

The Serjeant-at-Law

By Francis Watt

YOU have no doubt, at some time or other, walked through the Royal Courts of Justice and admired the judges in their scarlet or other bravery. One odd little detail may have caught your eye: the wigs of three seniors are differenced from those of their brethren by a black patch on the top. It signifies that the wearers are serjeants-at-law, and when the last of them goes to return no more, with him, it seems, will vanish the Order of the Coif. Verily, it will be the "end o' an auld sang," of a record stretching back to the beginning of English jurisprudence, of an order whose passing had at one time seemed the passing of the law itself. Here, in bare outline, I set forth its ancient and famous history. And, first, as to the name. Under the feudal system land was held from the Crown upon various tenures. Sometimes special services were required from the holders; these were called serjeants, and the tenure was said to be by serjeanty. Special services, though usually military, now and again had to do with the administration of justice. A man enjoyed his plot because he was coroner, keeper of the peace, summoner, or what not; and, over and above the land, he had the fees of the office. A few offices, chiefly legal, came to have no land attached—were only paid in fees. Such a business was a serjeanty in gross, or at

large, as one might say. Again, after the Conquest, whilst the records of our law courts were Latin, the spoken language was Norman-French—a fearful and wondrous tongue that grew to be ; “as ill an hearing in the mouth as law-French,” says Milton scornfully, and indeed Babel had scarce matched it. But from the first it must have been a sore vexation to the thick-witted Saxon haled before the tribunal of his conqueror. He needs must employ a *counter*, or man skilled in the *conte*, as the pleading was called. The business was a lucrative one, so the Crown assumed the right of regulation and appointment. It was held for a serjeanty in gross, and its holders were *servientes regis ad legem*. The word *regis* was soon omitted except as regards those specially retained for the royal service. The literal translation of the other words is serjeants-at-law, still the designation of the surviving fellows of the order. The serjeant-at-law was appointed, or in form at least, commanded to take office by writ under the Great Seal. He was courteously addressed as “you,” whilst the sheriff was commonly plain “thou” or “thee.” The King’s or Queen’s serjeants were appointed by letters patent ; and though this official is extinct as the dodo he is mentioned after the Queen’s Attorney-General as public prosecutor in the proclamation still mumbled at the opening of Courts like the Old Bailey.

Now, in early Norman times the *aula regis*, or Supreme Court, was simply the king acting as judge with the assistance of his great officers of state. In time there developed therefrom among much else the three old common law courts ; whereof the Common Pleas settled the disputes of subjects, the King’s Bench suits concerning the king and the realm, the Exchequer revenue matters. Though the two last by means of quaint fictions afterwards acquired a share of private litigation, yet such was more properly for the Court of Common Pleas. It was peculiarly the

the serjeants' court, and for many centuries, up to fifty years ago, they had the right to exclusive audience. Until the Judicature Acts they were the body of men next to the judges, each being addressed from the bench as brother, and from them the judges must be chosen ; also until 1850 the assizes must be held before a judge or a serjeant of the coif.

A clause in Magna Charta provided that the Common Pleas should not follow the king's wanderings but sit in a fixed place ; this "fixed place" came to be near the great door of the Hall at Westminster. When the wind was in the north, the spot was cold and draughty, so after the Restoration some daring innovator proposed "to let it (the Court) in through the wall into a back room which they called the treasury." Sir Orlando Bridgeman, the chief justice, would on no account hear of this. It was a flagrant violation of Magna Charta to move it an inch. Might not, he darkly hinted, all its writs be thus rendered null and void ? Was legal pedantry ever carried further ? one wonders. In a later age the change was made without comment, and in our own time the Common Pleas itself has gone to the lumber-room. No doubt this early fixing of the Court helped to develop a bar attendant on it. Other species of practitioners, barristers, attorneys, solicitors in time arose, and the appointment of Queen's Counsel, of whom Lord Bacon was the earliest, struck the first real blow at the Order of the Coif, but the detail of such things is not for this page. In later days every serjeant was a more fully developed barrister, and then and now, as is well known, every barrister must belong to one of the four Inns of Court—the two temples, Gray's Inn and Lincoln's Inn to wit, whose history cannot be told here ; suffice it to say they were voluntary associations of lawyers, which gradually acquired the right of calling to the bar those who wished to practise.

