ON

SURNAMES

FALCONER

ON

SURNAMES

AND THE

Rules of Law affecting their Change.

WITH

COMMENTS ON THE CORRESPONDENCE OF THE LORD-LIEUTENANT OF MONMOUTHSHIRE AND CERTAIN OFFICIALS RESPECTING A CHANGE OF SURNAME.

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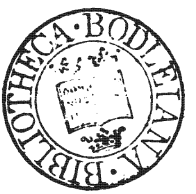

PREFACE.

THIS Essay was written with the sole object of defending a very respected neighbour from a series of published attacks, of a most censurable character, directed against him on account of his having done a perfectly legal and innocent act.

The Second Part of it contains the Correspondence of Lord Llanover and others on account of Mr Herbert of Clytha having changed his Surname without a Royal License. Among these letters is one, inadvertently it is to be assumed, written by the direction of the Lord Chancellor, which has given to the dispute more than a personal interest, and has occasioned this Question:—namely—When the name of a gentleman is on the Commission of the Peace, and such gentleman legally assumes a new name, before a writ of *Dedimus Potestatem* is issued to administer to him the necessary oaths—can the Lord Chancellor refuse to recognise the change of name and impose conditions—such as the Sign Manual to a license to assume the name, accompanied with a condition making it void if not registered at the Herald's

College, or any other similar condition—before a writ of *Dedimus Potestatem* issues? Can the Lord Chancellor impose conditions which the law is not known to require when a change of name has been legally made?

If a magistrate has taken the necessary oaths, and is an acting magistrate, the law does not prevent his assuming a new name. If he does assume a new name, it is his duty to notify the change to the Lord Chancellor. Can the Lord Chancellor refuse to notice the change? There can be no disqualification on account of having done a legal act. Is it not obligatory on the Lord Chancellor unconditionally to recognise the change of name when it is made under circumstances which establish the legality of the change?

T. F.

Usk,
October, 1862.

ON SURNAMES.

THE law permits, and permitting, enables a man to change his Surname. The name which is assumed in the place of the original name, provided it be publicly assumed, *bonâ fide*—or without fraud—becomes so soon as it is so assumed, the legal name. The law will promote the object of such a change of name when a succession to an estate is made conditional on the assumption of a new name, and it will also on other occasions recognise the new name as the true and legal name of the person assuming it publicly and *bonâ fide*, or without any fraudulent purpose. Some persons change their names for the purpose of fraud; but the law condemns all acts of fraud. If a name is honestly and publicly assumed, the change may be useful, or necessary, or fanciful, or meritorious, and it will be legal.

Lord Chief Justice Coke (1 Institute, p. 3) wrote thus: "Regularly it is requisite that a purchaser of land be named by the *name of baptism* and *his Surname*, and that especial heed be taken of the name of baptism, for that a man cannot have two names of baptism as he may have divers Surnames:" meaning by "two names of baptism," names apparently assumed as baptismal names when only such as were given at the time of baptism can be truly baptismal names. But this rule Lord Coke qualified in these

words: "If a man be baptized by the name of *Thomas*, and after, at his confirmation by the Bishop, he is named *John*, he may purchase by the name of his confirmation. And this was the case of *Sir Francis Gawdie*, late Chief Justice of the Court of Common Pleas, whose name of baptism was *Thomas*, and his name of confirmation *Francis*, and that name of *Francis*, by the advice of all the Judges, in *anno* 36, Henry VIII, he did bear, and after used in all his purchases and grants. And this doth agree with our ancient books, where it is holden that a man may have divers names (Surnames), at divers times, but not divers *Christian* names." And the counsel (D'Oyly and Long) *arguendo* in the case of *The King v. the Inhabitants of Billinghurst* [3, Maule and Selwyn's Reports, 254] said—"the reason of this seems to be, that the Surname probably originated in some accidental circumstance of property, person, or occupation peculiar to the individual, which therefore might vary with circumstances. But the Christian name being imposed at his baptism by a solemn act inseparably connected with his religion, could not be changed except at his confirmation, in which case, as was resolved by all the Judges in Sir F. Gawdy's case, he shall afterwards use his name of confirmation." So in Comyn's Digest, "*Abatement*," E. 18, E. 19, it is laid down: "That the defendant shall plead, misnomer of the plaintiff, if his Christian name be mistaken, though he be known by the name by which he sues, for he can have but one name of baptism, and ought to sue by his true [baptismal] name." "But it is otherwise with respect to his Surname."

"Anciently men most commonly took their Sur-names from their places of habitation, especially men of estate—and artizans often took their names from their arts: but for the Christian name this ought always to be perfect."—*Button v. Wrightman.* [Popham's Reports, 57, A.D. 1594.]

An action was brought by one *Benjamin Holman*, who pleaded in abatement that he was baptized and always known by the name of *John*. The plaintiff replied that he was known by the name of Benjamin from the time of his baptism. Lord Chief Justice Holt said—"it is a good plea in abatement for a defendant to say that he was known and called by such a name though he never was baptised, as many thousands in England never were; nor is it true to say—that one baptized by the name of John cannot be known by another name. Sir Francis Gawdy acquired a new name by his confirmation without losing his Christian (baptismal) name, at least he was not satisfied that his name of baptism ceased upon his taking a new name at confirmation." It was added by Mr Brotherick (counsel) that he remembered a case in which it was held, not to be a good plea for a defendant to say he was baptized by another name than that by which he was sued, without showing likewise that he was always known by it."—*Walden v. Holman* [6, Modern Reports, 115.] 15, *Viner's Abr.* "Misnomer," 409, 414, *and* 14. *Viner's Abr.* "Grant," 32, 33.

The name is the mark or sign, or the sound of such mark or sign, which distinguishes or differences particular persons when it is seen or heard. The law does not nicely require to know what a man may or might with propriety be called, but, dealing only with the ordinary means of recognition, demands and is satisfied with the name of reputation: it asks, "by what name is the person *known?*" Even in cases of mistake: *Nil facit error nominis cum de corpore vel personâ constat.*

The practice of altering the Christian name at confirmation has received this explanation: "In the offices of old the Bishop pronounced the name of the child, or person confirmed by him, and, if he did not approve of the name—or the person himself, or his friends, desired it to be altered—it might be done by the Bishop pronouncing the

new name on ministering this rite of confirmation, and the common law allowed the alteration. But upon the review of the Liturgy at King Charles the Second's restoration, the office of confirmation was altered as to this point—for now the Bishop doth not pronounce the name of the person confirmed, and, therefore, cannot alter it." [2, *Burn's Ecclesiastical Law.* "Confirmation."]

In the case, however, of *The King v. the Inhabitants of Billinghurst* [3, Maule and Selwyn's Reports, 250, A.D. 1814], the facts were: A pauper whose baptismal and Surname were *Abraham Langley*, was married by banns by the name of *George Smith.* Previously to his marriage he had resided about three years at Lamberhurst, during which time and from his first coming into that parish, and during all the time he remained there and afterwards, until and at the time of his removal, he was known by the name of *George Smith* only. His legal settlement was at Billinghurst, and his wife and children had no settlement in Billinghurst, unless they had acquired it by the marriage. The question was, whether the statute of the 26 George II, ch. 33 [An Act for the better preventing of Clandestine Marriages], which directs "a notice in writing of the *true Christian and Surnames* of the parties to be delivered to the minister," &c., was well satisfied, in this instance, by the use of the name of George Smith—this being the name by which alone he was known at the place of his residence and which was the name he had gained by reputation. *Lord Ellenborough,* in delivering the judgment of the Court of Queen's Bench, said: "It would lead to perilous consequences if, in every case, an inquiry were to be instituted at the hazard of endangering the marriage of a woman who had every reason to think she was acquiring a legitimate husband, whether the name by which the husband was notified in the bands were strictly his *baptismal name,* or whether at the period of his *baptism* he may not have

received some other name. What the consequences might be of encouraging such inquiries as to the avoiding of marriages and bastardizing the issue of them, it is not very difficult to imagine. The object of the statute, in the publication of the banns, was to secure notoriety—to apprise all persons of the intention of the parties to contract marriage: and how can that object be better attained than by *a publication in the name by which the party is known?* If the publication here had been in the name of "Abraham Langley," it would not of itself have drawn any attention to the party, because he was unknown by that name, and its being coupled with the name of the woman who probably was known, would perhaps have led those who knew her, and knew that she was about to be married to a person of another name, to suppose either that these were not the same parties or that there was some mistake. Therefore the publication in the real (dormant) name, instead of being a notice to all persons, would have operated as a deception; and it is strictly correct to say, *that the original name in* this case would *not have been the true name* within the meaning of the statute. On these grounds, I think that the Act only meant to require that the parties should be published by their *own and acknowledged names;* and to hold a different construction would make a marriage by banns a snare, and, in many instances, a ruin upon innocent parties."

In this case, though both the Christian name and the Surname were changed, there was clear absence of all fraud or intention to mislead, and the change of the names was *bonâ fide* made. The direction of the Marriage Act requiring a notice in writing of the *true Christian and Surnames* of the parties to be delivered to the minister was, therefore, held to be complied with, though it had been argued, that admitting the *Surname* acquired by reputation

to be well enough, yet the wrong *Christian* name suggested an inference of law that it was for the purpose of concealment. The effect of this decision was, that persons might legally change and acquire by reputation not merely a new Surname but, also, a new Christian name.

It is a general Rule of Law that it is legal in persons to change their Surnames without an Act of Parliament or Royal License, and this Rule is illustrated in the following cases:

1.—Sir Joseph Jekyll [Master of the Rolls, A.D. 1730] said "Surnames are not of very great antiquity, for in ancient times the appellations of persons were by their Christian names and the places of their habitation, as 'Thomas of Dale'—the place where he lived. I am satisfied the usage of passing Acts 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." [*Barlow v. Bateman*, 3, Peere Williams' Reports, 65.] In this case the testator gave to Mary Barlow, his kinswoman,—in case Charles Barlow should die before he should attain the age of 21 years,—8,000*l.*, to be paid to her at the day of her marriage, if she should marry with any person of the Surname of Barlow,—but if she should marry any other person of any *other Surname*, then, from and immediately after such last-mentioned marriage, he gave the said 8,000*l.* and the interest to his friend Henry Best. And the testator, also, gave to the said Mary Barlow 1,000*l.*, to be paid to her on the day of her marriage with a Barlow as aforesaid; but it was provided that if the said Mary Barlow should die unmarried, or should marry a person not bearing the Surname of Barlow, then he gave the said sum of money to Charles Barlow, to be paid as aforesaid. The testator died July 4,

1727. About Michaelmas, 1728, the said Mary Barlow married Robert Bateman, an apprentice to a coach-harness maker, whose father's name was Bateman, and he himself had been christened, called, and known by the name of Robert Bateman. At the beginning of the year, and some months before Michaelmas, 1728, he took upon himself the name of "Barlow." In his Answer to the bill in Chancery, he admitted he had taken the name to entitle himself to the said sum of 1,000*l.* It was contended the legacy was given on a condition precedent, namely, that Mary Barlow should marry a person of the Surname of "Barlow," and that she had not performed this condition. [4, Brown Par. Cases, 194.] The House of Lords held [A.D. 1735], reversing the decision of Sir Joseph Jekyll, that this voluntary change of name did not bring the wife within the benefit of the bequest, nor was it a performance of the condition of the will. She was not required to marry any person connected by blood with the testator, and she was free to choose from the world at large any person of the name of Barlow. [1, Vesey senr. 338, and 15 Vesey, 111.] It was stated in the appeal paper, "that the respondent could not otherwise than by Act of Parliament, previous to his marriage, have legally assumed the name of Barlow so as to entitle himself to the said legacy." It would not now be disputed, nor was it otherwise held by the House of Lords, or the Master of the Rolls, that a Surname might be changed by other means than by an Act of Parliament; but it is a remarkable fact, that neither before the House of Lords, or in the decision of the Master of the Rolls, or in the Appeal case signed by Sir John Strange (afterwards Master of the Rolls), is there any hint or allusion to any practice or usage of changing a Surname by a Royal License. It was alleged, but not so held, that it could only be done by an Act of Parliament. It may, therefore, be

inferred that in the year 1735 there was no recognised usage, or acknowledged practice of applying for a Royal License on the occasion of a change of Surname. It was not decided, that Bateman did what he was not entitled or not authorised to do in changing his name by his own voluntary assumption of a new name, but that under the circumstances, the qualification to take the bequest did not exist. It would have disposed of the case had the House of Lords held that Bateman could not by his own act have legally assumed a new Surname. Such a decision was not made, though it was a point of law stated in the printed appeal case and argued.

It is to be observed, however, that in the case of *Gulliver v. Ashby* [4, Burrows' Reports, 1940, A.D. 1766], Lord Mansfield spoke of a grant from the King, or an act of Parliament, as acts necessary in order to oblige "heirs" to take a new name. The condition which he subsequently called "a silly one" is, said he, "to take the name for themselves and *their heirs*." Now many acts, he added, are to be done in order to oblige heirs to take it: such as a grant from the King, or an act of Parliament. The case did not require the discussion of any steps necessary to render valid the adoption of a new name, and a grant from the Crown, or an act of Parliament, certainly could not be equivalent authorities compelling the performance of certain acts, though they might as conditions be made to be equivalent acts in their assigned effect. There was no decision on the point referred to, and it was unnoticed in the arguments of the other Judges then on the bench, namely, Yates, Aston, and Hewitt, J.J. The grants alluded to might have been intended to mean, "grants of Surnames *with arms*" [5, *Comyn's Digest*, "Norroy," p. 175], and then a grant from the Crown would be usual, and an act of Parliament unnecessary.

2.—Lord Tenterden (sitting with Bayley, Holroyd, and Best, J. J., A.D. 1822), delivered the opinion of the Court in the case of *Luscombe v. Yates* [5, Barnwell and Alderson's Reports, 555], when certain persons, named Manning, Ryan, and Creed, were directed, on the occurrence of a certain event, to bear the name of "Luscombe." J. L. Manning, the devisee, before he became of age or was let into possession of the premises, took upon himself the name of Luscombe. It was contended that the intention of the testator was, that any person taking the estate and not having the testator's name by descent, should be compelled to take it by Act of Parliament, and should retain no other Surname. If the party, it was said, taking the estate, has the name by descent, he can have no other Surname, and there could be no reason to alter it; but if he assumes a Surname, he does not thereby *lose the former Surnames, and consequently the name assumed* is not his *only* Surname, as required by the proviso of the will. Lord Tenterden, in giving judgment, said: "What sense and meaning ought, in the legal construction of this proviso, to be put upon the words 'not bearing the Surname of Luscombe;' whether a bearing of that name, *de facto*, be sufficient, or whether it is requisite that it should be borne by authority of an Act of Parliament or other special authority? If the testator had clearly intended the bearing of this name by virtue of some particular authority, it would have been very easy to have expressed that intention. He might have said, 'not bearing the name by virtue of an Act of Parliament, or some other authority as effectual,' according to the expressions used in another part of the proviso: or he might in some way have referred to that part of the proviso by saying, 'not bearing the name as hereinafter mentioned.' Whereas nothing of this kind occurs in this part of the will, but the words are

general and simple—'not bearing the name of Luscombe.' So that if any qualification is to be introduced, it can only be done by the addition of some other words, and such addition must be made by implication or intendment. But we think we ought not to make this addition, for two reasons:—first, because the effect of this clause is to defeat and divest an estate actually vested; and secondly, because such an implication or intendment is not necessary to effect the general object and intention of the testator. For a name assumed by the voluntary act of a young man at his outset into life, adopted by all who know him—and by which he is constantly called—becomes, for all purposes that occur to my mind, as much and effectually *his* name as if he had obtained an Act of Parliament to confer it upon him. We would not be understood to say that where a testator *expressly* requires a name to be taken by an Act of Parliament *or other specified mode*—any mode falling short of the specified mode may be substituted for it, or, to say, that under *this particular* Will a voluntary assumption of the name *after* the party became possessed of the estate would be sufficient. All we mean is this—that as the testator has annexed no express qualification to the words 'bearing the Surname of Luscombe,' and the word is not used in this Will to denote a name inherited from the father, a 'bearing' *de facto*, though by *voluntary assumption*, is sufficient to satisfy the general and ordinary meaning of the words 'bearing the Surname.'"

