THE

LEGAL NEWS.

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CURRENT TOPICS AND CASES

The November Appeal list at Montreal contained only 29 cases, a fact which attested the result of the excellent progress made in September. Of the 29, all but 11 were cases in which counsel were not ready to proceed during the September term, and which consequently were continued. Eleven new cases were added during the interval between the two terms—a number somewhat under the average. That there is practically no delay whatever at present in securing a decision of the Court of Appeal, is proved by the number of cases which have recently been decided in appeal within a few months of the delivery of the judgment appealed from.

One of the applications made at the opening of the term is of special interest to the bar. It was made in the case of *Angus & Pope*, from the district of St. Francis. Mr. Gilman, Q. C., one of the counsel for the appellant, asked to have the case continued to the January term, on the ground that the counsel associated with him for the appellant, Mr. Angers, Q. C., was absent from the country, having been obliged to proceed to England on important business of a public nature. Mr. H. Abbott,

Q. C., who temporarily represented the respondent, said that under ordinary circumstances he would have no objection, but that his instructions in the present case made it impossible for him to consent to the application. The Court (Lacoste, C. J., Bossé, Blanchet, Wurtele and Ouimet, JJ.) said that it could not interfere. One counsel for appellant was present, and the case must proceed.

The early closing by-law was never regarded with much respect, for the discriminations and exemptions contained in it were so extraordinary that they indicated narrow and selfish rather than philanthropic motives in those who sought to force the measure through the council. In its way, it was a masterpiece of mischievous meddling with business men, and therefore the fact that it has failed to stand the test of an appeal to the courts may be accepted without regret. Mr. Justice Loranger, in the test case of *Rasconi* v. *The City of Montreal*, in the Superior Court, Nov. 12, held that the by-law was null and void on more than one ground. The question of the constitutionality of the Quebec statute, 57 Vict., c. 60, under the authority of which the by-law was passed, was not pressed by counsel. That Act gives general powers to cities and towns throughout the province to regulate, within certain limits, the hours of opening and closing shops, but says nothing about the imposition of any punishment for infraction of the regulations which might be made under the authority of the Act. The by law in question imposed fine, or imprisonment in default of payment. It was contended that the city had this power under section 141 of 52 Vict., ch. 79. This section merely authorizes the council to impose fine or imprisonment for infraction of the by-laws made under the previous section (140). The early closing by-law was not enacted under the authority of section 140, but under the general Act above mentioned, which applies to all cities and towns, and is silent as to punishment. The court there-

fore found no authority for the imprisonment enacted by the by-law. Then, again, the by-law discriminated in a manner that appeared to the Court to be in excess of municipal powers. This is not the place to suggest what might be done for the promotion of reasonable hours for clerks, but it must be said that those who meddled in this instance under the guise of philanthrophy, proved themselves the worst enemies of the cause.

The Court of Appeal of Ontario has declared that provincial governments have the right to appoint Queen's Counsel. The question as to the right of the Dominion to appoint does not appear, from the newspaper report, to have been expressly decided. If the Supreme Court adheres to the opinion expressed by three of its members in *Lenoir & Ritchie* this decision will be reversed. In any event it is probably intended to have the point settled by the Judicial Committee of the Privy Council, the opinion of which alone can be accepted as final or binding in a question of this important character.

SUPREME COURT OF CANADA.

OTTAWA, 18 October, 1896.

IN RE PROVINCIAL FISHERIES.

Canadian waters—Property in beds—Public harbours—Erections in navigable waters—Interference with navigation—Right of fishing—Power to grant—Riparian proprietors—Great lakes and navigable rivers—Operation of Magna Charta—Provincial legislation—R. S. O. (1887) *c.* 24, *s.* 47—55 *V., c.* 10, *ss.* 5 *to* 13, 19 *and* 21 (*O*)—*R. S. Q. Arts.* 1375 *to* 1378.

The beds of public harbours not granted before Confederation are the property of the Dominion of Canada. *Holman* v. *Green* (6 Can. S. C. R. 707) followed. The beds of all other waters belong to the respective Provinces in which they are situate, without any distinction between the various classes of waters.

