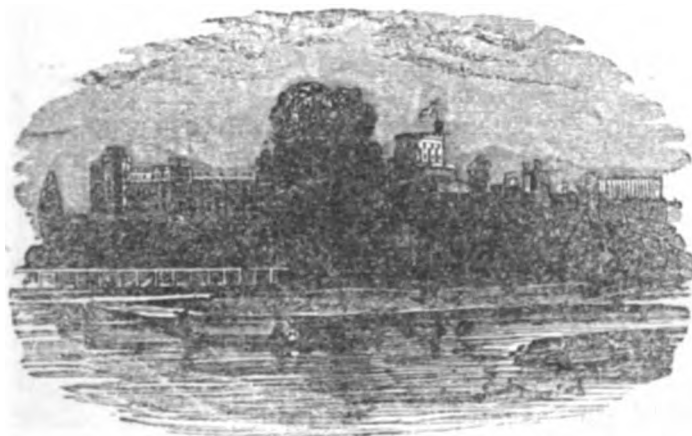


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THE
PATRICIAN.

EDITED BY
JOHN BERNARD BURKE, ESQ.,
Author of "The Peerage."



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TO

THE REV. SAMUEL HAYMAN, B.A.,
OF TRINITY COLLEGE, DUBLIN,

• ONE OF THE ABLEST CONTRIBUTORS TO THE PAGES OF THE PATRICIAN,

AND

A CONSTANT COADJUTOR IN THE AUTHOR'S GENEALOGICAL WORKS,

This Volume

IS INSCRIBED,

WITH FEELINGS OF THE TRUEST ESTEEM AND REGARD.

THE PATRICIAN.

JANUARY, 1848.

EDITED BY JOHN BURKE, ESQ.,

AUTHOR OF "THE PEERAGE," "LANDED GENTRY," &c.

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THE PATRICIAN.

WHO IS A GENTLEMAN, AND WHO AN ESQUIRE?

THE questions of "Who is a Gentleman, and who an Esquire?" are involved in some difficulty and confusion, in consequence of the law having been rather obscure in its interpretation of the right to be called Gentleman or Esquire, and in consequence also of the custom of society having opposed and gone beyond the law itself, and given a different construction and a far wider extent to these honourable additions. The subject, however, may, with a little care and attention, be clearly understood; a close investigation, particularly into the principles on which the matter rests, will lead to a fair estimation and pretty certain conclusion as to those who are fully justified in assuming to themselves the title of Gentleman or the degree of Esquire, or in allowing others to confer such complimentary designations upon them. We therefore propose, in the following inquiry, to state as far as possible, the exact answers to these questions, and the grounds on which they rest; and thus, after viewing the more general notions on the point, endeavour to arrive at a right understanding of this debateable and much disputed discussion.

We commence with the far more difficult inquiry of the two, that of,

WHO IS A GENTLEMAN?

There is no word in legal use, about which lawyers and law-writers have been so little explicit, or distinct, as the term Gentleman. And yet this word Gentleman is one of much importance in even a legal point of view. No later than a few weeks ago, we hear of a momentous affidavit being set aside in consequence of one who was a clerk, being styled in the document a gentleman. We copy the following from the *Morning Post* newspaper, of the 31st Dec., 1847.

"COURT OF BANKRUPTCY.—*Thursday, Dec. 30.*

Before Mr. Commissioner Evans.

"WHO IS NOT A GENTLEMAN.—In a trader's debtor's summons, under the 1st and 2nd of Vict., c. 110, Mr. Lloyd, a solicitor, objected to the description of one of the sureties in the affidavit. The objection was, that the surety was there described as a gentleman, he being a clerk in the

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office of the General Steam Navigation Company, 71, Lombard-street. Mr. Lloyd quoted a case (as we understood) *Wood v. Ray*, from Dowling and Ryland's reports, in which he said it was decided that 'gentleman' was not a proper definition for a clerk in a mercantile office.

"The Commissioner asked if there was anything to be said upon the other side. If not, he should consider the objection decisive.

"The gentleman who appeared on the other side said no notice had been given of the objection, and he was not prepared with a case to quote against that cited by Mr. Lloyd, but he could assure his Honour that the surety was a perfectly solvent man, and if the decision of the Court was adverse to the trader against whom the summons was issued, he would be made a bankrupt of, as the twenty-one days were on the eve of expiration.

"Evidence was given, proving that the surety had admitted he was a clerk.

"The Commissioner said the surety was described as a gentleman, and as he did not fulfil that description, he must hold the objection fatal.

["Our reporter," continues the *Post*, "referred to Dowling's, and to Dowling and Ryland's reports, and the only case, *Wood v. Ray*, which he finds there is in 2nd Dowling, p. 692, in which it was held by Mr. Baron Alderson, in a case in which a person was described as a 'gentleman' who was a clerk in the Post Office, and the description objected to upon this ground, that the description was sufficient."]

The reporter of the *Morning Post* is quite right as to the case of *Wood and Ray*, in the 2nd Dowling, which decided nothing else but that the designation of gentleman applied to a Post Office (a government) clerk was correct. The whole of this shews the existing legal doubts on the matter.