This case is remarkable, inasmuch as the testator directed that a certain designated person "not bearing the Surname of Luscombe," should, when and so soon as he should be in possession of the property, take the name of Luscombe instead of his own Surname, and should within three years after being in possession procure his name to be altered to the name of Luscombe by "Act of Parliament or some other

authority as effectual for that purpose." The name of the person in remainder being changed to Luscombe, previously to the limitation taking effect, by the voluntary assumption of this name, was held to be a sufficient "bearing of the name,"—but the voluntary assumption of the name *might* have been insufficient if it had been made *after* he had come into possession of the estate—for it was to have been adopted with "the Authority of an Act of Parliament, or some other effectual way for that purpose," *according to the conditional terms* of the donation. What, *under the will*, would have been "some other authority as effectual for that purpose," if so aftertaken, was not decided. A voluntary and public assumption of the name might have been an effectual way, because a legally sufficient way for that purpose; and it was said [and correctly said] in the argument of Mr Preston, "that the assumption of the testator's name was a mode equally effectual of acquiring a new Surname as an Act of Parliament." Lord Tenterden did not suggest that the License of the Crown was necessary, but he held, with the other Judges, that the plaintiff secured to himself the possession of the estates through having, by his own act, assumed the name of Luscombe instead of Manning. The law permitted the change and promoted the purpose on account of which Mr Manning changed his name to Luscombe. The recognition of the new Surname was, therefore, *compulsory* on the Judges, it having been assumed in the manner the law authorised.

3.—When a name is taken, and there is super-added the formality of a Royal License, or Act of Parliament, the License or the Act of Parliament does not *give* the name. "An Act of Parliament," said Lord Eldon, "giving a new name does not take away the former name: a legacy given by that name might be taken. In most of the Acts of Parliament for this purpose, there is a special proviso to prevent

the loss of the former name. The King's License is nothing more than permission *to take* the name, and *does not give it.* A name taken that way is by voluntary assumption."—[*Leigh v. Leigh*, 15 Vesey's Reports, 100.] This case was not dissimilar in principle to that above cited of *Barlow v. Bateman.* There was a devise of a certain estate and a remainder limited to the first and nearest of the kindred of the devisor (Lord Leigh) being male, *and of his name* and blood, that should be living at the determination of the estates devised, and to the heirs of his body. The plaintiff was the son of one *John Smith*, and was the first and nearest kindred being male of the blood of Lord Leigh. On the 8th of April, 1802, he obtained a Royal License to take the name of *Leigh*, and that name he thereupon assumed and used. It was held, however, that the qualification of the person described to take the estate was not satisfied by having taken the *name* under a Royal License. The object of the limitation did not proceed from any anxiety to continue the name of Leigh, but was *descriptive* of the first and nearest of the kindred being a male, whose *family name* was "Leigh:"—he was to be a person of the name of Leigh from his agnation to the testator to the exclusion of any person nearest of kin by descent from a female of the family. [See also *Pyot v. Pyot*, 1, Vesey, 335.]

The license of the Crown in this case did not avail Mr Smith any more than if he had assumed the name of Leigh without a Royal License. It was, also, said there was nothing imperative in a license. There can be no doubt that a man who is licensed to use, or to spell a name in a certain manner, may abstain from publishing the new spelling or the new name—or having made the publication, may assume another name or a dormant name by another avowed act of publication made *bonâ fide.*

4.—"It has been argued," said Lord Stowell, "that the

true and proper Christian and Surname of the party cannot be altered but by proper authority—by the King's License, or an Act of the Legislature; yet there are many cases where names acquired by general use and habit may be taken by repute as the true Christian and Surname of the parties. If a person has acquired a name by repute—the use of the true name in the banns would be an act of concealment that would not satisfy the public purposes of the statute; therefore I do say, that names so acquired by use and habit might supersede the use of the true name." This was said in a suit for nullity of marriage between Anthony Frankland and Anne Nicholson; this Anne Nicholson having been described in the banns under the assumed name of Ross. The marriage was held to be invalid; Lord Stowell saying—*a fraud* had been practised, and there had been an assumption of the name of Ross in such a way as justified the Court in holding that it had not superseded the other name.—[*Frankland v. Nicholson*, A.D. 1805. 3, Maule and Selwyn, 260.]

5.—Chief Justice Tindal [1835], in the last case of a Writ of Right, said: "It has more than once been asked by a learned gentleman of the Grand Assizes, whether the name has been changed in the way which the Law prescribes. In this Will, the condition is, that Mr *Lowndes* changes his name to *Selby*. It appears that at first he retained the name of Lowndes while the receivership was going on; and that afterwards he took the name of Selby in addition to the other; and I am not prepared to say that that was not changing his name; but, at all events, he afterwards changed it entirely and left out the name of Lowndes. There is nothing in the Will that purports that the condition is to be executed in a very limited or precise time; therefore, though he took it a little later, and though, in some particular acts, he might use the other name, it

would not at all interfere with the general act of changing his name. And *there is no necessity for any application for a Royal sign manual to change the name.* It is a mode which persons often have recourse to because it gives a greater sanction to it, and *makes it more notorious;* but a man may, if he pleases, and it is not for any fraudulent purpose, take a name, and work his way in the world with his new name as well as he can."—[*Davies v. Lowndes*, 1, Bingham's New Cases, 618.]

6.—In the case of *ex parte* Edward Bryan Jones [22, *Law Times*, 123], in the year 1853, in the Court of Exchequer, counsel moved, that the additional name of Bryan to that of Jones should be entered on the roll of the attornies of the Court, property having been left to Jones, with the request that he should take the name of "Bryan" in addition to that of "Jones," and that he had so done, but that he had not done so by Royal License. The Court ordered the name of "Bryan" to be added to the name on the roll. The Court being satisfied of the *bona fides* of the assumption of the new name, it must be held to have been compulsory on it to recognise the legality of the change of name. [Infra, pp. 30, 31.]

From the above cases, these conclusions may be drawn:

1.—That in the year 1735, when the question of the manner in which Surnames could be changed was before the House of Lords, no notice was taken of any supposed privilege of the Crown to grant Licenses on such occasions.

2.—That any person may take any Surname, and that the law recognises the new name when assumed publicly and *bonâ fide*. [Chief Justice Tindal, Lord Stowell, &c.]

3.—That a man may assume what Surname and as many Surnames as he pleases. [Sir Joseph Jekyll, M.R.]

4.—That where both Christian and Surname have been changed the law will recognise the assumed names. [Lord Ellenborough and the Court of King's Bench.]

5.—That no Act of Parliament, or Royal License, is needed in order to sanction a change of name, unless a new name is directed by a donor of land, or money, to be assumed by the donee, with such or some other particular sanction, and subject to the forfeiture of the donation if the name should not be assumed in the manner directed by the terms of such conditional donation. [Lord Chief Justice Tenterden and the Court of King's Bench.]

6.—That when a name is assumed by Royal License, it is so assumed by the act of the person taking the name, and the name is not conferred by the license. [Lord Chancellor Eldon.]

7.—That the effect of a Royal License is merely to give publicity or notoriety to the change of name. [Chief Justice Tindal.]

8.—That when, by any Act of Parliament, Judges have the control of a particular Roll of Names, they will, on a change of name, when the change is publicly and *bonâ fide* made, direct the new name to be added to the Roll, though such name has been assumed without a Royal License, and by the mere act of the person whose name is on the Roll. [Court of Exchequer, &c.]

9.—That when any person has legally assumed a name by his own act, it is compulsory on Courts of Law to recognise the legal act. [*The King v. the Inhabitants of Billinghurst* and *Luscombe v. Yates.*]

The authority of any person to change his Surname of his own free will and by his own act being established, the next consideration is, in what manner he may cause the change to be made, or may make it himself; and secondly, what are the legal conditions which must be fulfilled

in order to make the new Surname the true and legal name?

Names may be acquired:

1.—By Act of Parliament, in which case the authority for the name is supreme. Such an Act is a *privilegium*, and the name is actually conferred. If it were possible to presume that Parliament would meddle with a personal name without the assent of the person affected by its interference, there can be no doubt it has the power to impose the most absurd name on a family and by a special enactment to make it compulsory on Courts of Law to require its recognition. The explanation of the origin of many Acts of Parliament which have been passed authorising parties to change their name may be—that when persons have been desirous to have their names continued in another family there was no security when the entail of the land ended, that the newly assumed name would not be abandoned. The legal necessity, however, of the Act of Parliament has arisen from donors of land making the change of name by that authority an imperative condition for the enjoyment of the possession of the land. But if a name be assumed even by Act of Parliament, unless there is any special enactment to the contrary, it would not prevent the assumption of a new name or the re-assumption of the old name without the aid of another Act of Parliament. If there is no forfeiture, or no penalty, or the entail of the land has terminated, then, in the absence of any special enactment, there would be no personal disqualification to prevent any future change of name which the general law relating to names authorises. [See *Hawkins v. Luscombe.* 2, *Swanston*, 389.]

2.—Surnames are usually acquired by Birth, and they are, in fact, Names of Reputation. The law will ascribe to a child the name of its legitimate parents; but even a

child may through the conduct of its guardians acquire a name by reputation altogether different from its family name. The Surnames of illegitimate children are those of Reputation, though usually the Surname of the Mother is ascribed to the children. [1, *Lord Raymond*, 304.]

The registration of the names of the children upon their birth is regulated by the Act of the 6 William IV, ch. 86. The register contains the names of the father and mother. The Christian name may be given to the child on registration, and the baptismal name can be added after the registration of the birth when the baptism of the child is subsequent to the time of registration.

3.—Other Surnames acquired by reputation are: (a) Names assumed with the License of the Crown, and (b) Names assumed publicly and *bonâ fide* without any such license. These are Names of Reputation.

A licensed name is not conferred by the license on the person assuming it;—it is not imperative on the person obtaining a license to assume the name mentioned in it;—and if the name is assumed under the license, the assumption is a voluntary act. There is no obligation arising simply from the license to continue to use the name, and such licensed name may be abandoned whenever the person assuming it thinks proper.

The preference to be given to such license is, that it may be presumed the new name is assumed *bonâ fide*, and the license itself is evidence of *bona fides*. The writer has no means to ascertain when the practice arose of applying to the Crown for Licenses to use particular Surnames. It was probably connected with applications for grants of coat armour, and from such applications, for authority to adopt a coat of arms originially granted to another person, may have sprung up the practice of using the same authority to license the adoption of new names when arms are not

granted. The effect of the license is merely to give notoriety to the change of name. It may be a blast of reputation assumed to be so audible as to fill all regions.

When an application is made to the Crown to license a change of name, it is a voluntary intrusion. There is no authority to compel the Crown to accede to the request, and there is no legal necessity for it, except where conveyancers or private persons are foolish enough, on the settlement of property, to make the adoption a name so licensed a condition for the enjoyment of the possession of such property. A condition to obtain a license from an Archbishop or any named Curate would have the same imperative obligation as a condition to obtain a Royal License. When there is no property at stake, or when there is no such condition interfering with the possession of property, it is almost an act of impertinence to apply to the Crown or to a public officer for permission to do that which the law permits any person freely to do without the slightest hindrance; and it might be regarded to be an act of impertinence in conveyancers or others to introduce an intrusive and needless application to the Crown as a condition governing the enjoyment of private property were it not that such a license may be a ready proof of *bona fides* on the change of name: yet such a condition actually hazards the possession of the property.

It would be a perfectly legal condition if the limitation of an estate were, that a Surname should be assumed without the sanction of a Royal License, and that a Royal License should be forbidden to be applied for.

When a License from the Crown is sought for, there is considerable expense connected with the application. The stamps payable on the License are:

"Grant under the Sign Manual to use a Surname and

Arms, or Surname only, in compliance with the injunctions of any Will or Settlement, £50."

"Grant or License under the Sign Manual to take and use a Surname and Arms, or a Surname only, upon any voluntary application, £10."

If any tradesman desires thus to change his Surname, he may find, as not long since occurred in the instance of a lady, that the £50 stamp may be required, when the law says £10 is sufficient: if, indeed, such applications from tradesmen are permitted.

It appeared in a late case that the rules governing the assent of the Crown to voluntary applications are capricious:—One branch of a family was permitted to receive a license, while another branch of the same family, equally respected, equally entitled to assume the same name, and perfectly equal in position, in social consideration and family connection, and of irreproachable character, was refused. The names of both applicants were on the Commission of the Peace of the same county; and if one branch of the family was entitled to such a license, the other branch had an equally undoubted right to it. What was the pernicious influence which prevailed to disabuse us of the opinion that in these days all applications to the Crown are dealt with on fair and equal terms?

[b.] The other class of Names acquired by Reputation are those voluntarily assumed by the act of the person who changes his name.

In this case the law acknowledges the new name if it be assumed publicly and without any fraudulent purpose.

If a person who changes his name is of known position and of admitted good repute and honour, so soon as he publicly announces his change of Surname, his new name is his legal name. The law requires publicity and good faith in the adoption of the new name, and the absence of

any fraudulent purpose. These are the conditions to be fulfilled. When the legality of a newly assumed name is disputed, it becomes a question between the disputants which of them is to be believed. If the person adopting the name is to be believed, his new name is at once his legal and true name, and the person who deliberately contradicts his title to the new name, having no doubt that it has been publicly adopted, in good faith and in the absence of any fraudulent object, involves in his contradiction the expression of what is not true. No person can be forcibly compelled to call a man by any name, that is, no legal penalty attaches to him if he refuses to do that which guides every gentleman, namely—almost instinctively to recognise the truth and to act with courtesy. In every decent society the compulsion of such influences, though unfelt, is submitted to, and this same compulsion causing the recognition of a new name directs us to address any person on all occasions in the name by which he is known.

The circumstances under which names have held to have been assumed *bonâ fide* and under which they have been held to have been fraudulently assumed have been the subject of several decisions in the interpretation of the Marriage Act of the 26 George II, ch. 33, section 2, which provided that persons intending to be married should deliver or cause to be delivered to the parson, &c., "a notice in writing of *their true* Christian and Surnames." What then were true Christian and Surnames within the meaning of this Statute?

In the case of *Heffer v. Heffer* [3, Maule and Selwyn, 265] the name of the woman was "*Anna Colley*," but she was married in the name of "*Anna* Sophia *Colley*." The Judge said: "If the husband can show he has been imposed upon by a false name, he may on that ground falsify the

marriage, but he must set forth *the fraud*, and prove it to the satisfaction of the Court."

In the case of *Mayhew v. Mayhew* [3, Maule and Selwyn, 266] in a proceeding for divorce it was denied there had been any legal marriage, the woman having been described on the publication of the banns as "Sarah Kelso, widow," and that Kelso was not her name, and she was not a widow. Her maiden name, it was said, was "Sarah White," she had passed by the name of Aikin, and was *generally known* by the name of "*Kelso*," being the supposed widow of a person of that name. The Court said: "There was no fraud on any one, the husband having previously been made acquainted with all the circumstances. The woman was of age, and there was no person on whom fraud could operate. Her being described as a widow was immaterial, and the facts offered to be proved would not affect the marriage."

And in the case of *Rex v. Billinghurst*, the opinion of Mr Justice Le Blanc was to the same effect: "If the banns be published in the names of the party *by which alone he is known—and there is no fraud*—whether that be the true Christian or Surname of the party or not, I think the marriage is good within the meaning of the Statute."—[3, Maule and Selwyn Reports, 259.]

In the case of *Pougett v. Tomkins* [3, Maule and Selwyn, 262], A.D. 1814, which was a suit for nullity of marriage—one William Peter Pougett, a minor, under 16 years of age, married his father's maid-servant, named Letitia Tomkyns. The baptismal names of the minor were "*William Peter*." He was generally known and addressed as "*Peter*," and few people knew he had the Christian name of "William." The banns were published and the marriage celebrated in the names of "*William* Pougett" and "Letitia Tomkyns." The name of "William," said Lord Stowell, "would not have

sufficed to designate him to most persons. The question was—whether the omission of part of the Christian name is so material a variation as to nullify the publication. The true name is 'William Peter,' and, strictly, all baptismal names should be set forth; for, in strictness, I conceive that all the names compose but one Christian name. And I understand it is so held in Courts of Common Law. In the publication of banns, then, all the names ought to be published, for they all make up but one name. The party may be known to some by one name—by another to others. It is, therefore, highly proper that all should be enumerated. But I should be afraid to go the length of saying that the publication would be vitiated by the want of this in all cases. When *no fraud* is intended on either side—when all the parties interested have been cognizant—and when there has been a mere accidental omission of a dormant name—it would be too much to hold that a marriage perfectly honest in other respects should be vitiated by such an omission. Another case may be put, where either of the parties fraudulently suppressed one of the Christian names without the knowledge of the other—it would, in such a case, be hard to hold the marriage void against the ignorant party. But when the omission was *known to the parties* and *intended* by them as a *fraud* upon a third person—the father or guardian—the Court would, I think, in such a case be bound to enforce the strict letter of the law in order to maintain the spirit of the law." The marriage was declared to be null on the ground of fraud—the omission of the name "Peter" being intentional, and made for the purpose of concealment of the marriage from the father. One circumstance to prove the fraud which was strongly relied on was, that the *dormant* name was brought forward on the publication of the banns, and the name by which the minor was commonly known was suppressed.