Per Gwynne, J.—The beds of great lakes, rivers forming the boundary between Canada and the United States or between two Provinces, rivers navigable above tide waters, rivers to the extent to which tide waters reach Dominion sea-coasts, and provincial lakes and rivers not granted before Confederation, are subject to the jurisdiction and control of the Dominion Parliament so far as required for creating future harbours, erecting beacons or other public works for the benefit of Canada under B. N. A. Act, s. 92, item 10, and for the administration of the Fisheries.

R. S. C., c. 92, "An Act respecting certain works constructed in or over navigable rivers," is *intra vires* of the Dominion Parliament.

Per Strong, C.J., and King J.—A province may grant land extending into a lake or river for the purpose of there being built thereon a wharf, warehouse or the like, and the grantee may build thereon subject to compliance with R. S. C., c. 92, and to his obtaining an Order-in-Council from the Dominion Government authorizing the work, provided it does not interfere with the navigation of such lake or river.

Riparian proprietors before Confederation had an exclusive right of fishing in non-navigable, and in navigable non-tidal, lakes, rivers, streams and waters, the beds of which had been granted to them by the Crown. The right of fishing is an incident of the property in the soil. *Robertson* v. *The Queen* (6 Can. S. C. R. 52) followed.

The Dominion Parliament cannot authorize the giving by lease, license or otherwise the right of fishing in non-navigable waters nor in navigable waters the beds and banks of which are assigned to the Provinces under the B. N. A. Act. The legislative authority of Parliament under s. 91, item 12, is confined to the regulation and conservation of sea-coast and inland fisheries under which it may require that no person shall fish in public waters without a license from the Department of Marine and Fisheries; may impose fees for such license and prohibit all fishing without it; and may prohibit particular classes, such as foreigners, unconditionally from fishing. The license as required will, however, be merely personal conferring qualification, and can give no exclusive right to fish in a particular locality.

The rule that riparian proprietors own *ad medium filum aquæ* does not apply in case of the great lakes or navigable rivers.

Where beds of such rivers have not been granted, the right of fishing is public and not restricted to waters within the ebb and flow of the tide.

A Provincial Government may grant the bed of lakes and navigable non-tidal rivers as to which the restrictions in Magna Charta do not apply. Such grant will carry with it the right of fishing unless the same is reserved or such right may be granted without the bed.

The provisions of Magna Charta are in force in the Provinces of Canada (except Quebec), and restrict the right of either the Dominion or province to grant the beds of, or fishing rights in, tidal waters.

Sec. 4, and other portions of R. S. C. c. 95, so far as they attempt to confer exclusive rights of fishing in Provincial waters, are *ultra vires*. Gwynne, J. *contra*.

Notwithstanding the provisions of Magna Charta the Dominion Parliament can grant the exclusive right to fish in public harbours, and in waters in unsurrendered Indian lands; B. N. A. Act, s. 91, item 4.

Per Gwynne, J.—Provincial legislatures have no jurisdiction to deal with fisheries. Whatever comes within that term is given to the Dominion by B. N. A. Act, s. 91, item 12, including the grant of leases or licenses for exclusive fishing.

Per Strong, C.J., Taschereau. King and Girouard, JJ., R. S. O. c. 24, s. 47, and ss. 5 to 13 inclusive, 19 and 21 of the Ontario Act of 1892 are *intra vires*.

Per Strong and King, JJ. They are *intra vires* but may be superseded by Dominion legislation on the same subject.

R. S. Q. arts. 1375 to 1378 inclusive are *intra vires*.

Per Gwynne, J.—R. S. O. c. 24, s. 47 is *ultra vires* so far as it assumes to authorize the sale of land covered with water within public harbours. The margins of navigable rivers and lakes may be sold if there is an understanding with the Dominion Government for protection against interference with navigation. The act of 1892 and R. S. Q. Arts. 1375 to 1378 are valid if passed in aid of a Dominion Act for protection of fisheries. If not, they are *ultra vires*.

