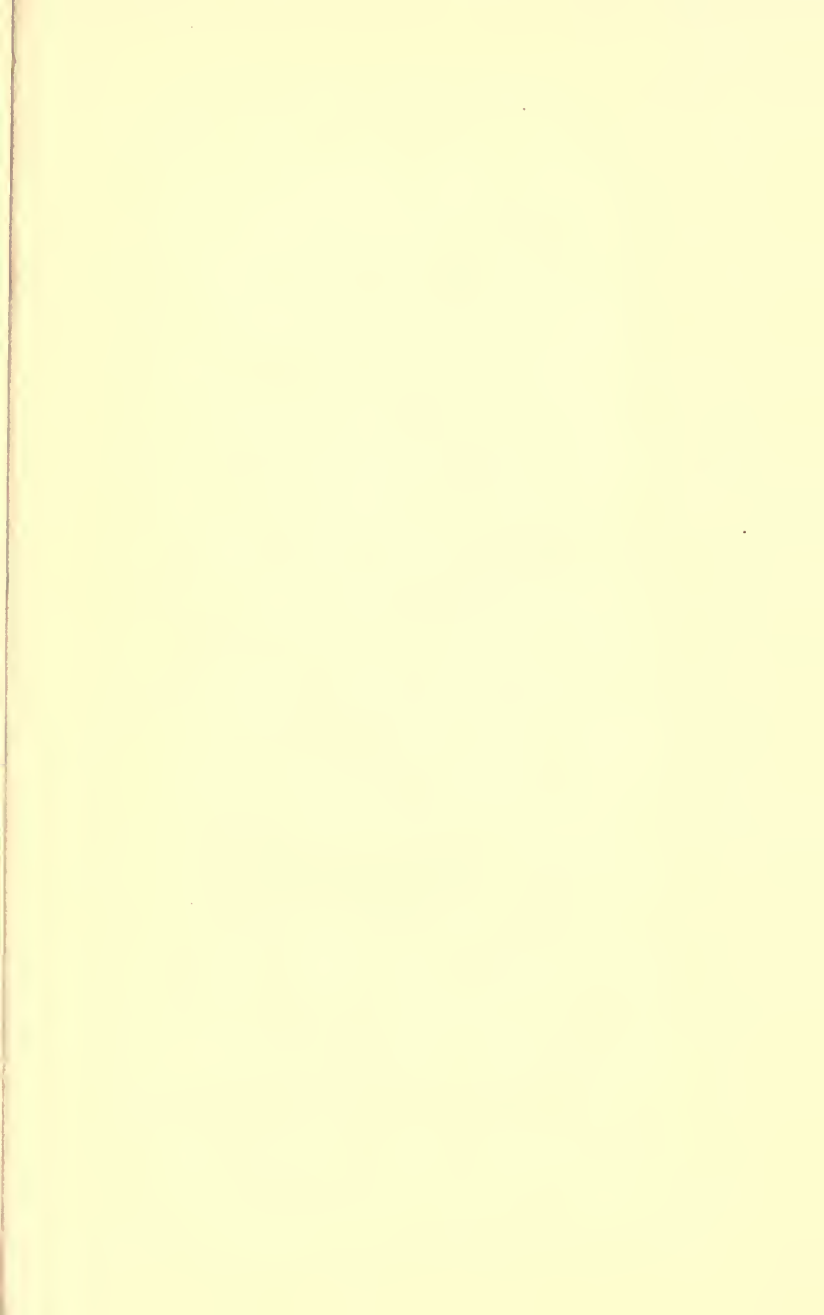
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PREFACE.

A SERIES of articles under the same title which appears upon the present volume appeared some years ago in the *Genealogical Magazine* over the signatures A. C. F. D. and A. M. R., the latter initials being those of Mr. A. M. Rickards. The revision and extension of those articles into the book form in which they now appear has been the joint work of Mr. Carlyon-Britton and myself, so that the actual authorship is rather a composite matter, although Mr. Rickards has, of course, no responsibility for the extended, revised and later form.

A. C. FOX-DAVIES.



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A TREATISE
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NAMES AND CHANGES OF NAME.

NAMES.

FROM the legal point of view, the consideration of the subject of names presents very abnormal difficulties from the initial obstacle that it is almost impossible to properly define a name. With one or two rare exceptions, which will be afterwards referred to, nothing in the nature of a right which can be enforced against either a specific person or the community at large is created either by the circumstances of origin, by prescription or by custom. Usage and the custom derivable from usage have created precedents and procedure, but nothing more. These can be recited and applied, but there are no circumstances in which they can be enforced, and, consequently, they are not cognisable by the law. There is no leading case, nor in fact a case of any kind, which has necessitated a legal interpretation of the conundrum, "What is a name?" and with the exception, perhaps, of the *Du Boulay* case, 6 Moore, P.C. 430 (N.S.) 31; 38 L.J., P.C. 35; L.R. 2 P.C. 430; 17

W.R. 594), the result of which was purely negative, in every case in which a name has been a more or less material issue, the real point at issue has been something else (usually the interpretation of a trust clause), and the matter of the name has been merely correlative.

The subject is complicated by the fact that, haphazardly from time immemorial, but consistently since, at any rate, the reign of Charles II., the Crown has asserted the matter of names and changes of name to be within its prerogative, but it has, whilst definitely asserting this attitude through such of its ministers and offices as are concerned with the subject, as persistently avoided putting its prerogative to the test of legal action. It has, moreover, and equally consistently, connived at wholesale disregard in some other of its departments of its asserted prerogative, and in this state of uncertainty undoubtedly lies the responsibility for the unsatisfactory position which exists at the moment. The few statutory enactments which can be referred to are not of the smallest use in defining the status of a name, and in the attempt to arrive at some approximation as to what that status is, it will be necessary to glance briefly at the origin of names.

FRONT NAMES.

One of the earliest evolutions in the progress of human nature from savagery to civilisation is marked when one reaches that point of the existence of individuality when the use of a name is an obvious necessity.

This necessity of course goes back to the remotest period of which human law as opposed to natural law has knowledge ; but for the present purpose there is not the smallest necessity to touch upon the matter at that stage. Forenames, or what we now term Christian names (the earlier form of the term is " christened names "), of course, antedate surnames, personal or hereditary, by many centuries, and the Christian Church in its all-embracing practices of appropriation of authority, and in its particular practice of grafting religious ceremony of its own upon occasions of ceremonial which it found in existence, quickly absorbed within its control an authority over Christian names.

There is no specific statutory basis for such authority, which must be implied, nor is there the smallest expressed legislative declaration thereof, but undoubtedly the common law of this country does recognise the existence of ecclesiastical law, and save in so far as it has been specifically abrogated, or is in admitted conflict with the common law, and therefore invalid, ecclesiastical law unquestionably retains a certain force and authority which cannot be ignored. More particularly is this the case where ecclesiastical law fills an obvious hiatus in the common law, and does not conflict therewith, which was undoubtedly the case in this country when the law of the Church had universal application, and nonconformity neither existed in fact nor was recognised by the common law. At a period when benefit of clergy was a part of the law of the realm, defeating in a most notable particular the operation of the ordinary common law,

it is quite idle to question the effective operation of ecclesiastical procedure, although even as ecclesiastical law no enactment or specific authority can be referred to on the subject of names. The common law will, of course, recognise and enforce custom on proof made of that custom, so that there can be no doubt of the effect in law of a custom so widespread and universal as the giving of names in baptism. The common law unquestionably recognises this, for though it does not forbid it, it neither provides for nor recognises any other method of acquiring a Christian name, and it is a point which should not be overlooked that it recognises the inviolable character of that religious ceremony, and its unalterable effect in conferring a Christian name, because it provides neither through the exercise of the King's prerogative nor by any other operation of law for, nor does it even contemplate the possibility of, a change of Christian name.

There is no way known to the law by which a man or woman can change a name which has been given in baptism.

Of course an Act of Parliament can do anything in this country, and, in consequence, any change in the Christian name acquired by baptism must be made by Act of Parliament. Where baptism does not take place, the Christian name, though selected and given by the parents, is on a different footing. Whatever force it may acquire, and one would hesitate to say definitely that it has any force at all, is derived only from repute.

With the repeal of the compulsory authority of the

law ecclesiastic, by the statutory recognition of Non-conformity, comes the first great breach in the continuity of custom. The custom and its legal validity, however, remain for those who incline to conform to it, but for those who decline such conformity, what law or custom can be said to take or have taken its place? Frankly, there is none. Nonconformists point to the provisions and procedure of the Act for the Registration of Births, but such a supposed custom is obviously a fallacy. The Act is one for the registration of the fact of birth, and of that only. The insertion of the name of a child is a mere matter of convenience, and a desirability for purposes of identification. Whilst the Act distinctly provides that the fact of a birth must be registered, it is perfectly possible for the child to be registered without a name; the name may be subsequently added to the register, but the provisions relating to the name are purely permissive, and for all that that Act, or any other Act or any law or custom, provides to the contrary, any person may live or die carefully refraining from acquiring any Christian name at all. There are scores of cases where a child dies without a name. So that, obviously, where a law is silent as to the name, it cannot be invoked as a statutory authority to stereotype or validly confer a name. The sum total of the effect of the registration of a name concurrently with the registration of birth, is merely an authoritative and notable record of the commencement of repute, which, however, must continue uninterruptedly to crystallise into such repute as the law will take cognizance of. Unquestionably,

if nothing subversive of or contrary to that repute occurs, then the registered name has acquired a certain force, and stands until it is upset by an overt act or by a repute to the contrary. The position may be put thus—that a baptismal name is a name conferred in a method that the common law has sanctioned for centuries, and which was formerly the only way in which a name could be conferred ; that this method was one which the common law not only recognised, but made compulsory by statute, under the statutory authority placed upon the services contained in the Prayer Book ; that nothing has occurred to alter the binding statutory legality of the prescribed service of baptism upon all conforming members of the Church of England, and that the fact that conformity has since been made permissive and not compulsory does not remove any part of the legal status of a name acquired in baptism by those who elect to conform. A baptismal name, therefore, is of higher authority than a name based upon repute only ; for while repute may lapse or may be destroyed and superseded by contrary repute, baptism cannot. But repute can be superseded by baptism.

If, therefore, a child has been registered in one Christian name and baptised in another, the baptismal name (which short of an Act of Parliament is unchangeable) is its true and unalterable name, and priority of baptism or of registration has no weight one way or the other. An entire change of name at a time of adult baptism is a lawful and irrevocable conferring of a name, absolutely operative as a bar to prior repute.

The Church in relation to baptism permits this rite to be performed by *any* person, and there is no set form of words essential beyond the mere declaration of some person, who, sprinkling the child with water, states that he or she baptises the child in the name of the Father, Son and Holy Ghost, so that practically within these very wide limits any professed ceremonial of baptism, with or without witnesses, in church, chapel or private house, is a valid baptism even by the law ecclesiastic; and consequently, a lawful and effective conferring of a name. And though the Church asks after informal baptism for the subsequent ceremony of the public reception of the child into the Church, there is nothing in the Church service to question the absolute and abiding validity of the informal ceremony.

Where nothing which the Church will recognise as baptism takes place, there is no conferring of a name which the law has recognised, for the common law cannot make into baptism a proceeding which the Church declines to recognise as such, and though the common law has recognised and made of authority that ceremony of the Church, it has provided nothing as a substitute where there has been no baptism.

There does not appear to be any civil penalty enforceable upon a clergyman for not making a proper entry in his Church registers after the ceremony has taken place, therefore there is no guarantee that the name given at the ceremony will be properly registered. Under these circumstances, it is desirable that the names should be written and handed to the clergyman before the ceremony, so that the child may

be called by the right name, and that there may be no discrepancies in spelling when the written evidence of the fact of baptism and of the name given in that baptism is being created in the ecclesiastical register.

At the same time a mandamus will lie under the Acts relating to the making of parish registers to compel any clergyman to make an entry in his register of any baptism which takes place.

There exists no machinery for making alterations in a Church register. There are many cases in which this has been done, however, though whether done properly or not is open to discussion. Entries registering baptisms, &c. made at a date long after the ceremonies have been performed are by no means uncommon in Church registers, and they are found interlined or out of their order of date. Such entries are always open to grave suspicion, consequently it is desirable that where the necessity for them arises, full explanation thereof should be inserted and signed by the clergyman.

The fact that, short of an Act of Parliament, the law knows no way in which a Christian name can be changed, however, does not seem to deter the perennial attempt on the part of those who object to the names bestowed upon them in baptism to make the change they desire.

Therefore two facts should be borne in mind. First, as will be subsequently explained at greater length in relation to changes of surnames, that (provided always that no question of deception or fraud enters into the matter) an act done in any name holds for good or bad equally with an act done in a

genuine name. (There is a possible exception to this generalization in the Money Lenders Act.) The second point to be remembered is that a change in any name leads to doubt of identity. So that if any change in a Christian or "front" name is made, lasting evidence of the facts of the change should be created at the time of the change. This can be done by an advertisement in a newspaper, or by a deed poll enrolled in the High Court. A copy of a newspaper gets lost, and back numbers of a paper are not always easy to procure, even when the actual date of the appearance of the advertisement is known. The *Times* is unquestionably the best paper to make use of, because an index to this is compiled and published. A deed poll, however, is better. Such a document does not run the same risk of destruction as a newspaper, and, being formally enrolled, the evidence is perpetuated beyond loss for all time to come.

But such a change is *not* a legal change, and neither advertisement nor deed poll can make it legal. The change is no more than an unauthorised *alias*, and the advertisement and the deed poll do no more than establish unquestionably the fact of the identity of the person described at the different periods under his genuine name or under his *alias*.

But there is one other custom which probably has equal binding effect with baptism, and that is the Jewish ceremony of circumcision, and the concurrent naming of the child.

The Jewish ceremony is on a different footing altogether from Nonconformist procedure. There is not the very smallest statutory authority for Noncon-

formity. In the eye of the law Nonconformity has no positive existence, at any rate as far as its ceremonial is concerned. It is purely negative, a statutory relief from the compulsion of ecclesiasticism and the law ecclesiastic. Nonconformity cannot of itself create a ceremonial of which the law can be cognizable. The law has created no ceremonial for Nonconformity, except the statutory recognition which exists of its ceremonials of marriage. The important point is that Nonconformity is subsequent alike to the Catholic Church and to the Established Church. The Jewish religion antedates them both.

The Jewish ceremonial is an integral part of Judaism; it is a custom so fixed and determinate that the law must recognise it as a custom binding in and upon Jewry, and upon proof made, must declare and pronounce for that custom. For the Jewish religion, and for the specific practice of Judaism in this country, there is specific and precise statutory authority, quite apart from the general statutory reliefs upon which Nonconformity at large is based. That specific permission and authority must be held to sanction the special customs and ceremonial of Jewry, and, in particular, the ceremony of circumcision and naming. There can be little doubt, therefore, that a Jewish forename is upon the equivalent basis to a baptismal name. No doubt similar remarks hold good concerning other ancient non-Christian religions within the British Empire, which either by express enactment, or by our recognised and undoubted constitutional custom, are permitted to retain and practise their ceremonial as theretofore accustomed.

As a matter of practice the Roman Catholic religion requires at least one of the baptismal names to be that of some saint included in the calendar. The Established Church of England neither in practice nor in law asserts any such position. Some clergymen seek to veto the name chosen by the parents ; but the ordinary citizen has this remedy against the clergymen of the Established Church, which does not lie against Nonconformist ministers. A clergyman of the Church of England is, in his ceremonial duties, subject to the law of the land. He is bound to perform the ceremony of baptism when so required by a parishioner, and the law will compel him to do so by *mandamus* ; and as both the law ecclesiastic and universal custom assign the choice of a child's name to its parents or godparents, a clergyman is bound to baptise a child in whatever name the godparents declare to him at the proper time in the baptismal ceremony. But it should be borne in mind that baptism is a Christian ceremony, and that no Christian minister can be compelled to perform the Christian ceremony of baptism and therein confer a name in open and direct antagonism with Christianity. A case some years ago obtained much newspaper notoriety (it did not, we believe, reach any court of law), in which a clergyman declined, and rightly declined, to baptise a child by the name of Beelzebub.

The privilege of signing the surname or peerage designation only (or rather, of omitting the Christian name in the signature) is in this country a privilege rigidly confined to peers, who merely sign the designation of their peerage. Peeresses in their own

right sign in the same manner, without the use of a Christian name. Peeresses by marriage sign their Christian names (or initials), followed by their peerage designation. Those who are peeresses by marriage and also peeresses in their own right have obviously the choice of either or both these two methods. The instances are of course rare, but in the cases of the late Duchess of Sutherland, the Countess of Yarborough, and the Countess of Powis, the signature has been the initial (or the Christian name), and the higher peerage (by marriage) designation followed by the lower peerage (by inheritance) designation alone.

There is no statutory or common law basis in England for this privileged custom of signing by the title only and omitting the Christian name, and the custom dates little, if anything, earlier than the Stuart period, nor is it easy to account for its origin.

