

# THE LAWS OF ENGLAND

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A COMPLETE STATEMENT OF THE WHOLE  
LAW OF ENGLAND

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THE RIGHT HONOURABLE THE  
**EARL OF HALSBURY**  
LORD HIGH CHANCELLOR OF GREAT BRITAIN  
1885-86, 1886-92 AND 1895-1905  
AND OTHER LAWYERS

Third Edition

UNDER THE GENERAL EDITORSHIP OF  
THE RIGHT HONOURABLE THE  
**LORD SIMONDS**  
LORD HIGH CHANCELLOR OF GREAT BRITAIN

VOLUME 7

CONFLICT OF LAWS,  
CONSTITUTIONAL LAW

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The fact of the accession of the new Sovereign is published to the nation by a proclamation, which is issued as soon as conveniently may be after the death of the former Sovereign, by the lords spiritual and temporal, members of the late Sovereign's Privy Council, and the principal gentlemen of quality, with the Lord Mayor, aldermen, and citizens of London (*m*).

### SECT. 3. CORONATION

#### SUBSECT. (1). *The Ceremony and Services*

427. Examination of claims for services. Before the actual ceremony of coronation, the rights of the various persons claiming to be entitled to perform ancient services thereat, or at the coronation banquet (*o*), are examined into and adjudicated upon by the Court of Claims (*p*).

428. The ceremonies. The forms and ceremonies observed at the coronation have differed somewhat at the coronations of various Sovereigns (*q*), but the ceremonies (*r*) at the coronation of Queen Elizabeth II were:

(1) A presentation of the Sovereign to the people by the Primate accompanied by the Lord High Chancellor, the Lord Great Chamberlain, the

by the law of England there is no interregnum, and coronation is but an ornament or solemnity of honour; and so it was resolved by all the judges (*Calvin's Case* (1608), 7 Co. Rep. 1 a). Coronation is a solemn recognition on the part of the nation that the regal authority is vested in the person of the King, and on the part of the King a solemn recognition of the fundamental rights of the people (see 6 Bac. Abr. (7th Edn.) 390, note (a)); and it may be said to be a necessary ceremony, since otherwise the obligation of the Sovereign to take the oath in the form prescribed by statute (see the Act of Settlement (1700) (12 & 13 Will. 3 c. 2)) would be imperfect. Whether entitled by hereditary descent or not, the person crowned becomes the *de facto* King, and as such is entitled to allegiance and protected by the law of treason. See p. 208, *post*.

(*m*) This is the established practice, for which there appears to be no direct legal authority other than usage. For the form of proclamation used on the accession of Her Majesty Queen Elizabeth II, see the *London Gazette* Extraordinary dated 8th February 1952, p. 787.

(*o*) This has not been held since the coronation of King George IV.

(*p*) As to these services and the Court of Claims, see p. 205, pp. 206 *et seq.*, *post*. The information given here with regard to the coronation has been provided by J. D. Mathewson, Esq., of the Earl Marshal's Office.

(*q*) For the form of ceremony used at the coronation of Queen Victoria, see Phillimore's *Ecclesiastical Law* (2nd Edn.) 813. For the form and order of the ceremony used at the coronation of King Edward VII, which was based on the form observed at the coronation of William IV (the last previous occasion on which a queen consort was also crowned), but was somewhat abbreviated by leaving out the Litany (which was, however, previously celebrated), the sermon, and the first oblation of the pall or altar cloth and wedge of gold, and curtailing the ceremony of homage, see Bodley's *Coronation of Edward VII*. At the coronation of King George V, the Litany, sermon, and first oblation were restored; otherwise the ceremony was the same, except that the Archbishop of Canterbury crowned the Queen; see Form and Order of the Coronation of King George V and Queen Mary, and Supplement to the *London Gazette* dated 27th September 1911. At the coronation of Queen Elizabeth II the sermon was omitted and the Litany was sung before the service began; see Supplement to the *London Gazette* dated 20th November 1953, p. 236. A committee is usually appointed by the Sovereign for settling the details of the ceremony; see, e.g., *London Gazette* dated 13th March 1953, p. 1438.

