## THE ARMIGER.

By EDWARD MARION CHADWICK.

In the revival of interest in the Science of Heraldry which has taken place during the latter part of the nineteenth century, the question of how people acquire armorial bearings and by what right they use them has naturally come under a good deal of consideration. There is perhaps no heraldic subject which has been so little understood and has been the subject of so much misapprehension. In its consideration a wide difference of opinion has appeared, some maintaining that armorial bearings are honours, and therefore to be acquired only by Royal grant in the same manner as peerages, knighthoods and the like. This opinion has its origin in the continental notion, derived by imitation from the social conditions of ancient Rome, that all persons are divided into two classes, "patricians" or "nobles" and "plebeians," and that the patricians or nobles are those who bear arms and the plebeians those who do not. That such a notion, in modern times at any rate, must inevitably lead to absurdities is evident. It is one which does not prevail in England, where the "patrician" and "plebeian" are unknown, and none are accounted "noble" excepting peers. It is true there are some who assert the contrary, but that is merely a fanciful assertion unsupported by any facts of difference in blood or circumstances attending social conditions. There is not, and never has been, any servile class in England, or any distinction caused by difference of nationality or origin except during the period after the Norman "conquest"; but as Normans and Saxons were near akin they soon became fused into one people; and since then the English people have been of but one blood, and the only distinction between classes is that which is caused by individual circumstances. Any person may rise from the

bottom of the social scale to a higher place, and no "ennobling" is required to enable him to do so.[1]

Many of those who maintain the opinion that arms can be borne only by Royal grant probably do so more as a matter of expediency than as a matured and well-founded opinion, no doubt considering it advisable to uphold the authority of the officers of arms, and to require that all armorial matters should pass under the cognisance of such officers. In these pages it is proposed to consider matters as they are, and not as either the writer or any other person may think that they ought to be.

Arms are borne by four titles, *viz.* inheritance, grant, transfer, and assumption. The mention of the last will no doubt be greeted by some readers with a note of interrogation, but the explanation of the term, and the reason for its use, will appear subsequently. In mentioning such titles it is usual to include prescription, although some regard that as debatable, but it is here omitted because prescription is founded upon and necessarily derived from inheritance, and forms but a branch of that source or manner of title.

Armorial bearings are a freehold of inheritance descending from father to son. And here we may observe a material difference between heraldic insignia and "honours," properly so-called, for the latter, if not for the life only of the possessor, descended to one person only, to the exclusion of all others, except only in the case of falling into abeyance, which, however, is not really an exception, for one only of the coheirs can inherit, and the abeyance only exists until that one is indicated. But heraldic insignia descend to all the

[1] As the assertion of a royal prerogative in respect of arms is founded upon the continental idea that armorials are honours, it may be interesting to note that in *The Last Colonel of the Irish Brigade*, London, Kegan Paul & Co., 1892, Vol. II, p. 73, apropos of difficulties experienced by Colonel O'Connell at the Court of the King of France, with regard to the rules of Court etiquette and Court privileges, Ross O'Connell, apparently a herald of some skill, explains that a distinction was made between *Pairie* (*anglice*, nobility) and *Noblesse* (*anglice*, gentlemen), as clear—and the same—as between peers and gentlemen-commoners in England. He says: "The King in France was the fountain of hereditary title, but not the fountain of *noblesse*." In other words, the creation of *noblesse*, even by the King's patent, did not proceed from the "Fountain of Honour." The rank of *noblesse* might be attained independently of any royal act, as in the case of one "ignoble" attaining to public office of sufficient importance to confer the social grade of *noblesse* by the mere fact of tenure.