There is, however, express statutory authority in Scotland, where it is illegal for any one being neither peer nor bishop to sign without prefixing the christened name or its initial letter; but express permission is given by the Act (1672) that any one may adject to his name the designation of his lands.

Cases have occurred in which, in compliance with the terms of a will or settlement, a peer has received a Royal Licence to assume an additional surname. The fourth Duke of Portland, after 1795, when he received a Royal Licence to assume that name, signed "Scott Portland." A Royal Licence was issued in 1789 to Lord Eliot of St. Germans to assume the name of Craggs in addition to Eliot, "with power to subscribe the name of Craggs before all titles of

honour." No doubt these are exceptional cases, depending upon express terms of settlement or bequest; but the declaration (1906) relieving Lady Dunsany from the necessity of subscribing an assumed surname in conjunction with a Peerage title will no doubt form a sufficient precedent for the future granting of such relief in a similar case.

The royal family of this country (as do the members of all other sovereign houses) sign by their Christian names only, and do not use the peerage designations they may possess. The reason is simple. In the early days, when both surnames and customs were in the making, kings and their families neither needed nor used surnames. Contrary to popular notions, Plantagenet was not a surname, nor even for junior members of the royal house is any record to be found of contemporary use of that designation, with one, and that a late, exception. Tudor may have been, Stuart certainly was a surname. Guelph was not, nor has his present Majesty any surname at all. To this extent is the absence of a surname carried, that H.R.H. the Princess Royal does not sign as a peeress "Louise Fife," but "Louise, Duchess of Fife."

SURNAMES.

Christian names, as we have seen, being given in baptism, the increasing population and the development of transit, and other matters of social progress, demonstrated the insufficiency of the Christian name alone. One would have expected the development

to have been upon the lines of a second baptismal name. As a matter of fact, the idea of a second baptismal name does not become at all a usual practice until the latter half of the eighteenth century, though isolated cases are met with earlier. The development, like so many other matters in our constitution, was an accident, though an inevitable one, and entirely unpremeditated.

Here it may be interesting to note that the definition of the word "surname" is from, according to some authorities, the French *sur* (Latin *super*), meaning over and above. That is, the "surname" is over and above the name. Probably the phonetic corruption of the word surname to "sirname" was the origin of the word "sirename," which is now identical in meaning with "surname"; but "sirename" is not the derivation of the word "surname," plausible as such a supposition may appear. Du Cange, on the other hand, suggests that surnames were first written, "not in a direct line *after* the Christian name, but *above* it," and hence they were called in Latin *supranomina*, in Italian *sopranomi*, and in French *surnoms*. Originally, any name other than the Christian name was a "surname." It should be borne in mind that anciently a man had but one Christian name.

With regard to the origin of surnames, it may here be pointed out that "surnames"—of the nature of nicknames—can be traced back to mythological times; but they were transient, and as often as not conferred after death. In England nothing of the nature of a hereditary surname existed before the

Conquest. True, a man was occasionally described as the son of his father ; *e.g.*, the names "Godwinson" and "Leofricson" are well known, though contemporary proof of the usage of such names is not easy to find. But these were *not* hereditary, and being *literally* used, must have been altered of necessity with each generation. With the Norman Conquest many things, many laws and many customs, changed completely. It is to the Norman invasion that we owe surnames.

In considering the origin of surnames it must be remembered that to all intents and purposes in those days there were but two classes—patricians and plebeians. The latter were chiefly of a status little, if anything, better than slavery ; in fact the serfs were slaves, though there was also a small, but a decidedly small class who were the merchants and traders—the freemen and burgesses of the towns. The patricians were the law-makers ; they made the laws to suit their own ways and ideas, to safeguard their own interests ; and though it is now the case that the provisions of Magna Charta are the inherent birth-right of every Englishman, it should be borne in mind that there was a large class then in existence who would have found it hard indeed to claim the rights extorted by the barons from the king, theoretically for the benefit of all men, really for the benefit of themselves alone. But even as far as the barons were concerned, Magna Charta was merely a declaration of rights supposedly then existing, and, as a document, a treaty between the barons and the king that these rights of theirs should be observed.

The barons were looking after their own interests, and the patrician of those days would see and admit but little social difference between his churls and the traders of a town. There were but few traders in those days that rose much beyond the level of the pedlar of to-day.

The point it is desirable to emphasise is the wide distinction between the landholders—who were the upper class—and the remainder. The upper class were few in number ; there was land enough for all. In those days it needed no great quantity of land to sustain a gentleman. Therefore, to all intents and purposes, every gentleman was a landholder. The overlords held direct from the Crown, rendering in return the military service which, according to their holdings, could be demanded from them. They sublet their lands, and the under-tenants were liable to them for military and other services. The whole being and existence of the Norman upper class was inseparably bound up in and interwoven with the land and the feudal tenure of it. The Saxon landholders who would not accept the new order of things simply “went under.” In those days human life was cheap, both in theory and in fact.

When a man’s Christian name was not a sufficiently distinctive description, it followed, of course, that he was described as “of” his lands—*i.e.*, “de” such and such a place. Now that practice, which is unquestionably Norman, dates back in this country as an assured and settled custom at least as far as the Conquest.

But the Normans, who brought with them the practice of describing themselves as “of” or “de”

their lands, also unquestionably (as is still so often the case with colonists) in many cases transplanted the Norman place-names to their new estates, and so perpetuated for themselves in England the same designation which they had previously enjoyed in Normandy. Others retained their Norman estates and designations, but these designations were not surnames, as is amply evidenced by the fact (provable in a few cases but suspected in many) that on different occasions the same man figures in different localities under different designations. But it should be remembered that at first such additions were *not names*—they were merely *descriptions*—and they were not hereditary. If a man changed his lands he changed his description (which now we should call his name) with his lands, as a matter of course. If a man divided his estate amongst his sons, each son had a different description, which he took from the particular lands he held. A man might give his lands away, he might sell them, he might settle them; he could not dispose of them by will until at a much later date. In those days there was no “estate” duty to avoid. The Plantagenets had not yet begotten that scion of their race who initiated that impost. Therefore, unless circumstances compelled a man to part with his property, he usually held tight to his lands until he died, and at his death his heir succeeded. As a rule, therefore, a man was succeeded by his son, and he, in his turn, by his son. As son, grandson and great-grandson, each in his turn succeeded, he, as a matter of course, also succeeded, along with the lands, to the same description, as being

“of” or “de” those same particular lands. This particular *description* recurring unaltered generation after generation, the form became stereotyped, colloquially the “de” would be dropped, and the same description being universally applied to the same family, it came to be regarded as a constituent part of a man’s name. Younger sons who were not provided with lands of their own did one of two things: they married an heiress, and then became *described as of her lands* (they did not take her surname, for *surname* she had none), or else they stayed in the old homestead in readiness to render the military service for which the landholder was liable to the king. As they remained at the old home (possibly with some interest—actual and reversionary—or maybe no more than an intangible moral right to sustenance, as children of their father, from their father’s lands) it was only natural that they also were described and referred to as “of” the place, even when they personally had no actual possession therein.¹ And it is difficult—in fact, practically impossible—to say when such a description came to be a *name*, and ceased to be a *description*. The point is of some importance, because many of these early changes—*apparently* changes of *name*, but in *reality* nothing more than mere changes of *description*—are glibly quoted as precedents to show that no authorisation was or is

¹ It is curious to note one radical difference in the present day between Scottish and English practices. In Scotland, in any legal deed, scrupulous care is always taken that a man is not described as “of” a place unless it is his property. In an English deed “of” means no more than resident there. Many a man has been described as “of London.”

needed to make a change. As a matter of fact, they are not changes of name at all, and though perfectly authentic pedigrees can be produced showing the *same* addition (in place of a surname) to the Christian name generation after generation back to the Conquest, such additions were most certainly not fixed or necessarily hereditary, nor were they *surnames* until a much later date. But it was the regular recurrence of the same territorial description from father to son that stereotyped that description into a "name," and which, by a very natural evolution, caused surnames to be considered to be and to become hereditary.

Concurrently with the evolution of surnames from territorial designations, the same process was going on in relation to offices. Some were actually and by law hereditary, and other posts, whilst not having a compulsorily hereditary attribute, were nevertheless held by successive generations of the same family. It is worth the passing remark in such cases whether successive holders of an office, consequently enjoying therefrom the same description, have not sometimes been too readily assumed to be a succession of father and son, and accepted as names in a pedigree.

The same sequence must naturally have occurred in regard to mere trade or occupation, the succession of a son to his father's trade, a circumstance which even now occurs constantly.

Again, a large number of surnames are of patronymic origin, the prefixes of "Ap" or "Fitz" or "Mac" or "O," and the affix of "Son" being a regular customary use. Names of this character at their

inception were presumably names only of a generation. But sons are baptised in their fathers' names, and it would need but two or three generations in which the same patronymic was consequently continued to stereotype it into a surname.

The hereditary repetition of a personal peculiarity would also stereotype a nickname, which unquestionably some of the Norman designations were.

All these circumstances acting concurrently in England produced our hereditary surnames, which in the upper classes date from about the twelfth century.

In Wales, Scotland and Ireland, where the Norman influence scarcely penetrated, the causes and effects were different.

Of course there are a *few* (a very few) exceptions, but to all intents and purposes it may be taken to be an established fact that the ancient families in England are those which have *territorial* surnames. What, then, becomes of the Roll of Battle Abbey? To begin with, the Roll of Battle Abbey no longer exists; no one knows whether it ever had any actual existence, and nobody really knows what names were originally upon it. So-called copies of it exist, but they all differ widely, and it is known to have been extensively tampered with. The names upon it are chiefly territorial descriptions, Christian names, patronymic descriptions and nicknames. None of these had then any fixed hereditary character. But as the earliest copy known is centuries later in its date, the appearance of a particular name is no evidence that that name existed at the Conquest. A few of the patronymics have remained, due no doubt to the

inherent inducements to christen a child after his father or grandfather. A few of the nicknames survived long enough to become crystallised into names, for the natural tendency of a nickname is to "stick." Personal characteristics, admirable or the contrary, were then the source of all nicknames, and personal characteristics were hereditary long before surnames became so. The nicknames were perpetuated by virtue of their being perennially appropriate, and by their being reconferred in the succeeding generations in which the personal characteristics were reproduced. But even in cases where the same nickname is repeated in later dates, there is seldom documentary evidence to show blood relationship between any two holders. In all times people have been only *too ready* to assume that a similarity of name indicated descent or relationship.

But the point is simply this : It is no good boasting of a Norman pedigree unless you have at least a territorial or a distinctly Norman name. Patronymic names—*e.g.*, Robinson, Jackson and Johnson—and names deriving from occupations—*e.g.*, Smith, Cook, Fletcher—did not originate till much later, and never originated at all in England amongst the upper classes. The upper classes in nearly every case took their names from their territorial descriptions. Those outside the landholding classes had no need for surnames till a later date. They were never mentioned in a legal deed, and their Christian names, and perhaps a nickname, answered all distinctive purposes amongst the few friends and neighbours who comprised the small circle of their acquaintance. They

lived and died and were forgotten. A moment's thought will show that this was so. Even at the present day there are hundreds of the lower classes who are only known by a Christian name and a nickname, and who find that the only occasions on which they have the slightest use or opportunity of using a surname are their registration of birth, occasionally for the purpose of a marriage, at their appearances in the police-courts, and for the inquests at their deaths. There is scarcely a week goes past that the press does not provide some instance or other of the difficulty such people and their friends find in coming to a decision as to what their surnames may really be.

Whether the Education Department will be able to alter matters in the near future still remains to be seen. But if in this busy, over-populated twentieth century there are still people who, without inconvenience, can dispense with the attribute of a hereditary surname—and it is evident that there are—it is not to be wondered at that in early times the possession of a hereditary name was not amongst the lower classes a “long-felt want.”

At any rate, those who were not patricians and not landholders managed to rub along without stationary or properly hereditary surnames until the twelfth or the beginning of the thirteenth century. From about that period, or perhaps a little later, surnames became hereditary and fairly universal in all classes in England.

But the upper classes had already obtained their names from their lands. The rest had no lands to take names from. Therefore we find they obtained

their names from other sources. It should not be forgotten that no man chose his own name. It was unconsciously conferred by his neighbours, who applied to him the most readily recognised description that would particularise him as and when the necessity arose that he should be particularised. There are many names which no sane man is ever likely to have deliberately selected for himself. His name was a matter of common repute—the description by which his neighbours happened to refer to him—and was neither assumed nor conferred by any overt or specific act. There was to all intents and purposes no general legislation concerning names, simply because the patricians needed none for themselves, the description of their lands answering every purpose. The doings of plebeians, which did not affect the comfort or prosperity of their lords, were not worth consideration, and certainly did not merit legislation. The laws of those days were not dictated by Newcastle or other programmes. Each particular enactment which happened to be made law was due to a palpable necessity of the moment.

Surnames other than territorial descriptions were, we must remember, the simple result of necessity, when population, theretofore isolated and small, became so increased as to necessitate further particularity than the merely personal one could supply. Bardsley in his “English Surnames” places the date of the general assumption of surnames too early, but his remarks are worth quoting:—

“In the eleventh and twelfth centuries, however, a change took place. By a silent and unpremeditated

movement over the whole of the more populated and civilised European societies, nomenclature began to assume a solid, lasting basis. It was the result, in fact, of an insensibly growing necessity. Population was on the increase, commerce was spreading, and with all this arose difficulties of individualisation. It was impossible, without some further distinction, to maintain a current identity. Hence what had been but an occasional and irregular custom became a fixed and general practice—the distinguishing sobriquet, not of premeditation, but by a silent understanding, came at length to be fixed and hereditary. This sobriquet had come to be of various kinds. It might be the designation of property owned . . . or it might be some local peculiarity that marked the abode. It might be the designation of the craft the owner followed. It might be the title of the rank or office he held. It might be a patronymic—a name acquired from the personal or Christian name of his father or mother. It might be some characteristic, mental or physical, complimentary or the reverse. Any of these it might be, it mattered not which ; but when once it became attached to the possessor and gave him a fixed identity, it clung to him for his life, and eventually passed on to his offspring.”

Bardsley, in his well-known book on the origin of English surnames, divides them into five classes :— (1.) Baptismal or personal names, better described, perhaps, as “patronymic” names ; (2.) Local surnames ; (3.) Official surnames ; (4.) Occupative surnames ; (5.) Sobriquet surnames or nicknames. Of

the first class, Williams, Thompson, Wilcox and FitzGibbon are good examples. In the second, distinction ought to be drawn between territorial and local names. Of the former kind are the place-names anciently written with "de" before them, signifying the former lordships of the lands. Of the latter are the names which merely arose from residence, *e.g.*, Bywater, Lane, Field, Styles, Ashurst, Attwood. Amongst surnames of office are Hayward, Buckmaster, Hunter, Falconer. In the fifth class the following must be placed :—Thacher, Mason, Slater, Vyner. The last class is very numerous, *e.g.*, Little, Black, Fairfax, Fox, Wagstaffe, Wise, Benbow, Hardman. Mr. Bardsley once went to the trouble of analysing the names in the first five letters of the alphabet in the *London Directory*. Here are his figures :—

| | | | |
|------------------------|---|---|--------|
| Territorial and local, | . | . | 11,360 |
| Baptismal, . | . | . | 8,203 |
| Occupative, | . | . | 2,651 |
| Official, . | . | . | 1,737 |
| Nicknames, | . | . | 3,096 |
| Foreign, . | . | . | 1,584 |
| Doubtful, . | . | . | 1,694 |
| <hr/> | | | |
| | | | 30,325 |
| <hr/> | | | |

In referring to local and territorial names, particularly the latter, it is well to raise the warning that the possession of a territorial name does not necessarily even suggest descent from the lords of those lands. A large proportion of foundlings have been given

surnames from the names of the places on which they were found. Further, former residence in a different place often conferred the name of that place as a surname, when in another locality it was necessary to distinguish a stranger who had come therefrom.

