Moot Court Cont'd.

(Continued from page Seven)

R. Gray and Robert Jaffray a case which was so dry that the Justices were buying Coca-Cola themselves. Of much more interest was the speech, congratulating the Justices upon their appointment, of Junior Counsellor Cohen. Cohen was asked by the worthy judges to stop the apple-polishing and sit down. Lawyer Cohen sat." Oct. 10, 1941.

"Before the case got under way, the Junior Counsel made fine speeches of flowery congratulations to their Lordships on their elevation to the Bench. Some smacked of insincerity. Some even derided the money-making capabilities of their Lordship while at the Bar but all were received with equanimity." Oct. 12, 1945.

Counsel W. Fulton congratulated their Lordships Campbell, C. J., Dube, J., and Jones, J. as follows: "I hope your Lordships will be as successful on the bench as you have been at the bars." Oct. 17, 1958.

COUNSEL

The calibre of argument of the neophyte barristers has always been maintained at a high level. No one dares to walk into his Moot Court unprepared for any inquiry made by his seniors sitting above him.

"On more than one occasion, the Chief Justice requested the learned counsel to translate Latin maxims quoted for fear they might be of a defamatory nature."

And in 1925, this Moot was reported:

"Huggins, K.C., senior counsel for the appellant, followed. And in a more masterful address lasting something more than one hour he exhausted all the English authorities on the matter and would have done likewise of the American but the unfortunate fact that the Reports ceased at Volume one hundred and seventy three."

And some 15 years later, the **Gazette** showed that counsel had lost none of their adeptness:

"The argument put forward by both counsellors was brilliant and A. H. Hart showed a surprising knowledge of the "doctrine of sensual satisfaction," while R. W. Frankish won the case on the question, 'Did she fall or was she pushed'?"

However, the reasoning has sometimes been questionable.

"The case opened with an attempt to dismiss Sheriff B. Cumerford. Failing in this, the respondant tried for a change in venue and various other technicalities. After being threatened with contempt of Court, the respondant quieted down and the case went on. The appellant won." Jan. 24, 1950.

"Due to the eloquence and legal bombast of Counsel for the Respondant, Mr. MacLeod, it was held perfectly permissible for two society girls to go slumming and accompany a gangster on his murderous rounds: provided they had the best of intentions." Nov. 26, 1937.

Counsel are expected to conduct themselves and do conduct themselves as they would in any court of law. They generally stand in great awe of the bench. But there have always been exceptions where counsel were blase, disinterested, or attempted to insinuate their way into the good graces of the bench.

"Mr. Trites appeared as humble as a boy in his first long pants while Mr. Hanway approached closer to modesty by adopting a pose of lifelessness." Oct. 7, 1939.

Breaches of court etiquette seem to have been unknown in the early history of the trials. In the twenties, humor displaced the former seriousness. The **Gazette** report examples of this, which in the thirties and forties became more numerous. This probably resulted from student benches, and a practice which grew up at this time and was much loved, of trying in a separate trial and then fining those who showed contempt of court. Since 1954, this practice has been dropped.

"Connolly LL.B., by his rapid, insistent argument, soon had the bench like a den of caged lions. But they refused to accept his argument. So he expressed hope and faith eternal in a Superior court to the one before him." Oct. 5, 1927.

"Mr. Justice Sheehan had not touched his pop, probably fearing there was a snail in it, but one of the counsels was not afraid of snails and took a gulp as she passed the bench. It was then one-quarter full." Jan. 29, 1938.

"Counsel blandly informed the Chief Justice that he, the Chief Justice, had come to us three short years ago from a land of wilderness and summer fishing." Oct. 21, 19484.

And in a recent Trial Court, R. Carleton to Mr. Justice Edwards, variously, "I hope your Honor knows that it is the duty of this court to be unbiased"; "would your Honor tell the audience to shut-up!"; "you're wrong, I know what the law is!"

Junior Counsel's participation in the case is relatively small. By custom they purchase refreshments for the bench and "are liable to be severely penalized for contempt of court if their Lordship feel at all thirsty." Oct. 1, 1948.

Junior Counsel have also traditionally prepared the courtroom before the trial and cleared it afterwards. On Oct. 22, 1930, the following appeared in the **Gazette**:

"Crouse and Underhay argued a tree-falling case for two hours and Chief Justice Grahame remarked, on congratulating counsel, "no Moot Court has ever been as exhaustively prepared. The junior counsels Kanigsberg and McDougall, apreciated this when carrying the law books back upstairs."