In the case of *The King v. the Inhabitants of Burton-upon-Trent* [3, Maule and Selwyn, 537, A.D. 1815] the facts were: The father of a pauper, whose real name was *Joseph Price*, married at Leicester, by license, by the name of *Joseph Grew*. He had changed his name to Grew because he had deserted from the army. He was known by the name of J. Grew only at Leicester, where he lodged at the time of his marriage, and where he had resided for sixteen weeks. He never passed by any name but *Price* in his father's family and in the place where they resided. His wife did not know his real name until a fortnight *after* her marriage. The pauper was the issue of this marriage. After his birth the parents were remarried, the father then marrying in the name of Price. The sessions considered the first marriage to be invalid. Lord Ellenborough said: "There is not any occasion to trouble the other side:—if this name had been assumed for the purpose of fraud, in order to enable the party to contract marriage and to conceal himself from the party to whom he was about to be married, that would have been fraud on the Marriage Act and the rights of marriage, and the Court would not have given effect to any such corrupt purpose. But where a name has been previously assumed so as to become the name which the party has acquired by reputation, that is, within the meaning of the Marriage Act, the party's true name." "Here the party assumed the name for the purpose of concealment and not of fraud upon the marriage, and he was known by that name alone for *sixteen weeks* in the place where he was married. It seems to me, therefore, that he had *acquired the name*, and that to have had *a license in any other name would have been a fraud on the Marriage Act*."

The marriage was therefore held to be valid. The name acquired by reputation in the sixteen weeks, and by which alone *Grew* was known where the marriage took place, was,

in the absence of fraud, the legal and true name, though he remarried in the name of *Price*. Sir Simon Le Blanc and Sir John Bayley, J. J., concurred in this decision.

"It may, in some cases," said Lord Stowell, "be difficult to say *what are the true names*, particularly in the case of illegitimate children. They have no proper Surname but what they acquire by repute, though it is a well-known practice, which obtains in many instances, to give them the Surname of the mother, whose children they certainly are, whoever be their father. However, if they are much tossed about in the world in a great variety of obscure fortunes, as such persons frequently are, it may be difficult to say for certain what name they have permanently acquired, as was the case in *Wakefield v. Wakefield* [1, Haggard, 394]. In general it may be said, that where there is a name of baptism and a native Surname these are the true names, unless they have been overridden by the use of other names assumed and generally accredited." "Variations of the names of parties sometimes occur in banns. If they are *total*, the Rule of Law respecting them cannot be doubtful. It never can be pretended that such names can be deemed true designations; nor could one have supposed that such names could have been used but for the purpose of gross *fraud*, if the case of *Mather v. Ney* [Consistory, 10th July, 1807, 3, M. & S. 265], had not occurred, in which the woman from a mere idle and romantic frolic, insisted on having her banns put up in the name of "Wright," to which she had no sort of pretension. Such a publication, whether fraudulently intended or not, *operates as a fraud*, and is, therefore, held to invalidate a marriage. But besides total variations, there may be *partial variations*, of different degrees, from different causes, and with different effects. The Court is certainly not to encourage a dangerous laxity; neither is it to distrust honest marriages by a pedantic strictness.

Variations may consist in the *alteration of one letter* only, as Dobbyns for Dobbyn ;—in more than one as, 'Widowcroft' for 'Meddowcroft;'—in the suppression of a name where there are more than two, as, 'William Pougett' for 'William Peter Pougett' [3, M. & S. 262]—or in the addition of a name where there are only two known, as in the present case ['Maria Holmes Oldacre' for 'Maria Oldacre'], and in the cases of *Heffer v. Heffer* [3, M. & S. 265], *Tree v. Quin* [3, M. & S. 266], and *Dobbyn v. Cornick.* Such varieties may arise not only from fraud but from negligence, accident, error from unsettled orthography, or other causes consistent with honesty of purpose. They may *disguise the name* and confound the identity nearly as much as a total variation would do, in which case the variation is for the very same reason fatal, from whatever cause it arises. When it does not so manifestly deceive, it is open to explanation, if it can be given. If the explanation offered implies *fraud*, that fraud will decide any doubt concerning the sufficiency of the name to disguise the party. The Court will, certainly, hold against the party that what he intended to be sufficient to disguise the names shall be so considered at least as against him. He can have no right to complain that too strong an effect is given to his act, when he himself *intended* it should produce that effect. But if the *explanation* refers itself to causes perfectly innocent, and if it be supported by creditable testimony overcoming all the objections that may be applied against its truth, the Court will decide for the explanation and against the sufficiency of the disguise, when no such effect was intended. If the explanation should leave the matter doubtful, then evidence of general fraud intended may be let in to decide what is left undecided on the explanation. But the only falsehood that can be shown, in the first place, is the falsehood or, at least, the

insufficiency of the explanation itself; for until that falsehood or insufficiency is shown, there is no admission for evidence of any matter besides." In this case the proceedings in a suit of nullity of marriage by reason of the publication of "the banns" not being made in the true names of the parties, were instituted by the Right Honourable John Sullivan to annul the marriage of his son "John Augustus Sullivan" with "Maria Oldacre," otherwise "Maria Holmes Oldacre." The lady had always borne the name of Oldacre only until her own marriage was in agitation; "but when she came to this solemn act —an act that was very likely to be scrutinised, and which her parents naturally thought, if it was done at all, should be done in a valid and effectual manner—they, under a common but very erroneous impression that she was legally entitled to her mother's maiden name (she being illegitimate) advised her to prefix 'Holmes' to 'Oldacre.' In truth it was this mistake of theirs which had occasioned the whole question." The conclusion from the facts, drawn by Lord Stowell, was that the variation of the name *did not originate in fraud*, and he held the marriage to be valid, *Sullivan v. Sullivan.* [2, Haggard's Consistory Reports, 254, A.D. 1818.]

These decisions were reviewed by the Court of Queen's Bench in a judgment delivered by Lord Tenterden, when a marriage was held to be invalid under circumstances of great hardship—no fraud having been intended and no person interested in the marriage appearing to have been deceived. [*The King v. the Inhabitants of Tibshelf.* 1, Barnwell and Adolphus Reports, 190, A.D. 1830.] A painter and his wife were married in the year 1817 by banns, and he by the names of "Joseph Betts," and she by the name of "Mary White." On the side of the husband, *Joseph* Betts, it appeared that he had been baptised as the

son of John and Mary Betts. This *John* Betts absconded shortly after his marriage, and the son of the marriage (Joseph Betts) was brought up by his maternal grandfather (Samuel Wilson), and was himself called by the name of "Wilson"—was bound apprentice in the name of Wilson with the consent of his grandfather, and was never called or known by the name of "Betts," or by any other name than that of "Wilson," either before or after his marriage with the pauper "Mary Betts." The decision was confined to the sufficiency of the name in which his wife [a pauper] was married to him. She was the legitimate daughter of Job and Martha Hodgkinson, and she was never called or known to the time of the publication of the banns of marriage or of her marriage by any other name than that of Hodgkinson. In the register of her baptism she was described as "Mary," the daughter of "Samuel White and his wife." The maiden name of her mother was White, and her father and mother resided with Samuel and Dorothy White—the maternal grandfather and grandmother of the pauper at the time of her birth. The brother of her mother stated, that he believed the entry in the register to have been the mistake of the clergyman by whom she was baptised, and that he was the person who previously to the marriage discovered the mistake in the register (namely, "Mary, daughter of Samuel White and wife," instead of the entry being "Mary, daughter of Job Hodgkinson and his wife"). The question was—whether there was a sufficient publication of the banns to render the marriage valid? Her Surname, on the publication of the banns of marriage, was stated to be that of "White"—it was the same name as that entered by mistake in the register of baptism, and it was adopted on the publication of the banns from excess of caution. It was neither her right name, nor a name by which she had ever been known.

The discovery of the mistake in the register of baptism led to the commission of an error on the publication of the banns of marriage. There was no imputation of fraud; no wish or intention to effect any concealment, or to procure any advantage, or to mislead by the notice any person interested in the marriage, or in the publication of the banns in the name of "White." The "true" name under the Marriage Act [26 George II, chap. 33, sections 2 and 8], said Counsel, "is that by which the party has always been known, or, at least, if he has borne different names, not one assumed [re-assumed ?] at the moment to effect a fraud on the Act. It is true no fraud was here intended, but the proceeding operated as a fraud on the public and on the officiating clergyman. The object of the Statute was "notoriety."

Lord Chief Justice Tenterden, in delivering the judgment of the Court of King's Bench, said: "In a series of decisions upon this Statute it has been held that the clear intention of the Legislature was—that the banns are to be published in the true names of the parties, otherwise it is no publication at all. By these decisions these Rules are fully established:

"First.—That if there be a total variation of a name or names, that is, if the banns are published in a name or names totally different from those which the parties, or one of them, ever used—or by which they were ever known—the marriage in pursuance of that publication is invalid; and it is immaterial, in such cases, whether the misdescription has arisen from accident or design, or whether such design be fraudulent or not."

"Secondly.—If there be a partial variation of name only, as the alteration of a letter or letters, or the addition or suppression of one Christian name, or the names have been such as the parties have used and been known by at one

time and not at another—in such cases the publication may or may not be void: the supposed misdescription may be explained, and it becomes a most important part of the inquiry whether it was consistent with honesty of purpose, or arose from a fraudulent intention. It is in this class of cases only that it is material to inquire into the motives of the parties."

"The substance of these Rules will be found in the judgments of *Sullivan v. Sullivan* [2, Haggard's Consistorial Reports, 254]; *Frankland v. Nicholson* [3, Maule and Selwyn, 261, and 1, Phillimore's Reports, 147]; *Pougett v. Tomkins* [3, Maule and Selwyn's Reports, 263]; and *Mather v. Ney* [3, Maule and Selwyn's Reports, 265]; and in the judgments in *Rex v. Billinghurst* [3, Maule and Selwyn's Reports, 256], in this Court. The present case falls distinctly within the first Rule. Whether the alleged husband was sufficiently designated by the name of 'Betts' we need not inquire, as we are clearly of opinion that the woman was never known by and never used the Surname of 'White' so as to make that in any latitude of construction 'a true name' within the meaning of the Statute. Her family name, and that by which she was always known, was 'Hodgkinson.' The only occasion upon which the name of 'White' was applied to her was, in the register of her baptism. She was not baptised by that name, for the Surname is never used in the baptismal ceremony; but the name was entered in the register necessarily without her privity, and it seems without that of her parents, and probably by a mere error of the officiating minister, who appeared to have mistaken her parentage and considered her as the child of her maternal grandfather and grandmother. It is impossible, whatever may be the disposition to favour parties who have meant to act correctly and from the best motives, to say that a Surname so entered can be

the true name of the party to whom it is applied. It is, doubtless, a great hardship upon these innocent persons to pronounce that this marriage is void, but it would be a much greater inconvenience to the public to alter the settled Rules on this subject for the sake of preventing a particular mischief."

The hardship in this case caused by the Marriage Act was corrected by the Act of 4 George IV, chap. 76, section 22, which enacts: that "If any person shall knowingly and wilfully intermarry without due publication of banns, the marriages of such persons shall be null and void." The meaning to be given to these words was the subject of judicial decision in the case *The King v. the Inhabitants of Wroxton* [4, Barnwell and Adolphus' Reports, 646, A.D. 1833.] One James Carpenter had the name of his wife, "Susannah Spencer," published by banns, without her knowledge or assent, as that of "Agnes Watts." Lord Chief Justice Denman said: "To show this marriage to be void, the case of *Rex v. Tibshelf*, decided in this Court in Trinity Term, 1830, was relied on." "The words of the present Act are wholly, and we must presume advisedly, different." "We are of opinion that, in order to invalidate a marriage under this enactment, it must be contracted by *both* parties with knowledge that no due publication of banns had taken place." The marriage was, therefore, held to be valid.

The same conditions on the change of name—namely, publicity, good faith, and the absence of any improper object—are observed by the Courts of Law when changes of name are ordered to be entered on the Rolls of such Courts. For example: In the case of *Ex-parte Duggett* [1, Lowndes, Maxwell, and Pollock's Reports, 1], an attorney who, without a Royal License, had assumed another name

than that on the Roll of the Court, was permitted to have his new name added, it having been assumed *bonâ fide* and without any fraudulent purpose.

In 1850 an application was made, on the 17th of April, to the Court of Queen's Bench, under these circumstances: The applicant had been admitted as an attorney in the year 1848, and his name on the Roll was "*Thomas James Moses.*" His father being about to purchase a business for him, was desirous that he should adopt and use the name of "*Thomas James*" only, which he had done in the early part of the month of April. The case of William Duggett Ingledew was cited, in which Mr Justice Erle had granted a similar application. William Duggett Ingledew had succeeded to some property as the heir of his mother, whose maiden name was "Jane Duggett." She wished her son to take the name of "William Duggett" only, and since her death, in December, 1849, he had been called "William Duggett." Neither in the case of William Duggett nor in this of Thomas James had any Royal License been obtained to sanction the change of name. Mr Justice Coleridge reserved his judgment on the application, and afterwards, on delivering it, said: "He had conferred with the other Judges on the point, and they thought the entry ought to be permitted. The entry, therefore, might be made, but it ought to show that it was made in consequence of a change of name, and not of any error in the Roll." In future applications, he added, of this nature, the affidavits ought to state very clearly that the party is not apprehensive of any proceedings being instituted against him by the name he bears on the Roll. [19, *Law Journal*, Q.B., 345.]

In this instance the name of "Thomas James" was recognised by the Court within a very few days after it was assumed. When Courts of Law are satisfied that a legal act has been done, they have no choice in the recogni-

tion of it; the recognition is a legal obligation. The same Thomas James, who had been admitted on the Roll of Attorneys of the Court of Queen's Bench, applied to the Court of Exchequer on April 23, 1850, to be admitted in this Court by the name of "Thomas James" only, having dropped the name of "Moses." A rule absolute in the first instance to authorise the admission was granted by Chief Baron Pollock, Baron Parke, and Baron Rolfe. [19, *Law Journal*, 272, Exchequer.]

On November 19, 1850, Mr Atherton (now Attorney-General) moved in the Court of Exchequer for a Rule to substitute on the Roll the name of "*Josiah Heaton Dearden*," for that of "*Josiah Dearden*." The affidavit stated, that the applicant had assumed the name of "Heaton," being the maiden name of his mother, from love and respect to her, and not from any improper motive. The Order of the Court (Chief Baron Pollock, Baron Parke, Baron Alderson, and Baron Platt), was—"Let the Rule be, that the Master shall enter on the Roll of Attorneys, opposite the name of Josiah Dearden, a memorandum that by rule of this Court Josiah Dearden shall be known by the name of Josiah Heaton Dearden, and that the Master shall be at liberty to make an indorsement of such alteration of the name on the admission of the applicant." [20, *Law Journal*, 80, Exchequer.] The Court in this instance was satisfied of the good faith of the applicant and recognised the assumed name. It was directed that, by rule of the Court, he should be known by his assumed name.

So again, on November 19, 1852, on the application to Sir John Romilly, Master of the Rolls, by Mr Beavan (the author of the Reports of Cases heard at the Rolls, and whose learning and long labours entitle him to every respect), a solicitor admitted by the name of "*John Matthews*," was desirous to assume the maiden name of his

mother, namely, the name of "*Chamberlain*" in addition to his own Surname. The affidavit stated, that such desire did not arise from any improper motive or with a view to defeat, delay, or otherwise prejudice any legal or other proceedings against him;—that his partners had assented to his changing his name;—and that the Court of Queen's Bench had granted a rule for him to assume the name of Chamberlain in addition to his own, and that he had assumed the name accordingly.—An Order was made which directed that the name of Chamberlain be entered on the Roll of Solicitors of the Court opposite the name of "John Matthews," so that the name of "John Matthews" shall stand as "John Matthews Chamberlain," and that an indorsement be made accordingly on the admission of the said John Matthews. [22, *Law Journal*, Chancery, 22.]

These cases of *Duggett*, *James*, *Dearden*, *Chamberlain*, and that of *Bryan* already cited (page 14), conclusively show, that so soon as it is clear there is no fraud, and that the object of the change of name is not an improper one, it becomes an obligation on Judges to recognise the act as legal. Neither the reality or the legality of the change is a question of time. A change of name [in the case of Thomas James] made in "the early part of the month of April" was recognised by the Court of Queen's Bench as soon as practicable after the fact of the change was brought under its notice upon the 17th of April. The recognition of the new name by the Judges occurred in about a fortnight after the name was assumed. In Price's case (ante 23) it was held that if the marriage had under the circumstances taken place in any other than the name which had been assumed for *sixteen* weeks, it would have been illegal. Is any Secretary of State, then, or any Lord-Lieutenant of a County, to set up rules different from these, which Judges are compelled to follow, or

to create for themselves rules interfering with personal qualifications—creating personal disqualifications—which are utterly unknown to Courts of Law? The decisions of the Judges in these cases are not mere examples of conduct to be followed or neglected by official persons according to their choice, but the expression of rules of law affecting legal rights, the acknowledgment of which is a duty to be observed by all persons, and which cannot honourably be evaded by those who hold public offices.

There have been two well-known instances of change of name in Ducal families:

WESLEY to
WELLESLEY.