We have now seen how and when surnames originated in England. Let us next turn to Wales. In no country in the world is the origin of each name so universally one and the same as in the Principality. Roughly speaking, there is but one class of surnames in Wales—the patronymic class. There are one or two rare exceptions (but they are so rare that they can be quite dismissed from consideration), but saving these, there are no territorial names at all in Wales. For all practical purposes it can be taken to be an established and indisputable point that every properly Welsh surname is patronymic in its origin, that is, it is derived from the *Christian* name of the father. From the circumstance of their common British origin, it might be supposed that the Welsh people and the inhabitants of Cornwall would exhibit some analogous principles in the construction of their surnames. Such, however, is not the case. The Cornish surnames are mostly local, derived from words of *British* root, and they are often strikingly peculiar. A large number have the prefix *Tre*, a town; and the words *Pol*, a pool; *Pen*, a head; *Ros*, a heath; and *Lan*, a church, are also of frequent occurrence, and the Cornish rhyme,

“ By Tre, Pol and Pen
You shall know the Cornish men,”

has obtained for itself a world-wide acceptance. This

is a striking proof that in the very earliest times there were no such things as surnames at all, much less hereditary surnames. Hereditary surnames were not in use in any form, even amongst the gentry and landholders in Wales, until the time of Henry VIII., nor were they generally established until a much later period; indeed, at the present day they can scarcely be said to be adopted amongst the lower classes in the wilder districts, where, as the marriage registers show, the Christian name of the father still frequently becomes the patronymic of the son. The way in which a Welshman was in a former day described was by his own Christian name, followed by the word "ap" (meaning the son of) and his father's Christian name, as Hugh ap Howell. The Welsh "ap" is the exact equivalent of the Norman "Fitz," and the Scottish "Mac," and the Irish "O'," and something akin to the Maltese "dei" of the present day. But with regard to the Norman "Fitz"—and perhaps the remark should more properly have been inserted when dealing with Norman names—the use of the prefix always carries with it a kind of lingering suggestion of bastardy, though this is far from being always the case. A Norman in the ordinary event inherited his father's lands and territorial description. A bastard inherited neither lands nor name, and therefore the "Fitz" was added to his father's Christian name when the father would acknowledge the relationship. We shall have occasion later to refer to the cases and rights of illegitimate children, but the point is illustrated by an ancient ballad. When Henry I. wished to marry his son

Robert to Mabel, co-heiress of Fitz Hamon, the lady demurred :

“ It was to me a great shame
To have a lord withouten his twa name.”

Robert of Gloucester.

“ Whereupon,” says Camden, “the king, his father, gave him the name of Fitz-Roy.” So that the aristocratic “Fitz” is somewhat discounted in value. Still, in these days when a pedigree of any sort beyond one’s great-grandfather is something to talk about, a bastardy in Norman days is a somewhat remote contingency.

A Welsh gentleman was not content with merely announcing the name of his father. Everybody could do that much. So he added his grandfather and his great-grandfather, and even a hundred years ago it was not unusual to hear Welsh names such as “Evan-ap-Griffith-ap-David-ap-Jenkin,” and so on up to the seventh and eighth generation. The church at Llangollen remains solemnly (we give this on the authority of an article in the *Cornhill Magazine* for July 1862, for it needs somebody to take the responsibility for the assertion from one’s own shoulders) dedicated to Saint Collen-ap-Gwynnawg-ap-Clyndawg-ap-Cowrda-ap-Caradoc-Freichfas-ap-Llynn-Merion-ap-Ernion-Yrth-ap-Cunedda-Wledig. Bearing this practice in mind, one pauses aghast at the frightful efforts of memory which Welsh nomenclature, both local and personal, must have necessitated.

Evidently the names the Welsh had occasion to use had the advantage of keeping their memories in good practice. To burlesque this extraordinary

fashion of nomenclature, a witty rhymster of the seventeenth century describes Welsh cheese as—

“ Adam’s own cousin-german by its birth,
Ap-Curds-ap-Milk-ap-Cow-ap-Grass-ap-Earth.”

The string of Christian names that formerly answered all distinctive purposes with the Welsh reminds one of the story (though there is no real connection between the two) of the purveyor of groceries, who in his year of office as mayor was elevated to the bench of the Great Unpaid. The sergeant of police, in mentioning a prisoner who needed the mayor’s attention, referred to him as “ Thomas Smith, *alias* Jones, *alias* the Snatcher.” “ Ah,” said his worship, “ suppose we take the ladies first. Bring up Alice Jones.”

In the plays of the Elizabethan period there is frequent allusion to this ludicrous Welsh system of names. But it distinctly had its advantages, for it preserved identity and descent and relationship in a manner utterly unknown in England. Thirty to thirty-three or thirty-four generations are the outside limit possible of any English or Norman pedigree save the royal ones. It is otherwise in Wales, and there is one well-known instance—Lloyd of Stockton, Co. Salop—in which the pedigree *in the male line*, without a single break, can be shown for sixty-six generations. Though it goes back almost to the times of legend, there seems to be no reason whatever to doubt it as a Welsh pedigree, for the early part is that of ruling princes in Wales, in whose retinue were bards and minstrels, who kept the descent alive in song and story as a part of their

regular duties. But if any book of Welsh pedigrees be examined, it will be at once apparent that the whole of the landed and upper classes had these patronymic names. In the upper classes in Wales surnames were adopted universally at about the same period—the reign of Henry VIII. One writer says, “He strongly recommended the heads of Welsh families to conform to the ‘English usage,’ and, in consequence, many houses made their old names stationary.” Other writers have assigned the change to the introduction and necessities due to the establishment of the system of parish registers; in fact, this is held by many to be largely the true cause which rendered surnames stationary and hereditary throughout England as well, where they had hitherto been somewhat loosely applied.

Other writers refer to a statute of King Henry VIII., definitely enacting that the Welsh should conform to the English practice. We confess, however, that up to the present we have failed to discover the statute, if any such exists. We are inclined to think that the reason is rather more due to the fact that the accession of the House of Tudor to the English throne brought the Welsh and English gentry into closer intimacy. The undoubted tendency of the English of those days to sneer at the rude uncouthness of the Welsh caused the latter—who considered ‘hemselves to be as well or better born than the English—to adopt the English ways and English customs which were current in the English Court, in order to remove the reasons of the supercilious sneers they encountered.

Any social practice originating with the highest classes quickly permeates down through the ranks of those who copy their betters. By the reign of Henry VIII. the originally territorial nature of English aristocratic surnames had been in a way lost sight of. Therefore the Welsh, in copying the English in the adoption of surnames, or else in the process of evolution from their own practices, simply made permanent and stationary for their surnames whatever Christian names their fathers had, which Christian names, with the addition of "Ap," had already been added to their own. Ap-hugh became Pugh, Ap-howell became Powell, Ap-Rhys became Price. The other alternative adopted would seem to show an English model. Evan's son became Evans, John's son became Jones, William's son became Williams, and in one or other of these two forms of procedure all Welsh surnames originated.

Before leaving the subject of Welsh names, one cannot help remarking the large number of the natives of Wales who deliberately duplicate their surnames in the Christian names chosen for their sons. There must be a legion who at the present day are labelled Hugh Hughes, John Jones, Owen Owen, William Williams, or Hugh Pugh.

One might, perhaps, attribute it to the unconscious poetic or musical instinct which exists in most inhabitants of hill countries, and to whom the alliteration might be an unwritten attraction. That, however, is merely a suggestion, and not a statement of provable or admitted fact.

If territorial names are absent in Wales, they are

vastly to the fore in Scotland. In spite of all one hears of "land-hunger" in Ireland, there is no quarter of the globe where the land and the lordship thereof claim and obtain so great a respect or exercise such a fascination as in Scotland. Even in this hard-headed commercial age, the patriarchal veneration for the "laird" of the parish is still a factor to be counted. At the present day in England, scarcely an individual—we know of no single one—is habitually spoken of by the bare description of his lands, without any prefix of his name. In Scotland the smallest freeholder is still as often referred to by the designation of his estates as by his Christian or his surname. In England we have Langton of Langton, Craster of Craster, Corbet of Moreton Corbet, Acton of Acton, Aldersey of Aldersey, Clifton of Clifton, Eyton of Eyton, Estcourt of Estcourt, Lowther of Lowther, Gatacre of Gatacre, and many others; but it would be considered an impertinence to drop the names or titular prefix. In Scotland it is otherwise; and not only do their neighbours merely use the designation of their lands in referring to them, but so fixed and accepted is the custom that the larger landholders, who by long inheritance have, as it were, acquired a hereditary right to such descriptions, themselves use them. For instance, Mr. Ewan Macpherson of Cluny Castle, who is always spoken of in Scotland as "Cluny Macpherson," and that without a "Mr.," in writing a letter in the third person refers to himself as "Cluny." In the same way Mr. Cameron of Lochiel is always spoken of and calls himself "Lochiel." Apropos of this, it may be recalled that the late Sir Frank Lockwood,

at a reception, hearing the butler announce "Lochiel and Lady Margaret Cameron," announced himself in his turn to that functionary as "24 Prince's Gardens and Lady Lockwood." In the same way there is another Scottish practice which is unfamiliar to English ears. When the surname and the designation of the lands are the same, a Scotsman describes himself as "of that Ilk" [*i.e.*, of that same (name)], *e.g.*, "Udny of that Ilk," "MacLeod of that Ilk," "Lamond of that Ilk," "MacIntosh of that Ilk," though the latter is more generally known as "The MacIntosh." That, again, is a custom the English never aspire to; some even object to it—to wit, the "cabby" to whom The MacIntosh paid a level shilling for an eighteen-penny fare. The usual abuse followed, and then, "My fare's eighteenpence, and I want another sixpence." "Mon, do you no ken who you're talking to?" "What do I care who you are?" "Mon, I'm The MacIntosh of MacIntosh." "And do you think I care a — whether you're the blessed old umbrella as well? Hand out that tanner!" It needed the ignorance of the Southron to fail to appreciate the revelation.

With and akin to, or perhaps arising from, this patriarchal veneration of the laird and the land, there has grown up in Scotland the "clan" feeling. The clan feeling is strong and intense in Scotland now, and he is a "proud man" who is chief of a clan. He has hundreds in his train to do him homage, for which he makes no return and bears no responsibilities other than those he chooses to adopt. Of course, there are many chiefs of clans who are admitted and recognised by everybody, but, like every other honour, it has

produced a crowd of spurious pretenders. To our own knowledge, there are some half-dozen who claim to be "chief of Clan Chattan." Outside the territorial names, which are far greater numerically in proportion to the population in Scotland than elsewhere in the United Kingdom, by far the greater proportion of Scottish names are distinctly due to this clan spirit. The Scot is and was a born fighter. Occasionally in his spare moments he might be induced to turn his attention to the land, but he much preferred "looting" his neighbours' cattle to rearing his own. Now, man is gregarious, and the duel was of later growth, and the inevitable result was that the "looting" was not done single-handed. It was not theft, it was the fortune of war; and the clans, which were originally gangs of cattle-lifters, developed into "tribes," perpetually warring with each other. Of course, a man's kinsfolk backed him in his quarrels, and undoubtedly kinship was the initial bond which held the clan together; but as the clans increased in size and importance, the embrace of the clan was widened, and every gentleman brought his servants, his tenants and his followers into the clan to fight with him, and to fight the battles of the clan. Recruits even were sometimes raised in England. Now, these servants and followers all either assumed the name of the chief of the clan or the name of the divisional head under whose particular leadership they were. That is the source from which the majority of the Scots assumed their names. Could any one suppose for one moment that every one of the name of Campbell had blood descent from the House of Lorne?

But if we trace the matter a step further back, and deal with the derivation of the clan names in Scotland, the Registrar-General for that country in his sixth report remarks : "Almost all the names of our Border and Highland clans belong to the first class [surnames derived from patronymics], and they are peculiarly Scottish, neither belonging to England nor to Ireland. These surnames include all those beginning with Mac, as Macgregor, Mactaggart, &c., besides those simple ones, as Fraser, Douglas, Cameron, Kerr, Grant, &c. . . . Surnames taken from the locality in which the persons originally resided form a very numerous class . . .," and "there is scarcely a county, parish, town, river or remarkable locality but has its name perpetuated in the surnames." But, taking them all in all, and as compared with other countries, in Scotland there is a comparatively short list of surnames, partly from the use of clan designations, and partly from the same cause as in Wales, the secluded and rude condition of the people, which is still especially the case along the coast and in the fishing villages. When the fashion of distinctive surnames was first carried into the North, about the time of the Reformation, the inhabitants of these secluded places seem to have felt the lack of characteristic designation severely, the fishing intellect being naturally limited.

According to the clever writer of an article in *Blackwood's Magazine* for April 1842, on "Fisher-Folk," there were then seldom more than two or three surnames in a town. In "booking" their customers, the grocers invariably inserted the nickname,

or "tee" name; and in case of married men they wrote down the wife's along with the husband's name. Unmarried customers had the names of their parent inserted with their own. The following anecdote is given by the same writer :—

In one of the Buchan fishing villages a stranger had occasion to call on a fisherman of the name of Alexander White. Meeting a girl, he asked :

"Could you tell me fa'r Sanny Fite lives?"

"Filk Sanny Fite?"

"Muckle Sanny Fite."

"Filk muckle Sanny Fite?"

"Muckle lang Sanny Fite."

"Filk muckle lang Sanny Fite?"

"Muckle lang gleyed Sanny Fite!" shouted the stranger.

"Oh, it's Goup-the-lift ye're seeking!" cried the girl, "and fat the deevil for dinna ye speer for the man by his richt name at ance?"

We are ourselves ignorant of the Scottish language, and had our doubts as to the strict propriety of the foregoing, but we print it, relying upon the known respectability of the magazine we quote.

There are reasons to suppose that, although 1842 is now an ancient date for these kingdoms, the peculiarity to which we point still exists in Scotland. A list of all the parishioners of a parish on Donside who voted in the election of a parish clerk in 1524 is preserved. The minister found all their names, with the exception of one or two existing in the parish in 1860.

The only laws, save those Acts relating to specific cases and legalising specific changes, relating to Scot-

tish surnames of which we are aware are the Lyon Office Act of 1672, to which we have already referred, and the Acts relating to the name MacGregor. By an Act of the Scottish Privy Council, dated April 3, 1603, the name of Gregor, or M'Gregoure, was expressly abolished, and those who had hitherto borne it were commanded to change it for other surnames, the pain of death being denounced against those who should call themselves Gregor or MacGregor, the names of their fathers. By a subsequent Act of Council, June 24, 1613, death was denounced against any person of the clan called MacGregor. Again, by an Act of Parliament, 1617, chap. 26, these laws were continued and extended to the rising generation, inasmuch as great numbers of the children of those against whom the Acts of the Privy Council had been directed were stated to be then approaching to maturity, who, if permitted to resume the name of their parents, would render the clan as strong as it was before. But upon the Restoration King Charles, in the first Scottish Parliament of his reign (statute 1661, chap. 195), annulled the various Acts against the Clan MacGregor, and restored them to the full use of their name.

In considering the derivation of Irish surnames, the history of the country must be carefully borne in mind. There have been settlements of English and settlements of Scots in the sister kingdom, which have added a large number of names of distinctly English and Scottish origin to those which were originally to be found in Ireland. The present population of Ireland, though a mixture of a number of

different races, is a mixture, however, in which the Celtic is the predominant element. The great bulk of the most common names in the country are undoubtedly of Celtic origin. Many of them still retain the prefixes "O" and "Mac," the former of which is peculiar to Ireland, whilst the latter belongs to both Ireland and Scotland. In many cases, however, these prefixes have been dropped, and it is a matter of common occurrence to find in the same record the same Celtic names written with and without these said prefixes. The coeval existence of two languages in the country accounts for the practice (which still prevails in some parts of Ireland) of using interchangeably English names, together with their Irish translations or equivalents.

In some cases it is now impossible to trace whether families are of Celtic or English descent, inasmuch as some of the English settlers took Irish names, and Irish families were compelled to take English surnames.

The sources from which Irish names have been derived are the same as in England and Scotland; but the tribal spirit was pronounced in Ireland, as it was in Scotland, and consequently the truly Irish names are limited in number.

In the matter of special legislation concerning surnames, Ireland has been more highly favoured than any other nation.

It was provided by a statute of as long ago as 1366 that: "Every Englishman do use the English language, and be named by an English name, leaving off entirely the manner of naming used by the Irish." This is a bull worthy of the Sister Isle; but again, in

1465, in the fourth year of the reign of Edward IV., an Act was passed : " At the request of the Commons, it is ordained and established by authority of the said Parliament (holden at Trim in 1465) that every Irishman that dwells betwixt or amongst Englishmen in the county of Dublin, Myeth, Ureill and Kildare, shall go like to an Englishman in apparel, and shaving off his beard above the mouth, and shall take to him an English surname of one town, as Sutton, Chester, Trym, Skryne, Corke, Kinsale ; or colour, as white, blacke, browne ; or arte or science, as smith or carpenter ; or office, as cooke, butler, and that he and his issue shall use his name, under pain of forfeiting of his goods yearly till the premises be done " (Statutes at large in Ireland, 1786, vol. i. p. 29).

In the eleventh year of Queen Elizabeth an Act was passed that five persons of the best and eldest of every nation amongst the Irishrie should bring in all the idle persons of their surname to be justified by law ; and in the same year an Act was passed for the attainder of Shane O'Neill and for the extinction of the name of O'Neill.

The most recent attempt at legislation was not, however, successful, and the Bill introduced by Mr. Macaleese, M.P., to enable any Irishman to prefix " O " and " Mac " to his surname, was not passed.

Such being the origin of surnames, we now come to their legal aspect.