Robinson, Q.C., and *Lefroy* for Dominion of Canada.
Æmilius Irving, Q.C., S. H. Blake, Q.C., and *Clark*, for Ontario.
Casgrain, Q.C., Atty.-Gen., for Quebec.
Longley, Atty.-Gen., for Nova Scotia.
Irving, Q.C., and *Clark*, for British Columbia.

QUEEN'S BENCH DIVISION.

LONDON, 14 April, 1896.

REGINA v. PAYNE AND COOPER. (31 L. J.)

Contempt of court—Newspaper comments—Pending criminal charge —Application to commit.

This was a rule *nisi* to commit the sub-editor and publisher of a newspaper for contempt of Court in publishing two articles and an account of a meeting whilst a criminal charge against the applicant was pending. The applicant occupied a position of trust upon the establishment of the newspaper, but at the time the articles complained of appeared was under arrest upon a charge of having set fire to the premises. The articles were written in explanation of other matters in connection with the newspaper, and contained no observations relative to the charge of arson further than that it had been made. The indictment for arson was ultimately thrown out by the grand jury, but there were other charges against the applicant, and the chief constable, desiring to obtain professional assistance in prosecuting them, made certain statements before the standing joint committee of the county. The newspaper published an account of what took place at this meeting.

A. H. Poyser, in support, cited *In re The Crown Bank, in re O'Malley*, 59 Law J. Rep. 767; L. R. 44 Chanc. Div. 649, and *Coats* v. *Chadwick*, 63 Law J. Rep. Chanc. 328; L. R. (1894) 1 Chanc. 347.

The COURT (LORD RUSSELL, L.C.J., and WRIGHT, J.) discharged the rule upon the ground that the newspaper publications disclosed nothing calculated to prejudice the applicant on his trial, and added that although the power of committal for contempt was salutary, it was an arbitrary power which should never be invoked or exercised unless upon really serious grounds. Applications of this kind had been too frequently made, and in some recent cases the decisions had gone somewhat too far. The Court must be guided by the principle laid down by Cotton, L.J., in *Hunt* v. *Clarke*, 58 Law J. Rep. Q. B. 490; 37 W. R. 724, which was that these motions should only be made in serious cases.

Rule discharged.

RIGHT TO ABANDON CONTRACT BECAUSE OF OTHER PARTY'S DEFAULT.

One of the most effective means of self-defence which a party to a contract has in case of the other party's default is to discontinue performance on his own part. In the earlier cases this right was made to depend on the covenants of the respective parties being dependent, and performance by the defaulting party being a condition precedent to performance by the party wishing to abandon. But the modern cases have established the doctrine that if the contract is indivisible, and the party wishing to rescind retains no benefit under it, he may do so without liability, upon the other party's becoming in default. The default however must be such as to render the object of the contract unattainable. For a partial or trivial default the remedy must be by action upon the stipulations of the contract itself. In addition to simple cases of rescission without action by either party, there are many instances where the party wishing to rescind has done something under the contract for which the contract provides him no compensation, unless he completes performance on his part. The default of the other party renders further performance by him undesirable. In such cases, if the default be such as necessarily to prevent the aggrieved party from performing on his part according to the terms of the contract, he may abandon it and recover the value of services rendered, of property delivered, or recover back money paid.

Some of the courts seem to be inclined to hold that mere neglect or refusal by one party to perform will justify abandonment by the other. But it would seem that the doctrine must be limited to cases where the nonperformance defeats the object of the contract. Still another class of cases is that where the aggrieved party, in addition to abandonment, seeks damages for the other party's breach. One of the latest cases which have applied the law to such circumstances is *Lake Shore & M. S. R. Co.* v. *Richards* (Ill.), 30 L. R. A. 33, in which it is held that a breach which will justify abandonment and suit for damages need not be such as to render further execution of the contract impossible, but that refusal to be bound will in legal effect be a prevention of performance by the other party. According to that case there is little difference in what is necessary to create the right between the several classes of cases, the remedy being

largely dependent upon the circumstances existing at the time of default.

