# Correspondence.

## *UNIFORMITY OF PRACTICE.*

*To the Editor of* THE CANADA LAW JOURNAL:

SIR,—For some years the profession have been justly complaining of the want of uniformity in the practice of the courts, each judge holding his own views as to what the practice is, and as to the construction of the rules, etc. Occasionally we find the Divisional Courts holding adverse views. I once heard the present Chief Justice of the Court of Appeal say, when Chief of the Queen's Bench, upon hearing some startling proposition laid down as being sanctioned by the Judicature Act, "I shall not be at all surprised to hear that you can hang a man under the Judicature Act." Since that time the practice has become more confused, until to-day no solicitor can speak with any certainty of what the practice really is.

A rather curious case has recently been decided which is worth noting on account of its startling result. The defendant applied to the acting Master in Chambers for leave to rejoin to the plaintiff's reply, filing on his application an affidavit verifying the statement of claim, defence, and reply. The plaintiff's counsel, on the return of the motion, objected to the motion, pointing out that under Consolidated Rule 382 the officer was to exercise his discretion, and that under the invariable practice both here and in England a copy of the proposed pleading should be filed or propounded on the motion either being shown by the notice of motion or the affidavit in support. The objection was overruled and an order made to rejoin to the reply. The plaintiff appealed on the ground that there was no sufficient material before the officer in chambers, citing form of summons in Chitty's Forms, 12th ed., p. 165, *Norris* v. *Beazley*, 35 L.T.N.S. 845. The motion was enlarged to put in proposed pleading and serve plaintiff with a copy. On the return, it was contended that the proposed pleading was unnecessary and contrary to rules of court. The judgment said, "All pleadings are unscientific, and the judge at the trial could dispose of the case on the evidence without regard to pleadings," and the motion was dismissed with costs to the defendant in any event.

The plaintiff, being admittedly right in his contention, was puzzled to know why his motion should be dismissed by the judge on appeal who ordered a copy of the pleading to be served, and why he should be ordered to pay costs, and appealed to the Divisional Court. The special rejoinder was said by one of the judges to be rather more explicit than former pleadings. But the appeal was dismissed with costs *payable by plaintiff forthwith*. Result: Plaintiff, who insists on defendant acting under the admitted practice, mulcted in costs; defendant, who acts contrary to the rules of court and against the admitted practice, helped at the expense of his unfortunate opponent. Query, what is the practice? The above case, which has recently come under my notice, is not an exceptional one, and whether it is to form a precedent for the future remains to be seen. It certainly does appear to put a premium on careless practice at the expense of the careful practitioner.

LEX.

Toronto, May 19th.

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[ERRATA.—In the letter on "The Appeal Grievance," in our last issue, at p. 278, l. 11, for "four" read "six," and on the first line read "commerce shuns the law" for "commerce spurns the law." Our printer should have known that the latter would be a contempt of court, which is something we would not even border upon.—ED. C.L.J.]