Now

Now the method of appointment of serjeants was as follows : The judges, headed by the chief justice of the Common Pleas, picked out certain eminent barristers as worthy of the dignity, their names were given in to the Lord Chancellor, and in due time each had his writ whereof he formally gave his Inn notice. His House entertained him at a public breakfast, presented him with a gold or silver net purse with ten guineas or so as a retaining fee, the chapel bell was tolled, and he was solemnly rung out of the bounds. On the day of his call he was harangued (often at preposterous length) by the chief justice of the King's Bench, he knelt down, and the white coif of the order was fitted on his head ; he went in procession to Westminster and "counted" in a real action in the Court of Common Pleas. For centuries he did so in law-French. Lord Hardwicke was the first serjeant who "counted" in English. The new-comer was admitted a member of Serjeants' Inn, in Chancery Lane, in ancient times called Farrington Inn, whereof all the members were serjeants. Here they dined together on the first and last days of term : their clerks also dined in hall, though at a separate table—a survival, no doubt, from the days when the retainer feasted, albeit "below the salt," with his master. Dinner done and the napery removed, the board of green cloth was constituted, and under the presidency of the chief judge the business of the House was transacted. There was a second Serjeants' Inn in Fleet Street, but in 1758 its members joined the older institution in Chancery Lane. When the Judicature Acts practically abolished the order, the Inn was sold and its property divided among the members, a scandalous proceeding and poor result of "the wisdom of an heap of lernede men !"

The serjeant's feast on his appointment was a magnificent affair, *instar coronationis*, as Fortescue has it. In old times it lasted seven days ;

days; one of the largest palaces in the metropolis was selected, and kings and queens graced its quaint ceremonial. Stow chronicles one such celebration at the call of eleven serjeants in 1531. There were consumed "twenty-four great beefes, one hundred fat muttuns, fifty-one great veales, thirty-four porkes," not to mention the swans, the larkes, the "capons of Kent," the "carcase of an ox from the shambles," and so forth. One fancies these solids were washed down by potations proportionately long and deep. And there were other attractions and other expenses. At the feast in October 1552, "a standing dish of wax representing the Court of Common Pleas" was the admiration of the guests; again, a year or two later, it is noted that each serjeant was attended by three gentlemen selected by him from among the members of his own Inn to act as his sewer, his carver, and his cup-bearer. These Gargantuan banquets must have proved a sore burden: they were cut down to one day, and, on the union of the Inns in 1758, given up as unsuited to the newer time.

One expense remained. Serjeants on their call must give gold rings to the sovereign, the lord chancellor, the judges, and many others. From about the time of Elizabeth mottoes or "posies" were engraved thereon. Sometimes each serjeant had his own device, more commonly the whole call adopted the same motto, which was usually a compliment to the reigning monarch or an allusion to some public event. Thus, after the Restoration the words ran: *Adeste Carolus Magnus*. With a good deal of elision and twisting the Roman numerals for 1660 were extracted from this, to the huge delight of the learned triflers. *Imperium et libertas* was the word for 1700, and *plus quam speravimus* that of 1714, which was as neat as any. The rings were presented to the judges by the serjeant's "colt," as the barrister attendant on him through the ceremony was called (probably from colt, an apprentice);

apprentice); he also had a ring. In the ninth of Geo. II. the fourteen new serjeants gave as of duty 1409 rings, valued at £773. That call cost each serjeant nearly £200. This ring-giving continued to the end; another custom, that of giving liveries to relatives and friends, was discontinued in 1759.