If the contract is what is known as a continuing contract to be performed in instalments, the weight of authority is that a default as to one instalment will authorize an abandonment of the entire contract, although the late New Jersey case of *Gerli* v. *Poidebard Silk Mfg. Co.*, 30 L. R. A. 61, holds that when the seller of goods has agreed to deliver them in instalments, and the buyer has agreed to pay the price in instalments which are proportioned to and payable on the delivery of each instalment, default of either party with reference to any one instalment will not ordinarily entitle the other party to abrogate the contract.—*Case and Comment.*

THE TEACHING OF ENGLISH LAW AT UNIVERSITIES.

[Concluded, from p. 335.]

The Year-Books.

Before I pass on, let me say, as if in a parenthesis, a word or two more about the Year-books. These great repositories of our mediæval law have been the subject of many cheap and foolish observations, as to their mustiness and mouldiness; but never, so far as I know, from persons who had any considerable acquaintance with them. It has dwarfed and hurt our law that research has usually stopped short about three centuries back; as to what went before, it has been the fashion to accept Coke as the epitome, or to take the summaries in the Abridgments. Back of Coke, these ill-printed, unedited, untranslated folios, the Year-books, have stood like a wall, repelling for most men any further search. But not all scholars have been deterred; and those who have gone through these volumes have found a rich reward. Amidst their quaint and antiquated learning is found the key to many a modern anomaly; and the reader observes with delight the vigorous growth of the law from age to age by just the same processes which work in it to-day in our latest reports. There, as well as here, together with much that is petty and narrow, one remarks not only well-digested learning and thoughtful conservatism giving its reasons, but also growth, the vigour of original thought, liberal ideas, and the breaking out of what we call the modern spirit.

Coming back to the task of the student of our law, it spreads far beyond what I have yet set forth; it has been wisely said that if a man would know any one thing, he must know more than one. And so our system of law must be compared with others; its characteristics only come out when this is done. As to the examination of mediæval and modern continental law, we have hardly made a beginning. When we trace our law far back, the only possible comparison with anything long-lived and continuous is with the Roman law. If anyone would remind himself of the flood of light that may come from such comparisons, let him recall the brilliant work of Pollock's predecessor at Oxford (Sir Henry Maine) in his great book on Ancient Law. That is the best use of the Roman law for us—as a mirror to reflect light upon our own, a tool to unlock its secrets. And so the recent learned historians of our law have used it. In writing of the English system of writs and forms of action, for instance, they put meaning into the whole matter in pointing out that all this, beginning in the middle of the twelfth century, finds a parallel in Rome 'at a remote stage of Roman history. We call it distinctively English, but it is also in a certain sense very Roman. While the other nations of Western Europe were beginning to adopt as their own the ultimate results of Roman legal history, England was unconsciously reproducing that history.'

Of the value of such comparative studies, and their immense power to lift the different subjects of our law into a clear and animating light, no competent person who has once profited by them can ever doubt. But, again, observe what this means. It means adding to the wide and difficult researches already marked out another great field of investigation. If it be said that our teacher of English law may profit by the labour of others, and has only to read his 'Ancient Law' and his 'History of English Law,' I reply that the field is still largely unexplored: and, furthermore, that, for the scholar, such books are helps and guides for his own research, and not substitutes for it.

The Line of Study.

So much for this head of what I have to say. Over these vast fields the competent teacher of law must carefully and minutely explore the history and development of his subject. I set down first this thorough historical and chronological exploration,

because in this lie hidden the explanation of what is most troublesome in our law, and because in this is found the stimulus that most feeds the enthusiasm and enriches the thought and the instruction of the teacher. The dullest topics kindle when touched with the light of historical research, and the most recondite and technical fall into the order of common experience and rational thought. Sir Henry Maine's book, like that of Darwin in a different sphere, at about the same time, created an epoch. Such books have made it impossible for the law student ever again to be content with the sort of food that fed his fathers, with that 'disorderly mass of crabbed pedantry,' for instance, as our recent historians of the law have justly called it, 'that Coke poured forth as institutes of English law.' Never again can he receive the spirit of bondage that once bent itself to teach or to study the law through such a medium.

