before a justice; but we see the Legislature expressly prohibiting the employment of unqualified persons in such cases, and it may be suggested as a strong reason why such a rule should prevail in Division Courts, that the cases in those courts may be tried by a jury at the request of either of the parties. On the whole, from the express language used by the Legislature in the statutes referred to, I think it is 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 are not entitled to have audience in the prosecuting or defending suits in the Division Courts.

As this rule was granted for the purpose of having the point discussed and an expression of the opinion of the court obtained, we assume that it will not be necessary that any further steps should be taken.

WILSON, J.—The Attorneys' Act is very direct and positive in its terms, and prohibits any one from acting as an attorney or solicitor, unless he has been duly admitted, enrolled and qualified.

The Barristers' Act, C. S. U. C. ch 34, is differently worded. It declares that "the following persons and no others may be admitted to practice at the bar, in her Majesty's courts of law and equity in Upper Canada." And it provides the class of persons who shall be so admitted.

The expression *admitted* in that Act appears to me rather to mean who shall be admitted to the bar, that is, by the Law Society, to practice at the bar. Section 1 of cap. 33 provides that the Law Society and the Benchers thereof shall have the power "to call and *admit* to the practice of the law as a barrister, any person duly qualified to be so *admitted*, &c. And the term appears to be used in that sense throughout chapter 34.

The 37 Geo. III. ch. 13, sec. 5, which has been consolidated by ch. 34, sec. 1, enacted "That no person other than the present practitioners and those hereafter mentioned, shall be *permitted* to practice at the Bar of any of His Majesty's Courts in this Province, &c." And when the word *admitted* is used in that act, it is used with reference to the admission of the person into and by the Law Society.

The word *admit* has not quite the same signification as *permit*. The Law Society may *admit* into its body those gentlemen who are to practice at the bar. The law does not, or the judge or other judicial person presiding for the time being shall not, permit any one who has not been so admitted, to practice at the bar.

It may therefore be, notwithstanding this act, that a judge might, in case of great necessity permit persons who were not barristers, to act before him It is certainly within the power of the English Courts to allow such persons to act as counsel in the matter before them as they please; the *Serjeants'* case, 6 Bing. N. C. 187, 232, 235; *Collier* v. *Hicks*, 2 B. & Ad. 662. And it is said in Roger North's Life of the Lord Keeper Guilford, that when the Serjeants of the Common Pleas would not move when called on, having taken offence at some action of the court which interfered with their monopoly, the Chief Justice said to the attorneys who were present, "And do you attorneys come all here to-morrow, and care shall be taken for your dispatch—and rather than fail we will hear you or your clients or the barristers-at-law, or any person that thinks fit to appear in business, that the law may have its course." See also Campbell's Lives of the Chancellors, Vol. 3, p. 361.

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. In *Tribe* v. *Wingfield*, 2 M. & W. 128, it was said by the different judges "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." It is however clear law that "any person, whether he be a professional man or not, may attend as a friend of either party, may take notes, may quietly make suggestions and give advice." *Collier* v. *Hicks*, 2 B. & Ad. 662, 668.

I agree in the conclusion my brother Morrison has expressed. The rule will be absolute, but it is not to be taken out of the office without the further order of the court.

COMMON PLEAS.

MOORE v. THE CORPORATION OF THE TOWNSHIP OF ESQUESING.

Dedication of highway—User by public—Stoppage by by-law.

Where a road was laid out over land by the owners thereof, and was so used by the public, without interruption for 30 or 40 years.

Held, that it had become a public highway, and could not be stopped up by by-law of the municipal council, particularly at the instance of a purchaser from one of such owners of the land, with knowledge, too, on his part, of the existence of the road.

[21 U. C. C. P. 277.]

In Michaelmas Term last, *McGregor* obtained a rule *nisi* to quash by-law No. 211, passed 25th July, 1870, to stop up the highway or allowance for road situated at or near the limit between lots 31 and 32, 2nd concession of Esquesing, on the ground that the same was illegal under sec. 320 of the Municipal Act, and *ultra vires*, and on grounds disclosed in affidavits and papers.

A large number of affidavits were filed.

The by-law stated that the road between 31 and 32 was not an original allowance, nor had any compensation been given in lieu thereof, and enacted "that the travelled road through Mr. Cummings' land, situate on or near the limit between lots 31 and 32, 2nd concession of Esquesing, shall be and the same is hereby stopped up."

Lot 32 was the last lot in Esquesing, and the town line between Esquesing and Erin bounded that line on the north. The road stopped up ran on the south side of 32, between it and 31, the width of the lot being between the two roads, which were parallel. It ran from one concession to the other, east and west. But the portion stopped, *i. e.*, the portion through Cummings's land, was only half the depth of the concession between the east halves of 31 and 32; the remainder, between the west halves, was left open.

It was sworn that in April, 1836, Hamilton