from the perishing of the thing without default of the contractor."

Now it is clear that no ordinary contract would contain a warranty as to the continuance of health on the part of one of the contractors, and where there is no such warranty it is hard to see how it is possible to enforce a personal contract, or to recover damages for its breach where illness prevents its performance. And there is only one further question in connection with the subject, and that is raised by Baron Cleasby, who would seem to suggest that a performer was not bound to appear and carry out her contract unless it is possible to fulfil it in all respects according to its terms. His Lordship said: "This was a contract to perform as a pianist at a concert; in truth, to be the sole performer, and to do what requires the most exquisite taste and the greatest artistic skill, and which, unless well done, would disgust the audience, who naturally expect a great deal from so celebrated a performer. That being so, the question arises, can this be done by the person engaged unless well and in good health?'

No such considerations as are here stated, can, in our opinion, be accepted as weighing on one side or the other. If a performer can scramble or struggle through an engagement even discreditably, and even, we would add, disgusting the audience thereby, and is not absolutely disabled, he is bound to go on with his undertaking. If a skilful person contracts to do a certain thing requiring the utmost skill, he cannot be excused on the ground that he is by reason of ill health incapable of fulfilling his contract as skillfully as he would have done had he been in health. It would be vain to give greater latitude to a plea of impossibility arising out of natural incapacity than has hitherto existed. The incapacity, as in *Hall* v. *Wright*, should be total for all intents and purposes, and in no degree merely partial. If it is ever held otherwise, a wide gate would be opened to the fraudulent evasion of contracts.—*Law Times.*

An interesting case affecting the rights of unprofessional advocates to appear in court was heard in Easter Term by the Queen's Bench in Ontario. The application to the court was for a prohibition to restrain certain unprofessional persons from conducting suits in the Division Courts, which are tribunals analogous to our County Courts. Looking at the Canadian statutes, the court came to the conclusion that it was manifest that the Legislature intended that only barristers and attorneys should be authorised to conduct or carry on in any court, any kind of litigation; and that consequently unprofessional persons were not entitled to have audience in the prosecuting or defending suits in the Division Courts. It was observed by Mr. Justice Wilson, that "It can only be a case of great necessity which will warrant a departure from the general, approved, and settled practice of the courts. The policy of the Legislature on this subject has plainly been to exclude all unqualified and non-professional practitioners, and Judges should give effect to that legislation." Although it was held in *Collier* v. *Hicks* (2 B. & Ad. 662). that "any person, whether he be a professional man or not, may attend as a friend of either party, may take notes and quietly take suggestions and give advice," the Judges in *Tribe* v. *Wingfield* said that "they could never lend their authority to support the position that a person who was neither a barrister nor an attorney, might go and play the part of both; and that in such a case there was none of that control which was so useful where counsel or attorneys were employed."—*Law Times.*

BENCHERS.

In another page will be found a letter from Mr. Charley, M.P., in reference to the notice of motion which he has given that "he will call attention to the existing state of the legal profession, and to move a resolution 'that the existing state of the legal profession is not satisfactory and needs reform.'" If the House has the time and is in the humour an interesting discussion is likely to ensue. There is a proneness with all sorts of people to talk about the *personnel* of the profession. We do not think that Mr. Charley's motion is likely to lead to any practical, and certainly not to any immediate result. Indeed, the terms are almost too vague for the House of Commons to discuss.

It may, perhaps, interest our readers to be told that our fellow-subjects in Canada have consummated a radical reform in respect to the benchers. An Act has been passed to make the benchers of the Law Society of Ontario elective by the bar. All members of the bar who are not in default as to their bar fees are eligible. Besides the thirty to be elected, there are seven *ex-officio* benchers, being the gentlemen who have held the office of Attorney or Solicitor-General.

How the experiment works we shall know some day, but already there is a little discontent with the scheme. The *Canada Law Journal* remarks that only one of the *ex-officio* members is resident in Toronto, and "in distributing the thirty elective benchers between Toronto and the country it would seem proper to give about one-half to Toronto." Our transatlantic contemporary observes that county judges, clerks of the Crown and Pleas in Toronto, the master in Chancery, and referee in Chambers, and other barristers who pay no bar fees, have been decided to be ineligible. Our contemporary says, "We are sorry for this, as many of the persons who are thus held ineligible would make excellent benchers; but whilst their services are lost for the present, it may result in an amendment of the law whereby some of them may be appointed *ex-officio* benchers." Thus even