Yet if the law is to be thus strict in respect to the addition of Gentleman, it should at least give some clear definition on the subject. That it has not done so is evident, from the confused and uncertain statements about the term, by the most eminent of the law writers. The plan of investigation we here propose is, to take first what has been written by these legal authors, then to give the opinion of heraldic writers on the point, and finally, to see if there may be not got from both some principle to guide us.

To begin with the Lawyers.

"GENTLEMAN, *Generosus*," says Cunningham, in his Law Dictionary, "is an irregular compound of two languages, the one from the French *gentil*, that is *honestus, vel honesto loco natus*; the other from the Saxon *mon*, as if you say, a man well born. The Italian followeth the very word, calling those *gentilhuomini*, whom we call gentlemen, The Spaniard keepeth the meaning, calling him *hidalgo* or *hijo d' algo*, that is, the son of some man of reckoning. The French also call him *gentilhomme*. So that gentlemen are those whom their blood and race do make noble and known. In Greek they are *Evyevais*; in Latin *nobiles*. Under this name are comprised all above yeoman, so that noblemen are truly called gentlemen; but by the course and custom of England, nobility is either Major or Minor; the greater contains all the degrees from Knights upwards; the lesser, all from barons downwards.

The reason of the name may arise from this, that they observe *gentilitatem suam*, that is, the race and propagation of their blood, by giving

of arms, which the common sort neither does nor may do; for by the coat that a gentleman giveth he is known to be or not to be descended from those of his name that lived many years since. These words, *Gentilis homo*, for a Gentleman were adjudged a good addition."

"There is said," states Sir Edward Coke, in the *Second Institute*, p. 668, "to be a gentleman by office and in reputation, as well as those that are born such." And again, remarks the same high authority (2 *Inst.* 668): "A gentleman by reputation, that is neither gentle by birth, nor by office, nor by creation, but commonly called gentleman, and known by that name, is a sufficient addition within this act (the Statute of Additions, 1 Hen. 5, c. 5.)" "Under the denomination of gentlemen," says Smith, (*De Republica Ang.*, lib. 1 cc. 20, 21.), "are comprised all above yeomen, whereby noblemen are truly called gentlemen." And Blackstone, in his *Commentaries* (vol i. p. 406), adopts the notion of this learned writer, in thus further quoting him: "As for gentlemen," says Sir Thomas Smith, "they be made good cheap in this kingdom; for whosoever studieth the law of the realm, who studieth in the universities, who professeth the liberal sciences, and (to be short) who can live idly, and without manual labour, and will bear the port, charge, and countenance of a gentleman, he shall be called master, and shall be taken to be a gentleman." In Bacon's *Abridgment of the Law*, title "Misnomer and Addition," a similar latitude is given to the term gentleman.

The following is the pertinent portion of what is said on the point in Bacon's *Abridgment* :—

"In the time of Henry V. it was perceived that the Christian and surname were not sufficient denominations of persons, and did not sufficiently avoid the confusion that might happen by the mistake of persons; and that an innocent person might, upon a process of execution, be distrained upon, having the same name with the real defendant: therefore by the 1 H. V., c. 5, (the Statute of Additions) it is enacted, 'that in every original writ of actions, personal appeals, and indictments, and in which the exigent shall be awarded to the names of the defendants in such writs, original appeals, and indictments, additions shall be made for their estate, or degree, or mystery.'

"By this law the name of worship was made equally necessary in these actions as the name of dignity was before.

"As to the estate and degree required by the statute to be added, we must observe, that estate is defined by the civilians the capacity of moral persons; for as natural persons have a certain space in which they perform their natural actions, so have persons in a community a certain state or capacity in which they are supposed to exist, to perform their moral acts, and exercise all civil relations; and therefore where one, who is neither by birth, office, creation, or reputation, an esquire or gentleman, is named with either of these additions; or where a gentleman by birth, who follows a trade or husbandry, is named with the addition of the trade or husbandry, and not of gentleman,* or where a peer, who has more than one name of dignity, is not named most noble; or where a gentlewoman is named spinster, or a yeoman is named gentleman; and such

* Sed quære, says to this Bacon in a note, if such exception would now be allowed? A trader may be such by his degree or by his trade; and if by his degree, the writ shall not abate unless he shews he has a higher degree.—*Strange*, 556 817, *Lord Raymond*, 1541.

matter is pleaded in abatement, and found for the person who pleads it, the writ shall abate.

"It seems agreed, that the word mystery includes all lawful arts, trades, and occupations; and that if one under the degree of a gentleman, have divers of such arts, trades, or occupations, he may be named by any of them.

"The additions of this kind which are said to be clearly good, are those of husbandman, merchant, broker, tailor, point-maker, smith, miller, carpenter, cook, brewer, baker, butcher, parish-clerk, mercer, fishmonger, dyer, schoolmaster, scrivener, and such like.

"The additions of this kind which are said to be clearly insufficient, are those of maintainer, extortioner, thief, vagabond, heretic, common informer, and such like."