A surname is no more than a description for purposes of identification. By long-continued and universal custom surnames are hereditary, and that custom the law would unquestionably recognise, fail-

ing in a specific case specific facts to the contrary. Custom regards it as a fixed hereditary right that a son should inherit his surname from his father, and inasmuch as a name ordinarily must be inherited, it is presumably a hereditament, and that being so, an incorporeal one. But surely there is no other so intangible, for, speaking broadly, the law provides no specific method for the creation of names. Nor is the hereditament of a name one in which any right of property exists that can be enforced. A surname cannot be given, sold or bequeathed, for no one person can create a right in a surname, nor convey any right in a surname to another. The basis of this peculiar state of affairs is simply that a man cannot give himself a surname. His surname is whatever name he is universally known by, and his right to that or any surname is in ordinary circumstances due solely and entirely to the general custom observed by others, who call him and know him by that surname, and the general, in fact universal, custom is that a man's surname is the same as that of his father ; that a woman's name, until marriage, is that of her father, and after marriage that of her husband. And the general custom does not regard surnames as changeable of mere motion, but regards them as fixed and unalterable. Now, no man can create a custom at or of his pleasure. The creation of a custom needs general and universal consent and assent. The law, where custom is not in conflict with the common law, upon proof made of that custom, must accept that custom as law and as binding, and must recognise and administer that custom, and it is amazing that

this principle of our law should have been so frequently overlooked in regard to the interpretation of law in cases in which a name has been a material issue, for the custom of inheritance of a name from the father is so undoubted, and its acceptance so universal, that it must be accepted as part of our common law.

Every man has a right to require the use of his right name, and in any legal document may require that such name, and that name only, shall appear and be used as his name, for ordinarily every man has a genuine name, *i.e.*, his baptismal name or names, followed by the surname of his father. But no man can insist that another shall address him or describe him by a name other than his baptismal and paternal names, unless he have authority for the new name, because, failing such express authority, the basis of the new name is but custom, and that custom must be universal before it is binding, and in the face of the refusal to concede the name, how can a universal custom be pleaded?

A false name certainly does not invalidate marriage, though this has often been supposed. It is the two people who go through the ceremony who are married, and their names have nothing whatever to do with the fact of the ceremony, and consequently the names have no relation to the validity of the marriage. To this proposition, however, there is one seeming but not actual exception. If either party to a marriage, by the use of a false name, wilfully deceives the other party so that the identity is obscured to the extent that the said other party

believes he or she is making a totally different marriage, the marriage is void, but it is void as a contract based upon fraud, and the false name is there merely a means or evidence of fraud, and not in itself the essential fraud.

Providing there be nothing in the nature of fraud, there is nothing in our criminal law to prevent the use of any name, and no injunction for a discontinuance will lie (*Du Boulay* case).

Nor at the moment of writing is there anything to prevent the use and assumption or wrongful retention of any title or dignity (*Cowley* case, 85 L.T. Rep. 254, P. 1900, 118; A.C. 1901, 450). It is possible, however, that the committee sitting to inquire into certain matters connected with the baronetage may recommend certain procedure to that end.

But in matters of trade a man may not use even his own genuine name in such a way as to lead the public to be under the impression that they are dealing with some other firm (*Valentine v. Valentine*, 31 L.R., Ir. 488; *Holloway v. Holloway*, 13 Beav. 209).

CHANGES OF NAME.

One of the fashions of modern times, which at first sight it seems difficult to account for, is that particular weakness which causes an endless number of people to change their surnames. But a little thought will give the clue to the rapidly increasing army who go through the world labelled in a form differing from the original advertisement of their known male ancestors.

It is a strange but nevertheless a true fact (and it is a fact which might be worth investigation by those who are at the present time engaged in the study of the reasons and causes of the determination of sex), that the undoubted tendency of aristocratic families is to become extinct or to end in heiresses, and as a consequence, for aristocratic surnames to become extinct. The usual supposition is that most families go up and down in a kind of switchback see-saw, and that the disappearance of a family simply means that it has sunk in the social scale beyond ready recognition. It cannot be denied that such cases have occurred, but they are not the rule; they are rare exceptions. The usual, the almost universal, course of events is that a family rises, intermarries with patrician blood, and in a few generations ends in an heiress or becomes extinct. There is no legitimate male descendant of any King of England who sat on the throne before the reign of George III. There is not a single English barony by writ¹ now held by a male of the family in which it was originally created.² There are only about 300 noble or gentle families now holding the same land in male succession which their male ancestors held even so recently as the reign of King Henry VII. There are many causes which have operated to this end, but the chief cause is this lamentable tendency of well-born families to terminate in the persons of females.

¹ Heritable by or through females.

Unless by any chance an instance which is overshadowed in a later creation by patent of a higher degree has been overlooked.

When a family has been associated with certain lands for several centuries, and where the name and lands have been inseparably joined and interwoven for so long, where the same blood (even though in or through a female) still remains, it is but natural enough that there should be a desire to still keep the estate and the surname together. And in these cases, as there has been no sale of the lands to an alien race from time immemorial from this cause, there have been these changes of surname. There is scarcely an English pedigree without such a break. It is doubtful if there are fifty authentic male pedigrees to-day in England which can be taken back to the Conquest.¹

Thus the necessity of changing one's name argued a connection with and descent from an ancient family, *ergo*, it was an aristocratic thing to change one's name or take a double name. After that, of course, came the deluge of such changes.

At a much later date came the class who, with no inherited obligation to do so, were glad enough to perpetuate by a change of surname, or by the adoption of a double surname, the fact of their descent in the female line from an ancient house.

At a still later date, probably within the last fifty years, has arisen yet another class, a typical product of the days we live in, who, for mere purposes of distinction, one might say from the *necessity* of distinction, have been glad to seize any plausible excuse to either make a complete change, or more often to

¹ Scottish, Welsh and Irish pedigrees are excluded from this estimate.

hyphen on some other name, in the hope that the combination will be more or less distinctive.

And herein lies another curious exemplification of what is alluded to above. Whilst aristocratic families die out, and aristocratic and distinctive surnames become extinct, the more plebeian families with very usual and common surnames thrive and multiply ; and whilst such names as Maltravers, Mauleverer, Conyers, Fitzalan, De Bohun, &c. have become extinct, the names of Smith, Brown, Jones and Robinson still increase and multiply as the sand upon the sea-shore. And with this steady multiplication and duplication, small wonder that distinction becomes advantageous. Consequently, as the reasons increase rather than diminish in the frequency of their operation, changes and assumptions of names are now an everyday occurrence.

It is hardly a matter of necessity to follow the example of Lord Randolph Spencer-Churchill, who, forgetting that he himself was *dans cette galère*, poured forth his scorn on "double-barrelled nonentities." The desirability, the necessity, the wisdom or the expediency of any change must be left to every man to decide for himself.

But in any case, if a change is to be made, it ought and must be made in the properly prescribed and recognised manner.

It seems to be a very general idea that a man may change his name as, how and when he likes, seeking the approval and authorisation of no one save himself. Nearly every solicitor will advise one to this effect, because the law books he refers to and relies

upon do not teach him to the contrary. This idea, unfortunately, is rapidly spreading, and to a great extent dates from the following dictum of a judge, who remarked from the bench: "I know of no law to prevent any man changing his name as often as he likes, provided that it is not done for the purposes of fraud."

Now, with regard to a change of name, there are two views as diametrically opposed to each other as they well can be. The one is that any man may assume at his pleasure any name, or as many names as he chuses. The other view is that no change can properly be made without the sanction of the Crown, conveyed in a Royal Licence, or else in an Act of Parliament.

As a matter of fact there is a good deal of truth in both views, which, as far as the theory of them is concerned, are not at all divergent.

The former view is chiefly based upon certain judicial dicta.

Chief-Justice Tenterden remarked [5 *Barnewell and Alderson*, 535],—"A name assumed by the voluntary act of a young man at the outset of life, adopted by all who knew him, and by which he was constantly called, becomes for all purposes that occur to my mind as much and as effectually his name as if he had obtained an Act of Parliament to confer it upon him."

Chief Baron Pollock [22 *Law Times*, 123], remarked,—"When by any Act of Parliament judges have the control of a particular roll of names, they will, on change of name, direct the new name to be added to the roll, though such name has been assumed without

a Royal Licence, and by the mere act of the person whose name is on the roll."

Sir Joseph Jekyll, Master of the Rolls [*Bateman v. Bateman*, 1730 (*P. Williams*, 65)], remarked,—“ I am satisfied the usage of passing an Act of Parliament for the taking upon one a surname is but modern, and that any one may take upon him what surname and as many surnames as he pleases without an Act of Parliament.”

To the foregoing may be added the remarks of the Attorney-General in the House of Commons on the occasion of the introduction by Mr. Macaleese of the “ O and Mac ” Bill. The Attorney-General, in moving the rejection of the Bill, said that it was quite unnecessary, inasmuch as there was nothing to prevent any man changing his name.

The matter was, however, before Parliament on an earlier occasion (the discussion of the *Jones-Herbert* controversy), and the then Attorney-General remarked “ that people were not bound to recognise the illegal assumption of a name.”

That is the unquestionable truth of the matter, and the true position is that whilst there is nothing to prevent any change of name, no unauthorised change of itself creates any right, and nobody can be compelled to recognise any change which long-established and universal custom has not sanctioned.

Now let us consider for a moment this other side of the question.

Chief Justice Tenterden's remarks absolutely presuppose every requirement necessary to create and establish a perfected particular custom, and are there

fore beyond cavil or question, and his statement of the law may be accepted *for such cases*, but for those only, *in which the requirements he lays down have been fulfilled*.

Chief Baron Pollock lays down no proposition of law, but merely recites a practice which, even if it be correctly recited, establishes nothing. The language used, however, leaves little doubt that he was merely quoting from the action taken by the Lord Chancellor in the case of *Jones or Herbert of Clytha*. The version of the Chief Baron is by no means a true representation of what actually did occur.

The judgment of the Master of the Rolls was absolutely upset by the House of Lords, his decision being reversed (4 *Brown's Parl. Cases*, p. 194), it being laid down by the House "that the individual ought to have inherited by birth, or have obtained an authority for using the name. [See also *Leigh v. Leigh*—15 *Vesey*, 92, and other cases there quoted.]

That decision absolutely upsets the bold contention that any man may change his name as he pleases.

Now, in law, wherein lies the necessity for authority? What is the authority which is needed? and why must that authority be the authority of the Crown or the higher authority of Parliament?

The whole thing is wonderfully simple if the correct initial step be taken in the chain of argument.

A name is an inheritance.

A man could not of himself create or grant an estate of inheritance to himself.—(*Vide* Judgment of Mr. Justice Chitty in *Austen v. Collins*—*Times*, 6th May 1886, 54 L.T. 903).

41 Therefore no man can create a name for himself.

Therefore no man can validly change his name by his own sanction and authority only.

All judicial, executive and legislative power was originally vested in the sovereign.

That power remains undiminished in every point, and to the same extent as originally, save where by express enactment of the State, or by an express relinquishing by the sovereign, or by the development or operation of the common law that power and authority has been specifically removed or diminished.

Nothing has occurred to remove from the power and prerogative of the Crown the right to give a surname, to sanction the change of a surname, or to create of its mere motion for any man the inheritance of a name.

Now land is an estate of inheritance, and precisely as a man can under squatter's right obtain an indefeasible title thereto, not by his own action in squatting, but by the universal custom of his neighbours and others in permitting him to own the said land for the specified period which, in this particular case, the law says shall perfect that custom, so can a man at birth, or subsequently, change his name, and acquire the "inheritance" of the new name by the custom of his neighbours, acquaintances and others, as and when he can prove that custom, but he has always to remember that he can compel no man to conform to a custom until he can prove that custom, and that whilst there are those who will not conform to his desire, he cannot prove the custom, and the

custom, therefore, cannot exist ; and that the law has fixed no limit of time (save the common law “ memory of man runneth not to the contrary,” *i.e.*, the reign of Richard I.) to perfect that custom, and that there is always the dissidence of the Crown weighing against the custom, which (save in the cases the Crown recognises) absolutely prevents any one pleading that custom as authorising any change. Until he can prove that custom, he has no unquestionable right to his name, and has established no inheritance in it.

The Crown in affairs of any importance will not recognise an unauthorised change of name, and in matters of the creation of a title, the gazetting of a commission or a presentation at Court, it declines to recognise a change of name (as to which in less important concerns it does not trouble to interfere), unless the change has been made with its sanction or by Act of Parliament, asserting its own prerogative to deal with the question.

With the introduction into the subject of the prerogative of the Crown, the question assumes a rather different aspect.

The Courts have the right to determine whether or not a given matter is within the prerogative of the Crown. But once having so determined, and the decision having been in the affirmative, the matter is thereafter entirely removed from the cognisance of the ordinary Courts.

From the earliest times the Crown has in England, as in some other countries, definitely made the assertion that changes of name and the sanction thereof are within its prerogative. But there never seems to

have been a case in which the Crown has deliberately put the existence of its prerogative to the test of a judicial decision, nor does the point ever seem to have been raised, or a decision given thereupon, unless this inferentially follows from the decision of the House of Lords (*ante*, p. 48).

But the prerogative being asserted upon good *prima facie* grounds, and consistently acted upon, and there being no decision on the question of prerogative to the contrary, the whole of the judicial decisions in which names have been an issue necessarily lose much of their weight and importance, and cannot be considered as more (if indeed they could under any circumstances) than decisions of law upon specific and stated facts and conditions, and certainly not as enunciations of canons of law.

With the exception of *Du Boulay v. Du Boulay*, the decisions may be divided into two classes, (1) the sufficient compliance with the requirements of a trust, (2) the validity or criminality of acts done in an assumed name. In neither of these classes of case has any decision been necessary on the abstract right or validity of a change of name *per se* without authority. In the latter class of case the question of a change of name is immaterial, providing identity is sufficiently established where proof of this is necessary, which is not always the case. In the former case it becomes merely a matter of the interpretation of the specific terms of a specific deed, will or settlement. In such circumstances, naturally the interpretation depends upon the terms. Where it is merely the expression of a desire—a precatory trust—the

change is not binding or imperative, and consequently any method of change will do, for, as regards the trust, even the fact of change cannot be called in question. The same remarks hold good where the change is a condition subsequent and there is no forfeiture clause. Where there has been no prescribed method of change to be adopted, and where the question is not complicated by a required assumption of armorial bearings, it has been held in many cases that an assumption of the name by Deed Poll, by advertisement, or of mere motion without either method of publicity, is a sufficient change for the purpose of inheritance, or for the purpose of satisfying the condition. Where any particular method of change has been specified, it follows as a matter of course that that particular method must be adopted.

At the same time it is open to very considerable doubt whether some of the decisions are justified, and one is inclined to think that a vigorous argument in favour of the prerogative of the Crown, particularly if supported by the Crown formally putting forward its asserted prerogative, would vitiate the past decisions that a change without authority satisfied a mere condition stipulating for nothing beyond a change or mere assumption of a name, and where no particular method of change was specified.

A judicial decision in favour of the prerogative of the Crown (a point still awaiting determination) would at once make a change by any other method than the sanction of the Crown or an Act of Parliament illegal, and it should be carefully noticed that the only decision by the House of Lords (see *ante*,

p. 48) definitely and distinctly asserts a change "by authority" to be essential.

There is this further point to be considered, particularly if the condition in the will or settlement be an unqualified command to assume a certain name, that it is doubtful how far any person has a right to make such a condition. If a change of name be a prerogative of the Crown, the matter remains at the pleasure of the Sovereign; and no subject has the right to attempt to command the exercise of or to fetter the prerogative of the Crown, nor has any person the right to assume the ability of another to obtain the passing of an Act of Parliament. Therefore an unqualified command may be an impossible condition from which the Courts will give relief (*Austen v. Collins*, 54 L.T. 903; *Kingston (Earl) v. Pierepont*, 1 Vern. 5; and *Joicey-Cecil v. Joicey-Cecil*, 10th June 1898), and the net result is that the condition is inoperative and void. The utmost limit to which such a condition can be properly made is that within a specified time the benefited person "shall petition for and do his utmost to obtain an Act of Parliament or Royal Licence of the Crown" that such a change shall be made.

In view of the assertion of the prerogative of the Crown, and when considering next the judicial dicta upon which the legal mind is wont to lay such stress, it should not be overlooked that from the reign of King Richard II., whilst there existed equal but different tribunals, with separate but equal jurisdiction, there has been maintained a long feud and rivalry as to the extent of their various jurisdictions; and the ordinary legal tribunals have been only too ready to

pronounce upon matters which really lay without their jurisdiction. There is a notorious case in which a judge once declined to admit an affidavit in his court because a barrister therein mentioned was not described as an esquire, and gave orders that on all future occasions a barrister was to be described as an esquire. Now, the state or rank, whichever it may be, of an esquire is not within the jurisdiction of an ordinary judge, and the fact that this certain judge required the barristers in his court to be described as esquires did not make them esquires, any more than the fact that if he had required them to be described as elephants would have made them quadrupeds of that species, for they would still have necessarily remained, not elephants, but specimens of the human race. The remarks made in the House of Lords upon the action of the lower courts at the hearing of the *Cowley* case are instructive upon the point.

