

The Legal News.

VOL. VII. SEPTEMBER 20, 1884. No. 38.

COUNSEL FEES.

In connection with the discussion over the case of Mr. Doutre, which has occupied some space in our columns, we may refer to the latest judicial exposition on the subject of counsel fees. In the case of *In re Cockayne*, judgment was rendered by the English Court of Appeal, Aug. 7. It was an appeal by Mr. Yeatman, a barrister, from a refusal by Mr. Justice Stephen and Justice Mathew to strike Mr. Cockayne, a solicitor, off the rolls. It appeared that Mr. Yeatman had been employed by Mr. Cockayne in a number of different matters, and that fees to the amount of 100 guineas were due in respect of them. Mr. Yeatman alleged that in several cases Mr. Cockayne had received the fees from his clients and had failed to pay them over. This was denied by Mr. Cockayne, who, moreover, asserted that there was an agreement between him and Mr. Yeatman to the effect that the latter was to have any business that Cockayne could give him, but was only to be paid the fees when Mr. Cockayne himself obtained them. This agreement Mr. Yeatman denied.

The Master of the Rolls said that the appeal must be dismissed. The case was full of lamentable disclosures. He had always stood up for the observance of the most scrupulous honour in the profession. One of the first rules had always been that a counsel's fee was not a debt. Every barrister knew that rule, and ought not by any legal proceeding to press for his fee. The old rule was that no barrister should take a brief unless the fee was paid at the time. If, however, he did so, he had nothing but the solicitor's honour to look to. He had no right to apply to the client in any way. The duty of a solicitor was reciprocal; he should mark a proper fee, and should under any circumstances pay it. He knew that he was under an honourable engagement, and if he made excuses for not paying counsel's fees he acted unprofessionally. It followed that

any agreement as to fees was wholly unprofessional and was equally dishonourable to both parties. It was not, however, necessary to decide whether or not there had been such an agreement in the present case. The question was whether Mr. Yeatman had made out a sufficient case. The Court would never interfere in respect of the mere non-payment of fees, though in cases of fraud they would do so—as, for instance, where a solicitor obtained fees from his client upon the allegation that they were due to counsel. That was to punish the fraud, not to assist the barrister to recover his fees. Mr. Yeatman had shown no case which would justify the Court in striking Mr. Cockayne off the rolls. There was no proof that he had received fees which he had corruptly refused to pay over. There was no proof of a corrupt intention, although for a time Mr. Cockayne claimed to retain certain fees in order to set them off against a claim of his own against Mr. Yeatman. There was no power to do that, but that only showed that Mr. Cockayne had taken a mistaken view. That was not dishonourable. The whole attempt to obtain these fees was a breach of the regulations between a barrister, the public, and the profession.

Lords Justices Bowen and Fry gave judgment to the same effect.

BUSINESS IN APPEAL.

At the opening of the September Term of the Court of Appeal in Montreal the number of cases inscribed was 84. In 1882 there were 107 inscriptions at the beginning of the September Term, and in September 1883 the number was 106. The two extra terms of December and February last, therefore, show as their result a gain of 22 cases.

APPOINTMENT.

The Hon. John O'Connor, who has been appointed to the vacant judgeship of the Queen's Bench Division, Ontario, was born in Boston in 1824. He was called to the bar of Upper Canada in 1854, and made a Queen's Counsel in 1873. He has filled the following positions in the Dominion government:—President of the Council from July, 1872, to March, 1873; Minister of Inland Revenue,