

THE HISTORY OF THE MOOT COURT

By GLORIA READ

"Centered around the Law School are many landmarks of former days, customs which trace their origin to the time when today's Great and Near Greats were but fledglings in the law, and usages and ceremonies which have become a ritual to the present day members of the Law Society. And listed as chief among them is the Moot Court"

Gazette, October 4, 1955.

The Dalhousie Law School has held Moot Courts every year since it was established in 1883. The Supreme Moot Court of Dalhousie is modeled on the Supreme Court of Nova Scotia, following the rules of procedure set out in successive Judicature Acts of Nova Scotia. This means that the Supreme Moot Court is an Appeal Court, but unlike the Supreme Court of Nova Scotia, its decision is final.

Although the cases have always been argued by the Law students, it is only in recent years that the bench has consisted of third year students. Since approximately 1915 students have organized the courts, almost entirely free from faculty control.

Moot Courts have been held to train Law students in Court Procedure, in preparation, and in argument of cases. They afford Law students an opportunity to review case law on the subjects concerned. Undoubtedly these courts have been of great service to the student as they have been a laboratory where he has learned to use many of the tools of his trade.

The inauguration ceremony of the Law School took place on Nov. 1st, 1883. The *Gazette* stated on Nov. 3rd, "the students are beginning to inquire when the Moot Court is to be started." On Dec. 24th, 1883, the following appeared, "A Moot Court has been organized among the students of 1st year." The first Moot Court was recorded in detail. Messrs. Gregory, Troop, Hensley and Crowe argued before B. Russell, Esq., then professor and afterwards a Justice of the Supreme Court of Nova Scotia. The case involved the following contract question: whether the mailing of a letter by the offeree or the receipt of it by the offerer constituted acceptance of a contract.

Either Dean Weldon or one of the Assistant Professors selected the facts for the cases, received and corrected the factums and acted as

Justice. Occasionally two Professors sat together on the Bench. From the careful, detailed reports of each case, it can be seen that the Courts proceeded in a mood of high seriousness. The professors were very exacting. On Nov. 3rd, 1888, the following appears in the *Gazette*:

"One of our coming Lawyers, who was arguing a case in the Moot Court in a manner 'rather more Parliamentary than Legal' on being continually interrogated by the presiding Judge, took his seat exclaiming, 'I will not interrupt your Lordship again'."

At this time the senior counsel were generally third year students. Occasionally they argued two cases a year.

"The sessions of Moot Court have progressed so well this year, that cases are soon to be allotted to members of the third year class for the second time. Although such allotment has been published in the calendar every year, the number of students in the second and third years has heretofore been too great even to allow everyone an opportunity of arguing a single case. We are pleased to note that better arrangements have been made this year to give the students more practice in court pleading. It has been frequently suggested that two of the third year men should sit with the Dean and give judgment at each trial. This certainly would be of practical benefit to us, and would perhaps create a greater general interest in Moot Courts." Nov. 1897.

Third year students had acted as Justices on certain occasions. One report states that, "Hanright J. rendered an excellent extempore judgment, reviewing and criticizing the cases as cited by the Counsel on both sides. The Judge showed a clear insight into the most difficult parts of the law of contracts."—*Gazette*, Dec. 26, 1885. However, Professors continued to act as Jus-



JUNIOR COUNSEL stand before the Learned Law Lords presenting his first case at the Bar. The bench consists of third-year students who set the fact situation to be argued. The grounds of appeal are prepared by senior counsel who are responsible for the factums and the argument. First year students get their initiation to Court Room procedure by arguing one of the grounds of appeal for their Seniors.

tics until approximately 1915. During this early period, occasional lectures were given to the students on how to prepare a case for trial.

Dean Weldon preferred Constitutional Cases. Some cases argued before him were: The Constitutionality of the Repeal by Manitoba of the Dominion Act of 1870, which made French an official language of Manitoba; The Constitutionality of sections of the Nova Scotia Act; the Interpretation to be given "harbors" as used in the British North America Act.

Mr. Justice Doull of the Nova Scotia Supreme Court relates that Dean Weldon and Mr. Justice Russell disapproved of many decisions of the Privy Council and overruled them with much satisfaction.

Mr. Justice Mellish, who was known for many years as a rather impish member of the Nova Scotia Bar, believed in the old legal maxim "know thy judge well". He made it his business to study closely the decisions of Mr. Justice Russell at Dalhousie at times he

would coolly argue in the face of well known principles as laid down in Privy Council decisions. When queried from the bench as to his flagrant interpretation of well known law, he would slyly reply, "but My Lord, that decision has been overruled in the Supreme Moot Court of Dalhousie."

Sometime shortly after 1915 a transformation took place in the procedure governing the operation of the Moot Court. The workings of the Moot court became incorporated into the constitution of the Law Society. By custom, the Moot Court Committee automatically became the top three students of the previous second year. They set up the Court term, informed the classes of their respective duties, and decided on the rules to be followed that year. The judges now coming from third year, senior counsel from second year, and junior counsel from first year. This practice is still followed today.

The traditions of the Moot Court have become firmly rooted; a recent attempt to alter the workings of court was recorded in this story of the *Gazette*, dated October 23, 1950:

"A recent attempt to alter the Moot Court system met with stubborn resistance of the third year class, who rallied to the cry, 'What was good enough for R. B. Bennett is good enough for us'."

The next issue of the *Gazette* added to the story:

"When an attempt had been made to change the Moot Court system, riots flared on the campus and in an attempt to quell the riots, one of Dalhousie's 'grand old men,' Chief Justice O'Hara appeared before the crowd with can and ear trumpet and was given audience for 30 seconds after which time he flew to the Ladies Washroom to seek refuge from the irate mob. From there he was dragged out from the main door of the Law School to the gutter of Carleton Street and was thereupon swept out of the city by a street cleaning machine. The

Moot Court system was not changed."

In each of the buildings that the Law School has called its "home," there has always been one particular room set aside and designated as the Moot Court room. The old Moot Court room in the Forrest Building still remains vividly in the minds of many of the former graduates. On the Law School's 50th Anniversary, the following appeared in the *Gazette*:

"The shrine of the traditions of the school is the Moot Court room. Men now prominent in public life first tried their wings in forensic combat and in Parliamentary debate in the Moot Court room. The old seats are carved with the initials of men who through hard work and devotion to principle have brought credit upon themselves and to the school."

Today's Moot Court room serves as lecture room in the mornings and as Court room in the afternoons. The atmosphere of the old Moot Court room finds embodiment in the pictures of many eminent professors and alumni which grace the walls, and already the desks are carved beyond recognition.

In 1927, the Honorable Sidney Smith, former student and Lecturer presented a plaque on which is engraved the names of the two students who achieved the highest marks in a court competition before a bench comprised usually of three members of the Bar and Supreme Court of Nova Scotia. Four students, chosen by the Moot Court Committee on the basis of marks submitted by each chief justice, argue a case which is submitted to them by the faculty. Except for a short period during the war, competition for the award has gone on every year, and a high level of achievement has been reported year after year in the *Gazette*.

THE BENCH

The Chief Justice chooses and issues the facts to be argued, receives and corrects the factums, and confers with his colleagues before the hearing. During the argument he maintains order in the courtroom through the sheriff, and questions counsel. He and his brothers then deliver judgment. The Chief Justice marks counsel on their performances.

The behaviour of the Justices is usually proper; bench after bench sits without particular incident. However there are exceptions, some of which have been preserved in the *Gazette*.

"Those present were greatly amused when Lord Koretsky fell from the bench, uttering a mystery—
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