

## RIGHT OF QUEEN'S COUNSEL TO DEFEND PRISONERS.

if the Crown be a nominal party only) without a license under Her Majesty's sign manual. To obtain the license a petition is presented to Her Majesty. This petition is left at the Secretary of State's office, and a sum of £1. 10s. paid, on which a certificate is given; and the license is then prepared, to which Her Majesty's sign manual is obtained. Serjeants, and Counsel who have Patents of Precedency, may appear in cases against the Crown without any such license."

Serjeant Woolrych, in his *Lives of Eminent Serjeants* (p. xvii.) explains the origin of these latter appointments. "The King's Counsel were gratified with a salary of £40 per annum. The rank thus salaried was held to be an office under the Crown. Hence, when a member of Parliament became King's Counsel he vacated his seat. This was, in more senses than one, a manifest inconvenience. A new election is ill-relished by the member; and if he were of the party of the Government, the loss of a supporter was hazarded. A remedy suggested itself. By investing the fresh 'silk gown,' with a 'Patent of Precedency,' the person on whom it was conferred received no salary, and consequently was not an officer of the Crown, and thus retained his seat. And he had this further advantage. He was to take precedence next after the King's Counsel last made, and his leadership at the Bar was thus secured to him. He had also the right to be called within the Bar."

In the case of *Regina v. Bartlett*, 2 C. & K., 321, at the Hereford Assizes in 1846, Mr. Whateley, Q. C., before the case was called, stated that a brief had been delivered to him for the defendant in the case of a criminal information, at the suit of a private prosecutor, and that a letter had been sent to the Secretary of State for the Home Department, to ask that a license might be granted to him, as a Queen's Counsel, to allow him to plead against the Crown, but to this letter no answer had, as yet, been received. He stated

that he felt a difficulty in the matter, as he had been informed that on the Norfolk circuit a Queen's Counsel had conducted the defence of a misdemeanor after an application had been made to the Secretary of State for a license, and before an answer was received, it being considered that after such an application, a license was always granted as a matter of course, if the case was not a Government prosecution.

The Lord Chief Justice, (Sir Thomas Wilde, afterwards Lord Chancellor Truro,) said, "I think there must be a license, or at least a letter from the Secretary of State."

The reporter adds, "As neither a license nor a letter from the Secretary of State arrived before the trial of the case, Mr. Whateley returned his brief."

In Cox's *English Government* (1863) the writer says (p. 375) "Queen's Counsel, or Her Majesty's Counsel learned in the law, are barristers who by an honorary appointment as servants of the Crown, obtain certain rights of pre-audience at the Bar. They have a nominal salary as servants of the Crown, and must not be employed in any cause against its interest without special license from the Crown which is, however, never refused."

Without citing further authorities we may add the following from the *Transactions of the Juridical Society* (vol. 2, p. 483): "Queen's Counsel have practically no duties whatever, corresponding to their title; for the most part, they have never to advise or act for the Crown; and they undertake no responsibilities by virtue of their appointments, beyond the negative duty of not appearing against the Crown, unless licensed so to do."

The result of these authorities would seem to be that, if Queen's Counsel in this country are "officers of the Crown," and occupy a position analogous to that of Queen's Counsel in England, they cannot appear in civil or criminal causes against the Crown without a license. But if their position is analogous to that of Barristers with patents of precedence there, then they are not restricted in the