In mediæval times the new serjeants went in procession to St. Paul's, and worshipped at the shrine of Thomas à Becket; then to each was allotted a pillar so that his clients might know where to find him. The Reformation put a summary end to the worship of St. Thomas, but the formality of the pillar lingered on till Old St. Paul's and Old London blazed in the Great Fire of 1666.

The mediæval lawyer lives for us to-day in Chaucer's famous picture:

“A Sergeant of Lawe, war and wys,
 That often hadde ben atte parvys,
 Ther was also, ful riche of excellence.
 Discret he was, and of great reverence:
 He semede such, his wordes weren so wise,
 Justice he was ful often in assise,
 By patente, and by pleyn commissioun;
 For his science, and for his heih renoun,
 Of fees and robes hadde he many oon.
 So gret a purchasour was nowher noon.
 Al was fee symple to him in effecte,
 His purchasyng mighte nought ben enfecte.
 Nowher so besy a man as he ther nas,
 And yit he seemede besier than he was.
 In termes hadde he caas and domes alle;
 That fro the tyme of kyng William were falle.
 Therto he couthe endite, and make a thing,
 Ther couthe no wight pynche at his writyng;
 And every statute couthe he pleyn by roote.

He

He rood but hoonly in a medlé coote,
Gird with a seynt of silk, with barres smale ;
Of his array telle I no lenger tale."

How lifelike that touch of the fussy man, who "seemed besier than he was!" But each line might serve as text for a long dissertation! The old court hours were early: the judges sat from eight till eleven, when your busy serjeant would, after bolting his dinner, hie him to his pillar where he would hear his client's story, "and take notes thereof upon his knee." The parvys or pervyse of Paul's—properly, only the church door—had come to mean the nave of the cathedral, called also "Paul's Walk," or "Duke Humphrey's Walk," from the supposed tomb of Duke Humphrey that stood there. In Tudor times it was the great lounge and common newsroom of London. Here the needy adventurer "dined with Duke Humphrey," as the quaint euphemism ran; here spies garnered in the popular opinion for the authorities. It was the very place for the lawyer to meet his client, yet had he other resorts: the round of the Temple Church and Westminster are noted as in use for consultations.

Chaucer's serjeant "rood but hoonly" because he was travelling; in court he had a long priest-like robe, with a furred cape about his shoulders and a scarlet hood. The gowns were various, and sometimes parti-coloured. Thus in 1555 we find each new serjeant possessed of one robe of scarlet, one of violet, one of brown and blue, one of mustard and murrey, with tabards (short sleeveless coats) of cloths of the same colours. The cape was edged, first with lambskin, afterwards with more precious stuff. In Langland's *Vision of Piers Plowman* (1362) there is mention of this dress of the serjeants, they are jibed at for their love of fees and so forth, after a fashion that is not yet extinct! But the distinctive feature in the dress was the coif, a close-fitting head covering

covering made of white lawn or silk. A badge of honour, it was worn on all professional occasions, nor was it doffed even in the king's presence. In monumental effigies it is ever clearly shown. When a serjeant resigned his dignity he was formally discharged from the obligation of wearing it. To discuss its exact origin were fruitless, yet one ingenious if mistaken conjecture may be noticed. Our first lawyers were churchmen, but in 1217 these were finally debarred from general practice in the courts. Many were unwilling to abandon so lucrative a calling, but what about the tonsure? "They were for decency and comeliness allowed to cover their bald pates with a coif, which has been ever since retained." Thus the learned Serjeant Wynne in his tract on the antiquity and dignity of the order (1765). In Tudor times, if not before, fashion required the serjeant to wear a small skull-cap of black silk or velvet on the top of the coif. This is very clearly shown in one of Lord Coke's portraits. Under Charles II. lawyers, like other folk, began to wear wigs, the higher they were the bigger their perukes. It was wittily said that bench and bar went into mourning on Queen Anne's death, and so remained, since their present dress is that then adopted. Serjeants were unwilling to lose sight of their coifs altogether, and it was suggested on the wig by a round patch of black and white, representing the white coif and the cap which had covered it. The limp cap of black cloth known as the "black cap" which the judge assumes when about to pass sentence of death was, it seems, put on to veil the coif, and as a sign of sorrow. It was also carried in the hand when attending divine service, and was possibly assumed in pre-Reformation times when prayers were said for the dead.