sons of the possessor, and to all his daughters also; but in the case of the latter for life only, unless the male descent fails. According to strict heraldic rule, when armorials descend to brothers, all but the eldest should assume differences, but this rule is nowhere observed except in Scotland, where cadets are forbidden to use or display their arms until they have been "matriculated" or entered in the office of Lyon King of Arms, when a proper difference is assigned. But there are few Scottish cadets who consider themselves under obligation to comply with this rule. It is confidently asserted that Scottish heraldry rigidly reserves to the male representative of each family the exclusive right to the undifferenced family coat, and that no Scottish arms of cadets are recognised unless duly differenced. Two instances occur to the writer where this rule has not been observed. The arms of Munro of Foulis, chief of the name, are, *Or, an eagle's head erased gu.* These arms without difference were borne by a cadet of another branch of that family, Sir Hector Munro, installed Knight of the Bath 1779. The arms of Strachan of Glenkindie are, *Az., a stag trippant or, attired and unguled gu.* The same arms are recorded as borne in 1776 by William Strachan, a cadet of another branch, that of Thornton; and in 1839 by Bishop Strachan of Toronto. In England and Ireland differences are formally assigned where a new branch of a family arises, and desires official recognition, and such assignments are made with but slight regard to nearness or otherwise of relationship to the previously recorded possessor of the arms. In the case of descent of armorials to the daughters, they all take alike and without regard to seniority. If, and so long as, they have a brother or descendants of a brother, they only bear the arms for life, but if they have no brother, or if, having had a brother, all his descendants male and female have failed, then they bear the arms as a freehold of inheritance and transmit them to their own descendants. A woman thus bearing arms is heraldically known as an heiress. Her husband bears her arms on an escutcheon of pretence, and her children bear them quartered with their paternal coat.

Heraldic purists strenuously dispute the right to bear

arms by prescription, and, while admitting that such right is recognised by Irish practice, assert that no arms can exist in England which have escaped notice in the course of the Heralds' Visitations.[1] Although such assertion is by no means conclusive, it may be passed over for the present. But it may be observed, *en passant*, that it is tolerably plain that the heralds in their visitations recognised arms prescriptively borne. In Scotland many armorial bearings have been borne by prescription from time immemorial, and are borne to this day in entire disregard of the statute enacted in that kingdom forbidding the bearing of arms unless registered; this statute we shall have occasion to refer to again. In Ireland arms are entered in Ulster's office on proof of user for three generations, but if they are the same as already recorded as borne, either in that or one of the other kingdoms, a proper difference is assigned.

The term "grant" is commonly used to signify the assigning of arms by some person in authority; but the expression is not accurate. The Crown "grants" lands, as does also a private person, the lands being already in existence and in the possession of the grantor. The sovereign "creates" a title of honour—*creare est aliquid ex nihilo facere.* Arms newly devised might, perhaps, be better spoken of as "assigned," using that word as a technical heraldic term in the sense of designating or appointing. But as the word "grant" is commonly employed, it will be convenient to use it in these pages. A grant of arms may be made by the King, or by any officer deputed or appointed by him for that purpose: this much all heralds are agreed upon as a statement which is not open to question; but there is a difference of opinion as to whether any exclusive prerogative in the Crown to make or authorise such grants exists or not. The writer who uses the *nom de plume* of "X" may be presumed to have said, in his work on *The Right to Bear Arms*, all that can be said in favour of a jurisdiction over armorials being an exclusive royal

[1] And, consequently, that no arms can be borne by a valid title unless officially recorded. But a writer in the *Contemporary Review*, LXXVI, 257, mentions two instances of unrecorded arms borne by heraldic grants, one dated 1590, and the other of about the same date.

prerogative; but he has entirely failed to establish this, for he quotes no authority to show that such prerogative has ever exclusively vested in the sovereign, excepting a recital in a grant of arms by Charles I., which was of no validity, and cannot be quoted as a precedent or authority, for much more than such a recital is and was necessary to change the laws of England; that quotation, therefore, does not close the argument or settle the point.