According to the whole view of the subject in this article in Bacon, a Gentleman would seem to be he who, as defendant in pleadings or indictments, has only the addition of estate or degree after his name, and not the addition of any art, trade, or occupation.

To these extracts, we may add the following dicta of Sir Edward Coke:—

"He that is destrained ought to be a gentleman of name and blood, *claro loco natus*. Of ancient time, those that held by Knight's service were regularly gentle. It was a badge of gentry. Yet now *tempora mutantur*, and many a yeoman, burgess, or tradesman, purchaseth lands holden by Knight's service, and yet ought not, for want of gentry, to be made a Knight. At this time the surest rule is, *Nobiles sunt qui arma gentilicia antecessorum suorum proferre possunt*. Therefore they are called *scutiferi, armigeri*.

"A Knight is by creation—a gentleman by descent; and yet I read of the creation of a gentleman. A Knight of France came into England, and challenged John Kingston, a good and strong man at arms, but no gentleman, as the record saith, *ad certa armorum puncta, etc. perficienda*. *Rex ipsum Johannem ad ordinem generosorum adoptavit, et armigerum constituit, et certa honoris insignia concessit*."

The Lord Chief Justice continues. "And great discord and discontentment would arise within the realme, if yeomen and tradesmen were admitted to the dignity of Knighthood, to take the place and the precedency of the antient and noble gentry of the realme.

"It is resolved in our books, without contradiction, that a Knight bachelor is a dignity, and of the inferior degree of nobility. Britton styleth a Knight honorable, and in the record 9 Edw. I. Sir John Acton, Knight, hath the addition of *nobilis*; but gentlemen of name and of blood, had very rarely the addition of *generosus* or *armiger*, being sufficiently distinguished by their Knight's service from yeomen, who served by the plough. But it was enacted by the statute 1. Hen. V. that in every writ original of actions, personal appeals, and inditements, to the name of the defendants, addition be made of the state, or degree, or misterie; and hereupon addition was made of *generosus* or *armiger*.

"An unmarried gentlewoman is improperly styled spinster; she ought to be styled *generosa*."—2 Institutes 668.

In the fourth volume, the Lord Chief Justice quotes Cicero and Pliny, *Nobilis est qui sui generis imagines proferre potest*: and adds, that what

images were to the Romans, coats of arms are to us—*Arma seu insignia gentilitia ex antiquo habuerunt locum imaginum*: so now the best way of discussing of antiquity of gentry is *per insignia*.

With reference to the curious fact of the King creating a gentleman, Sir Edward Coke is correct, for in 2 par. Inst. fol. we read of John Kingston being made a Gentleman by King Richard II. It is singular that so learned a student as James I. should have been unaware of this. Yet thus it seems from the answer he is reported to have given to his Scotch nurse, who entreated him to make her son a gentleman. "Madam," said the King "I can mak him a Lord, but I canna mak him a gentleman." Perhaps his erudite Majesty was wittingly ignorant.

We now come to the opinions of heraldic authors, which are about as vaguely and loosely given as those of the lawyers.

Camden Clarencieux, a King of Arms, says:—

"Nobiles vero nostri dividuntur in majores et minores. *Nobiles minores sunt equites aurati, armigeri, et qui vulgo generosi, et gentlemen vocantur.*—The lesser *nobilemen* are the Knights, Esquires, and those whom we commonly call gentlemen."

SILVANUS MORGAN, in his *Sphere of Gentry*, published in 1661, divides them into native, dative, achieved, and created nobility.

"The term gentleman," says Robson, in his *History of Heraldry*, "originally comprehended all above the rank of yeoman; whereby even noblemen are properly called gentlemen. All who were entitled to coat armour, or whose ancestors had been freemen, were included in the word *gentleman*. But it was more particularly applied to the lowest rank of these; because, not having any title of honour, for want of a specific term it was necessary to employ the general one, to distinguish them from the ignoble or plebeian. In times when the different ranks were more carefully distinguished, there were several shades of gentility. The first and most honourable were those who could boast of four generations of gentlemen, both in the paternal and maternal line: they were gentlemen by blood. If they could not prove this, but the contrary was not known within the memory of man, then they were gentlemen by prescription. It was also in the power of the King to raise any ignoble person to the rank of gentleman, by letters patent, conferring on him the right to bear coat armour; when this was done without any achievement either in war or peace, the person thus ennobled was insultingly called a gentleman of paper and wax. All orders of the King's household, not in a menial capacity, were considered raised to the rank of gentlemen. All orders of ecclesiastical preferment constituted a claim to gentility; and also any degree taken in the liberal sciences. In feudal times gentility might be acquired by the purchase of a seignory which had in any way lapsed to the King, and the new purchaser became entitled to bear the arms of the last possessor. There was yet another in which gentility was sometimes obtained, and that was by adoption; as when a person, who was not of gentility, was adopted by one that was, and, as he succeeded to his property and name, was admitted as his offspring, and allowed to bear arms."

