

Third Series Vol. VII Part 2

No. 222

Autumn 2011

ISSN 0010-003X

Price £12.00

THE COAT OF ARMS

an heraldic journal published twice yearly by The Heraldry Society



THE COAT OF ARMS

The journal of the Heraldry Society



Third series

Volume VII

2011

Part 2

Number 222 in the original series started in 1952

The Coat of Arms is published twice a year by The Heraldry Society, whose registered office is 53 High Street, Burnham, Slough SL1 7JX. The Society was registered in England in 1956 as registered charity no. 241456.

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PLATE 2

Image by courtesy of the Kings, Herald, and Pursuivants of Arms.



Arms and crest granted to Joseph Stubs of Warrington, co: pal: Lancaster, Esq.,
28 February 1849 (CA record Ms Grants 49/121).

See page 50.

THE RIGHT TO POSSESSION OF A GRANT OF ARMS

UNITED KINGDOM, REPUBLIC OF IRELAND AND COMMONWEALTH COUNTRIES

Richard d'Apice

The High Court of Chivalry has fallen into desuetude and it is often believed that, as a consequence, there is no court in England with jurisdiction to hear and determine disputes relating to arms.

That perception is accurate only to a limited extent. There are many instances, continuing up to the present time, of disputes over names and arms clauses in English wills which the English courts have determined without the slightest hesitation as to their jurisdiction.¹ On the creation of the sovereign state of Ireland in 1922, the Law of Arms of Ireland was substantially that of England with some local developments. The respective jurisdictions of the Court of the Lord Lyon and the Court of Session in Scotland in such matters are well understood.

Of interest amongst many judgments on armorial matters by the civil courts of England is the 1862 judgment in *John Stubs and Peter Stubs v Elizabeth Stubs*² of the Court of Exchequer on a case stated³ on a claim for possession of an English grant of arms. The suit was commenced by the heirs of destination of the arms (the nephews of the grantee including one of his executors) against the widow of the grantee who was beneficiary of the grantee's personal property.⁴

¹ The most recent English case on the subject which I have located is *Howard v Howard-Lawson* [2011] EWHC 63 (Ch) (21 January 2011) in which the bankrupt son of a landowner alleged that his father had forfeited the family estate for breach of a name and arms clause in the will of the testator.

² *Stubs v Stubs* (1862) 1 Hurlstone and Coltman Exchequer Reports 257; reprinted 158 English Reports 881. The case was also reported in a number of newspapers and, in the days before official law reporting of judgments, these various versions are of interest in amplifying the (itself unofficial) published report.

³ This is an appeal process by which a legal question upon which the outcome of a case depends is referred by the judge of an inferior court, at the request of a party, to a superior court for determination, the facts as determined by the inferior court remaining unchallenged.

⁴ The document was in the testator's safe at his house to which the widow 'had access with the knowledge and sanction of the testator's executors for the purpose of securing her own articles of value and it was asserted that she refused to deliver it up' (*Stubs v Stubs* 260). Some doubt was expressed as to whether the document produced in court was the original grant. The document described in the *Daily News* report on 5 June 1862 as having been handed up to the judges appears to have been the original grant but the document pleaded by the plaintiffs was clearly an 1861 extract from the records of the College of Arms. The judges appear to have proceeded on the basis that it was immaterial whether the disputed document was the original grant or an extract from the records and that any person with a right to bear the arms (including the plaintiffs) could at any time obtain a copy of the grant from the College of Arms.

The facts, the verdict at first instance and the Case Stated

On 28 February 1849,⁵ the arms were granted by means of the disputed patent to 'Joseph Stubs of Warrington in the county Palatine of Lancaster, Esquire, in the commission of the peace for the said county Palatine' by Garter King of Arms Sir Charles George Young (Garter 1842-69) and Norroy King of Arms Edward Howard Howard-Gibbon (Norroy 1848-9): 'Or three piles, two issuant from the chief and one from the base azure, each charged with a pheon of the field, and for crest, on a wreath of the colours issuant from flames, a dexter arm embowed in armour grasping a battle axe all proper, pendant from the hand by a chain or an escocheon sable charged with a pheon as in the arms' (see **Plate 2** and **Figure 1**).⁶

Joseph was baptized on 29 January 1797 at Latchford in Cheshire,⁷ the son of Peter Stubs who had established the family fortune.⁸ When he obtained this grant in 1849, he was aged 52, widowed and had no surviving issue and he obtained an extension of the usual destination of the arms so that they were 'to be borne by him and his descendants, and by the descendants of his brother Thomas Stubs, late of Warrington aforesaid, gentleman, deceased.'⁹

In 1860, Joseph married, as his second wife, Elizabeth Claudia Harding.¹⁰ They were enumerated in the census taken on 7-8 April 1861 at Park Place, Frodsham, Cheshire, he being 65 and she 26.¹¹ Joseph died at Park Place a week later on 15 April 1861.¹² They had no children.