Now the earliest written statement of the heraldic law of England is the famous *Boke of St. Albans*, printed in the first year of the reign of Henry VII., and supposed to be the printing of a much earlier manuscript work used in the education of the young gentlemen of England. After stating how arms are borne, firstly by descent, secondly by conquest, a manner then used but now obsolete, the Boke continues "On the thride maner of whise whe have armys the wich we beere by the grauntyng of a prynce or of sum other lordys." Here we have a statement which is in effect that any person of prominent position, who in feudal days would have retainers of various degree, might grant arms. This law has never been abrogated or altered. Armorial bearings are theoretically of a military character, and therefore it is a reasonable proposition that any person having a military command and power to grant military commissions may, in due consistency with the theory and principles of heraldry, grant arms.[1]

This mode of acquiring title to arms is referred to, as the writer is not aware of any good reason for its omission, although it is not now practised, unless, perhaps, by the not unusual condition in wills and settlements requiring a beneficiary to assume the name and arms of the testator or settlor. But there are known instances of persons having transferred their own armorial insignia to others in a manner similar to a

[1] On this consideration, and in view of the fact that armorial bearings (with certain exceptions) are not "honours," the writer has pointed out, in an article published in an American magazine, that arms might be granted to American citizens who should desire to acquire them in an official manner, by the President of the United States, and, concurrently within his own State, by each State Governor.

conveyance of lands (see Woodward's *Heraldry, British and Foreign*, ii, 402).

Now let us again consult the *Boke of St. Albans*, and we find the following: "The faurith maner of whise we have thoos armys the wich we take on owre awne ppur auctorite. as in theys days opynly we se. how many poore men by thayr grace favoure laboure or deservyng: ar made nobuls. Sum by theyr prudens. Sū bi ther māhod. sū bi ther strength. su by ther conig. sū bi od vtuys. And of theys men mony by theyr awne autorite have take armys to be borne to theym and to ther hayris of whoom it nedys not here to reherse ye namys. Nev the lees armys that be so takyn they may lefully and frely beer. Bot yit they be not of so grete dignyte and autorite as thoos armys the wich ar grauntyt day by day by the autorite of a prynce or of a lorde. Yet armys bi a mannys propur auctorite take: if an other man have not borne theym afore: be of strength enogh." It is interesting to add the paragraph of the Boke immediately following the above: "And it is the opynyon of moni men that an herrod of arınis may gyve armys. Bot I say if any sych armys be borne by any herrod gyvyn that thoos armys be of no more auctorite then thoos armys the wich be take by a mannys awne auctorite."

Here we have a voice, plain and unequivocal, from the palmy days of heraldry in England.

Five years before the book quoted was published (or rather republished, the modern edition being a facsimile of an original black-letter copy, reproduced by photographic process), the writer contributed an article on heraldry to *The Week* (of Toronto, Canada), in which he ventured the opinion that arms might be assumed by any person of his own will, provided two rules were observed, *viz.* the arms must be properly heraldic in design and character; and they must not be the same as, or so similar as to be confounded with, arms already borne by some other person. The observations then made by the writer are closely and quite curiously paralleled by the passage quoted. The opinions expressed, which at the time required some little courage to put forth, were arrived at after careful

consideration of the subject, the writer, however, retaining an open mind and being prepared to accept any good and well founded statement to the contrary, until the appearance of "X's" work, which seemed to him to fail so completely in establishing a contrary opinion, that a perusal of it only tended to confirm his views, in support of which an authority which seems to be conclusive can now be quoted.

It will be urged, no doubt, that a recognition of the liberty of persons to assume arms as they please will lead to heraldic chaos; but that is not the result of experience, for it is a fact which cannot be disputed that many persons have assumed arms, within the past century at the least, and we do not find any such arms (borne by private persons) of an incongruous or non-heraldic character, for those which are of such description have, in fact, been devised by professional heralds and formally granted. It is, of course, very desirable that all arms should be officially registered, but the question of expediency is one thing and the actual state of the law is another. The opinions which may be held by one person or many persons as to what is expedient do not make law.

Those who maintain that arms may be granted only by the King or those authorised by him found their strongest argument on the assertion that armorial bearings are "honours," and therefore proceed from the fountain of honour. But this is altogether fallacious. Armorials may be and often have been honours conferred as such in particular cases, such as honourable augmentations, and certain coats which have been especially granted to mark or record some famous exploit of the bearer. It is one of the common delusions regarding heraldic matters that all arms are what may be termed historic memorials, and many legends have been invented to fit particular coats, but such stories are in most cases mere fairy tales, and the fact is that memorial arms are quite exceptional, and there are very few which can be so classed with any reasonable certainty or even probability. Compared with the vast number of coats (certainly 25,000, perhaps twice as many) borne in the British Empire, honourable augmentations are extremely