That correct and graceful, but rather haughty heraldic writer, Sir James Lawrence, the author of a well-known clever work, *On the Nobility of the British Gentry*, thus discusses the subject of the term "gentleman:—"

"The books to form an opinion of the dignity of an old English Gentleman are the county histories; and these seldom come into the hands of foreigners. His baronial castle, or his not less sumptuous mansion of a more modern date, is there depicted. A stately avenue conducts to his residence, and a coach and six, escorted by a troop of outriders, the usual appendage of his quality, is seen driving into his gates; and when at length his numerous tenantry have accompanied the heraldic pomp of his funeral to the neighbouring cathedral, the next print represents him there sleeping in dull cold marble, but blazoned with all the escutcheons of his house. Such are the halls that embellish Whitaker's History of Richmond; such, in Nash's History of Worcestershire, are the monuments of the Sheldons, of the Vernons, and the Talbots, whose numerous quarterings would not have disparaged an elector of Mayence or a prince bishop of Wurtzbourg.

"The late King of Wirtemberg used to say, that he could form no idea of an English Gentleman, till he had visited several at their family seats, and seen their manner of living in the country. And it is remarkable that the author who at presents seems to take the most pleasure in doing justice to the character of an English Squire, is an American—Washington Irving.

"In Johnston's Dictionary, it is true, a Gentleman is said to be 'one of good extraction, but not noble;' and in so saying, he rendered the English Gentry considerable injury, as his work is translated into foreign languages, and this unintentionally; for he was a conscientious man, and though no Gentleman himself, he bore no envy towards his superiors. He was a friend of all aristocratical institutions; but however profound an etymologist, he was neither herald nor antiquary, and he committed the modern blunder of confounding nobility with peerage; and on points of honor, Lord Verulam, Selden, Cambden, etc., and the statutes of the Garter, are better authorities.

"In Bailey's Dictionary, of the edition of 1707, we find 'a Gentleman, one who received his nobility from his ancestors, and not from the gift of any prince or state.'

"And in the second volume of Bailey's Dictionary, printed 1728, (I specify the edition, because in later editions variations may be discovered, and these variations shew the progressive degradation of the British Gentry), we find, 'a Gentleman is, properly, according to the ancient notion, one of perfect blood, who hath four descents* of gentility, both by his father and his mother.'

"In choosing of magistrates, the vote of a Gentleman was preferred before that of an ignoble person.

"It was a punishable crime to take down the coat armour of a Gentleman, or to offer violation to the ensign of any noble person deceased.

"The reasons why those that are students in the inns of court are esteemed Gentlemen, is because anciently none but the sons of Gentlemen were admitted into them.

"But the students of law, grooms of his Majesty's palace, and sons of peasants, made priests, and canons, though they are styled Gentle-

* Four descents of gentility are in Germany called sixteen quarters, or parents; one descent requires two—two descents four—three descents eight—four descents sixteen great-great-grand parents, and which qualify a Gentleman to be chosen a prince-bishop, or Knight of the Teutonic order.

man, yet they have no right to coat-armour. If a man be a Gentleman by office only, and loses his office, then he loses his gentility.

“Gentry—the lowest degree of nobleness—such as are descended of ancient families, and have always borne a coat of arms.”

“This dictionary represented to foreigners the gentry of England in an honorable light; and being used at schools, inspired our youths with a respect for their own families. This dictionary pronounces nobility to be acquired; gentility never. This also was an axiom in France. The acquirer there of letters patent is styled an *ennobli*; his son a *noble*: but it is undecided among French heralds, whether his grandson, or his great-grandson, be the first Gentleman in the family; some heralds requiring only three, others five generations of *noblesse* to make a Gentleman.

“Formerly, while all persons of coat-armour were styled noblemen, all Gentlemen were styled persons of quality.

“A peer is only a person of rank, unless he be a Gentleman; but every Gentleman is a person of quality, for, in the opinion of a herald, quality and gentility are synonymous.

“Lord Verulam says (page 119): “At the same time there repaired unto Perkin, divers Englishmen of *quality*, Sir George Nevile, Sir John Taylor, and about one hundred more.”

“(Page 122.) “Upon All-hallowes day, the King’s second son Henry was created Duke of York; and as well the Duke as divers other noblemen, Knights, Bachelors, and Gentlemen of *quality*, were made Knights of the Bath.”

“Fuller’s Church History, anno 1546. ‘The last person of *quality* who suffered martyrdom in this King’s reign, was Anne Ascough, alias Kyme. She was worshipfully extracted; the daughter of Sir William Ascough of Kelsy in Lincolnshire, of the age of twenty-five.’

“The gentry of Yorkshire thus begin a petition to Charles the First, 1643:—

“‘Those members of parliament lately employed to attend your Majesty from both houses, being all of them Gentlemen of *quality* and estate in this county.’”

“During the civil war was published, a catalogue of all Lords, Knights, Commanders, and persons of *quality* slain, or executed by law martial to March 25, 1647.

“Proclamation against duelling, Whitehall, 9th March, 1679:—

“‘Whereas it has become too frequent, especially among persons of *quality*, to avenge their private quarrels by duel.’”