And now comes another labour for the legal scholar. After such researches as I have indicated, in any part of the law, the outcome of it is certain to be the necessity of restating the subject in hand. When things have once been thus explored and traced, many a hitherto unobserved relationship of ideas comes to light, many an old one vanishes, many a new explanation of current doctrines is suggested and many a disentangling of confused topics, many a clearing away of ambiguities, of false theories, of outworn and unintelligible phraseology. There is no such dissolver and rationaliser of technicality as this. A new order arises. And so when the work of exploration has been gone over, there comes the time for producing and publishing the results of it. Admirable work of this sort, and a good bulk of it, has already been done—work that is certain to be of inestimable value to our profession. In some instances it is but little known as yet; in others, it appears already in our handbooks on both sides of the ocean, and in the decisions of the Courts.

The publishing of these results by competent persons is one of the chief benefits which we may expect from the thorough and scientific teaching of law at the universities. In no respect can more be done to aid our Courts in their great and difficult task. There are many useful handbooks for office use and reference, and some excellent ones. But the number of really good English law treatises—good, I mean, when measured by a high standard—is very few indeed. They improve; and yet, to a great extent

to-day, the writers and publishers of law-books are abusing the confidence of the profession, and practising upon its necessities.

If I am asked to specify more particularly the sort of thing that may come out of the researches to which I have referred, and that has already been produced from the universities, I am tempted to refer first to a foreign book about one of our English topics—a book which is a little remote from our every-day questions, but full of value in any deep consideration of the subject—the admirable 'History of the Jury,' by Brunner, professor of law at Berlin, published in 1872. That is a book of the first class, superseding all others upon the subject; and yet, to the disgrace of the English-speaking race, it has not yet been translated into our language. English and American scholars have supplemented the work of Brunner, and the material for a true understanding of the history and uses of the jury system, and for a wise judgment as to continuing or modifying the use of it, were never anything like so good as now.

Then there is that masterly 'History of the English Law' by two English law professors of our own time, of which I have already spoken. In mentioning this book, it is only just to Professor Maitland, one of the finest scholars of our time, that I should quote the remark of his distinguished associate, where he says in the preface that 'although the book was planned in common and has been revised by both of us, by far the greater share of the execution belongs to Mr. Maitland, both as to the actual writing and as to the detailed research which was constantly required.' Of other English work to be credited to the universities, I have already mentioned the great performances of Blackstone and Maine, and I need only allude to the important works, well known among us, of Dicey, Holland, Markby and Pollock. Less well known, but masterly in its way, is Maitland's editing of that selection from the judicial records of the thirteenth century, which is known as Bracton's Note Book, and of other unpublished material brought out by the Selden Society.

As to this country, I will not mention names. I need not refer to the famous and familiar books from our university schools of law, by our leaders, living and dead. I will simply say this, that in recent times the researches and contributions of our own teachers of the law, at the universities in various parts of the country—and I include now not less than seven of these

institutions—have produced most important material, which is already finding its way into the current handbooks of the profession, here and in England—material which not only illuminates the field of the student's work, but lightens the daily drudgery of the Bench and Bar. The true nature of equitable rights and remedies; the doctrine of equitable defences; the history and analysis of the law of contract, torts, trusts, and evidence; the nature and true theory of the negotiability of obligations; the nature of the common law itself; the whole doctrine of quasi-contract; the doctrine of perpetuities—these things make only a part of this material. As I said, I do not speak of work done at any one institution or in any one part of the country merely.

But now suppose some one says, What is the use of carrying on our backs all this enormous load of the common law? Let us codify, and be rid of all this by enacting what we need, and repealing the rest.

Well, I am not going to discuss codification. There is not time for that. And the word is an ambiguous one; some good things and some bad ones are called by this name. I will only say that as yet we do not well understand our law; it is our first duty to understand it. The effort to codify it, or systematically to restate it for purposes of legislation—for any purpose other than a merely academic one—should come later, if it come at all. To codify what is only half understood is to perpetuate a mass of errors and shallow ambiguities; it is to begin at the wrong end. Let us, first of all, thoroughly know our ground. I can say this with confidence, that as regards one or two departments of law with which I have a considerable acquaintance, I have never seen any attempt at codification, here or abroad, which was not plainly marked by grave and disqualifying defects. Goodwill, strong general capacity, courage, sense, practical gifts, are indeed not wanting in some of these attempts; but a competent knowledge of the subject is wanting.