A few words will tell of the fall of the order. As far back as 1755 Sir John Willis, chief justice of the Common Pleas, proposed to throw open that Court as well as the office of judge to barristers

barristers who were not serjeants, but the suggestion came to nothing. In 1834, the bill for the establishment of a Central Criminal Court contained a clause to open the Common Pleas ; this was dropped, but the same object was attained by a royal warrant, 25th April 1834. The legality of this was soon questioned and, after solemn argument before the Privy Council, it was declared invalid. In 1846 a statute (the 9 & 10 Vict. c. 54) to the same effect settled the matter, and the Judicature Act of 1873 provided that no judge need in future be a serjeant. On the dissolution of Serjeants' Inn its members were received back into the Houses whence they had come.

As for centuries all the judges were serjeants, the history of the order is that of the bench and bar of England ; yet some famous men rose no higher, or for one reason or other became representative members. Such a one was Sir John Maynard (1602-1690). In his last years William III. commented on his venerable appearance : " He must have outlived all the lawyers of his time." " If your Highness had not come I should have outlived the law itself," was the old man's happy compliment. Pleading in a Chancery case, he remarked that he had been counsel in the same case half a century before ; he had steered a middle course in those troubled times, but he had leant to the side of freedom against King and Protector alike. His share in the impeachment of Stafford procured him a jibe in Butler's *Hudibras*, yet it was said that all parties seemed willing to employ him, and that he seemed willing to be employed by all. Jeffreys, who usually deferred to him, once blustered out, " You are so old as to forget your law, Brother Maynard." " True, Sir George, I have forgotten more law than ever you knew," was the crushing retort. Macaulay has justly praised his conduct at the Revolution for that he urged his party to disregard legal technicalities and adopt new methods
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for new and unheard-of circumstances. Edmund Plowden (1518-1585) deserves at least equally high praise. He was so determined a student that "for three years he went not once out of the Temple." He is said to have refused the chancellorship offered him by Elizabeth as he would not desert the old faith. He was attacked again and again for nonconformity, but his profound knowledge of legal technicalities enabled him on each occasion to escape the net spread for him. He was an Englishman loyal to the core, and, Catholic as he was, opposed in 1555 the violent proceedings of Queen Mary's parliament. The attorney-general filed a bill against him for contempt, but "Mr. Plowden traversed fully, and the matter was never decided." "A traverse full of pregnancy," is Lord Coke's enthusiastic comment. On his death in 1585 they buried him in that Temple Church whose soil must have seemed twice sacred to this oracle of the law. An alabaster monument whereon his effigy reposes remains to this day. A less distinguished contemporary was William Bendloes (1516-1584), Old Bendloes men called him. A quaint legend reports him the only serjeant at the Common Pleas bar in the first year of Elizabeth's reign. Whether there was no business, or merely half-guinea motions of course, or the one man argued on both sides, or whether the whole story be a fabrication, 'tis scarce worth while to inquire.

I pass to more modern times. William Davy was made serjeant-at-law in 1754. His wit combats with Lord Mansfield are still remembered. His lordship was credited with a desire to sit on Good Friday; our serjeant hinted that he would be the first judge that had done so since Pontius Pilate! Mansfield scouted one of Davy's legal propositions. "If that be law I must burn all my books." "Better read them first," was the quiet answer.

In recent days two of the best known serjeants were Parry and Ballantine, the first a profound lawyer, the second a great advocate, but both are vanished from the scene. Three serjeants yet remain : Lord Esher (Master of the Rolls), Lord Justice Lindley, and Mr. Baron Pollock.