accidental to that of the barrister, and the distinction is recognized by the Legislature and the Courts.

The usage in England and Ireland is referred to as evidence of a recognition of the attorney's right to act as an advocate at the Quarter Sessions. I know not if this practice at home be founded on ancient usage or permitted in the exercise of a discretion: I should suppose the latter from what is said on the subject in *Dickenson's Quarter Sessions Practice*. But the usage or practise of the Courts at home cannot bind us here, unless embodied in our legal system; and the attorney in England occupies higher ground than the attorney in this country, he receives *after* examination a certificate of his fitness, which the latter does not.

In this point of view the 9th sec. of 4 & 5 Vic., cap. 24, is relied on as a Legislative recognition of the existence of a practice—hearing attorneys as advocates: the words are—"all persons tried for felonies shall be admitted, &c., to make defence, &c., "by counsel learned in the law or by attorney in the courts where attorneys practise as counsel."

If the practice existed in U. C., I must presume it prevailed in the exercise of a discretion on the part of the court in favor of attorneys, as a mere matter of practise in particular courts for public convenience, it can be altered by any court when occasion demands it. For in respect to practise not *prescribed* by law, every independent tribunal can and does act, unfettered by the rules laid down by another of the same grade for its internal regulation.

It seems to me however, that any argument to be drawn from the clause will at least be greatly weakened by the following considerations:—This is a Statute of Canada. The Law Society's Act, and other Acts to which I have referred, were passed by the Legislature of Upper Canada. The 4 & 5 Vic., cap. 24, had reference to Lower Canada as well as to Upper Canada: it re-enacted matter before then law in Upper Canada: the measure was not even introduced by an Upper Canada member. Now, when there is change of constitution, it seems to me that unless acts be in *pari materia* very little weight is to be given to legislative expressions by the Legislature under one constitution, in expounding the meaning of laws by the Legislature under another; the position of England and Ireland after the Union would probably furnish illustrations on this point, but I have neither time nor material to make the examination. Respecting this particular act, we may conclude that the whole Province was in the minds of the framers of the law, and that the expressions used were directed thereto. It may be that in certain Courts in Lower Canada attorneys were heard as advocates; if so, the fact implied would have foundation, although that privilege was not granted in any Court in Upper Canada.

The U. C. Act, 6 Wm. IV, cap. 41, to allow persons indicted for felony to make full defence, presents no recognition of the attorney's right to act as counsel, but the reverse. The words are, it shall be lawful for any person tried for felony "to be heard in full defence before the court and jury, either personally *or by counsel* at his or her election."

The preamble shows the reason of the law and the evils it was designed to remove.

"Whereas, (it reads) nothing is more just and reasonable than that persons prosecuted for felony, whereby their liberties, lives and characters may be lost and destroyed, should be justly and equally tried, and that persons accused as offenders therein should not be debarred of *just and equal means for defence* of their innocencies in such case, *in order thereunto*, and for better regulation of trials of persons prosecuted," &c.

Now, if the practice of hearing attornies as advocates existed in U. C., it is reasonable to suppose it must have been known to the U. C. Legislature; and it is equally reasonable to presume that its existence would have induced the Legislature to insert apt words in the law to meet it, in order more effectually to enlarge the means for carrying out the beneficial end in view. If then this statute of *Upper Canada* is not a *proof* of the *non*-existence of the practice in U. C., as *evidence*, it is at least a good set-off against the statute of *Canada* before referred to.

On the whole I am of opinion, that an attorney is not entitled *de jure* to plead as an advocate in these Courts.

I come to the last question:

*Third*—Ought a discretionary power to be exercised and the privilege of advocacy to be granted to attorneys in the Courts of Quarter Sessions; (as respects the County Court as before mentioned, I think there is no discretion—attorneys must be excluded.)

An application to the discretion of the Court, should be founded on public convenience and on public policy—these are the only grounds on which an appeal to the discretion of any court of justice can properly be made. I do not think that either can be brought to sustain the present application. There is a bar in attendance sufficient to afford a choice of advocates to the suitors; and therefore attornies cannot claim to be let in as advocates *ex necessitate*, and to allow attorneys to invade the peculiar functions of the advocate, would not in my judgment be defensible on any ground whatever.

The privilege of advocacy held by the bar has been recognized for ages, and the exclusive principle encouraged for the public benefit.

A brief review of the enactments in reference to attorneys and barristers will better indicate their relative *status* at this time.

The ordinance of the Province of Quebec (25 Geo. III, cap 4.) was, I believe, the first legislative provision in this country, after it became a British province, respecting the profession. The preamble is in these words: "Whereas the welfare and tranquility of families require as an object of the greatest importance that such persons only should be appointed to act and practice as barristers and attorneys," * * * * "who are properly qualified to perform the duties of those respective employments."

This ordinance appointed the manner in which barrister and attorney should obtain qualification to practise: in both branches of the profession it was the same—a service under articles; but each candidate was commissioned after examination, and on being approved of by the judges. The clause is to this effect, that no person should be commissioned or permitted to practise as a barrister, advocate, solicitor, attorney or proctor-at-law, who had not *bonâ fide* served under articles with a practising advocate, &c., for six years; and it goes on, neither shall any person, &c., "be commissioned or admitted to practise in any of the several capacities as aforesaid until after he shall have been examined by some of the first and most able barristers, advocates and attorneys of the Courts of Judicature in this Province, before the Chief Justice or two or more of the Judges of some of His Majesty's Courts of Common Pleas, and approved and certified by such Chief Justice or Judges to be of fit capacity and character to practice the law in the several courts of the Province."

The Upper Legislature altered the system established by this ordinance, but the distinction of classes was preserved and defined. Persons were entitled to be commissioned and admitted to practise as attorneys *without any examination* as to their fitness, a service under articles to an attorney being the only qualification required.

The degree of *barrister*, however, could only be obtained from the Law Society upon these preliminaries—admission to and remaining on the books of the Society as a Student for five years—conforming to the rules and regulations of the Society, and being duly called "according to the constitution and establishment thereof." By the rules of the Law Society of Upper Canada, no person can be admitted as a Student, unless found, on full and strict examination, to be by habits, character and education, duly qualified for admission: and a