rare. It is another delusion which sometimes affects people whose arms are differenced, that the change in their arms, which they perceive but do not rightly comprehend, is an honourable augmentation. Supporters, as they are usually accessories to the arms of a nobleman and are inherited with the title, approach nearly to the status of honours, but not altogether so, because they are frequently borne by corporations (such, for example, as the Hudson's Bay Company, the East India Company, and various others); and in modern times they have come to be regarded as proper accessories to arms of colonial governments, *e.g.* Cape Colony, long borne, but only lately granted, or perhaps rather recognised, for the grant has been made in an exceptional manner; also British Columbia, where the Lieutenant-Governor in Council, about five years ago, assumed arms as an official act, with supporters.

There is another consideration bearing upon the question of the right to assume arms which must receive attention. Long-established custom has the force of law. Disregarding the chivalric era, which has spoken to us through the *Boke of St. Albans*, and passing over the Stuart and Georgian periods of heraldic debasement,[1] it is now a long-established custom, or practice of widely spread usage, to bear arms which are unknown to the Heralds' College. There is no law or authority in England or Ireland which can interfere with or prevent any person bearing arms by an assumptive title. If any herald should attempt in these days to impose upon any person any indignity because he chose to bear arms of his own devising, it is the herald whom the law would punish, and not the other.

All persons in England who use armorial bearings are required to obtain a license to do so, and to pay an annual tax; and anyone infringing the law in this respect is liable to a fine. But it must be observed that the Court which imposes the fine makes no inquiry as to the right or title which the bearer has to the armorials

[1] Those periods are well described by Boutell, *English Heraldry*, p. 9, who observes: "No nonsense appeared too extravagant and no fable too wild, to be engrafted upon the grave dignity of the Heralds' early science," and that science was "brought into disrepute, and even into contempt, by the very persons who loved it with a genuine but most unwise love."

he uses, but only as to the fact of the use, and the non-payment of the tax.

In the foregoing observations we have made some exceptions with regard to Scotland, for here the right to bear arms has been the subject of parliamentary enactment. In 1662 an Act was passed forbidding "cadents," or cadets, to bear arms unless matriculated and differenced, but this Act was repealed in the following year. Ten years later another Act[1] ordered all persons using arms to give in a description of them, with their lineage, to the Lyon Clerk, so that they might be registered, and that after a year and a day no one should "use any other armes." With regard to this enactment we may observe, first, that it was passed in the period of heraldic decadence; and secondly, that it has been, and is, more honoured in the breach than in the observance, and it is arguable that it has become effete by reason of long non-observance—but on this point the writer does not venture a definite opinion; and thirdly, that it is not in force out of Scotland.

In the preamble of the Act referred to it is recited that "many have assumed to themselves armes who should bear none, and many of those who may in law bear have assumed to themselves ye armes of their Chieff without distinctions, or armes which were not carried by them or their predicessors." The Statute unmistakably recognises arms borne by prescription—in view of Scottish, and especially Highland, social history, it could not possibly do otherwise—so that the meaning of the reference to those assuming arms "who should bear none" is not very clear. Read together with some following references in the Statute to those "who may in law bear," we may possibly have some suggestion of the notion, sometime prevalent, which connected the bearing of arms with possession of land; or perhaps it may be a vague shadow of the French ideas which had been introduced into Scotland. That it can be intended to refer to any previously defined law or regulation regarding the acquisition and use of armorials is negatived by the whole tenor of the Statute.

[1] This Act was pronounced in 1818 by Riddell, an "eminent legal antiquary," to be "now nearly obsolete." Seaton's *Scottish Heraldry*, p. 67.

Whether the Act is still in force or not, it is, at any rate, still the heraldic rule in Scotland that "cadents" or cadets must matriculate their arms and procure differences to be assigned to them; and this rule is also applied, whenever the opportunity occurs, in case of persons of Scottish descent living in the Colonies. Thus, upon a title being conferred upon any such person, it becomes necessary for him to matriculate his arms. Except in such cases there is nothing to prevent any one of Scottish descent living in the Colonies from using the arms of his family as freely as those of other origin may do.