In the correspondence of the Duke of Wellington [p. 34], in July, 1797, the name is "Arthur Wesley." In June, 1798 [p. 52] he signed his name "Arthur Wellesley." The note of the Editor is: "Lord Mornington's family adopted the ancient spelling of their name about this time."

The other instance is that of the Duke of Somerset. His family is said to have had an ancestor, one Saint Maur of Penhow, in the county of Monmouth, whose real history, as well as that of all the St Maurs, is shrouded in heraldic fable and in obscurity. But there did spring up, from among St Maur's descendants, Jane Seymour, Queen of England and the mother of King Edward the Sixth. Her brother, Thomas Lord Seymour of Sudeley, married Catherine, the widow of Henry VIII, and her elder brother, Edward Seymour, became Duke of Somerset and Lord Protector. The historic name of the family is

not SAINT MAUR,
but SEYMOUR;

and this historic name has been abandoned! The name in which the distinction and the honours of the family were acquired has been changed to the miserable and insignifi-

cant Norman name of St Maur! An affected pronunciation does not make the names identical.

The Duke of Wellington might well, when merely an Indian officer, have been glad to have ceased to bear the name of Wesley, which in his career might, at a critical moment, have turned the balance of doubt against him by the nick-name of being "a Wesleyan," and his clear and far-seeing judgment was conspicuous in the details of every-day life as well as in the great events of the world which were controlled by his genius. The case of the Duke of Somerset, however, is without the least excuse. The name of his family, as it was written by JANE SEYMOUR herself, ought never to have been changed.

Both these changes of name—Wesley to Wellesley and Seymour to St Maur—come within the words of Lord Stowell: "The new names disguise the old names and confound the identity as much as a total variation." If the variation is treated as the adoption of a dormant name, still it is such as to obscure and disguise the names by which the families were known. A question, in both cases, might have arisen exactly the same as that arising from an entire change of name; namely, was the change publicly and *bonâ fide* made, and under such circumstances that no inference could be drawn of what is called "legal fraud?" "If the explanation referred itself to causes perfectly innocent, and if it were supported by creditable testimony overcoming all the objections that might be applied against its truth, the decision would be for the explanation and against the sufficiency of the disguise where no such effect were intended" [ante, p. 25]. The change of name from Seymour to St Maur would, however, most properly come under what Lord Stowell called "total variation."

Among the most memorable names connected with the history of English law is that of Thomas Littleton, whose

Essay "On Tenures" is the foundation of the First Institute of Lord Coke. This Thomas Littleton was a Judge of the Court of Common Pleas in the reign of Edward IV, and was the ancestor of Lord Keeper Lyttleton, of Sir William Lyttleton, Speaker of the House of Commons in the time of William III, and of the present Lord Lyttleton and Lord Hatherton. The name of the family became Westcote, and Lord Coke describes the manner in which the name of Littleton was adopted. "Thomas de Littleton, he says, had issue Elizabeth, his only child. She married Thomas Westcote, and being fair and of a noble spirit, and having large possessions and inheritance from her ancestors de Littleton, and from her mother the daughter and heir of Richard de Quatermains and other her ancestors, resolved to continue the honour of her name [as did the daughter and heir of Charlton with one of the sons of Knightley, and divers others], and therefore prudently, and whilst it was in her own power, provided, by Westcote's consent before marriage, that her issue inheritable should be called by the name of de Littleton." The eldest of the four sons of this marriage with Thomas Westcote was the above-named eminent Judge, Thomas Littleton. In this case the sons acquired a Surname by reputation during their infancy through the acts of their parents.

It is not unusual, when names have been assumed under the conditions of wills or settlements by Royal License, that when the entail of the property ends, the old or dormant name is reassumed without a license. Legally, in these cases, the persons who so act are exactly in the same position as if they had assumed a new name. They take a name which they have not the reputation to be known by; and a license to aid them to get that reputation is as necessary—if any license were necessary—when such dormant or discarded name is re-assumed as though it

were a name unknown to the family in any past generation.

It has been suggested there should be a special law regulating the use of names and interfering with their change. Is it meant that there shall be certain protected names? or is it meant, that the families of esquires are to have the pleasure of being especially taxed when they do that which tradesmen and artisans may do? Is the law affecting names *to cease to be a general law?* At the present time the ancient family names of some counties are to be found only among tradesmen and labourers. In Glamorganshire, for example, the name of the family of "Gamage," the former possessors of Coity Castle—and from a daughter of which house is descended the family of the Howards of Effingham—is now unknown among the landowners of the county, but it exists among persons in a humble condition of life. So also, the name of the family of Stradling, the former owners of the Castle of St Donatts, no longer designates any family of esquires in the county, but it exists among the poorer classes. At and about Neath, the names of Mainwaring, and of several other distinguished Cheshire families, are the names of the families of many labourers who habitually speak Welsh, and the history of the immigration of their predecessors is well known. Are labourers not to have the names of distinguished families, such as some colliers in Glamorganshire, for example, who have now the name of Devereux; or are country esquires to be forbidden to assume the names of labourers or tradesmen? It is said that it is only desired to check a change of name.—Are the offensive names which have been imposed on a man without charge to those who intended to express the misfortune of his origin not to be got rid of without great cost or expense? Is Mr Bridecake not to change his name to Brideoake; or is Mr Shufflebottom to be content

with the unrelenting ridicule which his name suggests; is Mr Hogflesh not to become Mr Hofleish; and is Mr Bug or Mr Humbug, with fortune, influence, and talent, to be laughed off the hustings? Is it to depend on the decision of a herald or a clerk in the Home Office to say, whether or not he will permit a license to issue to enable men to get rid of names which interfere with their success in life? Without any legislative interference there are sufficient personal interests to check changes of name. If there were any expectation of property there would be a dislike to interrupt any proofs of descent,—there is also the habit of being known and called by a certain name, which being as strong as any other habit, it would be disagreeable to disturb;—then there is a certain pride which will be found to exist in family affections inducing a man to stick to the name of his father when the name is sometimes really objectionable—and lastly, there is some ridicule varying in degree according to the sound of the new name, when a change of name appears to be needlessly made. If, however, any man chooses to interrupt the proof of his descent, which with persons of a humble position it would be very easy to do, what interest has the public in the act? Nor would any wrong be done to private interests in leaving the law as it is, for any person who claims property without being able to prove a descent from a former possessor of it, could never have had any expectation, governing his private affairs, disappointed. The law of centuries on this subject may well be left alone. No cases have occurred requiring legislative interference. If an objectionable adoption of family names has taken place, it has been chiefly in the instance of family names added to Surnames as baptismal names. A Royal Licence, as a record of a change of name, is utterly needless to families possessed of estates which become subject to the limitations of wills and settlements.

To the poorer class of persons, who might lose the evidence of a change of name, such licenses are so expensive as to be unattainable. As records, therefore, of changes of name the present system of granting Royal Licenses is of no use to any class of persons.

A correspondent of the *Law Times*, under the date of June 11, 1862, writes thus:

"In the year 1785 a relative of mine petitioned for and obtained a Royal License to assume the name of a maternal uncle, then living, in lieu of his own. The petition on which the license was granted is thus recited, and there is no mention whatever made of property: '*Whereas, A. B., of , Esq., hath by his petition humbly represented unto us, that the Rev. C. D., of , the petitioner's uncle, having no issue, hath expressed a desire that the petitioner should assume the Surname of D., out of affection and regard to his said uncle, the petitioner is desirous of complying with his said request. He therefore most humbly prays, &c.' The operative part of the license is as follows:—'Know ye, that We, of our princely grace and special favour, have given and granted, and by these presents do give and grant unto him, the said A. B. and his issue, our Royal License and Authority, that he and they may assume and take upon them the Surnames of D. only. Our will and pleasure therefore is, that you, Charles Howard, Esq. (commonly called* Earl of Surry), Deputy to our said Earl Marshal, to whom the cognisance of matters of this nature does properly belong, do require and command that this our concession and declaration be registered in our College of Arms, to the end that our officers of arms, and all others, upon occasion, may take full notice and have knowledge thereof. And for so doing this shall be your warrant. Given, &c.*'"

1.—The above was a License simply to change the

* Those persons who represent that a change of name without a license merely gives an *alias*, may remark, that these words "commonly called" is an equivalent expression to *alias*.

name. If Mr Popkin ap Hopkin ap Davis ap Jones is of opinion, that Her Majesty would feel pleasure in being informed that he has taken the name of "Neville Mowbray Plantagenet Tudor," or that his father or uncle by deed, or will, directed this startling information to be laid at the foot of the Throne, he will, of course [independently of the legal facility it offers to prove the publication and notoriety of the change of name] apply for a Royal License, the expense of which is very considerable.

When there is no will or settlement and no grant of arms, the License is published in the *Gazette* in this form:

"Whitehall, October 2, 1848.

"The Queen has been pleased to give and grant unto John Arthur Edward Jones,* of Llanarth, Inerwen, and Penthwyn, in the county of Monmouth, Esq., in the Commission of the Peace for that County, eldest son and heir of John Jones, late of the same places, Esq., deceased, and unto Arthur James Jones, of the Royal Welsh Fusiliers, Edmund Philip Jones, Gerald Herbert Jones, and Mary Louisa Jones, the only other surviving children of the said John Jones, her Royal License and Authority, that they and their issue may take and use the name of Herbert, instead of that of Jones:

"And also to command, that the said Royal concession be recorded in Her Majesty's College of Arms, otherwise to be void and of none effect."

At the County Court at Merthyr, there were in one month, in the year 1862, fifty-seven plaintiffs and defendants of the name of Jones; and at Aberdare fifty-

* The writer has failed to ascertain when, and by whom, the name of Mr J. A. E. Herbert was altered on the Commission of the Peace, or if it was done before the Lent Assizes of 1849.

three;—and many of these were of the name of John Jones. Surely changes of name are desirable in such places?

It is said that when a change of name is made by a gentleman it is "a graceful deference to the Crown to obtain a Royal License." The Crown confers no Surnames, and the real meaning of these words is, that it has pleased certain unknown officials, the mere parasites of the Royal ante-chamber, to tax easily-plundered esquires, and to receive from them heavy fees through an expensive and unnecessary process of obtaining the sign manual.

2.—If any person is desirous to continue his name in another family—doing so as it were by adoption; or who from affection towards a maternal ancestor, prefers her name to that of his paternal ancestors; or who, having a disgusting or offensive name, desires to rid himself of the nuisance, or for any excusable reason desires to change his name, it may be modestly, legally, sufficiently, and with the greatest propriety be done in the manner stated by a writer [Mr Thomas Wetherell] in the *Law Times*, June 7, 1862, namely, by a Declaration and Deed Poll executed, stamped and enrolled in the Court of Chancery, and advertising the same in the county newspapers published where the person executing the same is known. A deed is recommended because the law attaches peculiar effect to acts done by deed—no one, as a rule, being permitted to aver or to prove anything in contradiction to what he has solemnly and deliberately avowed by deed. It is itself evidence of *bona fides*, and publishing the fact of its execution gives notoriety to the act announced to be done equivalent in effect to the publication of a Royal License.

A. B——. DEED OF DECLARATION.

Know all men by these presents intended to be enrolled in Her Majesty's High Court of Chancery, that I, the undersigned,

lately called John S., lately residing in the free city of Hamburg, but now in H. R., in the county of W., and one of the partners in the firm of "J. B. & Co.," of N. street, in C., in the same county, merchant, have determined to assume and take, as from the day of the date of these presents, and thenceforth, to use the Surname of B., in addition to the Surname of S., but as my last and principal Surname. Now, for the purpose of evidencing such determination, I do hereby declare that I shall, at all times hereafter, in all deeds and writings, and in all dealings and transactions, and on all occasions whatsoever, use the Surname of B., in addition to the said Surname of S., and as my last and principal Surname. And I hereby expressly authorise and desire every person whomsoever to designate and describe me by such Surnames accordingly. In witness whereof I have subscribed these presents with my name of John, and my Surnames of S. and B., this seventh day of May, one thousand eight hundred and fifty-seven.

J. S. B. (L.S.)

Signed, sealed, and delivered by the above-named J. S. B., in the presence of W. H. R., Solicitor; W. H. H., his Clerk.

This is the deed or writing marked "A.," mentioned and referred to in the affidavit of W. H. R. Sworn before me, this twelfth day of May, 1857. *Jno. S. N.*

I, W. H. R., of B., in the county of W., gentleman, make oath and say:—

1.—*That the deed or writing hereunto annexed, marked "A.," was signed, sealed, and delivered by John S., otherwise John S. B., the party executing the same, in my presence and in the presence of W. H. H., of B. aforesaid, my Clerk.*

2.—*That the name John S. B., set and subscribed to the said deed or writing, as the name of the person executing the same, is of the proper handwriting of the said John S. B., and that the names W. H. R. and W. H. H., set or subscribed as attesting the execution thereof by the said John S. B., are of*

the respective proper hands-writing of me, the said W. H. R., and of the said W. H. H.

Sworn at B., in the county of C., this day of 185 , *before me,* *W. H. R.*

J. S. N., a Commissioner to administer Oaths in Chancery in England.

By Affidavit.—And be it remembered that on the oath W. H. R., the deed aforesaid was enrolled word for word as above written; and also the deed aforesaid was stamped according to the tenor of the statutes made for that purpose.

[*Seal of the* *Enrolled the 16th day of* *in the year, &c. Enrolment Office.*

This is a copy of the record.—E.Y.

7th Sept., 1857.

Mr Wetherell states the disbursements on such a deed to be:

Stamp on deed	£1	15	0
Stamp on affidavit	0	2	6
Oath	0	4	6
Paid enrolling	0	14	0
	2	16	0

It cannot, however, be too often repeated that the Crown cannot be compelled to grant a License. Even if the title to an estate depends on the procurement of a License, the Crown may refuse it, and the estate may be lost by the person on whom it is settled conditionally on the procurement of it. The Crown does not confer Surnames, and it may refuse to license them—a license being merely a mode of making a Surname public. A very innocent effort was made in the time of Sir Robert Peel to change a name by Royal License under these circumstances: A lady agreed to marry if the gentleman she was willing to accept would change his name to that by which she was known, and

relinquish his own name. The condition was assented to, but Sir Robert Peel thought this was not sufficient reason to intrude a request for the sign manual to a license. They were told, however, there was no legal impediment to the change of name without the existence of any license. Fortunately, there was no title to property conditional on the change of name by Royal License, and probably the parties were all the more happy to discover that a large sum of money was saved in complying with the request of the lady without the aid of the sign manual. Lord Coke commended, in the case of Elizabeth Littleton, on her marriage with Thomas Westcote, the similar wish this lady expressed, and the care she took in order to secure its fulfilment. The conduct of Sir R. Peel, however, was perfectly correct. He did right to defend the Presence from nonsensical applications for licenses which the law does not hold to be necessary for the mere purpose of a change of name, and which the Crown cannot be required to issue.

3.—And lastly, if a man chooses to rely on the mere publicity of the act and its *bona fides*, he may change his name effectually without a deed. It was this course which was sanctioned by the many decisions of the Courts of Law already cited.

The most respectable and honourable mode to change a Surname is to do it with publicity and avowedly in the midst of a man's friends and family and without a Royal License. First, because any solicitation to obtain the concession of a personal favour at the Home Office and the obligation such favour when conferred imposes, are avoided; secondly, because any offended sense of self-respect is prevented in case of refusal, such refusal being, at times, capricious; and thirdly, because any uninvited and needless intrusion for the Sign Manual, which every

person must object to, is avoided. When these difficulties do not occur, no commendation can be given to those who brave them over those who are content in the ordinary course of law to inform their friends that they have innocently and legally, if not always wisely, adopted a new Surname without having subjected themselves to the possibility of any personal humiliation, and without being a suitor in any public office.

This question has been asked: If a person is acting in the Commission of the Peace, and changes his name, in what name is he to sign documents? The answer is, in his legal, that is, his new name. It is not to be presumed that the Lord Chancellor will disregard the general law which governs the use of Surnames, and omit to make any necessary alteration in the Commission of the Peace at the earliest convenient opportunity. In fact the course proper to be pursued cannot be one of doubt among the officials of the Crown Office. The instances of magistrates who have changed their names—no matter whether with or without licenses, for when honestly done the legal effect is the same—must have created a very large number of precedents of additions or alterations in the Commission of the Peace. Nor can a more desirable mode be suggested in the instance of magistrates, of announcing a change of name than through the customary practice at the Assizes of reading aloud the names of all the persons on the Commission whether they have been sworn in or not.—[*King v. Burton-on-Trent*, *ante*, p. 23.]

It has been suggested there should be some legislation on this subject, but the objections to it are:

1.—That no inconvenience has arisen from the present state of the law except in the instances in which Government officials have themselves caused them through their efforts to promote, apparently, the interests of the Herald's College or of some recipients of fees.