⁵ CA record Ms Grants 49/121.

⁶ *Stubs v Stubs* 259; Burke, *GA*, p. 983, gives these arms for 'Peter Stubs, Esq., J.P., &c., Statham Lodge, Warrington, co. Chester', with the motto *Cedant arma labori* ('Let arms give place to labour').

⁷ Genealogical Society of Utah, British Isles Vital Records Index (2nd edn., Salt Lake City 2002), film no 1656401.

⁸ The following account is given in the on-line 'Access to Archives' catalogue entry for the papers of Peter Stubs Ltd. held by Rotherham Archives: 'Peter Stubs (1756-1806) established himself as a file maker in Warrington c.1777. The business expanded to embrace a wide range of tools and in 1832 the Company acquired the Holmes Works of Joshua Walker and Co. as a base from which to supply high quality steel to Warrington. This site soon became too small. Accordingly the site of Holmes Hall was purchased and a new steelworks was erected in 1842. This was initially known as the Warrington Steel Works, near Rotherham, but soon became known as Holmes Steel Works. This was the first works in the area to have a direct railway connection (to the Sheffield and Rotherham Railway). Steelmaking ceased in 1958 when the premises were sold to the neighbouring company of J. J. Habershon and Son Ltd' (www.nationalarchives.gov.uk/a2a/records.aspx?cat=198-229b&cid=0#0, accessed 30 Oct. 2011); T. S. Ashton, *An Eighteenth-century Industrialist: Peter Stubs of Warrington, 1756-1806* (Manchester 1939).

⁹ CA record Ms Grants 49/121; transcript of grant in *Genealogist* 4 (1880), p. 286; *In re Neeld, decd.* (No. 3) (1968) 1 WLR 988 at 993.

¹⁰ She had been born in Merthyr Tydfil, Glamorganshire, on 17 Sep. 1834, daughter of Thomas Harding and his wife Anne.

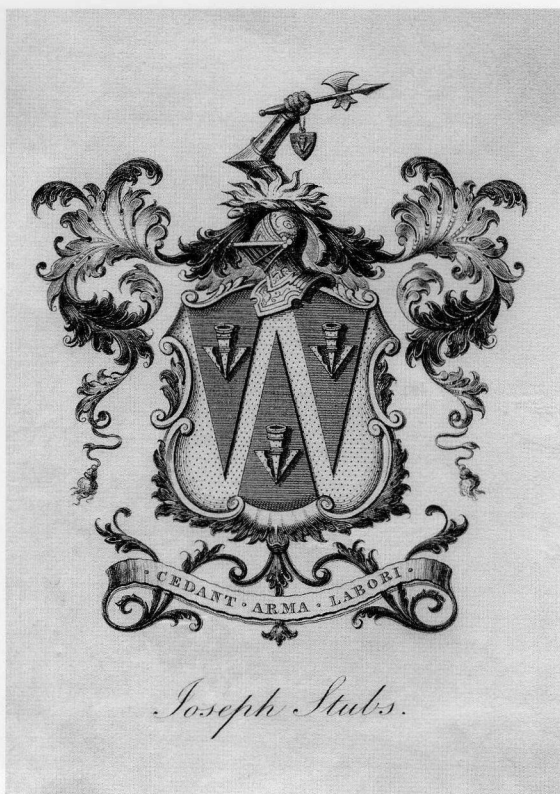
¹¹ TNA RG9/2599, fo 33.

¹² *The Times* 17 April 1861, p. 1.

THE RIGHT TO POSSESSION OF A GRANT OF ARMS

Figure 1: bookplate of Joseph Stubs.

Anthony Pincott Collection;
reproduced by permission. Cf. R.
J. Gambier Howe, *Franks Bequest
Catalogue* (London 1904), vol. 3, p.
93 (no 28,491).



By his will, dated 20 July 1860, Joseph left personal property to his wife as follows:¹³

I give and bequeath absolutely unto my wife Elizabeth all the household goods, wine, plate, plated articles, linen, china, books, prints, pictures, carriages, horses, farming stock and household effects whether of use or ornament, and which shall belong to me or be in or about any dwelling-house or dwelling-houses occupied by me at the time of my decease.