The consideration of this subject unavoidably requires notice of *The Right to Bear Arms*, lately put forth by "X" (to which reference has already been made), and of which a second edition has been issued by him, probably because he has been conscious that the first failed to establish his contention, a position which the second does not greatly amend. It may be advantageous to refer very briefly to two or three of the more important arguments or evidences which he adduces. "X," while without hesitation declaring the Judges of the Courts of Law to be incompetent to adjudicate upon heraldic matters, when their decisions are against his opinions, quotes certain cases which he considers to support his contention, but which on examination do not at all appear to do so. For example, Joicey-Cecil v. Joicey-Cecil (p. 146), in which a testator imposed a condition of the taking of his name and arms, and on the occasion for doing so arising, it was discovered that the arms used by the testator were wrongfully used, being those of another person, and consequently incapable of being assumed in compliance with the direction, and it appearing that the testator never used or claimed any other arms, it was held that the condition so far as concerned arms was ineffective and compliance with it not requisite. This case goes no farther than to declare the law that one man cannot acquire title to the armorials of another by assuming or using them. The ancient and oft-quoted contest between Scrope and Grosvenor (p. 40), was also decided upon the principle that one having used certain arms another could not adopt the same or a similar coat.

"X" refers to this case as supporting his contentions of an exclusive royal prerogative, which it does not do, but rather the reverse.

Much stress is laid by "X" upon a warrant of King Charles II., which he quotes (p. 48), granting to a certain person and his wife authority to assume a certain surname and arms, reciting in the document that "neither of which may regularly be done according to the laws of arms without the special dispensation and license of us, as we are by Our Supreme power and prerogative the only fountain of honour." Such a recital could not override or alter previously existing law or create a new law. Its value may be gauged, first, by the fact that the Stuarts brought into England notions of the Royal prerogative which the English people would not accept, as the troubles of that period amply attest; they were for four generations or more closely intimate with the Court of France, where such notions prevailed to the fullest extent; and Charles II. himself lived for twelve years in France, and his mother was a French princess; secondly, this was the period of heraldic decadence, in which all sorts of absurdities were foisted upon heraldry, leading to the utter debasement into which it fell in the ensuing Georgian period; and, thirdly, the law of England regarding changes of name has been plainly declared by judicial decision to be that anyone who chooses, and does so in good faith, may change his name of his own accord. Therefore if the recital in King Charles's warrant has not made a change of name illegal or irregular, neither has it made the assumption of arms, not being those of another person, illegal or irregular. Both things are in the same category.

In the opinion of the writer the strongest evidence brought forward by "X" in support of his contention is the early heraldic visitation (*temp.* Henry VIII.) where the King of Arms is commissioned to examine armorials in his province and to deface, etc. arms improperly borne, and to inflict dire punishments and indignities upon offenders; for at this time the debasement of heraldry had only begun. But the tenor of such commissions does not seem to be really more than the

grandiloquent language of the period, for, as "X" shows, the actual execution of their powers by the visiting heralds was done in a very mild-mannered way. It will be well to observe, too, that the heralds were commissioned not only to regulate armorials, but also "to reforme and comptroll" the mourning to be worn at funerals, and in various ways to interfere with the liberties of the King's lieges in a manner which would certainly not be tolerated in a later age—and probably was not generally submitted to even in Tudor times.

The attitude of the heralds in their visitations, while positively picturesque in its terribleness to the contumacious, was most lenient in its practice to the more amenable. And while they maintained an appearance of requiring the very strictest evidence of right to armorial bearings found in use, and of laying down rigid rules by which such right must be determined, in their actual practice they made confirmations easily obtainable by those whose evidence fell short of the standard—even to the extent of gauging their "fees" by the depth of purse of the visited. And in this respect they did right, and their actions were more in accordance with true heraldry than their words. Indeed, it is evident that the heralds themselves often had a truer appreciation of heraldry (and surely have still, though etiquette does not permit them to say so) than their unprofessional advocates.