2.—That if a new law of a restrictive character were passed, it would necessarily be accompanied with fines and penalties, and there would be a needless creation of new offences.

3.—The present law is a general law, and affects all classes of persons alike. If Surnames as well as arms are to be regulated by the Herald's College, and applications are to be made to the Home Office to obtain the Sign Manual to a license, in what manner could a labourer of the Surname of "Slug," or any similar offensive name, obtain relief? Fines and penalties would have a most unequal operation. It is chiefly on tradesmen and labourers that offensive and degrading names have been imposed, and there ought to be no interference with any sense of personal respect and of personal character which may induce them to abandon what are badges of degradation.

If any change in the law relating to Surnames were made, it ought to be exceedingly simple and in no degree restrictive. It should be enough to register the change in any office for the Registration of Births, Deaths, and Marriages, and a small fee only should be payable. There should be no compulsion to make this registration. Whatever name may suggest a sentiment of pleasure or happiness, or which may promote the interest of any person, he should remain as free to adopt as the law at all times has left open to him.

In the United States changes of names are frequently announced through Acts passed by the State Legislatures, but such Acts are passed without cost to the persons named in them, and names are not known to have been rejected.

The Herald's College pretend an interest in this question which is not dissimilar to that set forth two centuries since "to put a stop to the abuses of painters in marshalling funerals, making escutcheons, &c., and thereby intruding

on the officers at arms."—[*Calendar of State Papers, March* 10, 1662, p. 72.] Heralds were said to have had authority, "*on request*, to solemnise the funerals of noble, honourable, reverend, and worshipful personages" [4, *Institute*, 125], and a contest arose respecting funerals according to law and funerals according to the Herald's Office. The burial of a gentleman, without the interference of a herald, probably suggested similar arguments to those lately used respecting changes of name without heraldic aid. It is but just, however, to the keepers of the Great Heraldic Menagerie on Bennet's Hill to say, that the larger share of fees payable on a change of name by Royal License is not devoured by red lions, or true blue dragons, or, in fact, received by the College officials.

PART II.

On March 17, 1862, the following correspondence appeared in the *Observer* newspaper, published in London, and shortly afterwards in the *Morning Post:*

No. I.

THE CLERK TO THE LIEUTENANCY TO MR W. R. JONES.

Newport, Dec. 17, 1861.

SIR,—I am directed by the Lord-Lieutenant to state that his lordship, having been informed of your desire to obtain a commission in the Royal Monmouthshire Militia, will cause your name to be submitted to the Queen for Her Majesty's approval. —I am, Sir, your obedient servant,

(Signed) CHAS. PROTHERO, Clerk to the Lieutenancy.

W. REGINALD JONES, Esq., Clytha, Raglan.

No. II.

MR W. R. JONES TO THE CLERK TO THE LIEUTENANCY.

Dec. 22, Hotel de l'Orient, 38 Rue St Dominique, Paris.

SIR,—I beg to acknowledge the receipt of your letter. If my name has not yet been submitted to Her Majesty's approval, will you kindly *delay* doing so until after my coming of age, which will be in the month of February, as my father has expressed a wish to that effect. I have written to Colonel Vaughan on the subject.—Yours, truly, REGINALD JONES, of Clytha.

No. III.

MR W. R. JONES TO THE CLERK TO THE LIEUTENANCY.

Paris, Feb. 18.

DEAR SIR,—I am much obliged to the Lord-Lieutenant for his kindness in complying with my father's request in not gazetting me till I attained my majority.

Having arrived at that age on the 16th of this month, there is no further objection, and I shall be much obliged to you if you

will be kind enough to obtain the insertion of my name in the *Gazette* as soon as may be thought necessary.

On my coming of age my father decided on changing the name he has hitherto borne, and taking the family name of Herbert. Will you be kind enough to alter the name previous to my name being gazetted?

Hoping I may have caused no inconvenience by the delay, believe me, yours faithfully, REGINALD HERBERT, of Clytha.

No. IV.

THE CLERK TO THE LIEUTENANCY TO MR W. R. JONES.

Newport, Feb. 24, 1862.

SIR,—I am directed by the Lord-Lieutenant to acknowledge the receipt of your letter of the 18th inst.

With regard to that part of your letter in which you say that on your coming of age, on the 16th instant, your father decided upon changing the name he has hitherto borne, and taking that of Herbert, and in which also you express a desire that your own name should be altered previous to your being gazetted.

His lordship desires me to state that, having only seen an advertisement in the county papers, and a printed notice which has been circulated through the county of Monmouth within the last few days, that Mr Jones had assumed the name of Herbert, but without any authority being cited for his so doing, it became his duty to put himself in communication with the Secretary of State for the Home Department, in order to ascertain whether the Queen had been pleased to grant to Mr Jones her Royal License and Authority that he and his family might take and use the name of Herbert instead of Jones.

His lordship *is informed by the* SECRETARY OF STATE that no such license has been granted, and that "all commissions must be made out in the *real* name of the parties to whom they are granted."

I must also direct your attention to the fact that your father's name is in the commission of the peace for this county as "William Jones," and that when the assizes are opened at Monmouth, and the list of justices is read over in the Crown Court by the clerk of assize, Mr Jones's name must be called as heretofore.

I am instructed by the Lord-Lieutenant to add that, having acceded to the request of Lieut.-Colonel Vaughan, commanding the Royal Monmouth Militia, that his lordship would submit your name for approval for an ensigncy in that regiment, he will, in accordance with that promise, and if you still desire it, submit your "*real* name" of William Reginald Jones. *But he cannot*

submit a name which you have merely assumed without the Royal License and Authority for so doing.

Waiting your reply, I have the honour to be, Sir, your obedient humble servant,

CHARLES PROTHERO, Clerk to the Lieutenancy for the County of Monmouth.

To WILLIAM REGINALD JONES, Esq.

No. V.

MR W. R. JONES TO THE CLERK TO THE LIEUTENANCY.

Paris, March 4.

SIR,—In answer to your official communication, dated Feb. 24, I beg to say that my father, having taken counsel's opinion on the legality of the change of name, and having fulfilled all the requirements consequent upon such an opinion, I was not a little surprised at the refusal of the Lord-Lieutenant to recommend me to Her Majesty for an ensigncy in the Royal Monmouthshire Militia.

Being perfectly satisfied that the mode adopted by my father to change his name is *strictly legal*, I think it would be unbecoming in me to allow myself to be gazetted in any other name than that which we have lawfully assumed.

I have the honour to be, your obedient humble servant,

REGINALD HERBERT, of Clytha.

P.S.—Severe illness has prevented me from taking earlier notice of the letter, being still confined to my bed.

No. VI.

THE CLERK TO THE LIEUTENANCY TO MR W. R. JONES, OF CLYTHA.

Newport, March 11, 1862.

SIR,—I am directed to acknowledge the receipt of your letter, dated Paris, March 4, in which you say that "your father" has taken "counsel's opinion," and "having fulfilled the requirements consequent upon such an opinion," you are "not a little surprised at the refusal of the Lord-Lieutenant to recommend you for an ensigncy in the Royal Monmouthshire Militia."

His lordship declines to enter into any correspondence relative to the opinion of counsel to which you refer, and of which he cannot take any cognizance.

You are mistaken in saying the Lord-Lieutenant has refused to submit your name for approval. On the contrary, you will

find, on reference to my letter of the 24th ultimo, that I stated that his lordship, in accordance with his promise, would submit your *real* name of William Reginald Jones, if you still desired it, but that he could not submit a name which you had assumed without the Royal License and Authority for so doing.

Your father, Mr Jones, of Clytha, has failed to obtain that authority, and, having failed, you now desire the Lord-Lieutenant to submit for the Queen's approval an assumed name, unauthorised by Her Majesty, for a commission in the Militia.

His Lordship declines to accede to such a request, and you ought not to be "surprised" that the Lord-Lieutenant refuses to perform an act which would be *a direct interference with the prerogative of the Crown.*

In conclusion, I am directed to inform you that copies of this correspondence will be forwarded to the Secretary of State for the Home Department, and to the Lord Chamberlain of Her Majesty's Household.

I have the honour to be, Sir, your obedient servant,
CHARLES PROTHERO, Clerk to the Lieutenancy
for the County of Monmouth.

To WILLIAM REGINALD JONES, Esq., of Clytha,
7 Rue Faubourg St Honoré, Paris.

The little lecture "on surprise" may now be read by Mr Herbert, of Clytha, to the Monmouthshire officials. Such a Royal prerogative as that alluded to is unknown to the law.

It is to be observed that the correspondence was to be forwarded to:

1. The Secretary of State for the Home Department.
2. The Lord Chamberlain of Her Majesty's Household.

It must not, however, be assumed that the Lord Chamberlain superintends the Militia—though it might be so inferred from the fact of Mr W. R. Herbert, of Clytha, being reported by the Lord-Lieutenant to the Lord Chamberlain.

The prudence of Mr Herbert in delaying his application for a commission until a change of name took place has been shown in the result. If he had had his commission

and any one officer had insisted on calling him by the name in his commission because the Lord-Lieutenant would not recognise his new name and the other officers with the courtesy to be expected from gentlemen addressed him by his new name, his position might have been annoying, and especially in case of any official communications with the Lord-Lieutenant.

Shortly after this correspondence was published there appeared a series of articles in a newspaper published in Monmouthshire, from which the following are extracts:

"The Sovereign alone has a right by Sign Manual to give her Royal Authority by Letters Patent to any individual to bear any name, and to limit the favour to his immediate descendants; while any person who attempts to ignore the Royal Prerogative by taking a name by advertisement, though there may be no penalty affixed to it—debars the individual from being received at Court under the assumed name."

This article, curiously enough, points to the shadow of the Lord Chamberlain,—through what inspiration?

On the 26th of April an article was printed "On the Vanity of Human Wishes," in which it was said:

"There is a long and elaborate article in our local contemporary of Saturday last about a gentleman's right to *pirate* the name of another. In our simplicity we thought the Secretary of State was a preferable authority in such matters, and that the Lord Chamberlain, as well as the Lord-Lieutenant of the County, would also be qualified to speak authoritatively on the point, as they would, of course, have the best legal advice before they adopted any particular rule."

How came the writer to know what had passed at the Home Office or with the Lord Chamberlain? The name proposed to be taken was that already sanctioned by the

Crown as the Surname the other branch of the family might assume.

The writer further added:

"Mr Jones professes to be what the constitutional authorities affirm he is not. He asks to be Justice of the Peace, a Deputy Lieutenant, a Grand Juror of the County, an Officer of the Militia, under an assumed name, but there is a doubt how to describe him. He won't be *Jones*, and *those who have the whip-hand* won't let him be *Herbert*."

On the 10th of May, 1862, appeared another article, in which it was said:

"If Mr Jones, of Clytha, *alias* Herbert, can satisfy the Lord-Lieutenant, the Lord Chamberlain, the Secretary of State, the Law Officers of the Crown, AND THE CLERK OF THE PEACE OF THE COUNTY, we shall be happy to submit our judgment and opinion at the same time, but not until then. In the meantime we have neither space, nor time, to prolong an idle controversy in which caprice, vanity, and presumption seek to maintain a wrongful course, and are opposed by law, reason, custom, and precedent. As the case stands the concurrence of authority is decidedly against Mr Jones and his pretensions, *and he can only preserve his* STATUS *in the County* by retaining the name he has always been known by, or obtaining an Act of Parliament, or the License of the Crown, to take another man's name."

On May 17, 1862, another article appeared, stating that: "Her Majesty has just caused it to be notified, that all persons who had intended to be presented at Drawing Rooms and Levees this season can have a certificate to that effect which will ensure to the holders all the recognition and advantages Abroad which actual presentation at Home would have conferred on them. Mr Jones, of Clytha, is now abroad, and should apply forthwith for such an attestation, which would be equivalent to letters of credence.

The county has a right to require this of him, that it may be ascertained what his position is, and whether he can legally take a name without the formalities WE contend to be necessary. This would settle and save him from awkwardness and embarrassment on many occasions, and enable him to take the standing in the county *which he cannot occupy until the Authorities* admit the designation to which he pretends, and which they disavow."

This paragraph could only have been published for the sole purpose of insult towards a private gentleman who in no known act of his life had done anything to excuse his being referred to in this very offensive manner. Was it the editor who was so interested in the prosperity of the Clytha family during their absence abroad?

It will thus be seen that week after week the authority of the Lord Lieutenant, of the Home Office, and of the Lord Chamberlain, were cited to justify the publication of attacks on Mr Herbert of Clytha and on his son, in order to degrade them in public estimation. They were asserted to have acted illegally, and it was represented, in addition of the positive avowed refusal of the Lord Lieutenant to admit Mr W. R. Herbert into the ranks of the militia of his own county, that the Home Secretary and the Lord Chamberlain condemned his conduct. They were struck at by the public press, charged with *pirating* a name—and the most intolerable indignity was offered to them on account of the assertion by the highest authority in the county, that they had disqualified themselves to hold the usual offices in their own county which every gentleman expects to be permitted to fill. There are some countries in which, when murder is being committed—in Cuba for example—the neighbours who hear the noise shut up their houses in order to avoid the inconvenience of defending the unfortunate man—but it was not to be assumed that the influence which directed

the attacks on the character of Mr Herbert would induce any gentleman in the county of Monmouth to close his mouth from the expression of the indignation they excited in every assembly of gentlemen in which they were known. It was impossible to believe that any official in London would do any act which could in any degree sanction such attacks. The printed papers were sent to Mr Roebuck, M.P. He asked in the House of Commons whether the Lord Chamberlain had refused to permit Mr Herbert, of Clytha, to be presented at Court: if the Horse Guards had refused to sanction his admission into the Militia, and if the Lord Chancellor had refused to place his name on the Commission of the Peace? It is a small matter to strangers what name a private person assumes, but it was of importance to everybody, as put by the writer in the *Cornhill Magazine*, to ascertain *if Mr W. Herbert and his son Mr W. R. Herbert were outlawed without having committed any offence, or whether the highest officers of State were in a conspiracy to deprive them of legal rights.*

The reply to the first question was argumentative: there had been no opportunity, it was replied, to present Mr Herbert at Court. Had there been any answer when the correspondence was sent to the Lord Chamberlain, declaring what he would do? Had Sir G. Grey communicated with the Lord Chamberlain? What was the authority of those who sent paragraphs to the public papers stating the expected refusal of the Lord Chamberlain? The refusal of the Commission in the Militia was admitted and avowed in the following letter of the Lord-Lieutenant:

"Llanover, June 1.

"My dear Clifford,—I observe by the papers that Mr Roebuck has given notice that he will put several questions in relation to a matter connected with this county. The facts are these, as far as I am concerned as Lord-Lieutenant. In December last, Lieut.-Colonel Vaughan, commanding the Royal Monmouth

Militia, requested me to submit for the Queen's approval the name of Mr William Reginald Jones for a commission then vacant in the regiment. This I consented to do, and directed the clerk of the lieutenancy to inform Mr W. R. Jones of my intention to comply with his wishes so expressed. Mr Jones, in reply (dated December 22), requested that his name might not be submitted until February, when he would be of age, as his father had expressed a wish to that effect. The matter was therefore delayed. On the 18th of February, Mr Jones again wrote to the clerk of the lieutenancy, stating that he attained his majority two days previously, and requested him to obtain the insertion of his name in the *Gazette* as Herbert, instead of Jones, which he had heretofore been called, as, on his coming of age, his father had determined to abandon the name of Jones. Having only seen an advertisement in the county papers, and a printed notice circulated in the county by Mr Jones, the father, stating that he and his family had assumed the name of Herbert, without any authority being cited for so doing, it became my duty to ascertain whether the Queen had been pleased to grant her Royal License and Authority that Mr Jones and his family might take and use the name they had assumed. I was informed that Mr Jones had made application at the Herald's College, and *had failed to obtain that which he sought for.* I also applied at the Home Office, and was informed that no such license had been granted, and that all commissions must be made out in the real name of the party to whom they were granted. I therefore directed the clerk of the lieutenancy to write to Mr W. R. Jones accordingly, and also to inform him that although I could not submit a name which he had assumed without Royal Authority, as if I did so I should act in direct interference with the prerogative of the Crown, yet, if he still desired it, I would submit his real name, as I had previously promised. This Mr Jones refused, and thus the matter stands. I forwarded a copy of the correspondence to the Home Office in March last, and Mr Roebuck can move for it if he pleases.

"I remain, my dear Clifford, yours sincerely,

"LLANOVER."

The Herald's Office had been resorted to; the Home Office had been visited; but what had passed between the Lord Lieutenant and the Lord Chamberlain? What influence had induced the Herald's Office to refuse to one branch of the family what had been granted to another branch, and both in fortune, position and influence, little, if

at all, unequal? If any prerogative of the Crown, such as that asserted, had existed, it was clear its exercise was governed by no fixed rule, and that it was not above the region of Caprice.