(*r*) The essential ceremonies are to be found in the *Liber Regalis*, which is in the custody of the Dean of Westminster. It gives the forms used as early as the coronation of Richard II, and, probably, that of Edward II. See Wickham Legg's *English Coronation Records* 81, where the contents of the *Liber Regalis* are given. The older writers state the ceremony simply as consisting of the oath of good government (which originally came first, it seems), the recognition, and coronation. See Taylor's *Glory of Regality* 20, where he cites Doleman's *Rights of the Kingdom* 23, on the authority of other old historians.

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- Lord High Constable and the Earl Marshal, with Garter King of Arms, and a recognition of the Sovereign by the people (s);
- (2) The taking of the coronation oath in the form provided by statute (t);
  - (3) A presentation to the Sovereign of the Holy Bible (u);
  - (4) An anointing by the Primate with the consecrated oil (a);
  - (5) An investiture with the colobium sindonis, the supertunica, and the girdle (b);
  - (6) A presentation to the Sovereign of the spurs and sword, and an oblation of the latter by the Sovereign (c);
  - (7) An investiture with the armilla, the stole royal, and the robe royal, and presentation to the Sovereign of the orb (d);
  - (8) An investiture with the ring, the glove, the sceptre with the cross and the rod with the dove (e);
  - (9) The putting on of the Crown;
  - (10) The Benediction;
  - (11) The enthroning (f);

(s) This ceremony represents the old elective principle. "*Non a regnando dicitur, sed a bene regnando et ad hoc electus est.*" See Taylor's *Glory of Regality* 15, 16, where he cites Bracton, lib. 3, c. 9, and Fleta as to the early doctrine of election. See also note (h), p. 199, *ante*.

(t) See p. 208, *post*. As to the modifications of the present form of oath, see note (e), p. 202, *ante*. As to the provisions of the oath, see p. 208, *post*. The oath appears to have come first originally, because, presumably, the people would not have confirmed the election of the King had he not promised to govern according to law. See note (s), *supra*. The accession declaration may be taken at the coronation (as was done by King George VI), but is usually taken at the meeting of Parliament; see p. 202, *ante*.

(u) The Bible is presented as the most valuable thing on earth, and signifies wisdom, royal law, and the lively oracles of God; see Supplement to the *London Gazette* dated 20th November 1953, p. 6248. The rite originated at the accession of William and Mary (Wickham Legg's *English Coronation Records*, Introduction, p. xvii).

(a) The first English king to be anointed appears to have been Egbert, son of Ossa, King of Mercia (Selden, *Tit. Hon.* (1672 Edn.) 115). According to Thomas Becket, the oil was used in three places: "*in capite, etiam pectore, et brachiis, quod significat gloriam, et auctoritatem, et fortitudinem*" (*ibid.*, p. 109). The significance of the ceremony was pointed out by Robert Grosseteste, Bishop of Lincoln, to Henry III (*ibid.* (1614 Edn.) 135), and it is said by a modern writer that the regalia cannot be received without it. See Wickham Legg's *English Coronation Records*, Introduction, p. xxxiv. Queen Elizabeth II was anointed in the form of the cross on the palms of both hands, the breast, and the crown of the head. See Supplement to the *London Gazette* dated 20th November 1953, p. 6249.

(b) See Supplement to the *London Gazette* dated 20th November 1953, p. 6249. For a description of these, see Wickham Legg's *English Coronation Records* xl.

(c) The sword signifies justice, protection to the defenceless, and punishment to the offenders. The sword used for this purpose is delivered in exchange for the sword of State to the lord who carries that sword. It is by him delivered to the Archbishop, who presents it to the Sovereign. After the sword has been girt about the Sovereign by the Lord Great Chamberlain (at the coronation of Queen Elizabeth II the sword was not girt about the Sovereign but was held in her right hand) it is offered by the former at the altar, but is redeemed by the first-mentioned lord, who receives it from the Dean of Westminster at a fixed price. See Supplement to the *London Gazette* dated 20th November 1953, p. 6249.

(d) The orb with the cross signifies that the whole world is subject to the empire of Christ; it appears in early representations sometimes as a sceptre, that is with a staff attached, and sometimes without. The sceptre and orb were first used together at the coronation of James II (Wickham Legg's *English Coronation Records*, Introduction, pp. li, lii). For a description of the stole royal and armilla, see *ibid.*, p. xlii.