An action in detinue (a common law action to recover wrongfully detained personal property) was commenced against the widow of the grantee by John Stubs, eldest nephew and heir-at-law of Joseph, and Peter Stubs, younger nephew and one of two executors of Joseph's estate, the only sons of Thomas Stubs, late brother of the grantee.¹⁴ They sought a declaration that the widow of the grantee detained from them, and an order that she return to them, 'a grant or patent of arms belonging to the plaintiffs, to wit, a patent of arms, dated the 28th day of February, 1849, and granted

¹³ *Stubs v Stubs* 260.

¹⁴ Peter Stubs had an antiquarian interest and was a member of the Harleian Society from 1885; *Harleian Society: Rules, Report and List of Members for the Year 1890*.

by Garter Principal King of Arms and Norroy King of Arms of the north part of England from the river Trent northwards, to one Joseph Stubbs, deceased.’¹⁵

The case was heard, at first instance, by Sir Samuel Martin, Kt., one of the Barons of the Court of Exchequer,¹⁶ when it was agreed that there should be a verdict for the nephews subject to a case stated (the Court having power to draw such inferences as a jury would have drawn). Three questions were posed in the stated case:

1. Whether the grant passed under the bequest of the contents of the house to the widow.
2. If not, whether the widow was still entitled to retain the grant during her life.
3. If neither former proposition was correct, whether the entitlement to the grant was that of the nephews jointly, the eldest nephew alone or the trustees of the estate of the grantee.

Judgment on the Case Stated

The case stated was heard and determined by Sir Frederick Pollock, Chief Baron of the Court of the Exchequer (as he then was: see **Figure 2**),¹⁷ and Mr Justice George William Wilshire Bramwell, a Baron of the Court of Exchequer (as he then was)¹⁸ on 4 June 1862. The parties were represented by two of the best legal minds of the age. The plaintiff nephews were represented by Mr Brett of Counsel¹⁹ who appeared with Mr Crompton Hutton,²⁰ and the defendant’s widow by Mr Grove of Counsel²¹ with Mr Thrupp.²² Grove’s arguments were to prevail over those of Brett.

Bramwell was himself to receive an English grant of arms in 1856.²³ Pollock, who in 1847 had been granted arms in Scotland (incorporating an ermine canton with

¹⁵ An exemplification (certified on 16 December 1861) of the grant is printed in full in the report and was presumably obtained by the plaintiffs for their case in the absence of the grant itself.

¹⁶ Sir Samuel Martin (1801-83), pupil and intimate friend of Sir Frederick Pollock, Lord Chief Baron of the Exchequer, whose daughter he married.

¹⁷ Sir (Jonathan) Frederick Pollock, P.C. (1783-1870), later 1st Bt.

¹⁸ George William Wilshire Bramwell (1808-92), later Baron Bramwell, of Hever co. Kent. His dissenting judgment in the Court of Exchequer was upheld by the House of Lords in the landmark case of *Rylands v Fletcher* (1868) LR 3 HL 330, [1861-73] All ER Rep 1, which established a new area of English tort law.

¹⁹ William Bialiol Brett, Q.C. (1817-99), later the celebrated Master of the Rolls and 1st Viscount Esher.

²⁰ Crompton Hutton (1822-1910), later a judge of the Lancashire County Courts, described by Judge Edward Abbott Parry in *What the Judge Saw, being twenty-five years in Manchester by one who has done it* (London 1912), p. 143, as ‘a very learned man of a curious, cantankerous character, [who] held sway over the Bolton and Bury district. He had had a large practice in London as a junior, and though his methods were irregular they did not lack common sense. He never wore robes, and I was told it was an offence to appear in his court in robes’.

²¹ William Robert Grove, Q.C. (1811-96), later Sir William Robert Grove, P.C., Q.C., F.R.S., later a judge of the Court of Common Pleas and subsequently of the Queen’s Bench and a notable physical scientist.

²² Charles Joseph Thrupp (1791-1872), barrister.

²³ CA record Ms 52/23.

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Figure 2: Lord Chief Baron
Pollock (1783-1870).



a gold portcullis in commemoration of his judicial rank), was granted supporters in England in 1866.²⁴

Brett for the plaintiffs contended that the patent belonged to the sons of the testator's brother, in whose favour the arms were granted.²⁵ Bramwell responded 'It does not appear that they ever consented to wear the arms. Can the Earl Marshal inflict arms on a man without his consent?' (Here the court reporter recorded laughter.) 'Ought we not see whether the article is a picture?' Grove replied that 'it was contained in a very handsome box'. The grant was handed up to the judges and was described as 'a large sheet of vellum, engrossed and surrounded by a coloured border containing the Stubs arms'. The reasons proceeded on the basis that the grant did not pass under the terms of the bequest to the widow.

