

## THE QUEEN'S COUNSEL CASE.

The recent decision of the Court of Appeal on the case submitted to it on the subject of Queen's Counsel: 23 App. R. 792, still leaves several questions undecided. One of them is referred to in the judgment of Burton, J.A., touching the right of Queen's Counsel to act as Judges of Assize. The learned judge on that point says: "By statute a judge of a Superior Court in Ontario has the power of deputing any of Her Majesty's counsel to perform his judicial duties, both civil and criminal, at the assizes. Serious consequences might ensue, as in the event of a Queen's Counsel being so deputed who did not hold his commission from the proper authority, all proceedings would be illegal and *coram non judice*, and convictions, even in capital cases, invalidated." But the question, as to who is the proper authority does not appear to be settled by the Court.

The result of the judgment appears to be to declare that the Lieutenant-Governor has the exclusive right to appoint Queen's Counsel, with rights of pre-audience in the provincial courts. Beyond this nothing appears to be settled.

One of the judges (Street, J.) says (but, of course, this is a mere obiter dictum)—that the Dominion Government has the same right of appointment as regards Dominion Courts; but MacLennan, J.A., says that the case submitted did not involve that question, and he expresses no opinion on it, although he afterwards says that he does not deny that there may be Dominion Queen's Counsel.

Hagarty, C.J.O., and Burton, J.A., refrain from expressing any opinion on that point; and there is really no authoritative statement of opinion on the question stated by Burton, J.A., above referred to.

The right of a judge of the Supreme Court to nominate a Queen's Counsel to act as a judge of Assize, is based on s. 85 of the Ontario Judicature Act, 1895, which section is in this respect merely a reproduction of a similar enactment to be found in the C.S.U.C., c. 11, s. 3, which of course antedates Confederation. The Judicature Act, however, varies