These contested cases, which have been alluded to already, have been held to prove that the assumption of a name without a Royal Licence confers a property in that name. They prove nothing whatever of the kind, inasmuch as that point has never been an issue and has never been tried ; and, if the assertion of the royal prerogative be justified, the point is utterly beyond and entirely outside the jurisdiction of the courts in which these cases have been tried. The utmost extent of the interpretation of these decisions is this, that the assumption of a name without a Royal Licence (provided no Royal Licence was made necessary by the terms of the will or settlement) has been in some cases held to be suffi-

cient (under the express terms of the particular settlement litigated) for the inheritance of an estate, or that a name assumed without any specified authority, and as a mere matter of personal inclination, will answer many purposes ; for it should be remembered that the two crucial points upon which nearly every contested case has hung have been either (1) whether identity is sufficiently indicated by the use of a name which has not been ordinarily inherited, or (2) whether the unauthorised assumption of a name is sufficient to justify inheritance, and the ordinary legal tribunals have usually held that it is.

But there is another point. Does such unauthorised assumption constitute the creation of a right to the name? The answer is emphatically, No. The gift of a name or a change of name is within the prerogative of the Crown, and subject to the jurisdiction of the Crown conveyed through its court of honour, or such other tribunal as the sovereign may authorise to determine or select to advise upon a specific point. It is wholly outside the jurisdiction of the ordinary tribunals, which have no power to adjudicate upon the point, and which we say deliberately have never attempted to do so. **A name assumed without authority is simply an alias**, and has precisely the same weight as the grandiloquent names which are assumed for the purpose of the theatre, or the haphazard *nommes des plumes* which are adopted by so many writers.

The matter, therefore, hangs on the asserted prerogative and its validity, and it therefore becomes of importance to trace the assertion of such prerogative,

together with its exercise. The first instance of a change of name by command of the Crown, to which reference has been made by former writers, occurred in the year 1106. Nigel de Albini, who (according to the register of Furness Abbey) was bow-bearer to Rufus and to Henry I. at the battle of Tenchbray, dismounted Robert, Duke of Normandy, and brought him prisoner to the king. Henry gave the lands of the attainted Robert Mowbray, Earl of Northumberland, "in Normandy and England, to Nigel, as a reward for his great services and bravery;" and "by the special command of King Henry" he and his posterity were commanded to "assume the surname of Moubray" (*Dugdale's "Bar,"* vol. i., p. 122), "which they accordingly did, and retained the same as long as the issue male continued, which determined in John Moubray, Duke of Norfolk, in the time of King Edward IV., whose heirs were married into the families of Howard and Berkeley." Nigel de Albini was a Moubray maternally. The value of this precedent is doubtful, because it has yet to be definitely proved that the appellation was at that time a surname and not a territorial designation accruing in ordinary course from the possession of the lands.

The second case of assumption by command occurred in the reign of King Edward I., who, disliking the iteration of Fitz in the name of a famous noble, John Lord Fitz-Robert (whose ancestors had continued their sires' Christian names as surnames), commanded him to abandon that practice, and to bear the local name of the capital seat of his barony (Clavering), which command Fitz-Robert complied

with, and became John de Clavering. The authority of this precedent cannot be much greater than mere tradition.

The third case is that of the great-great-grandfather of the Protector, Richard Williams, a gentleman of good family in Wales, who changed his name to Cromwell, in compliance with a wish (which there can be little doubt was equal to a command) of Henry VIII., taking that particular name in honour of his uncle, Thomas Cromwell, Earl of Essex, then a favourite minister of that king (*Dugdale's "Bar,"* vol. ii., p. 374).

This Richard Cromwell, on May Day 1540, at a great jousting at Westminster, which had been proclaimed in France, Spain, Scotland and Flanders, was appointed one of the six challengers against all comers. On May 2 he was knighted by the king. On the 3rd he did tourney with the other challengers against forty-nine. Stowe only notes the "overthrow of Master Palmer and his horse in the field" by Sir Richard; and on May 5 the challengers fought on foot against fifty single handed, and again Sir Richard only is named by Stowe as having done a feat of arms in overthrowing an Esquire of the name of Culpeper. It is a well-known fact that the stringent laws enforced by the Court of Chivalry, or the Earl Marshal's Court, on the occasion of jousts and tournaments, debarred any person from entering the lists who had taken upon himself the surname of another illegally.

Finlayson also quotes, as follows, another case very much more to the point, which was brought

“before King Henry II. and his peers in Parliament, when the application for the assumption of a surname (and that surname a local name) was granted and confirmed to the applicant and his heirs, and he was summoned thereto by that name.” This statement may be verified on referring to the worthy Roger Dodsworth’s MSS. in the Bodleian Library, Oxford (*Ex præfato Regist. de Cocker-sand, fol. 72, B.*). A copy of this charter may also be found in Dodsworth’s “*Monasticon*,” Dugdale’s edition, vol. vi., p. 909, entitled “*Gilbertus Will. qui quidem Willielmus fecit se vocaru coram rege in parlamento Willielmum de Lancaster, baronem de Kendale*,”—that is, “Gilbert William, which said William caused himself to be called William de Lancaster, and caused himself to be called in presence of the king in Parliament, William de Lancaster, Baron de Kendale.”

“Now, from the known jealousy of Henry for his prerogative, De Lancaster must first have had permission granted him to bring his request before the Chamber. King Henry II. was not the sovereign that would sit and hearken to so much assumption from a subject, and that subject an officer of his Court (Sheriff of Lancaster) and the son of a justice of the King’s Bench, without having sanctioned the preliminary steps.”

Amongst those who have paid little or no real attention to the matter, it is a common enough occurrence for the prerogative and authority of the Crown to be denied, for the stated reason that the Crown has no power to confer a name or make a gift of a

patronymic, and has never done so ; and that names having been originally assumed of mere motion, they can equally easily be changed. Such an assertion is, however, wrong. We have here, following Finlayson, quoted the historic examples in which the Crown gave the name of De Mowbray, and in which Henry VIII. gave the name of Cromwell to a Richard Williams, who was the male ancestor of Oliver Cromwell, the Protector, after whose name Vincent wrote the words "of ever damned memory."

The illegal assumption of surnames was not tolerated during the days of Shakespeare ; he most emphatically condemns it in his play "The Taming of the Shrew" :

"PETRUCIO. Why, how now, gentleman ! Why, this is flat knavery, to take upon you another man's name."—Act V., Scene I.

Camden quotes a common saying of his time ridiculing such covetousness ; he writes that a gentlewoman, Doctor Andreas, the great civilian's wife, said : " If fair names were saleable, they would be well bought " (" Rem.," p. 153).

Lord Hoo, in the reign of Henry IV., required a change of name to be made in connection with the settlement of his lands, but this being done without the licence of the Crown, was specifically declared by the Crown to be void.

There are not many instances which can be quoted in early times, and as to those which can, a certain amount of doubt must attach, for it should be borne in mind that names in those days were not considered to be necessarily hereditary or

stationary, and a man's surname was no more than an additional description, for the purposes of identification, added to his Christian name; and even at a later date Sir Edward Coke, in his treatise upon law, distinctly says that a man may have many surnames, but only one Christian name. It is not therefore much good attempting to deduce settled rules of law or arguing very fully upon the practices at that date, and the foregoing are simply mentioned to show that from the earliest times the Crown is supposed to have asserted its prerogative, and occasionally interfered for this purpose in cases which it deemed of sufficient importance. That the everyday man was not interfered with, and pretty well pleased himself in such matters, is simply due to the manner in which the Crown and the upper classes looked upon the lower classes as people who had neither right nor concern in matters of honour. Whatever a plebeian did in those days in matters of honour was not considered worth interference with, or likely to jeopardise the rights of his superiors. The feeling was practically the same as that by which the liberated slaves in the United States took, and were allowed to take just whatever names suited their euphonic fancy.

But when we come to Stuart times, matters had vastly altered. With the abolition of feudal tenure in the reign of Charles II., the great barrier which acted as a division between the upper and the lower classes was removed. The Crown no longer drew a distinction between those who owed service direct to itself and the rest of its subjects, and from that date the broad distinction between the gentry and others

no longer existed. To all intents and purposes, however, it had been ignored for some time previously.

The Civil Wars which had raged throughout the kingdom had upset many things, and both the prerogatives of the Crown and many matters of law were in a state of chaos when King Charles came back to his own again. The result was a most careful inquiry into all matters relating to the prerogatives of the Crown, and from that date those prerogatives which remained were cherished and asserted, and we take it that no one yet has presumed to controvert the principle, which is accepted throughout the whole of Europe, that matters of honour are prerogatives of sovereignty; so that we must look to the Stuart period for a definite pronouncement upon the subject of the change of name if this savours at all of a royal prerogative.

That names and changes of names are matters within the prerogative of the Crown is neither the assertion of a modern assumption of authority nor the reassertion of an authority which has lapsed. So long ago as the reign of Edward II. a Royal Licence is said to have been issued to Edmund Deincourt, that, in accordance with the settlement of his land, which was specifically authorised, a consequent change of name and arms should be effected.

With regard to this particular licence, the following remarks occur in "A Discourse of the Duty and Office of an Herald of Arms, written by Francis Thynne, Lancaster Herald, third Day of March, Anno 1605. In a Letter to a Peer":

"According to which it seems the Law of Arms

was in England in Times past ; for that he which had but only Daughters, or one Daughter to succeed him, might have licence of the King to alien his Name or Arms to any other for the Preservation of the Memory of them both ; as appear'd in the Case of the Lord Deincourt, in the Time of Edw. 2^d whereof the Record is thus in the Patent Rolls 10 E. 2. part 2 Mem. 13. Rex, &c. *Salutem : Sciatis quod quum pro eo quod dilectus, &c. fidelis noster Edmundus Deincourt, advertibat & conjecturabat, quod Cognomen suum et ejus Arma post Mortem suam in Persona Isabella filia Edmundi Deincourt hæredis ejus apparentis, a Memoria delerentur, ac corditer affectavit quod Cognomen & Arma sua post Mortem ejus in Memoria in posterum haberentur ; ad Requisitionem prædicti Edmundi & ob grata & laudabilia Servitia quæ bonæ Memoriae Domino Edwardo quondam Regi Angliæ Patri Nostro & Nobis impendit, per Literas nostras Patentes concessionis & Licentiam dedimus pro Nobis & Heredibus nostris eidem Edmundo, quod ipse de omnibus Maneriis, &c. quæ de Nobis tenet in Capite feoffare possit quemcuiq ; velit, &c.* Out of the Preamble of which Deed we gather (as before is said) that because he had a Daughter which could not preserve his Memory he might alien his Name and Arms according to the Law, Because none de Stirpe Agnationis was living to forbid the same. But withal it is gathered, that he could not alien the same without Licence of the Prince (who might dispence with the Law). But because the Law and Custom had permitted that Women should inherit with us both Lands, Honours,

Name and Arms ; and *Quod consuetudo dat homo tollere non potest.*"

Now, the only licence upon the Patent Rolls which we have been able to find to Edmund Deincourt is the licence of which Lancaster Herald gives the reference, as above quoted, and if this is to be taken as a precedent and authority, the permission for the change of name and arms must be presumed inferentially from the preamble. But it will be seen that this licence refers itself to a previous licence, and this previous licence we have been quite unable to find.

It seems more likely that Lancaster had simply gone by the preamble without carefully examining the remainder of the record, for the name and arms are not thereafter specifically dealt with, and the Royal Licence itself only dealt with the alienation of his lands and estates from his daughter Isabella to "William, son of John Deyncourt, whom failing to John, brother of the said William. Other property is alienated to Master Oliver Deyncourt and John Deyncourt of Parkhall." These letters-patent do not state the relationship of any of the beneficiaries to Edmund Deincourt, upon which the whole matter hangs. There is much uncertainty regarding the Deyncourt descent at this point, but most of the accepted pedigrees show the earlier-mentioned beneficiaries to be male collateral relatives, who consequently needed no licence to assume the name of Deincourt, which was already theirs. It seems strange that the simpler plan of marrying Isabella to one of her cousins was not adopted, for the lady was then both young and marriageable, and dispensations

for marriage within the prohibited degrees (if the cousins were so) were common enough and readily obtainable. But until the pedigree can be positively set out and the prior licence found, it is difficult to accept the foregoing as a precedent either way.

But whether Francis Thynne be right or wrong in his interpretation of this Deyncourt incident, the extract we have quoted from his "Discourse" is clear evidence that, in 1605 at any rate, it was the accepted opinion that a change of name needed the licence of the sovereign.

Let us now proceed to the reign of Charles II. There is a warrant which is dated June 6, 1679, which recites that the Duke of Newcastle had represented that his son and heir-apparent, Henry, Earl of Ogle, had married Elizabeth, Lady Percy, sole daughter and heir to Jocelin, late Earl of Northumberland, deceased, and had "earnestly besought us to grant our Royal Assent, leave and allowance, That he the said Henry, Earl of Ogle, and the descendants of his body by the said Eliz. Lady Percie, may assume and take the surname of Percie, and bear the Armes of Percie quarterly with his own Paternall Armes, *neither of which may regularly be done according to the Law of Armes without y^e. speciall dispensacon and Licence of us, as we are by Our Supream power and Prerogative the onely Fountain of Honour.* Know ye, therefore, that we of our Princely Grace and Speciall Favour, at y^e humble request of the said Duke of Newcastle and Earl of Ogle, have given and Granted, and do by these presents give and grant, unto him the said Earl of Ogle and to the heirs and

descendants of his body to be begotten on y^e said Eliz. Lady Percie, now his wife, and to every of them, full power, license and authority to assume and take," &c. The patent goes on to recite the permission given, and ends with a clause requiring the warrant to be duly registered in the College of Arms.

But we are not dealing only with ancient times, for even so late as the reign of George III., the Crown, by its letters-patent, specifically gave and granted the name "of Bladensburg" (to be added to the name of Ross) to the descendants of General Ross, who captured Washington from the Yankees. Now there can be no question of this being a case of the mere sanction by the Crown of the assumption of another name. It was a definite and specific gift and grant of a name, and no one has so far questioned the right of the Crown to make this gift.

In an article by Lord Dundonald in the *Nineteenth Century* ("Protection for Surnames," January 1894) occur the following sentences :—

"Even as late as Charles the First's reign we have an example recorded of a fine being imposed on a person for the assumption of the name of another family. The defendant was fined £500, and, in the quaint words of the old record, he was 'ordered to be degraded and never more to write himself gentleman.'"

Where Lord Dundonald got his information from we cannot say, and it is much to be regretted that he did not give chapter and verse and full references, as their omission much discounts the value of the statement. We have but little doubt, however, that it

reads very much like a judgment of the Earl Marshal's Court, but it would be like looking for a needle in a bundle of hay to attempt to locate it without a further and more detailed reference.

The first Royal Licence, therefore, that was issued in the present form dates, as we have seen, from the reign of Charles II., and this method has been subsequently, continually and continuously adopted up to the present time.

But in the early Hanoverian reigns a practice sprang up of obtaining an Act of Parliament for the purpose. Probably this was originally due to a desire to create an entail of the lands at the same time ; and, for the purposes of the entail, an Act of Parliament was desirable ; and as the assumption was consequent upon the entail, the condition relating to the assumption was made in the same instrument which created the entail. And though the question of the name and arms was a matter of honour, and in the Royal Prerogative of the Crown, the Royal Licence upon this matter of honour was contained in and conveyed by the Royal Assent to the Act of Parliament. Now most changes of name were consequent upon entails of land, so that the idea sprang up that an Act of Parliament was necessary for a change of name, and such Acts of Parliament were frequent in the reign of George III.

What actually took place at that period very considerable research has not yet brought us definite knowledge. A statute of George III. is frequently referred to, which is supposed to have enacted that a change under the Royal Sign-Manual and Privy

seal was to be held to be equivalent for an Act of Parliament for the change of name and arms. This statute is referred to in the *Cornhill Magazine* (July 1862), in an article under the heading "Surnames and Names," as follows :—"You may go to a still greater expense if you please, for you may have an Act of Parliament ; but the statute of George the Third superseded the Acts of Parliament, by making changes of name under the Royal Sign-Manual as legal as when they are effected by Parliamentary enactment." But we can find no such statute, and do not believe that any such Act was ever passed. We are confirmed in this belief by the fact that the Crown had from a long period asserted the fact that matters of names were within its prerogative, and had continually exercised that prerogative, and issued Royal Licences by virtue thereof, during the whole of the period within which these Acts of Parliament were frequently applied for.

Another account of what took place has been supplied to us, and we believe it to be the correct one. It is to the following effect :—Many of these Acts of Parliament related to changes of arms ; some of the conditions were of such a kind that it was difficult to reconcile them with the recognised laws of arms. In addition, the Heralds' College considered that many of these Acts of Parliament were in conflict with their chartered and patent rights, by which they enjoyed the original cognizance and control of all coat armour. In consequence, the propriety of inserting clauses relating to arms in Acts of Parliament was questioned by the College of Arms,

who approached the Crown upon the point. The King, in the usual course of events, referred the whole matter to the law officers of the Crown for their consideration and report. The law officers of the Crown reported that matters of names and arms were within the prerogative of the Crown, and that a Royal Licence to effect the change was a proper and sufficient course to be adopted, and that it was unnecessary to obtain an Act of Parliament to confirm the personal licence of the sovereign. Certain is it, that private Acts of Parliament for the assumption of a name have practically ceased since about that period, and most subsequent lawful changes in England have been made by Royal Licence. Of these many hundreds have been issued.