Brett addressed the bench saying 'there may be a disposition on the part of his learned friend to treat the case with ridicule, but he thought the elder Stubs was rather entitled to credit for the course he adopted. Being desirous to found a family, instead

²⁴ Balfour-Paul, *Ordinary* p. 181 (no 2676); George Seton, *The Law and Practice of Heraldry in Scotland* (Edinburgh 1863), p. 147; CA record Ms 56/144.

²⁵ Details of Counsel's argument from the court report in the *Daily News* (London), 5 June 1862.

of doing what some persons did, put arms on their plate and carriages without having paid the necessary fees, he went and got a grant from the College of Heralds.'

During the course of argument, the Lord Chief Baron observed 'The right to bear arms belongs to all the children of the family equally, but with certain heraldic distinctions. The instant old Stubs got the grant, his lineal descendants were entitled to wear the arms.'

He further observed 'Unquestionably (the widow) has (a legal right to the arms of her husband) and she may say, I will keep the grant in order that I may justify my use of them' and 'When she dies the arms of her husband are put on her achievement.'

Convinced by what they had already heard, the judges cut short counsel for the defendant widow and delivered *ex tempore* reasons for determining the issues on the case stated and the proceedings with an order in her favour.²⁶ The findings made by Chief Baron Pollock can be summarized as follows:

1. 'This grant of arms is a sort of family document in which every member of the family is interested.'²⁷
2. 'Whoever has possession of it is entitled to keep it, but may be called upon by the others to produce it.'
3. An action in detinue was not available 'to recover it from anyone interested in it'.
4. 'The defendant has a right to keep it for the purpose of justifying her use of the arms' as widow of the grantee.²⁸ 'When she dies the arms of her husband are put on her achievement'.²⁹
5. 'If the grant had been to the husband alone, it is clear that the defendant would have a right to the document as against the executors; and I think that now she has such a right.'
6. 'If the plaintiffs think it is sufficient importance to file a bill in Chancery to prevent the defendant from defacing or parting with it, they can do so; but that is a matter with which we have no concern.'

Baron Bramwell delivered a judgment concurring with that of the Lord Chief Baron, remarking *inter alia* that '... it is said that the eldest male representative is entitled to take possession of the document and bear these arms, but I shall content myself with saying that Mr Brett has not satisfied me that this is so.'

A notable feature of this decision is that, in paragraphs 1, 2 and 4 of the Lord Chief Baron's findings as set out above (with which Mr Baron Bramwell agreed), a civil court of England made findings on the content of the law of arms of England and, in paragraphs 3 and 5, it applied those findings to a common law action in detinue.

²⁶ *Stubs v Stubs*.

²⁷ The Lord Chief Baron distinguished a claim for possession of a grant of arms from a claim for possession of a peerage patent: 'It is not the sort of chattel which anyone can specifically claim, as a peer would the patent of his peerage'.

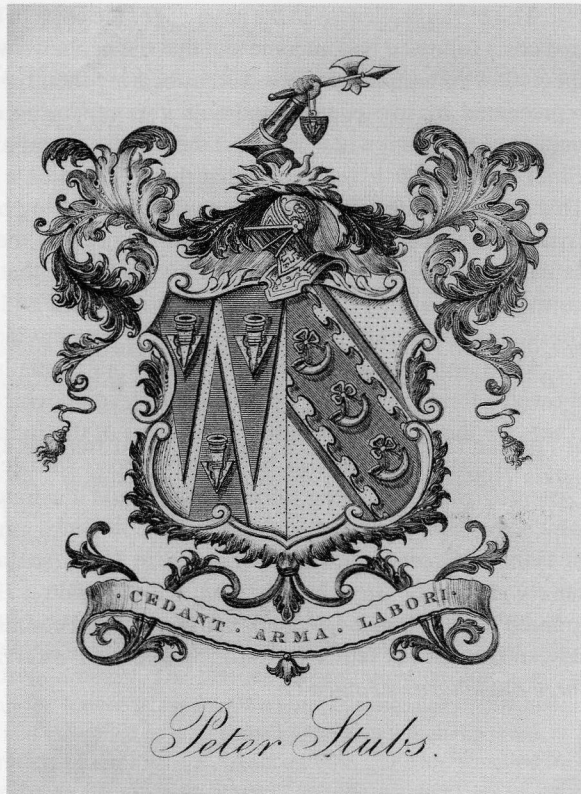
²⁸ *Stubs v Stubs* 264.