As applications to be placed in the Commission of the Peace pass through the hands of every Lord Lieutenant of a county, there existed the same groundless objection on his part to apply for an amendment or addition of the name of Mr William Herbert on the Commission of the Peace, as was made to the application to issue a commission in the Militia to Mr W. R. Herbert.

Sir George Grey explained, "That he was not responsible for any answer given to the Lord Lieutenant by an under-secretary at the Home Office; that he had taken no part in the matter except to acknowledge a letter transmitting the correspondence, and that he did not know if Mr Herbert, of Clytha, had assumed the name or not; that there was no Royal Prerogative such as that the Lord Lieutenant believed himself to be defending—that there was no personal objection to Mr Herbert receiving a commission in the Militia; but then he added, that a change of name in order to be valid must be sanctioned by usage of such a length of time as to give it a permanent character."

Every person must at once perceive the untenable qualification of the law expressed by Sir George Grey. A change of name necessarily implies the abandonment of a previous name or an addition to it. If the new name is no name until after the lapse of an indefinite interval of time, the man who changes his name has no legal name when he changes it:—and this absurdity follows—he has no name during the time his new name is becoming permanent, for the change compels the abandonment of the old name. The opinion of Sir G. Grey is, however, disposed of by the decisions of the Judges in the cases of *James* and of the *King v.*

Burton-on-Trent [ante, p. 23 and p. 31], already cited. He endeavoured to excuse a certain disregard of the law, and failed.

The facts to be ascertained on a change of name are those which induced the Judges to add assumed names on the roll of the attornies of their Courts when applications were made to them:—namely, Has the new name been publicly assumed, and without any fraudulent purpose? If so, the new name becomes *immediately* the legal name, though in certain solemn acts [on marriage, for example] it may be safe, for a time, to refer to the former name—when using the new name—and such a reference would be evidence of the good faith of the assumption of the new name.

Had Sir G. Grey, however, not merely distinctly recognised the law, but had avoided the expression of an opinion, the contrary of which had already been decided by the Judges in the cases mentioned, all the very discreditable official proceedings which have since taken place in Monmouthshire would probably have been prevented.

The results of the discussion in the House of Commons were to remove the imputation of personal disqualification to fill public offices in the name which had been assumed by Mr Herbert of Clytha—to exhibit the caprice of some officials who had unfairly refused to him a Royal License to change his Surname (he having, according to the letter of Lord Llanover to Col. Clifford, needlessly desired this expensive form to be observed), and to establish the perfect legality of the course he had adopted. Though the authority of the Secretary of State for the Home Department, of the Lord Chamberlain, and of the Law Officers of the Crown, had been affirmed to be opposed to Mr Herbert, it turned out that there was no acknowledged opposition to him in London.—[*The Times and Daily News' Reports of Debate in the H. of C.*]

In any county it must be a cause of sincere satisfaction and congratulation when a gentleman whose family is of ancient standing, and whose character no person has aspersed with truth, after being made an object of public censure, is found to have acted innocently, honourably, and legally.

There ought to have been no hesitation in issuing a commission in the Militia to Mr Reginald William Herbert, or in requesting the Lord Chancellor to add the name of "Herbert" to that of "Mr William Jones" of Clytha, which name is already on the Commission of the Peace. These are acts which were to be expected from the courtesy of a gentleman holding the office of Lord-Lieutenant. No correspondence whatever with the Lord Chamberlain ought to have taken place. It was perfectly needless to have introduced that usual silent personage into the discussion if its purely hostile object were not apparent. All officials, also, should have kept themselves clear of any participation or apparent assent to the threats of social degradation and of charges of personal disqualification to hold office, published against the Herberts of Clytha. The flagrant injustice done to them is shown in the decisions of the Judges on the assumption of new names, and in their ready recognition of such names, not from favour, but through submission to the law which they blamelessly administer. Legally the Herberts of Clytha have done no more than was done by the late Duke of Wellington and a Duke of Somerset—for "total variation" of name—the change of name—the assumption of a dormant name—and the re-assumption of names made dormant when new names were assumed—are governed by the same rules. That an assumed name was an old name of some member of the family does not vary the legal effect of what is done. The act of such change of name the law assents to, if it is publicly done, done in good faith, and done with an innocent object.

Were it not so, there would be no new Surnames, and a clerk of a petty office would sit to regulate changes of existing names, and to order prosecutions and the imposition of fines and penalties; the assumed results of the legislation of childish officials.

How injurious to public interests might it not have been, if, when the Duke of Wellington wrote from India and desired that the name of "Colonel Wesley" should be altered in the *Army List* to that of "Colonel Wellesley," some silly clerk at the Horse Guards had replied: "We do not attend here to what Colonel Wesley calls the law relating to Surnames. We only know of Colonel Wesley as he is named in the King's Commission, and we intend to keep that name on the list. The Secretary of State has been spoken to on the subject, and he says that he knows of no Sign Manual to authorise the change; the new name has no sound similar to that of the pronunciation of the old name, and whether it be a new name or the resumption of a dormant name a license to be known by it is necessary. As no title to property is in question the change is a mere fancy, and no license will be granted. The Secretary of State is, also, of opinion that Colonel Wesley could not, under the circumstances, be at once known as Colonel Wellesley, nor be known by that name until he has been so long known as 'Colonel Wellesley' that the world is satisfied that the change of name is permanent; but the change will not be permitted to be printed in the *Army List*, and Colonel Wesley will not be recognised by the name of Colonel Wellesley." Such an absurd proceeding —which in the year 1862 in other similar cases is not imaginary—might have interfered with the promotion and the success in life of one of the greatest of men—and a clerk at the Horse Guards might in these days be probably authorised to write in such terms.

The *Times* of August 13, 1862, announced that a baronet of the name of "Hoghton" had obtained the Royal Commission "to resume the ancient patronymic of his family" of "De Hoghton,"—in fact, converting, in sound, H into D. It was an idle reassumption of a dormant word which might once have had a useful meaning. Can it be doubted that if certain official persons did not get fees on the occasion, such an intrusion on the Sovereign, for so ridiculous a purpose, would be immediately condemned and forbidden? Did the Crown direct this family to show some good sense in suppressing the "De" when that interesting act was formerly done? If it did not, what need was there to ask for this license? The great Duke of Wellington made the much more important change in his Surname without such a needless application to the Crown. Could not the Home Office have been guided by the example?

After the debate in the House of Commons, every cause to suspect an intention to wrong the Herberts of Clytha ought to have been carefully avoided, and the affair should have been finally disposed of by a ready compliance with the law on the part of officials. The following correspondence has, however, been printed since the above pages were written:—

TO THE EDITOR OF THE 'MONMOUTHSHIRE MERLIN.'

SIR,—I am directed by the Lord-Lieutenant to request that you will insert the following correspondence in your next number.

I am, Sir, your obedient servant,

CHARLES PROTHERO, Clerk of the Peace.

Newport, 31st July, 1862.

No. I.

CLERK OF THE PEACE FOR THE COUNTY TO THE CLERK OF THE CROWN.

Newport, Mon., July 26th, 1862.

SIR,—I am directed by the Lord-Lieutenant of this county, to forward you a copy of a correspondence that took place between Mr William Reginald Jones of Clytha, and myself, as Clerk of the Lieutenancy, and acting under the instructions of his Lordship.

You will observe that his father, Mr Jones of Clytha, advertised in the public papers, that he had abandoned his name of Jones and assumed another name, and had enrolled a deed in the Court of Chancery to that effect, upon which Mr W. R. Jones desired to have his assumed name submitted to the Queen for Her Majesty's approval for a commission in the Royal Monmouthshire Militia. The Lord-Lieutenant refused to acknowledge a name assumed without Royal License, being of opinion (in which opinion he has been confirmed by the highest authority) that such deeds cannot supersede the Sign Manual of the Sovereign, and *are only good in law as against the enroller, in regard to money transactions.* He also calls attention to the fact that "the name of Mr W. R. Jones's father was in the commission of the peace for the county of Monmouth as William Jones, and that when the list of Justices was to be read over in the Crown Court, by the Clerk of Assize, Mr Jones's name must be called as heretofore." This was done at the Lent Assizes.

The Lord-Lieutenant has heard that Mr Jones has recently applied to yourself as Clerk of the Crown for a "Dedimus" to authorise him to act as a Justice of the Peace for this county under the assumed name of "Herbert," instead of his real name of Jones. As the Autumn Assizes will be held in the course of a few days, the Lord-Lieutenant will be obliged if you will state, for his information, whether any such application has been made, and if so, whether the application has been granted.

I am, Sir, your obedient servant,

CHARLES PROTHERO,
Clerk of the Peace for the County of Monmouth.

C. ROMILLY, Esq., Clerk of the Crown, Crown Office, London.

No. II.

THE CLERK OF THE CROWN TO THE CLERK OF THE PEACE.

To Charles Prothero, Esq., Clerk of the Peace, Monmouthshire.

Crown Office, 28th July, 1862.

SIR,—In answer to your communication of the 26th inst., I beg to acquaint you, for the information of the Lord-Lieutenant, that Mr Jones did, through his solicitors, apply at my office for a "*Dedimus potestatem*" in the name of William Herbert, described in the Commission of the Peace as William Jones, Esquire.

I felt myself, however, under the necessity of refusing his application, as I did not consider I had authority to issue such a writ in an unusual form, for which there was no precedent in my office.—I have the honour to be, Sir, your obedient servant,

C. ROMILLY.

The proceedings at the Crown Office seem to afford a similar illustration of what occurs in the Custom House [see *Digest of Proceedings of the Committee of London Merchants for the Reform of the Board of Customs*, 1852, p. 52-55]. An inexperienced person asks a question, the answer to which he anticipates will instruct him in what he ought to do. The person addressed strictly answers the question. He does not mislead. He knows precisely what is the information desired, and the question does not reach it. The information is, therefore, withheld, because it is not precisely involved in the form of the inquiry. It was known in the Crown Office what is the course which is pursued when a magistrate in the Commission of the Peace changes his name. There were numerous precedents which did apply, but what was actually asked for was unusual. What should we say, if a traveller desiring to cross a river in order to reach the end of his journey, asked at a cross road the way to the bridge, and was put out of his way on the assurance there was no bridge, and the information were withheld from him that the common ferry was close at hand? Had the information been given, which it was known would have directed to the right course, the Lord Chancellor would probably have been officially protected from being entangled in the affair.

It was, no doubt, an error to ask Mr C. Romilly to make out a writ of "*Dedimus potestatem*" in any other name than that which appears on the Commission of the Peace. He had no authority to do what was requested of him. It could only be done by the Lord Chancellor. But it is a painful fact that the opinion which the Clerk of the Peace is directed to express, is conveyed to him in words not at all dissimilar to those of the first of the series of most abusive articles, already cited, published against the Herberts of Clytha. For example:

"The necessity for enrolling a deed in Chancery (said the writer of the first of such articles), in the present instance is, that no *pecuniary matters* could have been transacted with any individual who merely advertised himself as having assumed a new name unless that person gave the security of a deed, enrolled in Chancery, to identify himself by his own act as the same individual, &c., such deed being merely good against *the enroller*."

If it is a mere coincidence, it is a remarkable one, namely, that "the highest authority" has expressed himself to the Lord-Lieutenant in language almost identical with that of the writer of a most inexcusable public attack on the Herberts of Clytha. Either the writer in the newspaper was "the highest authority," or "the highest authority," corresponding with Lord Llanover, was in communication with the author of the article—or their agreement is wonderful in the invention of a curious and very odd argument.

It must, however, have been instructive to Mr C. Romilly to be informed that "the highest authority" holds the opinion, that a man can only change his name without the aid of the Sign Manual in money transactions: that is, that he may have a name, assumed by his own act, when he goes to his banker, and that it is compulsory on him to use his original name when he is seen elsewhere. The name he has ceased to be known by at the Bank is the name he is to be legally known by outside of the Bank! Such Lord Llanover states to be a rule of law! Still more instructive must it have been to Mr C. Romilly to be informed that "the highest authority" entertains an opinion of the law opposed to the decisions of Lord Eldon and other judges together with that of his own brother, Sir John Romilly, when sitting as Master of the Rolls [22, *Law Journal*, Chancery, p. 22, ex parte John Matthews].

If "the highest authority" is not corrupt, or not ignorant, he is not truthful if he is authorised by study to express a legal opinion. The decisions of the Judges are too clear and too numerous to be disputed. They do not permit a doubt to be entertained that the conduct of the Herberts of Clytha has been perfectly legal. The manner in which they have been treated is indefensible. The question is not, whether certain officials are pleased with the law? It is their duty to recognise it, if they esteem their own character. The law itself is not objectionable, and it needs no change—it requires no official to superintend changes of name—and there is no necessity to create a new class of fines or penalties to regulate its operation. In Wales, most certainly, changes of Surnames ought to be favoured and encouraged if Surnames are to serve any useful purpose. The question, however, in this case is not whether this or that particular name should be assumed, but whether officials shall impose on any person serious disqualifications for having done a legal and innocent act without the slightest excuse for their interference, and without the slightest authority to justify the power they have assumed?

The writer of the above pages had believed, when they were printed, that Lord Llanover had exhausted all possible means at his command to worry and to annoy his very respected neighbours and family connections, the Herberts of Clytha, on account of their having assumed their present Surname without a Royal License. Lord Llanover admits, in the correspondence printed in the preceding pages, that he refused a commission in the Militia to Mr R. W. Herbert;—reported the father and son, as though they had committed some impropriety, to the Home Office and to the Lord Chamberlain;—hunted up an inquiry about

them at the Herald's Office;—entered into some personal communication relating to them with an Under Secretary of State;—and followed them to the office of the Clerk of the Crown. These proceedings were in the greatest degree undignified, but they do not terminate the pursuit, and it is in Chancery they have last been sought for.

The following correspondence was published 23rd day of August, 1862:

. TO THE EDITOR OF THE 'MONMOUTHSHIRE MERLIN.'

Newport, August 20th, 1862.

SIR,—I am directed by the Lord-Lieutenant to request that you will insert the accompanying correspondence in your paper of Saturday next, the 23rd inst.

I am, Sir, your obedient servant,

CHARLES PROTHERO,

Clerk of the Peace for Monmouthshire.

No. I.

· THE LORD-LIEUTENANT TO THE LORD CHANCELLOR.

Llanover, August 14, 1862.

MY LORD,—I forward to your Lordship a copy of the correspondence which has passed between the Clerk of the Peace of this county and the Clerk of the Crown.

I directed the Clerk of the Peace to make inquiry, for my guidance, whether application had been made by Mr Jones of Clytha, for a "*Dedimus potestatem*" to act as a magistrate in this county *under the name which he had assumed without Royal License.* The Clerk of the Crown has stated that application had been made and had been refused. This correspondence appeared in the county papers, on Saturday, August 2nd, and when the names of Justices were called at the recent assizes held at Monmouth, on Friday, the 8th instant, Mr Jones's name was called as heretofore. On the following day—viz., Saturday, August 9th, it was announced in a county paper that Mr Jones had appealed to a higher authority, and that his right to have his name enrolled as Herbert had been admitted—as a proof of which the name of Mr Jones had been called as Herbert at the assizes in the grand jury panel.

As the "higher authority" indicates your Lordship, I beg the favour of a reply, for my further guidance, as to whether appli-

cation has been made to your Lordship to recognise Mr Jones under the name he has assumed; and if so, whether your Lordship has recognised him under that name, or authorised its recognition.

I have the honour to be, my Lord,
Your Lordship's obedient servant,
LLANOVER,
Lord-Lieutenant of Monmouthshire.

The Right Hon. the LORD CHANCELLOR.

The Lord-Lieutenant did not inform the Lord Chancellor in what proceedings he needed any guidance, and the question may be asked—who his Lordship himself meant by "the highest authority" in the letter of Mr Prothero, dated July 26, 1862. The writer desires it to be most distinctly understood that he has assumed it to very different authority from that which Lord Llanover names in this instance.

No. II.

THE LORD CHANCELLOR TO THE LORD-LIEUTENANT.

34 Belgrave square, Aug. 16, 1862.

MY LORD,—I am directed by the Lord Chancellor to state to your Lordship that the Lord Chancellor has not recognised Mr Jones, of Clytha, as entitled to be called Herbert, or as having right to assume that Surname. When Mr Jones has obtained the Royal License to assume and bear the name and arms of Herbert, the Lord Chancellor will direct the necessary alteration to be made in the Commission.

I have the honour to be,
Your Lordship's obedient servant,
SLINGSBY BETHELL,
Prin. Secretary.

The Lord LLANOVER.

