But, as not even the Lord Chancellor himself suspected upon what basis his jurisprudence really rested, no one will wonder that it soon came to pass that the least thing suitors in England had to complain of, was the simplicity of the system. Equity had followed in the steps of the Common Law and both were now arrived at the same goal. Something was again to be done to level up the *lex non scripta* to the standard of moral progress. But what? Was a new system to be again founded as was done in the case of Equity? Clearly not; for the theory of the divine right of kings upon which Equity had been built, was long since dead, and there was happily no similar theory upon which a similar system could be reared. Our law had again run to seed in the midst of a verdant, throbbing civilization. True, something was, from time to time, done by legislation, but legislation could not infuse life into a dry stalk.

Here, then, was the problem: To preserve the symmetry of the law, it was absolutely essential that the Courts generally should follow precedent, and whilst this general symmetry was not to be disturbed, some means were to be devised whereby law might be brought, and if possible, kept in sympathy with the progressive spirit of our institutions. In this, the law's dilemma, it was discovered, that jurisprudence might be made to contain within itself a self-regulating principle which, if developed, would render unnecessary that continual levelling up of our laws which social progress had previously demanded. This self-regulating principle lay concealed in the original jurisdiction which is the proper incident of appellate courts. Our court of final resort is not like our inferior courts, bound by precedents—nor, indeed, is it reasonable that it should be any more than that our legislatures of to-day should be bound irrevocably by laws passed by their ancestors.

No sooner was the original jurisdiction of courts of final resort fairly at work than a change came over the spirit of our jurisprudence. Nowhere was the change more noticeable than in the attitude of the Common Law and Equity Courts towards each other. At first the attitude of the Lord Chief Justice towards the Lord Chancellor had been that of the proud, self-conscious aristocrat towards a *novus homo* of yesterday. But as the Upstart made rapid strides in the popular favor and began to encroach upon the province of the old Patrician, who traced his ancestry back to the Stone Age, the latter developed feelings of uncharitableness towards the former, and the system that had been patronized and despised, came to be hated and feared; and as Equity, from time to time, took leaves from the Common Law book, as precedent drove Common Sense from our Equity Courts as long before it had driven her from our Courts of Common Law, this feeling was rather intensified than abated. During all these years the Lord Chief Justice had never once dreamed of the Lord Chancellor but as an interloper, and the Lord Chancellor knew the Lord Chief Justice only as a muddle headed old formalist, wedded to his quibbles and fictions. For a while, like angry fish wives, they were content to belabor each other with sarcasms and witticisms, but when at length these failed to vent the full venom of their spleen, the two venerables fell to blows. But in the celebrated "Earl of Oxford case," it was not so much Chief Justice Coke and Chancellor Ellesmere that were by the ears as it was our two mighty systems of jurisprudence in deadly grip. Lord Coke, we are told, caused indictments to be preferred against the parties who had filed their bill in chancery, and on the other hand the Lord Chancellor directed the Attorney-General to prosecute in the Star Chamber those who had preferred the indictments. There truly was the unhappy suitor between Scylla and Charybdis. If he escaped the Lord Chief Justice, it was only to be swallowed up by the Lord Chancellor. But as the mutations of nature have left no trace of the bugbears of ancient navigators, so the evolutions of law have completely dispelled whatever cause the tempest tossed litigant, may have had to fear from the hostility of the two great systems which formerly divided between them the litigation of the people.

For the nonce, Equity triumphed, and the proud, decrepid old Common Law was forced to surrender without terms. This was, however, nothing more than the triumph of one set of formalists over another. A more potent influence was working itself out. Lord Eldon's was the voice in the wilderness. His privilege it was to announce a self-sustaining jurisprudence, based not upon maxims, nor yet upon the King's conscience, but upon the nature of things. The workings of the new system began to be felt in the early part of the present century. Few even of the lawyers of the time recognized the importance of the change or suspected that the foundations of the law were being now laid. Such, however, was the fact. Law came again to be treated not as a bundle of maxims twisted by fictions to meet as best they could hard facts, but as the Common Sense guide for the regulation of society. With the original jurisdiction of Appellate Courts in full swing, both systems of jurisprudence were found to rest ultimately upon the same principles. The Lord Chief Justice came to recognize in the Lord Chancellor first a fellow, then a relative, and finally a brother, and much to their mutual chagrin they discovered that throughout all their bickerings the only thing there really had been to keep them apart was the few centuries that had intervened between their births. And when, good souls, (for after all the law has a tender heart) they came fully to appreciate their blood relationship in the fullness of their hearts, they fell each upon the neck of the other and embraced in the Judicature Act.

W. E. RANEY.

C. C Kemp, B. A., was the fortunate winner of the Hamilton Memorial this year