From that time forward the Royal Prerogative has been universally and continually and continuously asserted, in the form of a Royal Licence under the Sign-Manual and Privy Seal.

The question of Royal Licences and changes of name was on one occasion argued at length in the House of Commons. The question had arisen with regard to the celebrated *Jones or Herbert of Clytha* case. There is a witty little story told about this case that Mr. Jones, before making the change, asked Lord Pembroke—as the head of the Herbert family—if he had any objection. Lord Pembroke replied that he had no personal objection in this particular case, but that if everybody named Jones proposed to adopt the name of Herbert, he himself felt it would be necessary for him to adopt the name of Jones.

The circumstances of the case were as follows :—

There was settled in the county of Monmouth at Llanarth and Clytha a family of the name of Jones, whose ancestors, it would appear, had once used the surname of Herbert, and were descended from the same stock as the Herberts, Earls of Pembroke and Carnarvon. In 1848 Mr. John Jones, of Llanarth, who was afterwards sheriff of his county, obtained the Royal Licence for changing his name to Herbert. It may be presumed that he was chiefly moved thereto by a natural desire to discard a somewhat homely and frequent surname in favour of one more euphonious and infrequent, and probably to emphasise his undoubted though very remote kinship to the various ennobled families of Herbert, for the pedigree which Mr. William (Jones) Herbert published in justification of his change shows that the paternal ancestors had borne the name of Jones for eight generations, and that some four or five hundred years had passed by since any of them were known by the name of Herbert. Both Herbert and Jones are merely patronymics, and in origin the one is no more distinguished than the other. Mr. John Herbert had married the only child of the late Lord Llanover, better known as Sir Benjamin Hall, M.P. for Marylebone, who, in his capacity of Lord-Lieutenant of his county, afterwards raised the discussion by his refusal to recognise the change from Jones to Herbert made without Royal Licence by another member of the family of Jones. It was in 1861 that Mr. William Jones of Clytha, uncle of Mr. John Herbert, late Jones, of Llanarth, actuated, it may be assumed, by the same reasons as had in 1848 moved his nephew,

adopted the ancestral name of Herbert in lieu of the obnoxious one of Jones. Mr. William Herbert, late Jones, of Clytha, like his nephew, wished for a Royal Licence. It was indeed suggested at a later date that the application to the Home Office had been refused, but he appears to have gone no further in his application than to consult one of the heralds, and that, as the opinion was somewhat hostile to his proposal, he dropped that procedure, and ultimately effected the change without obtaining the accustomed permission for the purpose. Probably this unauthorised change, of local and personal interest only, would have passed unnoticed had not Lord Llanover, as Lord-Lieutenant of Monmouthshire, declined to permit Mr. Herbert of Clytha to qualify for the magistracy in his new name, or to grant a commission in the Militia to the son in any name but that of Jones. It might have been thought that Lord Llanover in such a matter would have preferred to see the near relatives of his son-in-law bearing the same name, and would have assisted them as far as lay in his power. It is evident that he held strong views to the contrary. Whether it was due to any personal feeling or to an exaggerated view of his duties as Lord-Lieutenant, it is now perhaps not very material to inquire. However, it was Lord Llanover who raised the question of Mr. Herbert of Clytha's right to change his name in the way he did; he corresponded upon the matter with various officials, including the Home Secretary and the Chancellor, and took the course of publishing the letter in the newspapers in order to defend, despite the annoyance it would cause to a near connection,

the view he enunciated—"that it was his duty, as Lord-Lieutenant of the county, to preserve intact the prerogative of the Queen, who can alone sanction and legalise a change of name."

In consequence of his persistent refusal to recognise Mr. William Herbert or his son under any other than their "real" name of Jones, or to recommend the son for a commission in the Militia, the subject was at last brought to the notice of the House of Commons by Mr. Roebuck in the form of an address for a return from the Home Office of the names of all persons who had applied for licences to change their names since 1850; "of the instances in which such licences have been granted during that period, together with a statement of the names of the successful applicants and of the names which they have been permitted to assume by Royal Licence; of the names of the persons so applying who have been refused during the same period, with the reasons assigned in each case for the refusal; of the principles by which the Home Office is guided in granting and refusing such licences, and of the amount of fees demanded for such licences since 1850, and the manner in which the moneys received have been applied." To this motion, which was seconded by Colonel Clifford, the Secretary of State, Sir George Grey replied. After stating that Mr. Jones of Clytha had not applied for a Royal Licence, he said: "The hon. and learned gentleman (Mr. Roebuck) says there is no doubt that any person may assume any name he chooses without Royal Licence. Now I am not going to dispute the legal question. I believe there is no legal right to a

name. Any person may take any name he pleases, *but it does not follow that everybody else will at once recognise him by that name.* It is by no means a matter of course, because a gentleman who has hitherto been known as Jones suddenly calls himself Herbert or any other name that whim may direct, that all the world will immediately acquiesce to the alteration. *In short, this is rather a question of fact than of law.* A man's name is that by which he is generally known. How he may have acquired it does not matter. It is his name, and he has the right to be called by it if it is the name which he usually receives amongst his friends and acquaintances.

. . . As to the principle by which the Home Office has been guided in dealing with these applications, I have to inform my hon. and learned friend that there is no written law on the subject. About 200 years ago the practice of applying for permission to change names arose, and in 1783, in consequence of the frequency of these requests, it was deemed necessary to put some check on them. A regulation was therefore made that all cases should be referred to the College of Arms. That reference, however, is not necessarily decisive, as it is intended only for the information of the department. That usage has been universally adopted, subject to the modification introduced by Sir Robert Peel, that when there are no plausible grounds for an application, and it is obviously the result of mere whim or caprice, it should be at once declined without any reference to the College of Arms, leaving it to the applicant to exercise the right which the hon. and learned gentle-

man said all possessed of changing his name on his own responsibility."

The Home Secretary further stated that he was willing to make returns of the number of applications which have been made and the number which have been rejected, and to give every information as to the fees which are paid over to the fee fund. This was, under protest, agreed to by Mr. Roebuck.

The Solicitor-General (Sir Roundell Palmer) added that to the best of his belief there was no positive law on the subject. The fact was that surnames grew up mostly as nicknames. That very origin showed that there was no positive law on the subject. It was a matter of usage and reputation from the beginning, the name clung to the man, and the law permitted him to shuffle it off if he could. There was no law forbidding a man to change his name, but there was also no law which compelled his neighbours to acknowledge him under the name he might assume. . . . When, however, by usage a man had acquired a name by reputation, those persons in public authority were obliged to acknowledge this new surname. There was, however, no principle of law that any person occupying an official position was bound to recognise a capricious or arbitrary assumption of names by persons who had no right to them either by descent or by the requirements of property."

On the subject of Royal Licences, it must be confessed it is well-nigh impossible to convert the attitude of the Crown as expressed by the Home Secretary into a logical or plausible sequence of reasoned argument. Yet it absolutely expressed

what is still the identical frame of mind with which the Home Office now regards the matter.

Either the Crown has it within its prerogative to sanction the change or it has not. If it has the right to sanction and control changes of name, and the right to demand and receive the fees in payment for its Royal Licence, then the name should be given and confirmed, and the prerogative should be judicially tested, and thereafter consistently enforced. Its officers ought not to make even the semblance of an admission that there exists any case in which Royal sanction is not necessary. If it be good law that a Royal Licence is totally unnecessary for any purpose, then it hardly seems honest to demand the fees on a Royal Licence. The argument that the fees are paid voluntarily and with a knowledge of the exact status of affairs is discounted beforehand by the fact that there are various circumstances in which the Crown compels the procuring of a Royal Licence.

Now, it is not customary for the Crown to swindle its subjects, and the reply of the Home Secretary, quoted above at length, is doubtless no more than the best reply that could be provided at short notice for a ministerial answer to a Parliamentary question. The officials know that the sanctioning of changes of name has been a matter of Royal prerogative from time immemorial, and the traditions of office prevent a deliberate relinquishing, but they do not appear to have the faintest idea of the grounds on which the Royal prerogative is based, nor the remotest notion of the reason for, of the action of, or the result of Royal sanction for a change of name. Once it is

grasped and admitted that a name is an inheritance, the whole thing is absolutely clear and beyond dispute.

Royal Licences came into general vogue in the upper classes, where a change of name involved a change of arms, as a matter of course, and there is no doubt that the language of a Royal Licence depends much more upon the circumstances of the change of arms than the change of name, and the "permissive" character, of which so much is made in arguing against the authority of the Crown, is probably due to the fact that the permission is directed to the officers of arms, and the Royal Licence is followed by a patent *granting* the arms.

Unless it be within the Royal Prerogative to sanction a change, and unless the Crown really has the power to enforce the obtaining of its Royal Licence, as it frequently does, then Royal Licences are absolutely purposeless documents, and it is derogatory to the dignity and high repute of the sovereign to either demand or receive the heavy fees which are payable. But if, as seems almost certain, a Royal Licence is not only justifiable but is the only legally effective method (save by Act of Parliament) of making an authoritative and binding change, then it is a matter for urgent and weighty consideration whether the terms in which they are issued should not be revised so as to render the documents deeds of gift and grant, and not merely of licence.

Such having been the regular assertion of the Royal Prerogative, and there being every reason to believe that not only is it based upon good grounds,

but also that it is the only absolutely unassailable position in the matter, as has already been explained more fully, it follows that the only unquestionable methods of change are by the exercise of that prerogative, or by the higher authority of an Act of Parliament.

PROCEDURE.

Changes of name are either "voluntary" or done under a condition contained in a will, settlement, or deed of trust.

Voluntary changes are not controlled in any way when done by Deed Poll or Act of Parliament. They are very stringently controlled when by petition and Royal Licence.

The stamp duty on a voluntary change is 10s. when the instrument is a Deed Poll, and £10 when it is a Royal Licence.

In either case there is an additional stamp duty of £40 when the change is made under a will or settlement.

It is an utterly anomalous position, which of itself goes far to demonstrate the illegality of the informal and unauthorised methods of change, that unless the terms of the will or settlement specifically require a particular method of change to be adopted, the Chancery Division of the High Court will hold a change of mere motion, evidenced by an advertisement in the press, to be a quite sufficient compliance for the purposes of inheritance. In such a case there is no instrument which can be stamped, and as stamps

cannot be collected save upon the actual stamping of an instrument, and cannot be recovered by an action, it follows that change by advertisement avoids this impost.

Nor do we see what instrument can be stamped if the change is made by Act of Parliament, although in this method there are certainly loopholes through which the Crown can make a *locus standi* to collect the tax.

It can, however, often be avoided by anticipation. An heir-apparent or expectant, knowing that he must succeed in the future, and on succession make a change in his name, will often find that the circumstances of his case are such (see post) that he is justified in making a *voluntary* change prior to the date at which it becomes compulsory. The £40 cannot be arbitrarily enforced upon what is an absolutely voluntary change, and the change having been already made, no further act of change is necessary at the date of succession, and consequently there is no further instrument to be stamped.

With the exception of the difference in the amount of stamp duty payable, the procedure is the same whether the change be voluntary or otherwise.

Before turning to the methods of change, it will perhaps be more in the true sequence if we examine the means to procure the necessity of a change.

Let us first repeat that the mere expression of a desire that a change be made carries no weight, and may be, as it often is, quite ignored.

A condition which is a condition subsequent is not enforceable in the absence of a forfeiture clause.

An unqualified command to assume a name, particularly where this is made to include the assumption of a coat of arms, is *prima facie* bad, and doubtless can be upset if contained in a formal deed. If contained in a will, however, the *cy pres* doctrine would probably operate (*Joicey-Cecil v. Joicey-Cecil*), and reference should be made to the remarks on page 104.

Now the chief changes of name, both of the past and of the present time, are changes made in conformity with a will or settlement. The following clause has been modelled on the lines of those which are regarded as precedents, and upon these nearly all clauses requiring the assumption of a name or arms have been modelled, but owing to the loose interpretations of the rules applying to changes of name, we have inserted the manner in which a change can be made compulsory :—

“ Provided always, and it is hereby agreed and declared (*or I hereby declare*) that every person who shall under these presents (*or this my will*) become entitled as (legal or equitable) tenant for life, or tenant in tail (male or in tail), by purchase to the possession or receipt of the rents and profits of the [*where there is a limitation to tenants in common, say, entirety of the*] hereditaments hereby settled [*devised*] (other than a married woman) shall within one year after he (or she) shall so become entitled [*where infants may become entitled in possession, add, ‘or being an infant, within one year after he (or she) shall attain the age of twenty-one years, vide infra A*]: And also that the husband of every female so becoming entitled (not being a peer, or the eldest or only son of

a peer, *vide infra* B) shall, within one year after such female shall so become entitled, **petition for and endeavour to obtain the Licence of the Crown, or an Act of Parliament, to enable him (or her) to assume the name of [Settlor's or Testator's name] in lieu of, or in substitution for, such other name or names which he (or she) may have been accustomed to use** (*vide infra* C), unless such person shall already, by rightful inheritance at birth, or by Royal Licence, or Act of Parliament, be rightly authorised to use the said name, and unless in either of the said cases such person shall be prevented from petitioning for the same by death : And if the person so entitled as aforesaid (or, in the case of a married woman, her husband) shall refuse or neglect within such year to petition for, and endeavour to obtain, the Licence of the Crown, or an Act of Parliament, as hereby required, and fulfil all requirements of such Licence when so obtained, or shall at any time afterwards disuse or cease to bear such name [*or name and arms*] in such manner as is before mentioned. Then, and in every such case, immediately after the expiration of such year, or such disuser, if the person, or the husband of such person so entitled as aforesaid, shall be a tenant for life, he or she shall, during the remainder of the life of the person so entitled, but without prejudice to the uses, estates or powers, preceding or over-riding the estate of the person entitled as aforesaid, and to the uses and estates limited in exercise of such powers, hold the rents and profits of the said premises in trust for the person or persons who would for the time being be

entitled to the same, if the person so entitled as aforesaid were dead, and so that in such case all powers annexed to the estate of the person entitled as aforesaid shall cease to be exercisable [and that any appointment previously made by such person, being a married woman, of a rent-charge (life or any less interest) to her husband after her death under the power hereinafter contained shall be void, and that the enjoyment of any jointure rent-charge previously appointed by such person (being a male) in favour of his wife, or of any portions previously appointed by such person (whether a male or female) in favour of his or her younger children, under the respective powers hereinafter contained, shall not be accelerated], and if the person so entitled as aforesaid shall be a tenant in tail (male or in tail) by purchase, then the estate in tail (male or in tail) of such person shall absolutely determine, and the hereditaments hereby settled [devised] shall immediately devolve on the person or persons next in remainder, as if such person were dead without having had issue inheritable under such limitation in tail (male or in tail)."

NOTE A.—This may necessitate two changes in the case of a female, once in her own right, and, after marriage, in her husband's right; and if this is not desired, the clause should be altered accordingly. It is advisable to call upon a minor, when a male, to have his name changed immediately upon his estate becoming vested; and a Royal Licence will be granted for a minor upon the petition of his (or her) guardian and good cause being shown.

NOTE B.—This exception is special, and should

not be put in unless the instructions require it. A peer has a name as much as a commoner, and can be called upon to change it in the same manner. A title has once been changed in a similar manner, but it is not probable that this would be permitted again.

NOTE C.—The following clauses should be substituted for the clause in heavy type when instructions regarding the assumption of arms, &c. or other instructions render them necessary, and these will be found to include all possible cases :—

1. Petition for and endeavour to obtain the Licence of the Crown, &c. to enable him (or her) to assume and take the name of _____ in addition to and after such other name or names which he (or she) may have been accustomed to use, the name (testator's or settlor's name) being used as the last and principal name.

2. Petition for and endeavour to obtain the Licence of the Crown, &c. to enable him (or her) to assume and take the name of _____ in addition to such other name or names which he (or she) may have been accustomed to use, his (or her) own name (beneficiary's) being used as the last and principal name.

3. Petition for and endeavour to obtain the Licence of the Crown, &c. to enable him (or her) to assume and take the name of _____ and to bear the arms of _____ in lieu of and in substitution for the name or names and for the arms which he (or she) has been accustomed to use and bear.

4. Petition for and endeavour to obtain the Licence of the Crown, &c. to enable him (or her) to assume

and take the name of _____ in lieu of and in substitution for the name or names which he or she has been accustomed to use, and to bear the arms of _____ either alone or quarterly with such arms as he or she may be entitled to bear.