To give any further extracts from other legal or heraldic writers becomes unnecessary, as what they say is generally, in words or effect, a repetition of the foregoing statements.

From all these various opinions, though, as we remark, somewhat carelessly given, we think we are justified in drawing the conclusion, that those who really are entitled to be called gentlemen may be divided into the following classes:—

1. THE GENTLEMAN BY BIRTH, OR GENTLEMAN BORN, about which there is little difficulty, since he is allowed to be one who is of gentle extraction; that is, the issue of any nobleman, baronet, knight, or other gentleman entitled to arms. He that has four

descents of gentility, both by his father and mother, is, it will be remarked, termed the "Gentleman of perfect blood."

2. **THE GENTLEMAN BY CREATION**; that is, he who is so made by regal authority; and we take all persons ennobled, or styled gentlemen in royal patents, to belong to this class: moreover, those who receive grants of arms from the Crown, and perhaps (though we doubt it) those who receive grants of arms from the Heralds' College.
3. **THE GENTLEMAN BY STATION AND REPUTATION**; that is, one who combines with enough of independence to live unoccupied and respectably, sufficient education, conduct, and manners, to permit him to associate with persons of what is usually and easily understood by the designation of refined society.
4. **CLERGYMEN**, who are gentlemen from the sacredness of their office. The degrees at the Universities, would, it seems, also confer gentility.
5. **THE GENTLEMAN BY OCCUPATION**, whom, from a mature consideration of the above-cited authorities, and, indeed, from a consideration also of the whole subject, we would define to be one whose employment is not only honest, but honourable. The following passage from the celebrated *Reflections on the French Revolution*, by Edmund Burke, may serve to illustrate this proposition:—"The Chancellor of France," remarks that profound and sagacious writer, "at the opening of the States, said in a tone of oratorical flourish, that all occupations were honourable. If he meant only that no honest employment was disgraceful, he would not have gone beyond the truth; but in asserting that anything is honourable, we imply some distinction in its favour. The occupation of a hairdresser, or of a working tallow-chandler, cannot be a matter of honour to any person, to say nothing of a number of more servile employments. Such descriptions of men ought not to suffer oppression from the state, but the state suffers oppression if such as they, either individually or collectively, are permitted to rule. In this you think you are combating prejudice, but you are at war with nature." The distinction of which Edmund Burke speaks, and which we hold necessary to make an employment honourable as well as honest, consists evidently in its being requisite, for the performance of the duties of such employment, that there should be a certain degree of superior station, mind, and education. Thus is the magistrate or the lawyer a Gentleman, while the constable is not so. This it is that distinguishes, as Gentlemen, the officer from the common soldier; the merchant from the tradesman; the painter from the petty artist or decorator; the sculptor from the stonemason; the practitioner in medicine from the vendor of drugs or the barber who may bleed or draw teeth; the author from the copyist or scrivener; and so on. The definition we thus lay down may at first appear vague and dubious, but the more it will be considered the more will it be found to solve the question of who is a gentleman by occupation. It does, too, perfectly coincide with the view of the lawyers, for none of these honourable occupations are included under their term "mystery," which embraces the class below that of a

gentleman. Bacon, it is true, speaks, in reference to "mystery," of a "merchant," but then he means clearly a *marchand* or tradesman, and not what is understood by the English acceptance of the word, answering to that of "negociant."

There is, however, one class to whom the term gentleman is peculiarly attached—we mean ATTORNEYS, who are said to be "Gentlemen by Act of Parliament." We have made some search to see by what Act this is so, but, among the various statutes relative to attorneys, we can nowhere find the enactment. May not the idea have arisen from the term "general attorney—*attornatum gen'alem*," used in a very early statute, that of Westminster, 2. the 13th Edward I., St. I. c. 10, the words becoming corrupted into "gentleman attorney?" Whether that be so or not, we think this peculiar application of the term gentleman to attorneys is at best but invidious. Setting aside any statutable designation, the occupation of an attorney, when honestly and rightly exercised, is clearly that of a gentleman.

To this class of a GENTLEMAN BY OCCUPATION belong those who are Gentlemen by office; and it may here be remarked, that according to the lawyers, the one individual may be a gentleman, and at the same time belong, in some capacity, to a class which is beneath gentility. For instance, the Lord Mayor of London and the Aldermen may be, and generally are, tradesmen, yet, as Mayor and Aldermen, they are undeniably gentlemen. In such circumstances, the better, and perhaps the more correct plan would be, to give the party his superior designation of Gentleman.

In concluding this subject of "Who is a Gentleman?" we would observe, and we feel gratified in doing so, that in its every sense, the status of a gentleman legally requires, for its duration, the strict preservation of honesty and honour.

We now arrive at the more easily to be answered question of

WHO IS AN ESQUIRE?

To begin with the origin of the term Esquire.