²⁹ This comment is not found in the report by Hurlstone and Coltman but is to be found in a report on the case in the *Daily News*, loc. cit. It is strictly an *obiter dictum* as it was not part of the findings necessary to support the decision.

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Figure 3: bookplate of Peter Stubs.

Author's collection. Cf. R. J. Gambier Howe, *Franks Bequest Catalogue* (London 1904), vol. 3, p. 93 (no 28,492).



The law of arms of England and Ireland were co-extensive and it is presumed that the decision in *Stubs v Stubs* accurately reflects the law of the Republic of Ireland as well as that of Northern Ireland.

The opinions expressed in *Stubs v Stubs* were quoted with apparent approval by George Seton in the context of the law and practice of heraldry in Scotland.³⁰

These opinions also represent the law of those members of the British Commonwealth of Nations who derive their laws of arms from England.³¹

In recognising the interest which every other member of the family within the destination has in it, the judges (in para. 6 above) cast doubt upon the right of the holder for the time being of a grant of arms to sell the document. Such a sale would deprive other family members of their interest in the grant and their right to require its production in support of their own entitlements in relation to the arms granted by it.³²

³⁰ Seton, *Law and Practice*, pp. 131f.

³¹ Whether courts have the jurisdiction here exercised by the Court of Exchequer is largely dependent upon the form in which the statutory jurisdiction of each court was conferred.

³² These comments were, again, *obiter dicta* as the issue did not arise in the case before the court.

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The report is silent as to the payment of the costs of the litigation but it is presumed that costs followed the outcome and that the nephews were ordered to pay the costs of the widow of both hearings as well as bearing their own costs. The parties were each represented by two counsel and solicitors rendering quite expensive the nephews' pursuit of the grant which had cost their uncle a total of £79 13s. in 1849.³³ The Lord Chief Baron said 'it was a pity that there should be a family quarrel about nothing. This grant was literally of no value whatever, having been enrolled in the College of Arms, and that enrolment was as good for proving the title to the armorial bearings as the patent itself.' It was asserted by Mr Grove that the document in dispute was no more than a copy of the grant which remained with the College. The Lord Chief Baron, upon examining the document, was not convinced that this was the case.³⁴

Mr Baron Bramwell gave some additional grounds for dismissing the suit which showed a fondness for the rigid rules of pleading which would continue to afflict the courts for the next decade until the reforms of the Judicature Act 1873.

The arms continued to be used by those who fell within the destination. *The Genealogist* for 1880 reproduces the grant and illustrates the bookplate of Peter Stubs which displays the arms granted to Joseph Stubs impaled with the paternal arms of Isabella Greenall whom he married in 1864 (see also **Figure 3**).³⁵ Her brewing family (formerly Greenhalgh), from nearby Walton Hall, bore for their arms those granted to Sir Gilbert Greenall, 1st Bt., on 16 February 1876 with remainder to the descendants of his father Edward,³⁶ namely *Or on a bend nebuly plain cotised Vert three bugle horns stringed Or*.³⁷

³³ This may not have troubled Peter Stubs whose estate was sworn for probate in 1905 at £452,729 17s. 10d. The widow's defence of the claim must have been based on strong views on the subject but I have been unable to place the litigation in the context of the family dynamics.

³⁴ *Daily News*, loc. cit.

³⁵ *Genealogist*, loc. cit. The transcription bears the endorsement of the recording of the grant in the College of Arms by Robert Laurie, then Windsor Herald and Registrar who was appointed Norroy King of Arms the same year and in 1859, Clarenceux King of Arms. It would appear that, by 1880, the original grant was at last in the possession of Peter Stubs. The 1862 judgment imperfectly reproduces the grant from an extract (rather than from the grant itself) made, presumably in preparation for the case, on 16 Dec. 1861. John Stubs, his brother, died in 1864. I have not been able to follow Elizabeth Stubs but the young widow of 26 may not have remained long unmarried. Upon remarriage her right to bear the arms of her first husband by whom she had no issue would have been lost; with no interest in Joseph Stubs' arms, she would have lost any entitlement to possession of the grant against those in remainder to the grantee who had an interest in it.

³⁶ CA record Ms Grants 69/186.

³⁷ Burke, GA, p. 423, gives the bend as 'plain coticed' as appears in the bookplate which must date from after the grant in 1876. Burke, *PB* 2003, p. 1030, omits the cotise from the arms of Lord Daresbury, the male heir.