(e) The ring is the ensign of kingly dignity, and an emblem of defence of the Christian faith; the ring is placed on the fourth finger of the right hand. After this ceremony, and after a glove has been presented, the sceptre with the cross, symbolical of kingly power and justice, is placed in the Sovereign's right hand, and the rod with the dove, signifying equity and mercy, in her left; see Supplement to the *London Gazette* dated 20th November 1953, p. 6250. The rod with the dove appears upon the seal of Henry I, and its use probably became customary in the reign of Richard I. See Wickham Legg's *English Coronation Records*, Introduction, pp. lii, liii.

(f) After these ceremonies are performed the Sovereign is clothed with the full regal

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- (12) Fealty by the archbishops and bishops, and homage by the peers (*g*);  
 (13) An oblation by the Sovereign of a pall or altar cloth and an ingot of gold (*h*);  
 (14) The celebration of the Communion (*i*).

**429. Ancient services at coronation.** Various offices relating to services to be performed in connexion with either the coronation procession, the service at Westminster Abbey, or at the coronation banquet in Westminster Hall (if such be held), are by custom or usage of a hereditary nature, and are descendible, either in gross, or as attendant upon or as an apanage of some particular office or title, or as an incident of the tenure of land by grand serjeanty (*k*). Though some of these ancient services may be dispensed with by the Sovereign, the persons from whom they are due are bound to perform them if called upon to do so (*l*). ✓

**430. Tenants by grand serjeanty.** Where the services are incidental to the ancient tenure of land known as *magnum servitium*, or tenure by grand serjeanty (*m*), which is subject to peculiar properties (*o*), they must be performed, where the tenant is able, in proper person (*p*); and where the service (as in the case of coronation services) is to be done to the royal person of

dignity. Enthroning implies elevation, and the Sovereign is directed to be lifted up into the throne by the archbishops, bishops, and peers; see Supplement to the *London Gazette* dated 20th November 1953, p. 6250. So the early kings were raised on a stone, as at Kingston (King's Stone), where certain of the Saxon kings were crowned; and the Scone stone of Scotland is still used in the modern coronation throne. After the union with Scotland, 1706, the Scottish crown, sceptre and sword of state, were directed to be kept in Scotland as they were before the union, and so to remain in all time coming, notwithstanding the union (Union with Scotland Act, 1706 (6 Anne c. 11), art. xxiv).

(*g*) Since the coronation of King Edward VII the ceremony of homage has been abbreviated. For details as to the coronation of Queen Elizabeth II, see Supplement to the *London Gazette* dated 20th November 1953, p. 6251.

(*h*) See Supplement to the *London Gazette* dated 20th November 1953, p. 6251. The rite appears in the *Liber Regalis* (see Wickham Legg's *English Coronation Records* 116). Though offered at the ceremony, the pall and the ingot of gold (weighing one pound) do not, it seems, belong to the Church, but may be claimed by the Lord Chamberlain. The oblation originated in virtue of the commandment "Thou shalt not appear empty in the sight of the Lord thy God" (*ibid.*, p. 116). A Queen consort also makes an oblation of a pall or altar cloth and a mark weight of gold (see Supplement to the *London Gazette* dated 10th November 1937, p. 7074).

(*i*) Supplement to the *London Gazette* dated 20th November 1953, p. 6251.

(*k*) The Coronation Proclamation dated 6th June 1952, classes all such offices as existing "by ancient customs and usages of the realm, as also in regard of divers tenures of sundry manors, lands, and other hereditaments"; see the *London Gazette* Extraordinary dated 6th June 1952, at p. 3165.

(*l*) See the Coronation Proclamation dated 6th June 1952, where the services usually performed in Westminster Hall or in the procession were dispensed with, saving the rights and privileges of persons claiming to perform them at any future coronation; see the *London Gazette* Extraordinary dated 6th June 1952, p. 3165.

(*m*) "Tenure by grand serjeanty is where a man holds his lands of the King by such services as he ought to do in his own proper person, as to lead his army, carry his sword before him at his coronation, or to be his server at his coronation, etc." (1 Co. Inst. 105 b).