My honoured friend, Judge Dillon, in his excellent address last year, said a word or two in connection with this subject, which should be supplemented, I think, by a word or two more. In speaking of law reforms, he remarked that 'no mere doctrinaire or closet student of our technical system of law is capable of wise and well-directed efforts to amend it. This must be the work of practical lawyers.' If the expression 'mere doctrinaire

or closet student' refers to any class of pedants and incompetent persons who do not appreciate the nature of what they are studying, I should not wish to qualify that portion of the remark just quoted which reaches them. But if it may be supposed to allude to the class of legal scholars as such, to the experts in legal and juristic learning, this remark, at the best, is but half a truth. The practical work of carrying through any considerable measure of reform, of getting it enacted, is, indeed, peculiarly a task for the practical lawyer. His judgment also is important in the wise shaping of such a measure; as his authority and influence will be quite essential in gaining for it the confidence of legislators and their constituents. But no 'wise and well-directed efforts' of this character can dispense with the approval and co-operation of the legal scholar. I am speaking, of course, of competent persons, in both the classes referred to, and not of pedants or ignoramuses; and am assuming on the part of the systematic student of law, as on the part of the judge or practitioner, a suitable outfit of sense, discretion, preliminary professional education, and capacity to understand the eminently practical nature of the considerations which govern the discussion of legal questions. Perhaps I may be permitted to speak on this subject with the more confidence, as having been a busy practitioner at the Bar of a large city eighteen years before beginning an experience as a professor at the Harvard Law School, which has now continued for twenty-one years.

Professor Dicey has remarked, I believe, of the jurist's work in England, of the sort of work which he himself has so admirably done, that it 'stinks in the nostrils' of the average English practitioner; and Sir Frederick Pollock, in his inaugural lecture twelve years ago as Corpus Professor of Jurisprudence at Oxford, in speaking of his associates there, Dicey and Bryce and Anson, says, with dignity, that they are 'fellow-workers in a pursuit still followed in this land by few, scorned or depreciated by many—the scientific and systematic study of law.' That state of things is slowly disappearing in England as well as here with the gradual improvement in the legal education of the Bar. One of the best and most important results of this improvement will be a more cordial respect and a closer co-operation between the different parts of our profession, the scholars, and the men of affairs. Nothing is more important to the dignity and power of our common calling.

Let me now finally come down to this question: If what I have been saying as to the scope of the work of the university teaching of law be true, what does it mean as regards the outfit and the carrying on of these schools?

THE OUTFIT AND CARRYING-ON OF A LAW SCHOOL.

It means several things: (1) Limiting the task of the instructors. Instead of allotting to a man the whole of the common law or half a dozen disconnected subjects at once, it means giving him a far more limited field—one single subject perhaps, two or three at most; if more than one, then, if possible, nearly related subjects—to the end that his work of instruction may be thoroughly done, and that, as the final outcome of his studies, some solid, public, and permanent contribution may be made to the main topic which he has in hand.

It means (2) that instructors shall give, substantially, their whole time and strength to the work. In mastering their material and qualifying themselves for their task, they have in hand, say, for the next two generations much formidable labour in exploring the history and chronological development of our law in all its parts. On this, as I have indicated, a brave beginning has been made, and it is already yielding the handsomest fruits. They have also, of course, all the detail of their difficult main work of teaching; and this, when the work is fitly performed, calls for an amount of time, thought, and attention bestowed on the personal side of a man's relation to his students which instructors now can seldom give.

It means (3) that the pupils also shall give all their time to the work of legal study while they are about it. There is more than enough in the careful preliminary study of the law to occupy three full years of an able and thoroughly trained young man. It is, I think, a delusion to suppose that this precious seedtime can profitably be employed, in any degree, in attendance upon the Courts or in apprenticeship in an office. I do not speak, of course, of an occasional excursion into these regions when some great case is up or some great lawyer is to be heard, or of the occasional continuous use of time in such ways during these long vacations which are generally allowed nowadays. Nor do I mean to deny that attendance upon Courts to witness the trial of a case now and then will be a good school exercise. I speak only of systematic attempts to combine attendance at law

schools with office work and with watching the Courts. The time for all that comes later, or perhaps, in some cases, before.

