

**HERALDS' COLLEGE AND  
COATS OF  
ARMS, REGARDED  
FROM A LEGAL ASPECT**

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Heralds' College and Coats of Arms, Regarded from a Legal Aspect by W. P. W. Phillimore

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**W. P. W. PHILLIMORE**

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COATS OF  
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FROM A LEGAL ASPECT**



**Heralds' College**  
and  
**Coats-of-Arms,**

REGARDED FROM A LEGAL ASPECT.

THIRD EDITION : REVISED.

WITH A POSTSCRIPT CONCERNING PRESCRIPTION, AND AN  
APPENDIX OF STATUTES AND CASES.

BY

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NOTE.

*The interest taken in the legal aspect of Heraldry and the use of Coats-of-Arms, here presented as concisely as possible, necessitated a second edition within three months of the publication of the first. The opportunity has therefore been taken to carefully revise the pamphlet throughout.*

*It has been thought expedient in this third edition to deal fully with the subject of Prescription, of late so persistently put forward as a justification for the use of bogus Coats-of-Arms, and to add an Appendix of statutes and modern cases.*

## HERALDS' COLLEGE

AND

## COATS-OF-ARMS.

REGARDED FROM A LEGAL ASPECT.

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IF we may judge from the voluminous correspondence, often very acrimonious, concerning coats-of-arms and the right to bear them, which from time to time appears in the newspapers, it is evident that the science of heraldry, effete and obsolete though some may think it, still, in certain ranks of life, excites no little interest. Such correspondence may be mostly classed under two heads; letters from genuinely armigerous persons who feel aggrieved at the number of bogus coats-of-arms which are in existence, and letters from the users of such bogus coats, which generally resolve themselves into attacks upon the officers of arms and Heralds' College, too often it is to be feared originating merely in some petty personal grievance.

It may be worth while, therefore, to consider the origin of coat-armour, and the right to bear it in relation to the officers and College of Arms.

Armorial bearings, or coats-of-arms, in their origin are clearly of a military character, but for many centuries past they have been distinctly a civilian honour. Great uncertainty attaches to the early beginnings of heraldry; it cannot be regarded even as a settled point

whether arms could be assumed by soldiers in the King's army without any specific authorization, or whether the King's own approval, exercised directly, or through his officers of arms, was requisite. Certain it is, however, that the regulation of such matters was very early taken to be a matter of honour, and therefore to be dealt with by the royal prerogative, as the well-known case of *Scrope v. Grosvenor*, settled by King Richard II in person, over 500 years ago, amply proves.

The absence of any definite code or set of rules in early times respecting armory is a clear indication that the law on the subject is wholly analogous to the common law, *i.e.*, it rests, not on statute, but on very ancient and long usage, continued down to the present time, without, as far as we know, any break or interruption whatever. Indeed it is not a little remarkable that even the turbulent period of the great rebellion saw no disturbance of the officers of arms, who pursued the duties of their office with perfect equanimity under Cromwell and Charles alike.

There is apparently no existing document which can be cited wherein is set out the precise functions of the kings, heralds and pursuivants of arms. The charter of King Richard III, granted in 1484, to the then Garter and his fellow officers, which many, in error, have assumed to be the authority for their powers, is merely a document forming them into a body corporate with seal and perpetual succession, with liberty to meet together for the purpose of transacting the business of their faculty. It is merely an incident in their history; and in fact this particular charter is but an example of the policy of that period, under which it became customary to grant charters to city companies, forming them into bodies



corporate. It is well to remember that in Scotland and Ireland the kings of arms and their colleagues still remain unincorporated.

The practice and law of heraldry in England has therefore to be gathered from the various royal grants and warrants and letters patent relative thereto, and from the practice and usages of the officers of arms, extending without intermission over a period of some five or six hundred years. It is a matter for regret that so far no adequate treatise of the law and practice of heraldry in England has as yet appeared,\* for the text books that we possess deal mainly with the grammar of heraldry. The individual officers of arms are attached to the King's household, and upon certain of them, viz., the Kings of Arms, amongst other responsibilities, devolves the duty of assigning coats-of-arms and other hereditary family emblems to such persons as obtain the Earl Marshal's warrant for that purpose. The Officers of Arms receive from the King's Privy Purse fixed salaries, which are now almost nominal,† so that their income is mainly derived from fees, and to a very large extent depends on their own individual industry and reputation as genealogists. The rights and duties of each officer rest on the letters patent granted to him individually by the Sovereign, from time to time, upon being created King, Herald or Pursuivant, as the case may be. The very existence of the College as a body corporate wholly depends on the King's pleasure, for if he ceased to create

\* *The Right to Bear Arms*, by X, which has reached a second edition, contains copies of many documents relating to the history and constitution of the College and Officers of Arms in each of the three kingdoms.

† *E.g.*, The salary of a pursuivant of arms is only £13 19s.

any more Officers of Arms it would obviously come to an end, and at the same time it would cease to be possible, except by direct grant from the Crown, to create any more *nobiles minores* with hereditary coats-of-arms.

The question of what arms are lawful and descendible to the heir has several times been before the Courts of Law,\* chiefly in connection with disputes arising out of the provision sometimes met with in wills and settlements, under which it is directed that the successor shall assume the name and arms of the testator or the settlor. When it is shown that the arms used by the latter are bogus, *i.e.*, assumed by him *suo motu*, the clause is held to be inoperative, in other words, the Courts will refuse to recognise such coats as genuine. Moreover, it may be noted that baronetcies can only be conferred on gentlemen of coat-armour, and the proposed baronet must show that he comes under that designation, which means that he must be possessed of a coat-of-arms such as will be accepted as lawful at Heralds' College. In such cases mere voluntary assumptions, whether by the applicant or his ancestors, are entirely disregarded, and the ultimate and only test is whether the arms rest on a grant or ancient allowance by the heralds at some Visitation.

To justify the right to an assumed coat, or to a bogus coat, *i.e.*, one to which no title, resting on grant or allowance can be shown, it is not sufficient to allege that it was used at a time anterior to the incorporation of the Heralds' College, for, as already stated, that is merely an incident in the history of the heralds, and has nothing whatever to do with the right to bear arms.

Often it is alleged that a Heralds' College patent of

\* See the various cases set out in the Appendix.

arms is a grant which may be obtained by anyone on payment of certain specified fees, the suggestion implied being that modern grants are worthless, as being readily purchasable by the man in the street for filthy lucre. Such, to those who know the practice of the College, is notoriously not the case, though there is no precisely defined rule as to whom arms may be granted or refused. The issue of a warrant by the Earl Marshal is purely a matter of grace, and each application is judged upon its merits. To persons in certain classes of Society arms will be granted at once without question, to others with equal certainty they will be denied. It is no use complaining that there is no hard and fast rule when we are dealing with what is a matter of grace. We might just as well grumble at the haphazard creation of peers, baronets and knights.

Of late there has been put forward, and advocated with some show of energy, a theory that it is open to any man to adopt and use what arms seem good to him. Sir George Sitwell, who has investigated, with some minuteness, the meaning and origin of that somewhat obscure term "gentleman," suggests that in the middle ages it was synonymous with "freeman," and says that such did, without intervention of heralds, assume to themselves coat-armour, though he does not assert that they did, or could, create to themselves hereditary estates therein, such as would confer on their descendants the right to use the same coat as had been irregularly assumed by their ancestors. Obviously therefore, if such be the case, since now we are all free, there is clearly no obstacle to a crossing-sweeper taking to himself such a coat as—Gules, a pair of brooms in saltire covered with mud proper. For after all, the crossing-