

WE were recently asked some questions (*ante* page 190) as to the etiquette of the profession on the following points :

(1) If a solicitor employs a counsel as leader at a trial of *nisi prius*, and there is subsequently a motion before the full court in term, is there any etiquette requiring him to give a brief to the same counsel on the motion in term ?

(2) If upon a motion in term a brief is given to a leading counsel, and the case is afterwards carried to the Court of Appeal, is there any etiquette entitling him to expect to have a brief in the Court of Appeal ?

(3) If the opinion of counsel is taken before commencing litigation upon the questions about to arise in the suit, is there any etiquette requiring that he should have a brief in the case when it comes before the courts ?

We answered the question by saying that we knew of no etiquette or unwritten law of the profession which required that in any of the above cases the same counsel should be employed. Our namesake in England refers to the subject, taking practically the same view as ourselves, saying that they know of no rule which requires a solicitor to employ a particular counsel in the conduct of litigation simply because before the action commenced, or at any time, they have advised on the matters in question, and remarking that certainly different counsel are, for various reasons, frequently employed under such circumstances, though that a solicitor would often be led to select the same counsel as advocates by the motives which originally prompted his employment as an adviser, and, further, because he is already acquainted with the matters in question.

As regards the other cases put, the writer in our contemporary seems to think that there is in England an understanding to this extent : that, "If two counsel have been employed in the same interest at any stage of an action, and there are subsequent proceedings in the matter, the junior will not accept a brief in those proceedings (if they are of the kind in regard to which leaders are usually engaged) without the leader, unless the latter refuses or waives his right to be retained. The practice in regard even to this rule is, however, very ill-defined and varying, and the rule is, as all such rules are in England, so far as they are observed at all, made operative only by the action of individual barristers."