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The BARRISTER

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The Barrister.

VOL. II. TORONTO, MARCH, 1896. No. 3

EDITORIAL.

A Free Forum.

We invite every lawyer in the Province, who desires to discuss any topic of interest to the profession, to use The Barrister freely. We do not ask that he should agree with us or any body else. If he has a sincere opinion upon any topic, or grievance, or a simple suggestion to present, The Barrister is open to him. We desire to make The Barrister a free forum for the use and benefit of the profession.

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We desire that the Bar should be a power in politics, in legislation, and in every public movement. Under such circumstances the profession would be able to move together against every evil and abuse, and in favor of every reform demanded by the exigencies of the times.

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Regarding the subject of University education, we judge that public opinion has rightfully come to the conclusion that for the highest success at the Bar a University education is not essential. A University education is certianly one of the means—to an end. If for success at the Bar a University education is necessary, what then about the Lord Chief Justice of England and Sir Edward Clark, Q.C.? "The Brief," London, Eng., says: "A University education affords advantages to members of both branches of the profession (Barrister and Solicitor), but to talk about its being essential either for one or the other is simply silly."

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The final year at Osgoode Hall this year possesses one woman. She will be called to the Bar in June. This will be the first occurrence of its kind in Canada.

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We purpose publishing the most salient features of 58 Vic. (Ont.) in our next issue.

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Benchers' Election.

Before our next issue appears, another Benchers' election will be

a thing of the past. We believe the members of the profession will think before they mark their ballots. Our desire is to see the best men elected. The Barrister has no desire to indite the present Benchers for felony or grievous sin individually, nor to find fault with the general administration of the affairs of the Law Society for the past five years. We do not believe that a single appointment in the gift of the Law Society during the last five years has been made upon personal grounds.

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On the other hand, we do believe that recent appointments which have been assailed by correspondents in the daily newspapers on the grounds of family and family compact, etc., could not be improved upon. We believe the best and most capable men available have been appointed by the present Benchers.

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It is our belief that the evils that exist are found in the Act incorporating the Law Society. It may be said that the Benchers should have taken means to amend the Act. In the opinion of many the term of office is too long, so long in fact that before it has half expired the Benchers are out of touch with the profession. Two or three years would be a sufficiently long term of office.

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Again, in the opinion of many, there should be some means of making formal and official nominations. Every candidate should be duly nominated as in any other election. As the Act stands at present, the existing Benchers are practically the only persons who obtain the benefit of a decent nomination.

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It has been said with some force that the Benchers should represent localities or districts, as is the case with the Medical Council. This practice would enable all parts of the Province to be represented. The appointment of Bencher is an honorary one of even greater distinction than the appointment of Queen's Counsel, and we think these honors should in reason and in season be passed around, and be distributed among the leaders of the profession. We do not approve of the present system, which is rapidly becoming that of "once a Bencher always a Bencher."

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In reality the Benchers are little more than "bare trustees." They have very little active duty to perform, and outside of legal education and an occasional appointment, they have practically no discretion in administering the affairs of the profession.

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The present Benchers cannot be censured for anything that they have done, but might they not have done something in addition to the daily task laid down by the statute which creates them.

Would not a convention of the entire profession at least once a year, called by the Benchers to consider the interests of the profession, be beneficial? We think it would. Are not the Benchers the proper persons to take the initiative in this matter?

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We have always been of the opinion that a Bar Association for the Province would be highly desirable. Much good would result from an annual coming together of the entire Bar of the Province.

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The introduction of a reasonable percentage of young blood would not injure the present complexion of the administrators of the affairs of Law Society. There will always be a constant influx of young practitioners into the profession. Should not these young men be brought more directly in touch than they are at present with their own governors. The highest positions in the gift of the pepole of Canada in commerce, in the professions, in parliament, etc., are legitimate objects of the ambition of young men. Sir Charles Hibbert Tupper was Minister of Justice and Attorney-General of Canada before he was forty years of age. The Hon Mr. Dickey, who at present worthily fills these offices, is only some forty-two or three years of age. The election of young men would help to harmonize the younger members of the profession with the older.

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There are already a large number of candidates in the field; the latest among the recent nominations, who are not now Benchers, are Mr. J. J. Foy, Q.C., Mr. Geo. Kappelle, Mr. E. F. B. Johnstone, Q.C., and Mr. Hartley H. Dewart, all sound, representative men. Mr. Foy was formerly a Bencher, and was one of the progressive element during his incumbency of the high office. He is popular and able, and will no doubt be elected. Mr. Kappelle is one of the ablest members of the Junior Bar in the Province; he has filled many high positions most satisfactorily. He is a mass of energy, and it will be a reflection on the Junior Bar if he is not elected.