SHERIFFS AND AUDIENCE

In the early days, each court had its sheriff and deputy sheriff who called to order and maintained the dignity of the court throughout proceedings. If they were not present continuously throughout the trial strict sanctions were imposed on them. Today this proceedure is not followed.

Until 1953, a number of designated 1st year students was compelled to attend the Moot Courts, on pain of fines or actions brought against them. Although this rule still exists it is un-enforced and first year students seldom observe it. However, every Moot Court has its audience, and, in the twenties, when the **Gazette** published invitations to attend, the audience was large and not always respectful.

"The dignity of the law was seriously threatened when two Arts students attempted to leave the courtroom without bowing to the bench on their departure, but due to the alertness of the sheriffs, they were given an opportunity to correct their grievous error and depart in peace." Nov. 1, 1933.

"Mr. Decker, in the audience, was lulled to sleep by counsel's voice, but Mr. McLeod pointed out the impropriety to the court and the offender was disturbed." Oct. 20, 1939.

WOMEN IN THE MOOT COURT

Their first recorded appearance is in the **Gazette** issue of Nov. 21, 1923:

"The appellant, Miss Wambolt, K.C., presented her argument in a clear and concise manner. Her learned opponents, Miss Stewart, K.C., and Miss MacIntyre, also showed they had given their case careful preparation. The occasion was one of unusual interest in that it was the first time in the history of Dalhousie that so many of the weaker (?) sex had taken an active part in Moot Court."

The performance of women received further comment on Oct. 23, 1942:

"Mr. Redden, counsel, reflected he was quite upset at seeing such beauty on the bench, and Lord Justice McMillan commented that if loquacity were the basis of success, Redden would be a wow. Miss Johnson was very vehement in her argument, pounding her fist on the table and arguing with heat and steam. Se did not hesitate to lay down the law to the judges."

And on Oct. 22, 1943:

"Two ladies, Mary Kingly and Lorraine Johnson, proved once and for all that at times beauty can be combined with brains. Their sagacity and wisdom may be said to be almost comparable with that of men."

Miss Clancy, of the '44 class, was the most controversial woman in Moot Courts. On Oct. 23, 1943 after one month at the law school, Miss Clancy had make this headline:

'MOOT COURT CLANCY SCORES AGAIN: MORE TRIAL, TRIBULATION.

In a period when the bench enforced punctual attendance of first year students, Miss Clancy invariably appeared late, and she would disappear for unreasonable lengths of time. In one instance, Lord Chief Justice Forbes subpoeaned her for summary trial. She pleaded 'illness caused by the aroma of cigar smoke' and was let off with a warning. Miss Clancy's behaviour did not improve: "when she was not herself being fined, she was the source of fines for others who invariably sat too close during court sessions."

The last of many scrupulously reported incidences of Miss Clancy's court career is this one: "A touch of beauty was added to the musty atmosphere of the aged courtroom when, like a white lily coming to the surface of a stagnant pond, Miss Clancy rose to argue the case for the respondent."

The Law School's men have continued to suspect the "reasonableness" of women, and for this reason plus the diffficulty of addressing them, men have not welcomed the opportunity of arguing before women justices. The writer will give no examples of this. However, certain colorful incidents must be noted. In 1957, Stanfield, C. J., periodically, and nonchalantly slumbered through the hearing, while counsel D. Riche and W. Chmara beat the air. In 1958, the women chief justices showed a predeliction for topics of blood, adultery and murder. Most unfortunate of all was the fact that their cases involved unsettled, unthought of, and befuddled points of law. Strong, C. J., heard arguments on a husband's liability for his wife's debts after the wife had committed uncondoned adultery, but before she left her husband. Blake, C. J., wondered about the legal situation of a siamese twin who had committed premeditated murder.

CASES

The topics of a period have been influenced by political and social pressures, as well as the individual preference or the sex of the chief justice. The topics have been by and large fascinating despite Ben R. Gusse's comment on Oct. 21, 1927 that the topics of the cases argued "range from the sublime to the ridiculous."

Contract, property, and constitutional cases, all then of great moment, were argued until 1915. During the two world wars and other minor wars such as the Russo-Japanese and the Boer War, the cases, in frustration of contract, shipping, the legal position of the individual, etc., were colored by the reality of war. On Dec. 7, 1921, with the Federal election pending, the following case was argued by and before men, some of whom became famous in politics and public life.