This appellation comes from the French *escu*, and the Latin *scutum*, a shield; and they both derive from the Greek *σκιος*, which signifies the hide of which shields were anciently made, and with which they were afterwards covered. An Esquire was originally he who, attending a Knight in time of war, carried his shield, whence he was called *escuier* in French, and *scutifer* or *armiger*, (armour-bearer) in Latin. "The Squires," says James, in his History of Chivalry, "had often important duties to perform. It was for them to follow their lords to the battlefield; and while the knights, formed in a long line, fought hand to hand against their equals, the squires remained watching eagerly the conflict, and ready to drag their master from the *melee*, to cover him if he fell, to supply him with fresh arms, and in short to lend him every aid; without, however, presuming to take an active part against the adverse knights, with whose class it was forbidden for a squire to engage." Hotoman, in the sixth chapter of his work upon Feuds, says, that those whom the French call Esquires are a military kind of vassals, having *jus scuti*, that is, liberty to bear a shield, and in it the ensigns of their family, in token

of their gentility or dignity. But this about the ensigns is evidently too fanciful a meaning, and applies to a subsequent use of the term. The former derivation and explanation, in accordance with James's account of the Esquire's duties, appear to be far more reasonable and correct, especially since the law, as will be presently seen, connects the dignity with office and employment, and not with mere condition.

The whole judicial construction of the right to be called Esquire is so admirably compressed and put forth in the second volume, p. 553, of the third edition of Jarman and Bythewood's *Conveyancing*, edited by a learned counsel, Mr. Sweet, that we cannot do better than give the entire extract, leaving out only the references, which are somewhat troublesome to the general reader, and may be easily had by looking into the book itself.

"No lord or lady of a manor, *under the degree of an Esquire*," says the work, "could appoint gamekeepers to *seize* guns, nets, and other engines used for the destruction of game, under the 22 & 23 Car. 2. c. 25. s. 2., whatever the estate might be ;' for no landed estate, however large, will confer the title, as the term Esquire has no relation whatever to landed property ; but it must be acquired either by office, the King's patent, or some of the means laid down by Selden and Camden. A lord of a manor is certainly not an Esquire by virtue of his manor, or royalty, though in common acceptation he is considered as such. ESQUIRES, in law, and properly so called, are the sons of all the peers and lords of parliament, in the lives of their fathers ; the eldest sons of the youngest sons of peers, and their eldest sons in perpetual succession, and consequently the younger sons of peers after the death of their fathers. All the noblemen of other nations, and Scotch and Irish peers if they be not knights (but now, by the Acts of Union with Scotland and Ireland, Scotch and Irish peers retain their rank in this country). The eldest sons of baronets, the eldest sons of knights, and their eldest sons for ever. Esquires created expressly with a collar of S S, and spurs of silver, of which at present there are none. Persons of whom the King gives arms by letters patent, with the title Esquire, and their eldest sons for ever. Esquires of the Knights of the Bath, each of whom formerly constituted *two* at his installation, but the number now is *three* ; for by the statutes of the Order of the Bath, article 15, 23 May 1725, 11, Geo. 1., at which time the Order was revived, each Knight is required to have at his installation one young esquire, and two esquires governors ; all of whom have the same rights and advantages as gentlemen of the Privy Chamber : and it is by the same section declared, that the eldest son of every of these esquires shall have and use the addition and title of esquire in all acts, proceedings, and pleadings. Barristers-at-law by their office or profession. Justices of the peace, while in the commission, but no justices of the peace of corporate towns,* &c. Persons chosen esquires to the body of the Prince, of which at present there are none, their place being supplied and rendered unnecessary by means of a

* We take this to mean such magistrates as become justices in corporate towns by virtue of their respective charters. The justices, however, for boroughs, under the Municipal Corporation Act, 5 & 6 W. 4. c. 76., are appointed by the Queen's commission, and consequently have as much right to the title of Esquire as justices for counties. We moreover are strongly inclined to the opinion that all mayors and justices are Esquires, since, however appointed, they are the conservators of the Queen's peace, with power to hear and determine, within their respective jurisdictions, and consequently are high officers of trust under the Crown.

standing army. Persons attending upon the King's coronation in some employment, or persons employed in any superior office in the kingdom, or serving in some place of better note in the King's household. And it has been *supposed* that all who bear an office of trust under the Crown, and who are styled Esquires by the King in their commissions and appointments; as they are once honoured by the King with the title of Esquire, they have that distinction *for life*; such, for instance, as sheriffs of counties, or captains in the army or navy. Notwithstanding the 44 Geo. 3. c. 54. s. 26, enacted that all officers in corps of volunteers, having commissions from lieutenants of counties, should *rank* with the officers of His Majesty's regular forces, yet a commission signed by the Lord Lieutenant of a county, and announced in the *Gazette*, constituting a person captain commandant of a corps of volunteer infantry, and styling him an Esquire, does not create such a person an Esquire, because the Lord Lieutenant cannot confer honours; and the Court of Common Pleas, in the case of *Talbot v. Eagle*, *Taunton's Reports*, p. 510, said there was no pretence to call such a gentleman Esquire. Although Mr. Serjeant Len's opinion, that the 'eldest son of a clergyman is not as such qualified (as the son of an Esquire) under any of the descriptions of the statute 22 & 23 Car. 2. c. 25. s. 3; * and that it makes no difference in this respect that the father is a Master of Arts in an English University, and in the commission of the peace: ' still it seems that a clergyman in the commission of the peace, lord of a manor, would have been considered as not being *under the degree* of an Esquire, according to the description of the repealed statute. The ground of the learned serjeant's opinion perhaps is, that such a clergyman is neither an Esquire nor a 'person of higher degree.'