[We observe from the foregoing that we were partially in error in the statement made on the 9th instant, with respect to the *official admission* of Mr Herbert's change of name. The error consisted in that our remarks were liable to the implication that Mr Herbert's recently assumed name had been admitted by the Lord Chancellor. Such, it seems, has not yet been the case. While, however, it appears that the Lord Chancellor has given no authority to change Mr Herbert's name on the Justice Roll

of the county, it is equally true, as stated by us on the 9th, that "The names of Mr Herbert and Mr Herbert, jun., were called over from the Sheriff's Grand Jury Panel, as 'William Herbert and 'William Reginald Herbert' respectively. The change has, then, been admitted by the High Sheriff; it may, possibly, hereafter be admitted by the Lord Chancellor. But whether it be so or not, the legal right to change a name without a Royal License is beyond doubt, as we have previously shown; and the validity of such a change cannot be successfully controverted. This, after all, is the main question; and the correspondence given above is rather indicative of the official obstructions which Mr Herbert has the misfortune to encounter, than suggestive of anything to vitiate a claim which the law clearly recognises.—Ed. M. M.]

These remarks of the Editor of the *Monmouthshire Merlin* are very well expressed. Every person has a legal right to change his Surname without a Royal License. Not one lawyer in the House of Commons ventured to deny the right. Such is the law. The Lord Chancellor himself does not dispute it. The following, also, are the names of some of the Judges by whom legal decisions expressing the law to this effect have been made, and there is no legal decision to the contrary:

1. Lord Chancellor Eldon [15, Vesey, 100].
2. Masters of the Rolls:—Sir J. Jekyll [3, P. W., 65] and Sir John Romilly [22, *Law Journal*, 22].
3. Chief Justices Ellenborough [3, M. and S. 259, 539—], Lord Tenterden [5, B. and A. 556], Sir N. Tindal [1, Bing. N. C. 618], Sir W. Erle [1, L.M.P. 1].
5. Chief Baron of the Exchequer—Sir F. Pollock [22, *Law Times*, 123—19, *Law Journal*, 272].
6. Judges:—Sir J. Bayley [3, M. and S. 539], Sir Simon Le Blanc [3, M. and S. 258, 539], Sir G. S. Holroyd [5, B. and Ald. 553], Sir J. Park [Lord Wensleydale, 19, *Law Journal*, 272], Sir R. M. Rolfe [Lord Cranworth, 19, L. J., 272, and 5 Exch. R. 310], Sir J. T.

Coleridge [19, *Law Journal*, 345, K.B.], Sir E. H. Alderson [20, *Law Journal* Reports, 80].

7. Judge of the Consistory Court—Lord Stowell [3, M. and S. 270], and divers others.

The authority of these sixteen most eminent Judges, it might have been presumed, was sufficient to guide the Herberts of Clytha in safety. It is not to be overthrown by private correspondence between officials—nor is it overthrown, for the Lord Chancellor has merely expressed a private opinion as to the course he shall pursue. As only one party was before him, and he might have to decide the question formally, it might have been advisable to have heard both sides and to have acted with the discretion shown by Sir George Grey, who simply acknowledged the receipt of the communications from Lord Llanover on this subject. Sir G. Grey also, in the Debate in the House of Commons, appeared to take some credit to the Government that there had been no refusal given to any application respecting the commission of the peace. That ground of congratulation is now gone,—and what has been done is almost an equivalent to a removal of Mr W. Herbert from the commission.

In this last correspondence the Lord-Lieutenant asks the Lord Chancellor if a certain application had been made on the part of Mr Herbert of Clytha to be recognised by this name,—whether his lordship had recognised him under this name, or authorised the recognition of this name?

The simple answer to this would have been "No," and no more ought to have been added. The answer, however, is, "No," and it is further added: that the necessary alteration will be made in the Commission of the Peace when Mr Herbert shall have obtained a Royal License to this effect, namely:

1. To assume the name of Herbert [which, according to

the letter of Lord Llanover to Colonel Clifford, has been refused—*ante* p. 27].

2. To bear the arms of Herbert.

There is nothing to hinder the Lord Chancellor in altering or adding names to the Commission of the Peace. The public desire the services and authority of certain gentlemen of a county on account of their position, influence, and character. Whether they are licensed to use certain Surnames or not, or whether their names are to be found in the Herald's College or not, is of no importance to the public. The Lord Chancellor may require, but the law does not require that magistrates shall have licensed names.

The second condition, namely, that Mr Herbert of Clytha shall obtain a license to bear the arms of Herbert is certainly ill-considered. The law authorises a man to change his Surname, but it does not require him when the change is made to assume the arms of any family who may have the Surname which he assumes. The family of Clytha can have no wish to abandon their paternal coat of arms—or to ask the Crown to take from them, or to disturb those emblems of distinction which for many generations have been justly borne among the very foremost of the gentlemen of Monmouthshire.

Heralds are empowered to grant arms, but even the Crown does not assume the power to grant names: nor is the Herald's College an establishment for the registration of names.

Has the Lord Chancellor, then, determined to impose personal disqualifications on the family of Clytha: first, on account of having done a perfectly legal act; and secondly, because they most assuredly could not be expected to ask the Crown to confer upon them the armorial bearings of some other family; this request, if made, being one that,

under the circumstances, might have been most properly, and according to usage, refused? Accidentally, the families of Llanarth and of Clytha do now bear the arms of a family of Herbert, and their right to bear them has been allowed by the Herald's Office, and is entered by heraldic authority on the record of their pedigree in that office. When the Crown licensed the use of the name of Herbert to the family of Llanarth, October 2, 1848, there is no mention of arms.

Is it in future to be understood that any person who desires to assume the name of JONES must intrude a request to this effect on the Sovereign, though the law does not require it to be done, and that, at the same time, he must choose from among the armorial bearings of many hundred families of that name, those which he will adopt in addition to any which have been granted to him or to his own ancestors?

As we are governed by general laws affecting all classes of persons alike, the implied opinion is important.

The Herberts of Clytha have done what is strictly innocent and legal, and the name they have assumed cannot be objected to. Its selection has already been approved of even by the highest authorities in the instance of the other branch of their family. The conditions, however, which the Lord Chancellor desires to impose are unsanctioned by usage or law. Colonel Clifford informed the House of Commons, when he read the letter from Lord Llanover, that the license for the Surname had been *refused*. The second condition is almost impossible if the opinion of Lord Coke —that a gentleman has a fee simple, &c., in his armories and arms [1, Institute, 27, a.] is still law. With the King's license, a man may grant his arms to another [5, Comyn's Digest, "Norroy"], but the Crown could not be expected to grant an honour of inheritance of another without the

assent of the person entitled to it, even if it were desired. But, of the many existing families of Herbert, whose arms is it intended should be applied for? The arms of all the families of Herberts are not necessarily the same, yet some assumption of new arms is suggested. The law has long been expressed that a license of the Crown is necessary for the transfer of a coat of arms—and the assent of the bearer of them would, at least, be expected.

There is, however, a very remarkable difference of opinion between the Lord Chancellor and Lord Llanover. The latter would prevent, if possible, the assumption of the name of Herbert,—while the Lord Chancellor promises to recognise it on certain conditions, and to add it to, or instead of, the name of Jones on the Commission of the Peace.

The difference between Mr Herbert of Clytha and the Lord Chancellor may be thus stated—namely, the former has assumed the name of Herbert, guided by and in compliance with the law as expressed again and again without variance of opinion, by the most eminent Judges, and the latter imposes conditions to be complied with before his lordship will recognise the law; the first condition being one apparently unknown to the law, when the subject of the change of Surnames was under discussion in the House of Lords (*Barlow v. Bateman*) in 1735; and the second, being one which it would be most highly improper to attempt to comply with, and which may, in fact, be regarded to be impracticable—if it implies the assumption of arms not now borne by the family.

Mr Herbert of Clytha has not, however, applied for an amendment of his name or the addition of his name to the Commission of the Peace. The decision has been made against him in answer to an inquiry of Lord Llanover.

Is a gentleman, on the Commission of the Peace of a

county, to be refused the power to act, because he has done a lawful act and cannot comply with conditions unknown to the law? Is he to be licensed through his name to become a Justice of the Peace by the Herald's College, and is the power of the Lord Chancellor to amend the Commission of the Peace to be controlled by a herald? Or is a gentleman who has legally changed his Surname to be compelled by officials to incur a great expense, or, in fact, to be fined by parasites of Royal or official ante-chambers a sum said to vary from 150*l.* to 300*l.*, in obtaining the signature of the Sovereign to an unnecessary document; or, failing a license, to be plundered in a Committee of the House of Commons in procuring an Act of Parliament which, if well paid for, is to be passed, in order to confirm a proceeding already perfectly valid and complete in law?

Or, to put the questions in another form: Is it not the duty of all Judges and public officers to recognise all lawful and innocent acts, whenever the performance of a public duty requires their recognition? And can a Lord Chancellor make the issue of a writ of *Dedimus Potestatem* conditional on the performance of a most expensive act not required by the law, on a change of name by a person named in the Commission of the Peace?

If the person who changes his name is an acting magistrate, he does not disqualify himself by the performance of a legal act. His new name becomes his official name, and the duty of making it an addition to the Commission of the Peace rests with the authority which can add to or change the names on the Commission. The magistrate would, of course, notify the change of name to the Lord Chancellor, and at a time and under circumstances causing the least, if any, personal inconvenience to any official whose duty it may be to notice new name; but his powers as a magistrate

would not be suspended by the change of name. There could be no peace or security in any civilized country if innocent and legal acts were subject to the opposition and disregard of public authorities.

Mr William Herbert, of Clytha, printed the following letter on the publication of the letter of the Honourable S. Bethel:

To the Editor of the 'Times.'

SIR,—You having published on Saturday last the following letter from the Lord Chancellor to Lord Llanover:

"THE LORD CHANCELLOR TO LORD LLANOVER.

"34 Belgrave square, Aug. 16.

"MY LORD,—I am directed by the Lord Chancellor to state to your Lordship that the Lord Chancellor has not recognised Mr Jones of Clytha as entitled to be called Herbert, or as having right to assume that Surname. When Mr Jones has obtained the Royal License to assume and bear the name and arms of Herbert, the Lord Chancellor will direct the necessary alteration to be made in the commission.

"I have the honour to be,

"Your Lordship's obedient servant,

"SLINGSBY BETHEL, Principal Secretary."

I would now ask you to permit me, through the same medium, to correct an error, and make public a few facts connected with this subject.

His Lordship's remark as to my assuming the "arms" of Herbert arises from his not being in possession of all the facts, for the Herbert family and my own have always borne what are the Herbert arms.

I am the son of Mr John Jones, of Llanarth court, in the county of Monmouth, and have inherited the Clytha estates by will from a paternal uncle. My eldest brother, the late John Jones of Llanarth, married the Lady Harriet Plunkett, and his eldest son (my nephew) is the present proprietor of the Llanarth estates. My nephew, Mr Jones [now Mr Herbert] married Miss Hall, daughter of Sir B. Hall, Bart. (now Lord Llanover), and shortly afterwards, in 1848, assumed by Royal License the name of Herbert. It may be, therefore, that, being of the same family, the reasons embodied in the petition presented to Her Majesty, by my nephew, Mr Jones (now Mr Herbert) of Llanarth, are those which have actuated me in adopting the course I have taken. For the course I have adopted there

are numerous precedents, and it is sustained by the judicial decisions of the following eminent Judges: Lords Eldon, Ellenborough, Tenterden, Cranworth, and Wensleydale, Sir J. Romilly, Chief Justices Tindal and Erle, Judges Bayley, S. Le Blanc, Holroyd, Coleridge, Alderson. These and several other Judges have held that no License or Act of Parliament is needed on a change of Surname.

The Surname of Wesley was changed to Wellesley, by the Duke of Wellington, when he was in India, without a Royal License; so also the family of the Duke of Somerset changed their historic name of Seymour to St Maur.

The Herald's College has never possessed the power to grant names, but it is enabled to grant arms. Names taken by Royal License or by Act of Parliament appear to have been thus taken originally in order to satisfy the conditional limitations of estates. When the subject of taking names was judicially under discussion in the House of Lords in 1735 it would seem that Royal Licenses were unknown.

I had believed that those only were punishable who did illegal acts, and not those who conformed to the law as interpreted by the Judges of the land, but in this instance the Lord Chancellor has, without hearing me, or having all the facts before him, sent forth through the newspapers an expression of his opinion upon a strictly legal act, which, in effect, prevents me from qualifying and acting in the Commission of the Peace. Seeing that I already legally bear the arms of Herbert, and have done what the law requires on assuming the name of Herbert, I feel confident he will not refuse the necessary alteration being made in the commission on the issuing of a *dedimus potestatem* to enable me to qualify as a magistrate, if a *dedimus potestatem* is applied for.

Believe me, Sir, to be your obedient servant,

WILLIAM HERBERT.

Clytha, Monmouthshire, Sept. 9th.

This was followed by the following letter of Lord Llanover:

To the Editor of the 'Times.'

SIR,—I have read in your paper of yesterday's date a letter from an anonymous correspondent, and an article in relation to the assumption by Mr Jones of Clytha of the name of Herbert without Royal Authority, in which my conduct as Lord-Lieutenant of this county is alluded to. I take this opportunity of stating that if Mr Jones considers he has any proper or just grounds of complaint against me in my capacity of Lord-Lieutenant, he can request any Peer who may be so inclined to give me an oppor-

tunity of stating my whole case in my place in Parliament, which I shall be most happy to do; but I shall decline to enter into any controversy or to take notice of any future letters on the subject. As, however, it is asserted that Mr Jones is prevented from acting as a magistrate in consequence of the Clerk of the Crown (under the authority of the Lord Chancellor) having refused to grant to him a *dedimus potestatem* to act as a Justice of the Peace under the name of Herbert, I will add that Mr Jones has been in the Commission of the Peace nearly forty years, and I am informed by the Clerk of the Peace that he has never yet qualified. I am, Sir, your obedient servant,

Llanover, September 19. LLANOVER.

The letter alluded to appeared in the *Times* on September 18th, and is signed "Common Sense." There is, perhaps, as the writer admits there may be, some slight error in it respecting the transmission of the Herbert family property, but its account of the conduct of Lord Llanover in his treatment of the Clytha family appears to be quite accurate. There also appeared, on Saturday, September 20, articles on the same subject in the *London Review* and the *Saturday Review*.—(See APPENDIX).

Lord Llanover shows some skill in preparing to draw attention from himself. On the 9th September a most esteemed and honourable gentleman thus wrote: "I am amazed that Lord Llanover should have permitted himself to go so far wrong, and, still more, that he should have managed to get the Lord Chancellor into the mess. Under cover of this distinguished person, the real offender will, I fear, now get off with less discredit than he deserves." It is evidently intended that the Lord Chancellor shall be involved in the personal part of this disreputable squabble.

As respects the Clerk of the Crown, the refusal of a writ of *Dedimus potestatem* was a point of form, and the refusal was perfectly right. There was no precedent for the issue of a writ in a name differing from that in the Commission of the Peace. An alteration of the name must be made in

the Commission. What is complained of is, that the Lord Llanover, when he got the reply of Mr C. Romilly, printed the correspondence. This was not done in the pursuit of any public interest.

Mr Herbert of Clytha is about four years older than Lord Llanover and is still a person of active habits. There is nothing which incapacitates him to act as a magistrate, but there is an important suppression of information in the letter to the *Times*.

Lord Llanover knows this, that all the names on the Commission of the Peace, whether the persons named have qualified to act as magistrates or not, are called over at the Assizes. Part of his pleasure to annoy Mr Herbert is, that he should be called as "Mr William Jones" on the list of magistrates, when a few minutes afterwards he may be called, as was the case at the last assizes, "Mr William Herbert," on the reading of the Grand Jury panel. Moreover, if Mr W. Herbert qualified to act as a magistrate, after having been many years on the Commission, he would not be singular among the magistrates of Monmouthshire.

When Mr Herbert was affirmed to have lost his social position by the performance of a legal act, and was publicly vilified, it was both natural and proper that he should claim a writ to act as a magistrate; but it is to be observed, that his claim for it could only correctly be made to the Lord Chancellor himself by asking that an alteration of his name should be made on the Commission of the Peace. He was checked in making this application, if he intended to make it, by Lord Llanover himself anticipating any application and obtaining from the Lord Chancellor a promise to recognise the assumed name of Herbert, subject to conditions which have been discussed in a former page.

What is to be reserved for discussion in the House of Lords? Is the, hitherto, unedited correspondence with the Lord Chamberlain to be read? Will the exclusion of young Mr W. R. Herbert from the Militia be defended? Will the conversation with the Under-Secretary of the Home Office be related? Will the communications with the Herald's Office be disclosed? Will the various discreditable manuscript remarks sent to the Editors of various newspapers for publication with printed copies of the correspondence with the Lord Chancellor, be explained?