"Connolly wrote to Bowes saying 'I will not run, tell my friends not to vote for me in the election.' The letter was for publication. Later Connolly changed his mind (Dunlop says he does so often) and was a candidate for the nomination after all. Connolly sought an injunction against printing the letter. Dunlop said there was no libel and therefore no reason for an injunction or anything else. He sighted Arkansas Law. Mr. Murray said that every case in the books on the subject was wrong and expounded a theory of his own which seemed to convince their Lordships.

In giving his decision, McDonald, C. J., said the Liberals would win. Chipman J. did not concur, claiming that the Conservatives would carry Yarmouth and two-thirds of the Dominion. Livingston J. said it served Connolly right for writing the letter, and anyway it looked to him as if the farmers would get a majority."

In the twenties, when the **Gazette** gave witty, excellent reports of cases and arguments, favorite subjects were **Rylands v. Fletcher** and property law. The following case is cited as an example; once again many famous names appear:

"The fall term of the Dalhousie Moot Court opened with the case of ROSS v. FEDDEN with Messrs. Colquhoun and Bethune for the appallants and Messrs Ives and Read for the respondents. The case was based on RYLANDS v. FLETCHER. After hearing argument by learned counsel, decision was given in favor of the appellants."

From 1930 to the present, the greatest number of cases has been derived from Tort & Agency law. Chief Justices generally choose topics from the first year curriculum. Otherwise the topics are usually taken from Administrative law, Constitutional law and Labor law.

COURTS

Although they are seldom needed, a bench has had during the years, various weapons with which it could maintain respect and enforce its commands. One of long standing, and the one which today is most often used, is the tactic of forcing counsel to argue another case. But of old, the benches often imposed fines or brought the offender to trial. The following quote of Sept. 28, 1933, shows the workings of and the result of the system:

"The Moot Court preserves law and order within the north wing of the Forrest Building. In addition to its more important functions, it has for some years past played the part of a charitable organization by contributing five dollars annually to the Beaver of Forrest Hall in trust for the maintenance and improvement of the Dean's bush."

These trials, occurring at isolated instances, were modeled according to the previousness of the offence on summary conviction or indictable proceedings downtown, with docket, prosecutor, witnesses and jury included. Miss Clancy was tried in a summary conviction court; many contempt of court charges were brought for which a jury was always present.

Certain rare trails were apparently unrelated to the mere enforcement of order in Moot Courts. Some of these were criminal trials. Examples:

"In the thirties a criminal action was brought against a law student for being drunk and disorderly at the law dance. The prosecutor confessed difficulty in finding law to obtain a conviction, but the public outcry against the accused was so great that the jury found him guilty, and the judge sentenced him to a 20 minute confinement."

"The criminal case concerned an act, the equal of which (quoting Kelly Morton, the prosecutor) for heiniousness, had not been seen since 1911. The judges, jury and spectators were all equally shocked that such a state of affairs should exist within the borders of our fair alma mater." Oct. 1, 1930.

Oct. 4, 1927, the case of Rex V. Redmond, "Redmond was accused of trigamy. The feature of this case was the Roman witness Tom Coffin, who spoke only Latin, and who had an interpretor, Jack Atwood.

C. J. to Atwood: Ask the prisoner if he was in Hong Kong.

Atwood to Coffin: Arma virum ne cano ab oris?

Coffin: Lavinia ne venit litora multum jactatus.

C. J.: What does he say?

Atwood: He says that has often had Chop Suey in Hong Kong.

Verdict of guilty brought in by the jury."

The civil actions brought were generally in libel. On April 4, 1923, the following case of Rowe MacKenna v. The Dalhousie Gazette was heard before **M. Justice Read,** "the learned judge and jury were confronted in this case with a vast amount of contradictory evidence adduced by many witnesses. Arguments both loud and long were made by the learned counsel representing both parties, and when the weary jury retired, they were not in that frame of mind which is conducive to a lengthy deliberation on any matter. The verdict returned after five minutes was against the Gazette for $3000. "The damages are to be paid in Russian Rubles at an early date. Note—by editor **Horace E. READ."**

"The most famous of the civil cases was Alfred Harris v. The Dalhousie Law Library Committee. On returning an overdue book, Harris was fined 10c by the committee. He refused to pay, questioning the constitutionality of the committee's imposition of the fine. A great trial ensued at which innumerable witnesses swathed and unswathed were heard. Among the swathed appeared "one professor R. G. Murray, chairman of the Law Library Committee. He professed the Chinese faith and asked to be sworn on a broken saucer, according to Chinese custom." Nov. 2, 1951.

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The author hopes that this brief history does not convey the impression that Moot Courts are for entertainment only. On the contrary, it is stressed that they are of value for every student in the Law School. They are a living and important tradition.