5. Petition for and endeavour to obtain the Licence of the Crown, &c. to enable him (or her) to assume and take the name of _____ in addition to the name or names which he (or she) now uses, the name [settlor's or testator's name] being used as the last or principal name, and to bear the arms of [settlor's or testator's arms] either alone or quarterly with such arms as he (or she) may be entitled to bear.

6. Petition for and endeavour to obtain the Licence of the Crown, &c. to enable him (or her) to assume and take the name of _____ in addition to the name or names which he (or she) may be accustomed to use, and to bear the arms of _____ either alone or quarterly with such arms as he (or she) may be entitled to bear.

The foregoing variations which we have set out at length may seem somewhat superfluous to those legal minds which consider the subject no further than the due and proper or sufficient settlement of the estates ; but to those who are versed in the laws and requirements and in the penalties of armoury, the necessity of these varying forms to suit the cases which may arise will be readily apparent. Thus, whilst one testator may desire that his name alone shall be borne, and that it shall not be over-ridden by another name used either before or after it, another testator might be

content if he could advisedly rest assured that his name would be perpetuated in some form or another. Again, many testators are indifferent to this subject of armorial bearings, whilst others attach, and rightly attach, importance to the due perpetuation of the arms they have inherited.

Considering the expense which is incurred by the procuring of a Royal Licence, and considering also the difficulties frequently attendant upon the proof of the right to the various coats of arms, the advisability may well be questioned of so drawing the clause that a Royal Licence is necessitated thereby as in the precedents which we have given; but we would point out to those who contemplate inserting such clauses in the settlements of their estates, that if they wish to make such clauses and conditions valid and *binding*, there is no alternative but to make such clauses operative only after the obtaining of a Royal Licence or private Act of Parliament. For this reason, that in spite of all the decisions to the effect that the mere unauthorised assumption of a name is sufficient to justify inheritance (when a Royal Licence is not expressly stipulated for, and where no question of the assumption of the arms arises), the fact still remains, as we have already shown, that the assumption of a name of mere motion is an improper assumption, and it is absolutely and admittedly impossible to lawfully assume a coat of arms without the sanction and interference of the Crown; consequently, if the question of a Royal Licence be ignored, and the assumption of the name be required to be made by a Deed Poll, the condition is not *binding*,

and may be totally ignored or can be legally avoided, inasmuch as it is arguable, and no doubt on some future occasion will be argued that no man has the right to assume a name without the licence of the Crown, and that no man has the right to procure or require another person to commit or perform an illegal act. The result would be that such a condition had no weight or effect, and consequently the wishes of the testator would remain absolutely inoperative, and the expression of them valueless.

Therefore it behoves every man who desires his name and arms to be borne by those who are to follow him (when these future successors are not originally of that name or entitled to those arms) to take care that this clause requiring a Royal Licence or Act of Parliament to be obtained is duly inserted, for by its due insertion, and by this means only, can a man *enforce* upon his successors the fulfilment of his wishes. There is no clause which has yet been drafted which can be *relied* upon to attain this object, unless it has stipulated for a Royal Licence or Act of Parliament to be obtained, for the common law will compel no man to deliberately break the accepted and recognised laws and regulations of the Crown.

If it be a matter of indifference whether or not one's successors take one's name and arms, there is of course no necessity for such a clause at all of any sort or kind requiring them to do so; but if it be the desire or intention that they must and *shall* do so, and shall only succeed to one's property on condition of having done so, this end can only be

certain of attainment by making the Royal Licence or Act of Parliament absolutely essential.

The methods of change of name which are known in practice are (*a*) of mere motion, evidenced either by advertisement in the press or by Deed Poll; (*b*) by Royal Licence; (*c*) by Act of Parliament. Let us consider them in that order.

DEEDS POLL.

The Deed Poll, of course, neither conveys, nor creates any property or right in the new name, nor does it abolish the old. It is merely the commencement of an attempt to acquire a name by repute and custom, which custom cannot be created by the interested person, but must be established through the agency of and by the courtesy of neighbours and acquaintances in general, and requires long years to perfect it as a custom, often several generations, and which cannot be established against the Crown, and to which custom, if and when it may interfere, the Crown always dissents and thereby vitiates. In point of fact, action of mere motion creates an alias and nothing more.

If an alias be adopted, ordinary prudence requires that steps should be taken to create and perpetuate evidence of the fact of change, by means of which identity can at any moment be established. This evidence is usually made by means of newspaper advertisement alone, or of this in conjunction with a Deed Poll.

Advertisement alone is unsatisfactory, because old

newspapers get destroyed, do not lend themselves readily to preservation, and back numbers of a newspaper are often difficult or impossible to procure.

A Deed Poll is merely a declaration under Seal, this giving it a greater importance than an ordinary document, declaring the past fact or the intention of the assumption of a new name. The deed itself really amounts to nothing save the creation of evidence, and (without the slightest inquiry as to its accuracy, validity or legality) the authority of the Master of the Rolls is obtained for it to be entered on the Rolls of the Supreme Court of Judicature. That registration is merely a preservation of evidence, in a manner the Crown has appointed and devised for the preservation of any evidence. The registration does not in any way make the Crown a party to the deed or its validity, nor does it convey any sanction for the change; which change the Crown will contemptuously repudiate if the point ever comes, *e.g.*, before the War Office or the Lord Chamberlain's Office or the Home Office. Neither the Deed Poll itself, nor the registration of it, nor its advertisement make or authorise the change, and they neither create nor confirm any right to or property in the new name. The right to the new name still requires to be established by the long custom and repute of other people if and when that custom can be called into being, and proved to exist, and have existed. The Deed Poll in itself is the creation of evidence of identity, the registration of it is the perpetuation of that evidence, the advertisement is the notoriety of the change and the beginning of the custom it is desired to create.

But even as mere evidence of identity, the terms of a Deed Poll have a certain importance, for they must leave no doubt regarding that identity. The deed should at any rate recite the date and place of birth and parentage, and also the date and place of marriage (where this has already taken place), as failing the inclusion of the details in the deed, it will subsequently be difficult to establish either point. It should also state clearly the reason for the change. The following may be taken as a model :—

To all and singular whom it may concern, I, Thomas Henry Johnson, gentleman, presently residing at No. 10 Queen's Gate, in the Royal Borough of Kensington, give notice—That whereas, on or about the 20th of January 1834, John Crowther, of Kensington High Street, in the Parish of Kensington and County of Middlesex, gentleman, now deceased, intermarried at the Church of St. Clement Danes in the Strand, London, with Hannah Benson, of the last-named parish, spinster, now deceased, as his first and only wife, of which marriage there was issue one child, and one only, a daughter, baptised at the Church of St. Mary Abbots on or about the 5th of February 1835, by the name of Constance Muriel: And whereas the said Constance Muriel Crowther, now deceased, intermarried on or about the 10th of June 1858, at the said Church of St. Mary Abbots, with Richard Thomas Johnson, of Seaford, in the County of Kent, Esquire, in the Commission of

the Peace for the said county, then a widower, and since deceased: And whereas there was issue of the said marriage four children, and no more, of whom I, the said Thomas Henry Johnson, am the eldest and only surviving son, and was born on or about the 10th of March 1862, at No. 7 Kensington High Street aforesaid, and baptised on the 26th of the same month next following at the aforesaid Church of St. Mary Abbots, and intermarried on or about the 14th day of August 1898, at the Church of St. Paul, Stratford Road, in the said Borough of Kensington, with Helen Julia Vincent of that parish, spinster, now Helen Julia Johnson, and have issue an only son, John Crowther Vincent Johnson, born at No. 10 Queen's Gate aforesaid, on or about the 17th of January in the year 1902: And whereas I have succeeded as heir-at-law to considerable property formerly belonging to and enjoyed by the aforesaid John Crowther, my grandfather: And whereas I am desirous, out of gratitude and respect for my said grandfather, to keep his name in remembrance, now know ye that I, the said Thomas Henry Johnson, now Thomas Henry Crowther-Johnson, have assumed the additional surname of Crowther before and in addition to my previous surname of Johnson for myself and my said wife and for my descendants, and that I intend henceforth upon all occasions to sign and subscribe myself, and to be styled in all legal and other documents by the surname of Crowther-Johnson in lieu of and in substitution

for my former surname of Johnson.—In witness whereof, I have hereunto set my hand and seal this 20th of March in the year one thousand nine hundred and six.

(Signed) THOMAS HENRY CROWTHER-JOHNSON.
Formerly THOMAS HENRY JOHNSON.

Witness to the signature of the within-named

THOMAS HENRY CROWTHER-JOHNSON.

(Signed) ARTHUR ELLIS,

Solicitor,

51 Lincoln's Inn Fields.

After the Deed Poll has been registered in the Supreme Court it is usual to make public notification of the fact by means of an advertisement, preferably in *The Times*. The form following is the one usually adopted :—

Notice is hereby given, that I, Thomas Henry Crowther-Johnson, heretofore known as Thomas Henry Johnson, of 10 Queen's Gate, Kensington, W., gentleman, have assumed the additional surname of Crowther, in addition to and before my surname of Johnson, and that henceforth I intend to sign and subscribe myself by the surname of Crowther-Johnson in lieu of and in substitution for my former surname of Johnson, and notice is also given that such change of name has been formally declared and evidenced by a Deed Poll under my hand and seal bearing date the 20th of March 1906, which Deed Poll has been enrolled in the Central Office of the Supreme Court of Judicature.

THOMAS HENRY CROWTHER-JOHNSON.

But throughout the whole of this procedure it should always be borne in mind that the right to the name has still thereafter to be acquired by the custom and repute depending upon the complacency of other people.

The cost of a Deed Poll consists of the 10s. stamp, the legal charges for drafting and engrossing the deed, and a small charge for registration. Most solicitors would carry out the whole business, including the advertisement, for an inclusive charge of £5, or in a complicated case perhaps £10. As the cost of making the change by Act of Parliament need not, we believe, exceed this sum, as hereafter will be explained, the popularity of change by Deed Poll is not easy to understand.

ROYAL LICENCES.

We now turn to the usual method adopted for change of name by any person of accepted social position, the only method (save an Act of Parliament), moreover, which the Crown fully recognises, and that is by Royal Licence under the Sign-Manual and Privy Seal of the Sovereign.

This is obtained by submitting a petition to the King, lodged with an Officer of Arms, and transmitted by him to the Home Office, the petition being submitted to the King by the Home Secretary.

It should be at once stated that the issue of a Royal Licence is a matter of royal favour, and cannot be demanded by anybody as a right. Nobody supposes the King personally concerns himself as to the

decision, except possibly in some very exceptional case, which the Home Office in effect may leave to His Majesty's discretion.

Some of the objections to particular cases raised by the Home Office are very frivolous and capricious.

In petitioning for a Royal Licence it should not be forgotten that the terms of the licence follow (with the addition of conditions) the terms of the petition.

Consequently great care is necessary in drafting the petition that it shall ask for precisely what is desired.

It is possible that the will or settlement may leave no choice in the matter, but it is not an infrequent occurrence for a decision as to the order of the names, and consequently the terms of the petition to be decided by the validity or otherwise of the armorial bearings thereby affected. For example, it is idle to petition for the arms, which are to be assumed under the Royal Licence, to be borne quarterly with the arms of the petitioner when the said petitioner possesses none. The terms of the petition being then decided upon, the petition is then drawn up in the usual form and signed, and transmitted by the Officers of Arms through the Home Office to His Majesty. If the prayer of the petition be granted, a Royal Licence under the actual Sign-Manual and Privy Seal of the Sovereign is issued and transmitted to the College of Arms. It is there recorded, and any exemplification of the arms required under its terms is made if the same can be made according to the laws of arms. The fees upon a Royal Licence in England are somewhat as follows: For a voluntary

application to assume a name and having no reference to arms, the fees and stamp duty amount to £54 : 13s. Upon a Royal Licence to assume a name and arms, the fees for the Royal Licence and the consequent exemplification of the name and the arms amount to £121 ; but to this must be added the cost of establishing and proving the validity of each separate coat of arms which is exemplified in pursuance of the Royal Licence. If the right of the petitioner to his own arms is recorded in the college, together with the right of the testator (or, if it be a voluntary application, the right of the ancestor, with the descent of the petitioner from such ancestor, whose name he assumes), there is no additional expense involved, but if it be found that all or any of the arms are destitute of authority, the cost of establishing the right thereto must be added. If the assumption of either name or arms be in pursuance of a will or a deed of settlement, there is in any case an *additional* stamp duty of £40 imposed by the authorities of the Inland Revenue. The fees in Dublin are for a voluntary change of name, £60, or £100 under a will or settlement ; for a change of name and arms, £120, or (if under a will or settlement) £160.

The stamp duty consequent upon the change being made under a will or settlement, *i.e.*, the additional £40, can frequently be saved through a little family arrangement, by making a voluntary application before the date at which the provisions of the will or settlement become operative. For instance, if a person knows that he is likely to benefit under a will on the condition of assuming a certain name, it is

frequently the case that the rules governing these matters will permit a successful voluntary application to be made during the lifetime of the testator.

Now the Crown has the absolute right to grant or withhold at its pleasure its licence and authority for a change of name, and, if all one hears be correct, almost as many applications are refused as are granted. Needless to say the refusals are not the personal refusals of His Majesty, but emanate from the Home Office, through which all petitions pass, and the Home Office has assumed to itself the decision as to whether or not a case shall be put forward for the personal consideration of His Majesty. In no circumstances can any one compel either the Home Office to put forward a petition or His Majesty to grant his licence. But judging from past experience, one is able to indicate generally the cases in which an application is likely to be successful. To begin with, *no case has ever been known* in which the Crown has refused its licence for any change or assumption which is *in conformity with either a will or settlement*, so that *it may be taken for granted* that any application for a Royal Licence in pursuance of the requirements of either a will or settlement will be granted without the least difficulty being raised. Applicants desiring to assume a name under other circumstances must show what the Crown can consider to be good and sufficient reason why the change should be effected. The refusals as to which one hears occasionally do not all seem to be dictated from identical reasons, but it is difficult to get exact particulars of such cases, and though one would hesitate to say that the granting of

a Royal Licence upon a voluntary application was a matter of the caprice of the Crown or its officers, one cannot, however, definitely say that such and such a case would be invariably permitted, or that such and such a case would be invariably refused. Certainly no positive rule can be deduced from precedent. Consequently, one can only indicate the probabilities of consent or refusal. These will usually be found to be somewhat as follows, though as each case has its special circumstances, it is naturally difficult to speak with any certainty.

An application to assume a name where no descent can be shown from any family of such name, and where it is a mere matter of personal caprice, is almost invariably refused. There are, however, precedents to the contrary.

An application to assume the name of a family from whom descent in the female line exists is generally granted, if it can be shown that the female ancestor of that name through whom descent is proved was an heraldic heiress *in blood*, or where the applicant can show that he is an *heir of line* of any male of that family.

An application put forward in a case of adoption to assume the name of the guardian is usually granted if the application is made by the guardian and in his lifetime, but the matter is on an entirely different footing if the application is made merely at the caprice of the ward, and after the death of the guardian when the latter has left behind him no indication of his wish that his ward should adopt his name.

An application to assume the particle "De" in front

of a name is usually granted where unquestionable evidence can be produced of descent from some ancestor who properly so wrote his name.

A Royal Licence is almost invariably granted to a bastard to assume the name of his putative father *when the application is made by the father*. But if the application is left until after the death of the father, and if the latter has left no instructions to that effect either in his will or in any settlement, the Crown requires very certain and stringent proof to be produced of the fact of the parentage before it will grant its licence, and the mere presumption of illegitimate descent unsupported by evidence is not sufficient.

The application of a husband to assume his wife's name (or the name of any ancestor of hers) is usually governed by the fact of the heirship or otherwise of the wife. If she be an heiress *in blood* the application is usually granted, but it is not infrequently refused in cases to the contrary. But the Crown does not sanction the assumption of a name by the wife whilst her husband is alive, unless the husband joins in the petition to assume the same name.

The Crown, if reason is produced why its licence should be granted, does not trouble to decide in what order the name shall be borne, and in cases where a Royal Licence is granted, it is usually in the terms of the petition in which it is prayed for; consequently, care should be taken in putting forward the petition that the request it contains shall be precisely what it is desired to obtain. Judging by past precedents, the Crown will grant its licence to bear the new name in lieu of the old one, or else in addition to and before

the old one, or else in addition to and after the old. It will grant its licence for a name to be borne during lifetime, but not to descend to the children ; or it will grant its licence for the new name to descend to all the children from birth, or to the eldest son only, or (and this is a frequent limitation) to such persons as shall succeed to a certain estate or under a certain settlement. It will grant its licence for a name to be assumed without reference to the arms of either family, *and in that case the arms remain precisely as they were previously, and without alteration.* It will grant its licence for a new name and the accompanying arms to be borne in lieu of the old name and arms. It will grant its licence for a new name to be assumed in lieu of an old one and the arms of the two families quarterly. It will grant its licence for the new name to be used in addition to and after the old one, and for the new arms to be borne alone. It will grant its licence for two, three, four or five names to be borne in a string, but it will not grant its licence for either a name or a coat of arms to be borne or discarded at pleasure. The petition must ask for a definite thing, and if the prayer of the petition be assented to, that definite thing will be sanctioned.