(*o*) Namely, (1) The land must be holden of the King only; (2) the service must be done when the tenant is able in proper person; (3) the service is certain and particular; (4) the relief due differs from knight's service (it is one year's value over and above all charges and reprises); (5) the service is to be done within the realm; (6) is subject neither to *aid pour faire fitz chevalier*, or *file marier*; (7) and pays no escuage (1 Co. Inst. 105 b). By the Tenures Abolition Act, 1660 (12 Car. 2 c. 24), s. 7, the honorary services of grand serjeanty are preserved, other than those of wardship, marriage and value of forfeiture of marriage, escuages, voyages royal, and other charges incident to tenure by knight's service, and other than *aid pour faire fitz chevalier*, or *pour file marier*. They are again preserved by s. 136 of the Law of Property Act, 1922 (12 & 13 Geo. 5 c. 16), but the tenure itself is abolished. See also title REAL PROPERTY.

(*p*) 1 Co. Inst. 107 a; and see note (*l*), *supra*.

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the Sovereign, a deputy cannot be appointed without the Sovereign's licence (*q*). It seems that a tenant by grand serjeanty held also by knight's service, and that therefore the services could not properly be performed by any person below the degree of knight (*r*); nor may the service be performed during minority, or by a woman (*s*), though in both these cases a proper deputy may be appointed by the Sovereign (*t*).

SUBSECT. (2). *The Court of Claims*

431. **Establishment of court.** It is customary for the validity of claims relating to the honorary services to be determined before the coronation by the Court of Claims; and the hereditary office of Lord High Steward, before whom the Court of Claims was originally held, having become merged in the Crown (*u*), the claims and petitions of all persons relating to coronation services are now adjudicated upon by a royal commission appointed by proclamation under the Great Seal, termed the "Committee of Claims" (*a*). This proclamation designates the persons (or quorum of such persons) who are to form the committee to receive, hear, and determine the claims and petitions exhibited, signifies the royal pleasure as to what portions of the ceremonies are to be observed at the coronation and considered by the committee (*b*), and provides for the appointing of a day for the meeting of the committee upon which all persons may attend for exhibiting their claims and petitions (*c*).

432. **Powers of court.** The court has power to decide on these claims, subject to the pleasure of the Sovereign, who may withdraw a claim from the commission, and transfer it to some other tribunal (*d*). The court

(*q*) 1 Co. Inst. 107 a. Where the tenure is of the King by cornage (namely, by winding a horn to give notice of the enemy's approach, which is also grand serjeanty), or to serve the King in war, there a deputy may be appointed by the tenant (1 Co. Inst. 106 b, 107 a).

(*r*) 1 Co. Inst. 107 b; Taylor's *Glory of Regality* 109.

(*s*) 1 Co. Inst. 107 b; Taylor's *Glory of Regality* 109. It is noted by Taylor that certain of the duties of the Lord Great Chamberlain, as to carry the King his clothes on the morning of coronation, must, in the case of a Queen, of necessity be performed by a woman deputy (*ibid.*, p. 111), and the same would be the case, *semble*, in respect of kindred services by grand serjeanty.

(*t*) 1 Co. Inst. 107 b.

(*u*) The first Court of Claims of which a record exists was held on the occasion of the coronation of Richard II, in 1377, when John, King of Castile and Leon and Duke of Lancaster, presided as Lord High Steward. The *processus factus* of this court is on the Close Roll of 1 Ric. 2, memb. 45; and is printed in Legg's *English Coronation Records* 131. The high stewardship belonged originally, it is said, to the family of Grentemaisnel, in connexion with the lordship of Hinckley, in the county of Leicester, and subsequently became connected with the earldom of Leicester by marriage, and descended to Simon de Montfort, on whose attainder it was granted by Henry III to Edmund Crouchback, descending from him to John of Gaunt (whose presidency over the Court of Claims at the coronation of Richard II appears to be the first recorded instance), and from the latter to Henry of Bolingbroke, afterwards Henry IV, in whom it became merged in the Crown (Taylor's *Glory of Regality* 110; but see Wollaston's *Coronation Claims* (2nd Edn.) 9, as to the doubt with regard to the lordship of Hinckley).