In addition to this, we find at p. 380. of the same volume of the same work, that—

"As barristers in England are called Esquires, the attornies in all the colonies, excepting Jamaica and Barbadoes, are also called Esquires: because the departments of counsel and attorney are there united. In Jamaica and Barbadoes, where the departments of counsel and attorney are distinct, the attorneys are described, as in England, *gentlemen* in all legal proceedings."

It is quite apparent from the law as above laid down, that the degree of Esquire does not result from gentle birth or lauded possessions, but is nothing more than a dignified appointment, which either comes mediately or immediately from the Crown, and may exist by itself; or which necessarily attaches to the filling, or, as it would seem, to even the re-

* The words of the 22 & 23 Car. 2. c. 25. s. 3., are, "That every person not having lands and tenements, or some other estate of inheritance, in his own or his wife's right, of the clear yearly value of £100 per annum, or for term of life, or having lease or leases of ninety-nine years, or for any longer time, of the clear yearly value of £150, (*other than the son and heir-apparent of an Esquire or other persons of higher degree*, and the owners and keepers of forests, parks, chases, or warrens,) is prohibited from having, keeping, or using any guns, bows, greyhounds, setting-dogs, ferrets, coney-dogs, lurchers, hays, nets, lowbels, hare-pipes, gins, snares, or other engines aforesaid." Pursuant to the curiously strict ruling of the courts of law, the qualification marked in italics in the above section, was not accorded to the Esquire or person of higher degree himself, but only to his son, and heir-apparent, and that merely during the father's lifetime, because, pursuant to Lord Mansfield's decision, "the son ceases to be heir-apparent upon his father's death." *Jones v. Smart*, 1 *Term Reports*, p. 44.

versionary contingency of filling any office of trust and honour in the service or about the person of the Monarch. True it is that in some cases the title of Esquire is hereditary, but this (the case of the sons of Esquires of the Bath being a mere statutable exception) is only where the royal patent so makes it, or, apparently where those in succession, as in the case of a peerage, have the possibility of obtaining a superior dignity and office to which they are in remainder. This is the more evident from the fact of the sons of justices of the peace and barristers not being consequently Esquires, since their fathers' functions terminate with their lives, and do not go to their descendants. The eldest sons of Knights being Esquires, may seem to contradict this position, but Sir Edward Coke (one authority for the statement) is not very clear upon the point. His words (2 Inst. 596.) are, "The eldest son of a Knight is an Esquire, as his father ought to be before he was called to the dignity of Knighthood;" which would seem to infer that the son was not an Esquire by birth, but had some claim or right to be made one in the way his father was prior to being Knighted. Moreover, it was determined by a decree of the Earl Marshal's Court, 18 March, 1615 :—"That there are two degrees that give the title of Esquire by birth, 1st. Younger sons of Peers of the Realm and the heirs-male of their bodies; 2d The direct heir-male of Knights;—and the heirs-male of younger sons of Peers take precedence of the heirs-male of Knights." How the sons of Baronets (and we think all the sons of Baronets, if any,) come to be Esquires is, probably, because the dignity had originally attached to it the honourable office of assisting the Crown in the reduction and plantation of a province.

There is a very common error abroad, that a grant of arms from the Heralds' College gives of itself the title of Esquire; but this is decidedly not so. It is only where a direct patent from the Crown names the grantee Esquire, that he becomes entitled to the addition, should he not already possess it. This is so well understood in the College of Arms that it is the invariable practice there never to call the person to whom the grant of arms is made, Esquire, in the patent, unless the party is already actually and strictly an Esquire, according to law. Indeed, we are inclined to doubt whether a mere Heralds' College grant of arms, as it is not a direct grant from the Crown, confers gentility at all. A Herald's grant of arms to a mere mechanic or tradesman, the regal direct donation not appearing in the patent, seems to us to leave him but a mechanic or tradesman still. This, however, may admit of dispute; but one thing is certain—the grant of arms of itself does not confer the title of Esquire.

Barristers-at-law are Esquires pursuant to a right legally and universally acknowledged. In one case reported in the first volume of *Wilson's Reports*, p. 224, the Court of Common Pleas refused to hear an affidavit, because a barrister named in it was not called Esquire; and all the courts now invariably require counsel to be so styled. Some writers think this an anomaly, and declare the dignity to have been obtained by barristers through usurpation. Yet are not barristers in some measure superior officers, or officers of trust in the court of the Sovereign? They were first appointed by an ordinance of King Edward I. (1 *Blackstone's Com.* p. 23. n.), and they now derive their degree from the benchers of the Inns of Court, who have their authority for this purpose from the ruling

power. Barristers certainly do on their admission take a very strong oath of something even more than common allegiance to the Crown. Moreover, they are within the principle we detect in the law above laid down; they have the contingency of filling stations of high trust and honour in the state; they form the body from whom the judges, the attorney and solicitor general, the Queen's serjeants, and Queen's counsel, must of necessity come. If the son of the peer or minor noble be an Esquire because he may inherit the dignity and duty of his father, how much more so is he who may one day have to protect the rights of his sovereign by his knowledge and ability, or to do the Crown the most essential service of all, in learnedly interpreting the statute and common law for the furtherance of the common weal, and in wisely and impartially and mercifully administering justice.