The account of the family dispute would not be complete without these particulars, but it might not be ungracious to remind Lord Llanover, that though they might interest a vestry they would be particularly unsuited for such an audience as that of the House of Lords, and that it is to be hoped he will not receive the invitation he proposes to deliver the speech he may be preparing on the subject. He should remember, also, that the overwhelming answer to his letter is, not merely that Mr Herbert has a right to his writ; not merely that he would not be singular among the magistrates of Monmouthshire in demanding his writ after being on the Commission for a long series of years: but that on February 24, 1862, his Lordship directed Mr R. W. Herbert to be informed that his father would be called as "Mr Jones" when the list of Justices should be read at the Assizes; that on July 26, 1862, he told Mr Romilly that the name of "Jones" had been called on the list of Magistrates at the Lent Assizes, and on August 14, 1862, he informed the Lord Chancellor, that on August 6, the name of "Jones," on the list of Magistrates, had again been called at the Assizes; on the same day, in fact, when the names of Mr W. Herbert and Mr R. W. Herbert had been called over as grand jurors!! His Lordship now directs attention to an im-

material issue, which certainly does not include Mr R. W. Herbert.

There ought, however, to be no error in understanding the questions at issue so far as they concern the public. It is of no importance whatever what name a private person assumes: but it is important to everybody that a law which may contribute to the happiness, the comfort, and the interests of many persons, shall not be disregarded by officials: that personal disqualifications shall not be imposed by the mere authority of officials on account of legal and innocent acts: and that conditions unknown to the law shall not be imposed on those who may ask for the issue of writs to enable them to perform public duties.

Lord Llanover may feel himself safe through the opinion expressed by the Lord Chancellor, but he is in error if he infers that the uniform decisions of Courts of Law can be overruled by mere speeches. This sort of proceeding has lately been witnessed at Washington—it will not be seen at Westminster. The proper course may be, that the Lord Chancellor should at once add the names of Mr William Herbert and Mr William Reginald Herbert to the Commission of the Peace of the County of Monmouthshire, and leave the Lord-Lieutenant alone to defend the position which he has established for himself.

APPENDIX.

From the MONMOUTHSHIRE MERLIN.

Some folk who desire Royal Licenses to change their Surnames, look with contempt on those who declare by deed their change of name. Those who change their name by deed, look with surprise on those whose change of name has been recognised by courts of law on the mere publication of the change. Those who consider themselves to be very grand indeed, look on Royal Licenses with profound contempt, and order an Act of Parliament. Thus, in 1859 a private Act of Parliament was passed "to enable Charles Frederick Clifton, Esq., and the Lady Edith Maud (daughter of the Marquis of Hastings), and their issue, to assume and bear the Surnames of 'Abney Hastings,' in lieu of the Surname of 'Clifton,' and to bear the arms of Abney Hastings in compliance with the condition contained in the settlement made by Sir Charles Abney Hastings, Bart., of certain estates in the counties of Derby and Leicester." [22 Victoria, ch. 1, Private Act.] Sir Charles Hastings directed no attention to a Royal License: this was far too humble a mode in his opinion to change a Surname and to satisfy family pride, and he ordered the change of names to be made with the sanction of Queen, Lords, and Commons, namely, by an Act of Parliament. When the Lord Chancellor undertakes to impose conditions on the magistrates, who assume Surnames, that they shall get Royal Licenses, he has the same authority, if it be legal, to order them to get an Act of Parliament.

From the JURIST.

One consequence of this little squabble has been such a ventilation of the law on the subject as will probably put an end to the profit derived by the Crown officers from applications for Licenses to change names, except in the few cases in which conveyancers have been so inconsiderate as, in limitations conditional on change of name, to make the obtaining of the Royal License part of the condition.—P. 434. *September* 20, 1862.

From the LONDON REVIEW.

Lord Llanover persists in adhering to a course by which he is enabled, if not to carry his point, to annoy, very seriously, Mr Herbert and his family. He continues to write letters to all the officers of the Crown whom he thinks he can interest in his view of the case; and when he receives their replies, he *forthwith publishes them in the country and London papers, accompanied by comments of the most insulting and contemptuous description towards Mr Herbert*, who, being a somewhat obscure and entirely inoffensive country gentleman, is of course no match at this sort of work for the experienced ex-M.P. for Marylebone. After the debate which took place on this subject a short time since, it seems surprising that the Secretary of State for the Home Department should not have pointed out to the Lord-Lieutenant of Monmouthshire that he had better leave poor Mr Herbert and his family alone, and that his Lordship has not been intrusted with his official powers for the more bitter prosecution of family quarrels. Some good, however, will probably come out of this contemptible squabble. It will lead to a ventilation of the subject of Royal Licenses for change of names, and of the rights, powers, and perquisites of the College of Arms in general. Nobody now knows for what reasons such licenses are granted or withheld; nobody knows what they cost, or who profits by them pecuniarily. An examination of the *Royal Gazette* shows that, on an average, about twenty such licenses for change of name are granted annually, that they are invariably granted to a class of people who can pay well for them, and that they are not, as Sir George Grey asserted, granted only in furtherance of testamentary conditions connected with property. Indeed, it appears from the *Gazette* that they are habitually granted for any reasons which the applicants choose to set forth, no matter how frivolous and transparent, and in a considerable number of cases for no alleged reasons at all. We read in the *Royal Gazette*, for instance, that A. has been graciously permitted by Her Majesty to assume the name of B. out of respect and affection for the memory of the said B. or for the memory of somebody else; or that C. has been permitted to assume the name of D. because he is supposed to be the illegitimate son of the said D., or of somebody else. Indeed, the very last change of name by Royal License which the *Gazette* has recorded entirely upsets the theory respecting Royal Licenses which Sir George Grey has sought to establish. On the 6th of August last, the public were informed that the Queen had been pleased to grant to Sir Henry Hoghton, Baronet, of Hoghton Tower, in the county palatine of Lancaster, the Royal License and Authority that he and his brothers and sisters "may take and henceforward assume *the ancient patronymic* of their family

by resuming and using the Surname of De Hoghton, instead of that of Hoghton; and to command that the said Royal concession and declaration be recorded in her Majesty's College of Arms, otherwise to be void and of none effect."

Now what can be more perplexing than this announcement? It does not profess to be in fulfilment of any testamentary condition connected with property, it simply empowers a man to assume and use what it states to be *the real name* of his family; and it goes on to say that if he does not record this Royal concession in Her Majesty's College of Arms, "the concession will be void and of none effect." What then? Will Sir Henry de Hoghton backslide into Sir Henry Hoghton, or will he have no name at all? And in what position does this place the Wellesleys and St Maurs? They have never sought or obtained any concession of the kind. Are they therefore still Wesleys and Seymours, or what are they? And why should Sir George Grey, after having made a formal statement in Parliament of the conditions on which alone Royal Licenses for change of Surname are obtainable, immediately allow a Royal License to be granted to the Hoghton family, in flat contradiction of the principle which he had just laid down?

In all probability we shall ere long discover that this is one of the many cases in which certain obscure dependants of the Crown, professing to act in Her Majesty's interests, and ostentatiously putting forward her name, are really occupied in serving their own private objects and in feathering their own nests, regardless of the odium which their malpractices bring upon their Royal Mistress. In this Herbert case, for instance, if we are to believe Lord Llanover, the Queen is acting most capriciously and unjustly. She has readily allowed Mr Jones of Llanarth, Lord Llanover's son-in-law, and all his brothers and sisters, to assume, by Royal License, the name of Herbert; whilst she obstinately refuses to extend the same indulgence, claimed on precisely the same grounds, to his uncle, Mr Jones of Clytha. But we do not believe Lord Llanover; we are convinced that the question has never been submitted to Her Majesty at all; that no Minister would have been so frivolous or so unfeeling as to importune her at such a melancholy time on such a trumpery subject; and that the entire credit of the whole transaction belongs to his Lordship, and that, had he been as ready to assist his unlucky connection as he has been active and spiteful in thwarting him, the desiderated change of names would have been consummated long ago in peace and quiet. Why the Herald's Office should have been invoked by Lord Llanover it is difficult to surmise, the powers of that body being limited "to regulating the irregularities of such as assume the arms belonging to others." Now in this case there has been no

question of any change of armorial bearings on the part of anybody concerned in the affair. Nor is it a question which can in any way affect the Lord Chamberlain, whose duty it is to see that "only such persons as are entitled by station and character be presented to the Sovereign." If Mr Jones of Clytha and his family were proper persons to be admitted into the Royal presence before they assumed the name of Herbert, and if they have assumed that name—as Sir George Grey has declared they have—in exact conformity with all the law of the land, they can hardly be said to have degraded themselves in the social scale by so doing, or to have unfitted themselves thereby for any honour to which they were previously entitled.

TO THE EDITOR OF THE 'TIMES.'

SIR,—Lord Llanover has undertaken a more difficult task than he probably contemplated in undertaking to regulate and control Welsh Surnames. If his Lordship will turn to page xxii of Lower's *Patronymia Britannica* he will find that

"About the year 1825 a witness in a Welsh cause was examined before Mr Justice Allan Park. His name was John Jones. He was asked if he had always gone by that name, and he said he had. He was then asked whether, at the time he lived at Carmarthen, he did not go by the name of Evan Evans, and to this he replied also in the affirmative. This apparent discrepancy was explained to the Court by Mr Taunton, afterwards Sir W. Taunton, and a Judge of the Court of Queen's Bench, who stated that Evan is the Welsh synonym of John, and Evans that of Jones, and that John Jones might be called indifferently Evan Jones, John Evans, or Evan Evans, without any real change of name."

Lower further states that,

"Until the beginning of the present century there were scarcely any family names at all in Wales, the baptismal name of the father generally constituting the Surname of the son.

"Thus, if Morgan Richards had three sons, John, William, and Griffith, they would be called John Morgan, William Morgan, and Griffith Morgan.

"John Morgan's two sons, Peter and James, would be called Peter Jones and James Jones.

"William Morgan's two sons, Job and Abel, would be called Job Williams and Abel Williams.

"And Griffith Morgan's two sons, Howel and Cadwallader, would be called Howel Griffiths and Cadwallader Griffiths."

I am, Sir, your obedient servant,

F. P. S.

Bishop Copleston was accustomed to say, that names were intended to distinguish persons, but that in Wales the name of Jones distinguished no one.

The name of the father of Sir Leoline Jenkins, the celebrated Judge of the Admiralty Court, was Jenkins Llewellyn.

From the SATURDAY REVIEW, *September* 20, 1862.

THE PREFECT OF MONMOUTHSHIRE.

If the House of Commons continues in the next session to enjoy its recent leisure, Mr Roebuck will probably succeed in calling its attention to the petty act of oppression by which, as far as official authority can prevail, a respectable country gentleman has been left without a name. The reasons which may have induced Mr Jones of Clytha to adopt the name of Herbert *concern himself and his family alone;* and if it were necessary to inquire into his pedigree, it is evident that he is descended from a common ancestor with his nephew or cousin, Mr Jones of Llanarth. A Welsh family of high antiquity and considerable local importance may be trusted to preserve the history of its own blood and alliances. As the Sheikh, in Mr Disraeli's *Tancred*, answered, when he was complimented on the Scriptural record of his family connexion with Moses, "The children of Rechab need no books to inform them whom the daughters of their tribe have married," it may fairly be assumed that Mr Jones was acting consistently with custom and propriety in assenting, by his own act, to the change of name which had been deliberately made by the head of his family; but even if he had rivalled in silly vulgarity the real or fictitious "Norfolk Howard" of the advertisement, *it would be not less necessary to vindicate the privilege of every Englishman to use or abuse his undoubted legal rights without impertinent interference from the Government or its subordinates.* Lord Llanover ought to be made to understand that, when his political claims were commuted for a peerage and a Lord-Lieutenancy, the Minister had neither the intention nor the power of making him "*Prefect of Monmouthshire.*" When the little pigs, as Mr Drummond said, are too many for the natural supply, the supernumeraries ought to be provided with a trough, but not to be let loose in the garden. The office of Lord-Lieutenant is in itself not a little invidious, and when it becomes the reward of recent services and the stamp of sudden elevation, its functions may easily be converted into means of annoying former equals, and of carrying out local feuds. No one can be surprised that one county magistrate should wish to mortify another, especially when the

families are connected by marriage. If Lord Llanover had fined Mr Herbert's keeper for trespass, or indicted his favourite highway, he would have acted in conformity with the provincial laws of private war, and he would have been exposed in his turn to retaliation in kind. In official relations he represents the Queen, who has assuredly neither a feeling of hostility to Mr Herbert, nor any interest in perpetuating the patronymic of Jones.

The law of Surnames lies in a nutshell, nor has it ever given rise to difference of opinion or variety of decision in the Courts. *Whatever is forbidden must come within the prohibitions either of the unwritten law or of some Act of Parliament*; and while on this subject there is no Statute-law, the Common-law is older than Surnames, and consequently cannot affect them. Even the Christian name, which is the ancient mode of identification, may, for some legal purposes, be got rid of by repute. The Surname is the appellation by which a man calls himself, and by which he is known to his neighbours. There are remote valleys in Wales where family Surnames are still imperfectly adopted, and the son of Thomas Jones requires no permission from the Lord-Lieutenant to call himself John Thomas. Originally, all Surnames were assumed by choice or by accident, and the acquisition of a new estate, or even the adoption of a different trade, converted Hill into Dale, or Smith into Baker. In modern times, according to the apt observation of an able writer on the Herbert controversy, two families at least of the highest rank have changed their names without one superfluous application to the Crown. About 1798, the Wesleys silently assumed the name of Wellesley, which they afterwards made so famous; and a few years ago, the Dukes of Somerset renounced all the historical grandeur of their family by the self-denying affectation of subsiding into unknown St Maurs. In neither case was the sound retained when the spelling was altered, for a second innovation was necessary to reconvert St Maur into the oral Seymour. One nobleman probably wished to avoid an association with the well-known founder of a religious sect, and the other perhaps fancied, that the most insignificant Norman took precedence of the most eminent Englishman. Wellesley and St Maur were probably early appellations of the respective families, as Herbert in the Llanarth pedigree may have been anterior to Jones. If the right of changing the name had been disputed, it might have been argued that the original corruption ought to be corrected, because it had never been sanctioned by a Royal License. Lord Llanover is, perhaps, actually infringing the imaginary prerogative on which he relies as an excuse for his petty act of ill-nature. * * * * * *

It is only in Monmouthshire that the Militia and the Commission

of the Peace are closed to gentlemen whose new family names are not palatable to the Lord-Lieutenant. There is at least no other county in which the highest local functionary would attempt to annoy a neighbour, *by informing the Lord Chamberlain of the supposed objection to his presentation at Court.* Lord Llanover might as well have composed newspaper attacks on Mr Herbert, and, indeed, the learned writer of the pamphlet on Surnames quotes some passages from a local journal which unaccountably coincide in language and argument with the Lord-Lieutenant's official communications. It is too bad that a would-be Prefect should follow the example of his French prototype by persecuting the subjects of his administration with "communicated" articles, as well as with paternal supervision and restraint.

It may be said, that although a private gentleman has a right to take any name which he chooses, the Lord-Lieutenant cannot be controlled in his appointment of militia officers or of justices, and *that the refusal of honorary preferment is not equivalent to legal persecution.* If Lord Llanover had chosen to vent his spite without giving his reasons, it might have been difficult to prove that he had abused his official discretion. But in the present case, he has repeatedly stated that Mr Herbert's son is excluded from the militia only because he declines to be gazetted in a name which is no longer his own. On the same ground he practically removes Mr Herbert from the Commission of the Peace, *and he has wantonly attempted to interfere with his reception at Court.* A country gentleman of family and fortune, *who is deprived of the local duties and functions for which he is properly qualified, is as fully entitled to complain as if he were imprisoned or fined;* and the official intruder who disturbs his comfort would be lightly punished by a summary disavowal and reprimand. The Queen, through the Secretary at War, can give the commissions in the militia, and the Lord Chancellor exercises unlimited control over the appointment of magistrates. Unluckily, Lord Westbury has, in a hasty moment, sanctioned his subordinate's vexatious interference with private rights. In an official letter, he states that "the necessary alteration will be made in "the Commission of the Peace when Mr Jones has obtained the "Royal License to assume and bear the name and arms of "Herbert." It happens that there is no Mr Jones to apply for the license, and that Mr Herbert has never felt the smallest desire for new armorial bearings. By the grant of a former license, the Crown *has not conferred a name,* but recognised the Llanarth family under the name of Herbert. It follows that Mr Herbert of Clytha is not acting from discreditable or frivolous motives, although, in the *communiqué* of the Monmouthshire paper, he is characteristically accused of vanity and caprice. The Lord Chancellor might as well impose the condition of his

substituting a blue coat for a black one, or of putting a Gothic front to his house if it happens to have a Grecian elevation. Every man has a right to do whatever is not contrary to law; and unless his conduct is immoral or indecorous he ought not to be subjected to any special disqualification. Mr Herbert cannot honourably or properly accept any office under the name of Jones; and the Lord Chancellor ought to have protected him against the petty vexations which result from neighbourly dislike. If the subject is revived in the House of Commons, it may be presumed that Sir G. Grey will not repeat the singular assertion that a new name can only be legally used after the continuance of its legal use for a considerable time.

ERRATUM.—In page 11, lines 5 and 6 from bottom, omit the words "or by Act of Parliament."

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