(*a*) Down to the reign of Henry VII high stewards appear to have been appointed at each coronation for holding the Court of Claims (see Wollaston's *Coronation Claims* (2nd Edn.) 12), and thenceforward commissioners in recent times without reference to the office of high steward. Wollaston's *Coronation Claims* (2nd Edn.) 12, cites Henry VIII's commission as omitting reference to the high steward; Taylor's *Glory of Regality* 111, note 23, cites James II's commission as referring to the high steward.

(*b*) See note (*l*), p. 205, *ante*.

(*c*) See the Coronation Proclamation dated 6th June 1952 (*London Gazette Extraordinary* dated 6th June 1952, p. 3165).

(*d*) As, for instance, in 1901, the opposing claims to the office of the Lord Great Chamberlain were transferred to the Committee of Privileges of the House of Lords.

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may, however, refer any claim to the Sovereign's pleasure (*e*). It would seem that a decision of the Court of Claims cannot be treated as *res judicata* so as to bar further litigation, but it must be treated as proceeding from a very high authority which it is not safe to call into question unless there is a very clear case (*f*).

**433. Procedure.** No precedents being in existence with regard to the Court of Claims, the rules of procedure and evidence to be observed are such as may be formulated by the committee.

In 1952 the court issued a notification (1) that all claims must be made by petition which might be sent to the clerks of the Court of Claims at the Privy Council Office; (2) that petitioners need not appear in person unless summoned; (3) that petitioners might appear by counsel, solicitors, or agents; and (4) that, if a claim was admitted in 1936 or 1937, all that was required from the petitioner or his representative was a short formal petition, without appearance, stating that he was the same petitioner, or his representative, and, if representative, in what capacity, and that a petition was allowed in 1936 or 1937; that if there was no counterclaim the clerks would place the claim in the list in order that it might be formally admitted upon the court being satisfied that the claimant represented the person whose claim was admitted in 1936 or 1937; that no claim excluded by the court in 1936 as inappropriate by reason of the royal proclamation would be placed on the list; and that any claim which in 1936 was referred to the Executive Committee for the Purposes of Arrangements for the Coronation would be referred to the same committee (*g*). As to evidence, the strict rules of evidence have been relaxed so far that the court has not inquired too strictly into whether documentary evidence was produced from the proper custody. Petitioners have had to give notice whether they appeared in person or by counsel or agent (*h*).

The judgments of the court are recorded by the Clerk of the Crown in Chancery (who, with the assistance of the Registrar of the Privy Council, is entitled to act as clerk of the court or of the committee), and are entered on the coronation roll (*i*).

**434. Hereditary offices.** The existing offices connected with the coronation which have been allowed by the Court of Claims as hereditary in gross, are those of Lord Great Chamberlain, the right to carry the great spurs (*k*), and certain Scottish and Irish offices. Certain other hereditary offices are either doubtful or obsolete (*l*).

(*e*) As in the case of the claim of the Earl of Huntingdon in 1838 to carry one of the swords.

(*f*) *Scrymgeour Wedderburn v. Earl of Lauderdale*, [1910] A. C. 342, H. L., at p. 364 per Lord LOREBURN, L.C.

(*g*) *London Gazette* dated 22nd July 1952, p. 3947.

(*h*) See Wollaston's *Coronation Claims* (2nd Edn.).

(*i*) The claim of the Clerk of the Crown in Chancery to act in this capacity was allowed by the Court of Claims in 1901 (see Wollaston's *Coronation Claims* (2nd Edn.) 164, 165), and confirmed in 1911, 1937 and 1952.

(*k*) See Taylor's *Glory of Regality* 138, where it is stated to descend to Lord Grey de Ruthyn by descent from the family of Hastings, Earls of Pembroke (*ibid.*, cited MS. Cott. Vesp., cxiv, p. 133; Harl. 592, p. 24; Collins' *Baronies by Writ* 242, 243). At the coronation in 1953 the court held that Lord Hastings and Lord Churston had each established a claim to perform this service and referred to the pleasure of Her Majesty to determine how such service should be performed.

(*l*) The office of Earl Marshal is hereditary in the family of the Duke of Norfolk, and is exercised by him (see Adye's *Courts-martial* 8). Generally, see Wollaston's *Coronation Claims* (2nd Edn.); Taylor's *Glory of Regality*. For the decisions of the Court of Claims in connexion with the coronation of Queen Elizabeth II, see *The Times* newspaper, dated 1st November 1952.