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Mr. Johnstone's ability and popularity should secure his election. Mr. Dewart is Crown Attorney for the County of York, and his many friends in justice to themselves should give him a loyal support. It is rather a pity that the different districts throughout the Province have not adopted a systematic plan of campaign. At present nearly every county has produced a crop of candidates, and if the Bar outside of Toronto does not elect its just proportion it will be because of the miscellaneous and what one might call guerilla warfare adopted.

ONTARIO CASES.

Recent Decisions not Pre iously Reported.

Carroll v. Beard.—Landlord and Tenant—Seizure of goods belonging to third party—57 Vic. ch. 43—R. S. O. ch. 143, sec. 42.—Before Boyd, C., Rose, J., and Robertson, J.—18th Feb. 1896.—Judgment on appeal by defendants from judgment of MacMahon, J., in favor of plaintiffs in action for damages for illegal distress upon goods in the possession of Joseph Yorke, a tenant of the defendants, which goods were claimed by plaintiffs under an agreement of the 11th December, 1889, by which, as plaintiffs alleged, the property was not to pass until the goods should be paid for. The lease was dated and the tenancy began in April, 1890. In 1894, by 57 Vic. ch. 43 (Ont.), it was enacted that sec. 28 of the Landlord and Tenant Act R. S. O. ch. 143, was repealed, and the following substituted:—"A landlord shall not distrain for rent on the goods and chattels the property of any person except the tenant or person who is liable for the rent, although the same are found on the premises," etc. Defendants contended that the property had passed to the tenant before the seizure, and also that the new statute did not apply to tenancies created before it came into force, referring especially to sec. 8, sub-sec. 43, of the Interpretation Act, R. S. O. ch. 1. The Court held against both contentions. Per Boyd, C.—"As to the question of the statute affecting existing leases, there appears to be no room for argument, if the language of R. S. O. ch. 143, in sec. 42, is to be read as applying to the new sub-section which by the Act of 1894 is substituted for the old sub-section in sec. 28 of the revised statute, and sub-sec. 1. The Legislature may not have intended that the new provision should apply to existing leases; it may have been an oversight to leave sec. 42 of the revised statute so that it applies to the new provision which is substituted for sec. 28. But, if so, the modern method is to leave the remedy in the hands of the Legislature, and not to qualify the enactment according to the presumed intention by judicial amendment." Per Rose, J.—"The legislation is remedial, and must receive the most liberal construction so as to suppress the mischief aimed at and advance the remedy desired to be given by the plain language of sec. 42, the substituted section is made to refer to tenancies created after 1st October, 1887, and there is nothing in the revised statutes nor in the 57th Vic. to require or justify the reading of sec. 43 otherwise than as plainly written. Any other construction would work an inconsistency in the working out of the provisions of the Act." Appeal dismissed with costs. Arnoldi, Q.C., for defendants. Moss, Q.C., for plaintiffs.

Gurofski v. Harris.—18th Feb., 1896. — Fraudulent conveyance preferring one creditor—Object, to avoid payment of damages for slander.—Judgment on appeal by defendants from judgment of Armour, C.J., at the trial at Toronto, in favor of plaintiff in an acton brought by her, on behalf of herself and all other creditors of defendant Harris, to set aside a conveyance by defendant Har-

ris to his daughter, defendant King, of a house and lot in the city of Toronto, alleged by plaintiff to have been made without consideration, and for the fraudulent purpose of defeating her claim for damages for slander. Defendants contended that the conveyance was made in good faith for valuable consideration. Appeal allowed with costs, and action dismissed with costs. Per Boyd, C.:—"Though it was found that the deed impeached was made with the intention to defeat the action for slander then pending, yet no reasons are given, and there is no finding impeaching the credibility of the witnesses, who affirm that there was a debt existing between the father and daughter. Having carefully read and compared all the evidence, I am lead to believe that a debt to the extent of $600, the full value of the land, is satisfactorily proved to have existed, and in satisfaction of which the conveyance was made and accepted. The attack being under the statute of Elizabeth, by one who became a creditor by reason of the judgment obtained in the action of slander, three months after the conveyance—and there being no other creditors—it is shown by Cameron v. Cusack, 17 A. R. 489, that the preferring of one creditor, even though there be an impending action for tort, of which both are aware, is no ground for displacing the transaction as fraudulent and void. As to the form of the notes, being without interest, that is the ordinary way in which Jews deal with each other—not exacting money from their own kindred. Special expenditure on a marriage feast is also a Jewish custom of great antiquity." Watson, Q.C., for defendants. F. E. Titus for plaintiff.