Professional heralds are understood to be precluded by the etiquette of their office from publicly expressing opinions on such a question as that now under consideration, so that their views can only be matters of conjecture. It may be noted, however, that the late Sir Bernard Burke, Ulster King of Arms, in his work on *Colonial Gentry* recognised many coats of arms as used which are not recorded.

In the preface to *Armorial Families*, by Mr. Fox-Davies, it is stated that twenty-two peers and over thirty baronets "have no right to the arms they bear"; that is, they bear arms not recorded. But those arms are recognised by peerage authors without question. Foster even describes such arms as unrecorded, and he suggests no question as to their validity.

In Seton's *Scottish Heraldry* there is a paragraph (p. 86) which contains what may be assumed to be the opinions of three successive heralds of acknowledged authority, namely, the writer himself, as he quotes with seeming approval, first, Nisbet, a well-known writer of about the beginning of the eighteenth century, and secondly, Camden, a professional herald. The paragraph is as follows:—

"Besides an elaborate chapter in his larger work, the laborious Nisbet has produced a separate treatise entitled *An Essay on Additional Figures and Marks of Cadency, showing the Ancient and Modern Practice of differencing Descendants, in this* (Scotland) *and other Nations.* Towards the commencement of the volume he introduces the following advice of the learned Camden, Clarenceux King of Arms in England:—'No gentleman ought to bear the differences in Armories otherwise than the office of Armorie requireth, and when younger brethren do marry, erect and establish new Houses, and accordingly do bear their Arms with such a distinction and difference that they might be known from the families from which they are descended, the King-of-Arms ought to be consulted withal, and such differences of houses are to be assigned and established by his privity and consent, that so he may advise them best and keep record thereof; otherwise, gentlemen, by taking unfit brisures, may either prejudge themselves or the principal houses they are come of.' 'This advice,' adds Nisbet, 'is congruous to our law, and consonant to the principles of prudence and reason; and I wish from my heart that our gentry may take more heed to this than hitherto they have done, and may apply to the Lyon office for suitable differences, and not assume them at their own hand, or by the advice of some presumptuous sciolist, whereby oftentimes their posterity suffer prejudice.'"

This plainly recognises the fact of the assumption and use of armorials without the aid of those in authority, and does not suggest that a breach of any law is thereby committed; though expressing a desire for heraldic acts being done under competent advice—with which, no doubt, all persons will agree.

Dr. Woodward, perhaps the most learned writer on

heraldic matters of recent time, in his *Ecclesiastical Heraldry* (p. 22) says:

"In our own country (Great Britain) men of all ranks have always been eligible for the highest ecclesiastical positions, and on obtaining them have often, down to the present day, assumed armorial bearings for use upon their seals, etc., though frequently the connection of the prelate with the family whose arms were adopted was, to say the least, extremely difficult of proof. Occasionally permission to use their arms was sought by the prelate from the head and other members of the family to which he desired to attach himself. In France, and probably in other countries, it is usual for a bishop to invent for himself a coat of arms, if he is not entitled by birth to bear one."

And again (p. 81): "I have alluded to the practice by which a bishop who possessed no armorial bearings by inheritance generally assumed for himself either a coat borne by a family of the same name, from whom he supposed he might have descended, or, and with much greater propriety, an entirely new coat; and this is the custom still both among Anglican bishops and those of the Roman obedience."

In this work Dr. Woodward describes and illustrates many arms of modern Sees, especially Colonial, which are officially unknown to the Heralds' College, and these are shown *pari passu* with more ancient episcopal armorials.

Dr. Woodward, as he informed the writer, purposed writing a treatise on *The Law and Practice of Heraldry*, and had collected material for the work, but he died before its completion, to the great loss of heraldic literature, to which such a work by so eminent and able a writer would have been a valuable contribution.

Since the foregoing pages went into the printer's hands, the writer has obtained a copy of Hulme's *Heraldry* (second edition, 1897; an excellent work), in which he finds inserted at full length the passages in the *Boke of St. Albans* on the manner in which arms were acquired and rights by which they were borne, of which the parts immediately relating to the subject now under consideration are quoted above. Hulme discreetly

refrains from expressing any opinion of his own, but as he allows the quotations to stand in his work without comment, his silence is eloquent.