The arms for the last and principal surname in England will always be exemplified in the first and fourth quarters, with the arms for the first name in the second and third. But it is possible to obtain an exemplification and a Royal Licence for two surnames to be borne together with the arms of the assumed name only, provided this assumed name is

the last and principal surname ; but arms for the first name will *not* be exemplified alone and without arms for the last and principal name. If it is desired that the Royal Licence shall confer the right to the two crests, it is a matter of necessity that the petition must pray *for the two coats of arms to be borne quarterly, and for the crest* of the assumed name specifically.

Royal Licences have been issued for the use of three, four, and even five distinct surnames as one compound name ; but the consequent arrangement of the arms carries the subject into the highly technical laws of armorial marshalling, and need not be here pursued beyond that the arms of the last name always go first.

But it should not be forgotten that a change of arms *cannot* be made without the interference of the Crown. With regard to the assumption of names, there are undoubtedly two widely divergent opinions held strongly by opposing advocates. There is no alternating opinion about the assumption of arms, which is admittedly absolutely illegal without the licence of the Crown. A person who has persuaded himself that a Deed Poll or a newspaper advertisement is sufficient for his purpose, and imagines he can at his pleasure adopt the arms of the family whose name he has appropriated, will simply find he has rendered himself absurdly ridiculous, has infringed the prerogative of the Crown, and has handed himself over to the tender mercies of his many friends and acquaintances, who will be only too ready to hold him up to the ridicule his vanity and mistaken

economy have richly entailed upon him. After he has borne the expenses attendant upon his pursuit and employment of unauthorised methods, and after he has accepted and lived down the ridicule and chaff of his acquaintances, and paid the other penalties of his actions, he will have the opportunity of taking the happy comfort to himself of the certain and definite knowledge that at the end of it all he will be no nearer the desired end, and will be simply using a *bogus* coat of arms, and using a name to which the right has still to be created, which may or may not happen in the succeeding two or three generations.

When arms are exemplified under a Royal Licence, and no blood relationship whatsoever can be shown to the family whose arms they originally were, certain marks are added to the coat of arms to indicate the fact. These marks naturally have to be such that will not interfere with the arms themselves. Usually it will be found that the mark of distinction is a plain canton upon a coat of arms, and a cross crosslet upon the crest; frequently, however, a cross crosslet is substituted upon the arms for the canton if this seems more advisable, and in rare cases other charges have been introduced for the same purpose. These marks are made *perpetual* when blood relationship will not follow in the future, but when a husband obtains a Royal Licence to bear his wife's surname or the surname of some ancestor of hers, the children will naturally obtain through their mother some blood relationship to the family whose name has been assumed. And in such cases the marks of distinction are governed by a special clause in the

patent of exemplification under which the husband (who has no blood relationship) is required to bear the marks of distinction, whilst the children (who have the relationship) are specifically exempted from so doing.

In cases of illegitimacy a son taking his putative father's name and arms has the recognised marks to indicate the fact of illegitimacy added to the arms in the exemplification, and the Royal Licence is only granted to him on condition that he bear these, and it is impossible at any future date for them to be discarded. But it is desirable to point out that there is one way out of the difficulty, and that is, that the condition of the bequest or settlement shall relate only to the name. It is then open to the son to obtain a grant of arms to himself without any reference to the arms of the testator, and this grant *de novo* will not contain these marks. But the arms would be different from the arms of the testator, and will be an entirely new coat of arms.

In cases where the illegitimate child is a daughter, a certain procedure has sometimes been adopted, though whether it is still always possible, we are unable to say. This procedure is as follows:—The daughter is ignored in the bequest, which is specifically made to her husband and his children, on condition that the husband assumes the name and arms. Now there exists no blood relationship, legitimately or illegitimately, between the husband and the testator, and it would be a manifest injury to the husband to require him to bear marks of illegitimacy when there is no stain whatever upon his own birth,

so that the arms will be exemplified to him with the mark indicative of the absence of blood relationship. But the daughter must be absolutely ignored, as if the entail is limited to her descendants in order to exclude any possible inheritance by other children of the husband by another marriage, then it is evident that the bequest is to the daughter and to the descendants of the old family through her bastard descent, and consequently such descendants must bear the penalty accruing to the manner of their descent. In putting forward this method of overcoming the penalty attaching to illegitimacy, it should be remarked that there is a manifest risk of the property passing in a direction which is not intended, and this risk should be well weighed before this procedure is adopted. From the point of view of the laws of arms, it is somewhat of the nature of a shuffle and is undesirable, and those endeavouring to adopt it will find that many difficulties are put in the way of its being carried out.

But in every Royal Licence which is issued the following clause will invariably be found :—"And to command that this our Royal Licence and authority shall first be duly recorded in our College of Arms, otherwise this our licence and authority be void and of none effect." And, moreover, if the petition and consequent Royal Licence concern the arms in addition to the name, a clause is also inserted that the said arms "shall be duly exemplified according to the laws of arms, and recorded in our College of Arms."

If the petition be that of a bastard, the Roya

Licence stipulates that the arms shall be borne and exemplified *with due and proper marks of distinction*, and in the case of a Royal Licence granted to a person to take the name and arms of a family, to which family he can show no blood relationship, the arms are required to be borne and exemplified *with such marks of distinction* as may be necessary.

The Crown will not grant its licences without the aforesaid conditions. Consequently, if the Royal Licence in any way relates to arms, the recipient of the royal favour will find it necessary to formally establish and record the right of the person to arms under whose will or settlement he derives benefit, or, if the application be a voluntary one, the right of his nearest ancestor of the name to those arms which he is desirous to assume. Further, if the Royal Licence requires that the arms to be assumed shall be borne or exemplified quarterly with any other coat of arms, then it at once becomes necessary to equally prove, establish and record those other arms.

Consequently, it behoves every testator or settlor who contemplates inserting in his will or settlement the clause requiring the assumption of his arms to take care to ascertain that he himself has an unquestioned right to those arms, and to establish and record such right in his own name and person. When this has not been done, the beneficiary is frequently involved in great expense in establishing and recording this right, and in obtaining information and details of proofs which may all the time have been within the personal knowledge of the testator or settlor.

Now it is a curious fact, and one singularly indicative of the vanity of a *nouveau riche*, that fully half of the arms, which under wills or settlements are required to be assumed, are found upon investigation to be bogus or void of authority, or (what is perhaps more frequently the case) that the right of the testator or settlor to the arms which he had assumed, and which he desired to perpetuate, was absolutely incapable of proof.

Now the Crown will not allow any man to meddle with the arms of a family to which he is not allied, or to which he himself could show no claim; consequently a clause in a will which related to a specific coat of arms by description would be held to be absolutely void, unless the testator or settlor himself, or his proved and admitted ancestors, unquestionably had a right to bear those arms in some manner or other; so that, if the testator desires that there shall be no question as to what arms he intends shall be assumed, he would be well advised to ascertain what are his own rights in the matter. It is seldom, however, that a will or settlement specifically details a particular coat of arms by a formal and technical description thereof. A beneficiary is usually only required to assume the name and arms of, for example, Smith. The Crown then grants its licence to the petitioner to assume the name and arms of, *e.g.*, Smith, such arms being first duly exemplified according to the laws of arms in the College of Arms. The matter is thus specifically committed by the Crown to the control and jurisdiction of its College and officers of arms. It is no good kicking against

the authority of the College, for the officers of arms are the officers of the Crown, and the Royal Licence is only granted *on condition* that the Royal Licence is recorded in the College of Arms, and that the arms are there exemplified according to the laws of arms.

Therefore, unless the arms can lawfully be exemplified according to the law of arms, the College of Arms will point blank refuse, and rightly refuse, to exemplify them. It is not the faintest use trying to bring pressure to bear upon the College of Arms, because the officers of arms are under no control whatever save that of the Crown, whose officers they are, and that of the Earl Marshal, who has been placed in control of the College by the Crown, and neither the Earl Marshal nor the Crown will interfere, unless the arms can properly be exemplified according to the laws of arms.

The frequent result is that many arms which are required to be assumed by will or settlement are incapable of lawful exemplification, and a deadlock immediately ensues. Consequently, there is a fault in the inheritance, for the licence to assume the name is granted subject to a condition which, being impossible of fulfilment, renders this licence absolutely void and of none effect. Though it has occasionally been held in the ordinary law courts that where the will or settlement does not specifically stipulate for a Royal Licence to be obtained, the assumption of a name by mere motion is sufficient to justify inheritance, no law court has up to the present presumed to take upon itself to say that the assumption of arms of a man's mere motion, and without the

interference of the properly constituted Crown authorities, is a sufficient compliance with the clause in a will or settlement requiring arms to be assumed. Consequently, if the will or settlement relates to the assumption of arms, which arms are incapable of lawful exemplification, the result, as we have said, is an immediate deadlock. There are two ways out of this, and, to the best of our knowledge, only two. The Crown is usually willing to grant new arms which may be lawfully borne and lawfully exemplified, in order to comply with the stipulation in the will or settlement. This is the course usually adopted, but it stands to reason and is evident that these arms are not the exact arms that the testator used and wished his successors to assume, but this is the only manner in which the Crown will permit the attempt to be made to fulfil the requirements of the will. The other method, which is but seldom adopted, but which in the eyes of the law is perhaps the *safer* plan, is the course which was taken in the recent case of *Joicey-Cecil v. Joicey-Cecil*. The course is simple. The matter is taken to the Chancery Division of the High Court of Justice, and it is demonstrated before the judge there sitting that the will or settlement contained the clause for the assumption of arms or of certain arms ; that the testator or settlor had no right to arms or to those certain arms ; that the Royal Licence granted in pursuance of the petition contained the usual clause to the effect that before it could take effect, arms, or these certain arms, should "first be duly exemplified according to the laws of arms in our College of Arms ;" otherwise the Royal

Licence to be void and of none effect ; that these arms, being illegal, were incapable of lawful exemplification, and that the College of Arms refused to exemplify them.

Such demonstration having been made, the Court will make a declaration that the condition requiring the assumption of the arms is a condition incapable of being complied with, and that therefore it is inoperative, and may be disregarded.

Therefore it will be seen that the vanity of the *nouveau riche*, which has required the assumption of his name and of arms to which he had no right title, has simply involved his beneficiaries in the expenditure of large sums of money, and in costly litigation, without having had the least permanent effect for the furtherance of his desire. Therefore we emphatically say that it is foolish to insert a clause requiring the assumption of arms either as a condition precedent or as a condition subsequent, unless the testator had himself an unquestioned right to bear arms. Without such a right, as has been shown, the insertion of the clause will have no effect whatever, and can be eventually overridden and ignored.

ACTS OF PARLIAMENT.

With regard to Acts of Parliament, it does not need the lore of a constitutional lawyer to be able to assert that an Act of Parliament can do anything. An Act of Parliament for change of name proceeds upon very similar lines to any other private Act. But as it is quite impossible for an ordinary person

to self-conduct his own Act, little, if any, purpose would be served by a lengthy recital in these pages of the ordinary parliamentary procedure of a private Act. The cost of a private Act varies according to different circumstances, and it needs a somewhat careful examination of the table of fees to estimate the cost. These fees, however, do not include the necessary services of counsel, solicitors or parliamentary agents. But making quite adequate provision in such direction, the entire cost of a private Act for a change of name would probably come to about £200, or perhaps rather less.

But the experiment has never yet been tried of running an Omnibus Act. There is nothing whatever in the Standing Orders of either House in contradiction of such action, and it stands to reason that if twenty people all desiring to change their names are jointly responsible for one Act of twenty clauses, the estimated cost of £200 when divided would be only some £10 each, which is little more than the expense involved in a change by Deed Poll, whilst an Act of Parliament is of greater weight and authority than even a Royal Licence. It is desirable that some one should secure the co-operation of sufficient people to enable the experiment to be made, and if this is ever done, perhaps in some future edition of the present work it may be possible to publish the results of the attempt. It may be noticed that an Omnibus Act of this kind is the procedure enforced in the United States, and if it prove to be possible to carry out such procedure in this country, then it follows that a method of change will have been demonstrated of

which the cost is no more than that of a Deed Poll, and which will validly create an unquestionable right to a new name, without submitting the desire to the capricious vagaries of Home Office control. That control may be, and probably is, exercised on some intelligible lines, but after long experience, we confess we are often puzzled to supply a motive or logical reason for many official happenings.

THE NAMES OF BASTARDS.

There is a very popular idea that the surname of a bastard is that of its mother. The supposition is absolutely erroneous. A bastard is "*filius nullius*," and in the eye of the law no more the child of its mother than the child of its father. It has no surname at all by inheritance.

It must acquire a name by repute, that is, it must (theoretically) wait until the popular reputation of neighbours, acquaintances and others has conferred a name upon it. What period must elapse before such a name, acquired by repute only, can crystallise into a heritable possession, no one can say. For the ordinary purposes of life a comparatively short period will suffice. But when one comes into contact with the Crown's authority and prerogative in such matters, the question is on a different footing. We have known the necessity of a Royal Licence insisted upon in the third generation.

It is difficult in attempting to deduce a rule of practice from known precedents, however, to decide

how much differentiation should be made on account of cases dealing not only with the name, but also with the arms. By the technical rules of the science of armoury, a Royal Licence is obviously essential before a bastardised version of a coat of arms can be exemplified, and on this account many precedents of non-recognition may need to be discarded as precedents, if considered as precedents to be regarded, in reference to changes of name only. On the other hand, precedents of recognition of a name may obviously be nothing of the kind, for the Crown may have had no knowledge of the real facts. Many precedents we are aware of are obviously discounted for that reason.

The absurdity of the supposition that a child inherits its mother's name is flagrantly apparent if the case be considered of the bastard child of a widow or married woman. In such a case the child, under the popular idea, would be and often is saddled with the name of the previous husband of the mother, the very person who had nothing to do with its birth, and from whom the child derives not an atom of blood descent. The matter is best evidenced in the case of the bastard child of a widow, for, of course, a child born in wedlock is presumed to be legitimate, and legally inherits the name of its mother's husband for so long as that legal presumption legally continues.

But the fact that a child not born in wedlock does not inherit its mother's surname cannot be too widely known, for, unfortunately, clergymen of the Church of England are much given to enforcing upon a bastard child the use of the name of the mother. A scandalous case of the kind occurred within the knowledge

of one of the writers. A child was born shortly before the marriage of its parents, but the circumstances of its birth were such that its illegitimacy was absolutely unknown to the outside world, and the child grew up to adult years known (as, of course, were the other children born after marriage) by its father's surname. Never once in the course of its life had it been known by the mother's surname. The banns of its marriage had been published in the father's name, when it suddenly came to the knowledge of the clergyman that its birth was illegitimate, and he insisted in republishing the banns in the mother's surname. A more unjustifiable act can hardly be conceived. But such officious and illegal interference is not uncommon. Banns of marriage—a notification to the public—ought to be published in the name by which the person is ordinarily known, or they defeat the very purpose for which they exist.

An illegitimate child is generally brought up in the family of the mother, and therefore is usually known by the mother's surname. But there is nothing in law, nor is there any custom enforceable in law, which requires a bastard child to take its mother's surname. There is nothing beyond the circumstance that in most cases that eventually proves to be the surname acquired by reputation. If the circumstances prove that the reputation is in another name, the father's, for example, or the surname of a parent by adoption, then the child has as much or as little (whichever it may be) right thereto as it would have had to the mother's name.

Upon baptism the child acquires an absolute right

to whatever names have been given in baptism. There is no reason in law or custom why an illegitimate child needs any "surname" over and above its baptismal names. A single baptismal name would not in practice be found sufficient for ordinary purposes, but when two or more names are given, there is not the least necessity for the addition of anything further. The obvious corollary of this assertion is the advice to first decide what surname it is desired that the child should be known by in after life, and to give that surname as the last baptismal name.

The argument upon which much discussion is based that "obviously a child must have a name" is fallacious as thus put, for we know of no law or custom which, in opposition to the repute commenced and adhered to by the child's relatives, and adhered to by the child itself on reaching years of discretion, can fasten upon the child a name he has not inherited and disclaims.

Providing the filiation can be indubitably proved (and stringent proof is always required), a Royal Licence can usually be obtained to "assume and take" the surname of the father, or else "to continue to use" that surname, if the reputation has been acquired therein. A Royal Licence is equally necessary and equally obtainable to use the mother's name, though we are aware of no precedent of a case dealing with the name only and having no reference to the arms. Nor are we aware of a precedent of a Royal Licence to a bastard to take the name of a more remote ancestor, but it seems an obvious and logical conclusion that, if on proof of filiation from one person

from whom no inheritance can be alleged, a Royal Licence is obtainable, it should be equally available for the name of another. But Royal Licences being no more than matters of grace and favour, no one can demand that favour as a right, no matter how logical may be the basis of the request therefor, if the Crown prefers to refuse.



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