With regard to doctors of medicine or physicians, they hold a rank on the scale of precedence above that of an Esquire, but they are not consequently Esquires. Indeed, there seems no ground whatever for giving them that title. None of the law writers and law reports (and they, after all, are the real authorities on this subject) attach Esquire to the degree of doctor, although they do gentility and rank. "A degree in either University," it is said in *Bacon's Abridgment of the Law*, title "Misnomer," "is a good addition, yet a doctor in divinity may be described by the addition of clerk, as well as by that of doctor." Here, then, though a further addition is mentioned, no allusion is made to an Esquire. In the case of *Jones v. Smart*, reported in the first volume of the *Term Reports*, p. 44, which was a question as to qualification under the Game Law, it was not for a moment contended that a doctor was an Esquire, but that he was a person of higher degree. The College of Physicians is an incorporate body of great learning and dignity, but there is nothing in their charter (the 14 and 15 Hen. VIII., c. 5) which could lead to their assuming the addition of Esquire. With respect to doctors of physic, not members of the College of Physicians, and consequently disabled from practising in and within seven miles of London, the following expression is used in *Burn's Justice*, last edition, vol. v. p. 532:—"As to the testimonials granted by the Universities on a person's taking the doctor's degree, these may have the nature of a recommendation, and give a man a fair reputation, but confer no right." In the case of *Jones v. Smart*, above alluded to, where the question arose after the Union with Scotland, Lord Mansfield, in giving his judgment, thus spoke of a doctor of medicine of a Scotch University:—"Whatever rank such doctor may hold by courtesy in this country, he is not, in point of law, to be considered as a doctor to this purpose," viz. with respect to giving qualification as a person of a higher degree than an Esquire under the game statute of Charles II. Consequently, we conclude that a doctor of medicine, as such, is not an Esquire: he, however, holds a position superior to that of the Esquire, except he be a doctor who is not licensed by the College of Physicians, and whose degree or diploma comes from a foreign university, or indeed from any university but those, such as Oxford, Cambridge, or Dublin, which give a right to practise in England. A doctor of a Scotch or foreign university has no rank in this country beyond that of mere gentility alone. It should be understood generally, as well as in the case of physicians, that the addition of Esquire has nothing to do for its existence with the scale of precedence: a person may be far

above an Esquire on that scale, yet he is not an Esquire, and why? because the title arises from office, and not from position.

Thus far as regards the legal right to the addition of Esquire, and, let it be clearly understood, no person can fairly or honourably be an Esquire, but according to the law alone. Custom has, however, given a far wider range to this designation of Esquire, through a complete mistake. It has confounded the term with that of Gentleman, one of different, and much less strict acceptation. An Esquire is a gentleman in consequence of the honour of his station; so is a peer, or a baronet; but one might just as well term every gentleman a Duke as call him an Esquire. Of the term Gentleman we have fully spoken, above.

Custom, politeness, or pretension, may designate persons Esquires who are not entitled to be so; nevertheless it is an assumption and an error still—an error which right feeling and respectability will ever refuse to adopt. The polite intention of others in wrongfully applying the title, is pardonable; but he who will himself be called Esquire, contrary to law and reason, may probably eventually find that he loses rather than gains in public estimation.

IN conclusion, for the sake of clearness, we recapitulate in a tabular form, the different classes to whom the title of Esquire belongs.

ESQUIRES ARE—

1. The sons of all the peers and lords of parliament in the lives of their fathers; the younger sons of peers after the death of their fathers; the eldest sons of the younger sons of peers, and their eldest sons in perpetual succession.
2. Noblemen of other nations.
3. The eldest (and we think, if any, all the) sons of baronets, and the eldest sons of knights.
4. Esquires created expressly with a collar of SS, and spurs of silver, now obsolete.
5. Persons to whom the Queen gives arms by her own letters patent, with the title Esquire.
6. Esquires of the Bath, and the eldest sons of those Esquires pursuant to the statutes of the order.
7. Barristers-at-law, by their office or profession.
8. Justices of the peace, and mayors, while in the commission, or in office.
9. Persons chosen Esquires to the body of the Prince, now obsolete.
10. Persons attending on the Sovereign's coronation in some notable employment, or persons employed in any superior office of trust under the Crown, or serving in some place of better note in the Queen's household.
11. Persons who are styled Esquires by the Queen in their patents, commissions, or appointments, such as sheriffs of counties, captains in the army and navy.
12. Attorneys in colonies, where the departments of counsel and attorney are united.