Our subject naturally leads to the inquiry being made, Who may bear arms? and it is one which is not very easy to answer. Title by inheritance vests in all descendants of the ancestor, no matter what their social status or condition may be. So that the question is rather, Who may acquire arms? the answer to which involves drawing an arbitrary line somewhere between the worthy and the unworthy; and as all will not agree upon how and where such a line should be drawn, the question becomes one of opinion. In forming such an opinion it should be borne in mind that ordinary armorials are not "honours"—"X" and all his school to the contrary notwithstanding—but merely the insignia by which families may be symbolically or pictorially distinguished from other families. The writer will no doubt be expected to express an opinion, which he therefore does, but speaking only for himself and in a general way, leaving it to others to concur or not as they may think best. The following are those whom he considers to be of sufficient social degree to appropriately bear arms in Canada: Members of Parliament, and of the Provincial Legislatures; officers of the civil service of at least the grade of chief clerk, or, in outside service, of an equivalent grade, such as collectors of customs in important ports, and postmasters of the larger cities; mayors of towns and aldermen of cities, wardens of counties, sheriffs and registrars; professors in the universities, and Masters of Arts; priests of the Anglican and Roman Catholic Churches[1] (there is no equivalent line which can be drawn with regard to ministers of other religious bodies, but they will easily find places in other classification); captains of militia, lieutenants in the Royal Navy and Royal Naval Reserve, and officers of equivalent rank in the colonial naval services; barristers-at-law and solicitors; Doctors

[1] It is held by some heralds that crests, being of an especially military character, should not be used by clergymen. Dr. Woodward, who was the rector of a parish of the Scottish Episcopal Church, used a bookplate displaying a full achievement; but as he was the chaplain of a knightly order, his case may perhaps be regarded as exceptional.

of Medicine; civil engineers, architects, and land surveyors; bankers, wholesale merchants, and manufacturers; yeomen possessed of lands of the value of $8,000, and of suitable education (but not farmers[1]); and all others who are of liberal education, or of independent means, and of manners so far refined as to admit of their associating on fairly even terms with such persons as are above particularly mentioned.

## Note on the Right to Arms derived from User.

*From information supplied by* Mr. Wolseley Emerton, D.C.L.

That rights are established by user is, in the Civil Law, a rule so notorious that the only difficulty is to choose one's authorities; and it must be noted that (contrary to the general principle of English statutes of limitation) the Civil Law does not only "bar the remedy of an opponent," but actually "confers a right" on the originally wrongful possessor. I give some authorities on this point as I know that antiquaries frequently find themselves compelled by more pressing avocations to leave the Institutes and the Pandects out of the list of their studies.

*Institutes*, Book II, Tit. 6.
"de Usurpationibus et
Longi temporis possessionibus."

*Digest or Pandects*, Book XLI, Tit. 3.
"de Usurpationibus," etc.

*Gaius*, II, 42, 43, 44, 46.

Looking on the right to arms from the civilian's point of view, an unchallenged possession of twenty years at most would be sufficient as a rule.

[1] The "yeoman" is a freeholder, while the "farmer" is one who holds under another, colloquially termed a "tenant," and therefore clearly inferior in social position to the freeholding yeoman. In Scotland it was enacted in 1400 and 1430 that every freeholder should have his proper seal of arms, for the due execution of documents (Seton's *Scottish Heraldry*, p. 16).

The above qualification of fitness is according to the writer's own ideas of propriety, and that of value of estate is founded upon ancient English ordinances which required that every man possessed of landed estate of a certain value should become a knight.

It is important that the possession should have *begun* in good faith (which is, of course, presumed unless the contrary be proved), but it is not necessary that the good faith should continue till the time of "prescription" has expired.

In the reign of James I. Segar (who was Garter King of Arms), while opposing the view of Bartolus on "Arms by User," thinks it prudent apparently to make considerable concessions to the civilians as a body.

Mr. Round's argument from the wording of the proceedings in the time of Henry V. seems to me conclusive. It was very common in the middle ages to confirm rights which, as a matter of fact, stood in no need of confirmation, such as the right to arms conferred by user.