It means (4) that generous libraries shall be collected at the universities suited to all the ordinary necessities of careful legal research; and it also means gathering at some one point in the country, or at several points, the best law library that money can possibly buy.

And (5), in saying that proper university teaching of law means all this, I am saying in the same breath that it means another thing—viz. the endowment of such schools. The highest education always means endowment; the schools which give it are all charity schools. What student at Oxford or Cambridge, at Harvard, Yale, Columbia, Ann Arbor, or Chicago pays his way? We must recognize, in providing for teaching our great science of the law, that it is no exception to the rule. Our law schools must be endowed as our colleges are endowed. If they are not, then the managers must needs consult the market, and consider what will pay; they will bid for numbers of students instead of excellence of work. They will act in the spirit of a distinguished but ill-advised trustee of one of the seats of learning in my own State of Massachusetts, when he remarked, 'We should run this institution as we would run a mill: if any part of it does not pay we should lop it off.' They will come to forget that it is the peculiar calling of a university to maintain schools that do not pay, or, to speak more exactly, to maintain them whether they pay or not; that the first requisite for the conduct of a university is faith in the highest standards of work; and that if maintaining these standards does not pay, this circumstance is nothing to the purpose—maintained they must be, none the less. It has been justly said that it is not the office of a university to make money, or even to support itself, but wisely to use money.

If, then, we of the American Bar would have our law hold its fit place among the great objects of human study and contemplation; if we would breed lawyers well grounded in what is fundamental in its learning and its principles, competent to handle it with the courage that springs from assured knowledge, and inspired with love of it—men who are not, indeed, in any degree insensible to worldly ambitions and emoluments, who are, rather, filled with a wholesome and eager desire for them, but whose minds have been lifted and steadied and their ambitions

purged and animated by a knowledge of the great past of their profession, of the secular processes and struggles by which it has been, is now, and ever will be struggling towards justice and emerging into a better conformity to the actual wants of mankind—then we must deal with it at our universities and our higher schools as all other sciences and all other great and difficult subjects are dealt with, as thoroughly, and with no less an expenditure of time and money and effort.—*Address by J. B. Thayer.*

GENERAL NOTES.

RESPONSIBILITY OF HYPNOTIST.—Judge Foute, of Atlanta, Ga., holds that a hypnotist is responsible for the acts of his subjects. During the performance at a local theatre, the subject of the hypnotist imagined he was a monkey, and grabbed a hat off a a man in the audience and bit a piece out of it. The professor and his business manager refused to make good the cost of the hat, and the hypnotist was prosecuted. The charge was sustained by the court and the hypnotist was bound over.—*Ohio Legal News.*

THE LATE LORD SELBORNE.—The recent memoirs of Lord Selborne do not coruscate with wit; but there is one incident which is decidedly droll. The scene was Penmaenmawr. Discovered, Sir Roundell Palmer, (then Solicitor-General) walking down the village street with his two little girls, in white sun-bonnets. Enter to him a benevolent-looking old gentleman (Admiral Harcourt). The Admiral advances and holds out to the Solicitor-General a tract written in the Welsh language, saying, 'My good man, can you read?' 'I,' says Sir Roundell Palmer, telling the story, 'answered "Yes; but not Welsh," which I believe the tract-distributor understood as little as I did,' and then, according to the version of Sir Roundell Palmer's witty friends, the old gentleman went on to admonish him against 'frequenting public-houses.' This is delicious to those who are acquainted with the immaculate virtue of the decorous ex-Chancellor, and not the least amusing thing is that Sir Roundell Palmer hastens to disclaim this embellishment as 'mythical.' The story may rank with Lord Eldon in the stocks, and Lord St. Leonards in the lunatic asylum. Why, by the way, were not these volumes entitled 'Memoirs of the Earl of Selborne, or Virtue Rewarded,' like 'Pamela'? One is constantly reminded of an exclamation of of a lively friend of his, 'What a bore you are, Palmer; one is tired of wishing you joy!'—*Law Journal.*