Brown v. Carpenter.—26th February, 1896.—Before Boyd, C., Ferguson and Meredith, J.J.—The Law Courts Act, 1895, Sec. 44, Sub-Sec. 3—New trial and appeal—Rule 1509. Judgment on appeal by defendant from order of County Court, of Ontario, in term, of 26th December, 1895, dismissing motion by defendant for a new trial on the ground of the discovery of new evidence. The plaintiff objected that no appeal lay to this Court. Held, that under the Law Courts Act, 1895, sec. 44, sub-sec. 3, a motion for a new trial on that ground must be made before the County Court, and there is no appeal. The order in question would have been appealable to the Court of Appeal under R. S. O., ch. 47, sec. 41, sub-secs. 3 and 4; but this provision ceased to be law on the 1st January, 1896, when the Law Courts Act was proclaimed; and the present appeal was not launched until the 21st January, 1896. Rule 1,509 relates to pending business, and, applies, first to cases where an appeal lies under the Law Courts Act; and, secondly, to cases where an appeal lay under the former law, but no appeal lies under the Law Courts Act, and in these cases where an appeal has been commenced it shall be prosecuted under the old procedure. This appeal falls under the latter branch of the rule —a matter of appeal which obtained under the former but not under the present practice; and it cannot be prosecuted in this Divisional Court, for want of jurisdiction. McGillivray (Whitby) for defendant. Shepley, Q.C., and Farewell, Q.C., for plaintiff.

Patrick v. Walbourne.—The Divisional Court—Meredith, C.J., Rose and MacMahon, J.J.—The 10th February, 1896.—Mechanic's

Lien—Mortgagee losing priority as to increased value—Property destroyed by fire. Judgment on appeal by defendants Cawsey, Baldwin, and A. Bicknell (lienholders) from an order of Falconbridge, J., allowing an appeal by defendants Hughes and Barwick, and the Oxford Permanent L. and S. Company (mortgagees) from the finding and report of a referee in a proceeding under 53 Vic., ch. 37, to enforce a mechanic's lien. By the report of the referee the mortgagees were found to be prior mortgagees within the meaning of the Act, but the appellants were declared to be entitled to rank on the increased value in priority to the mortgagees. Falconbridge, J., held that the building having been destroyed by fire the lien was at an end, as far as the mortgagees were concerned. Appeal dismissed with costs. J. Bicknell for appellants. Aylesworth, Q.C., for mortgagees.

Reg. v. Cable.—27th February, 1896.—Crown case reserved.—Admissions made by prisoner as evidence in chief.—Before Armour, C.J., Falconbridge, J., and Street, J.—Judgment on Crown case reserved by the Chairman of the General Sessions of the Peace for the County of York upon an indictment and conviction of defendant for receiving stolen goods, the question being as to the reception of evidence of admissions made by defendant. Held, that according to the decision in Reg. v. Day, 20 O.R. 209, the evidence of W. J. Barr of admissions made to him was admissible as evidence in chief on the part of the prosecution against the prisoner, and was rightly made use of for the purpose of contradicting the prisoner's testimony. Conviction affirmed. Du Vernet and T. E. Williams for defendant. J. R. Cartwright, Q.C., for the Crown.

Mones v. McCallum.—20th February, 1896.—Receivor of debtor's interest in estate of his father.—Action by receiver against executor for administration. Judgment on ex parte application by judgment creditors for leave to receiver to bring an action. The receiver was appointed at the instance of the judgment creditors, Mones & Co., to receive the interest of defendant McCallum in the estate of his deceased father for satisfaction of judgment debt. The proposed action is for administration of estate of father, the sole acting executor refusing to give any definite statement of his dealings with the estate. Street, J.—The right of a judgment creditor of a legatee or devisee to bring an action is by no means clear, but the Court in McLean v. Bruce, 13 P.R. 504, appears to have been inclined to think it would lie, although Elmsley v. McAuley, 3 Bro. C.C. 624, leads to an opposite conclusion. Without expressing an opinion as to whether a judgment creditor, under such circumstances, is entitled to obtain a judgment for administration, I think he should have to try his right to do so. Order made for leave to bring action as asked, the consent of Mones & Co. to be filed with the application for the writ of summons. D. Armour for motion.

Merchant's Bank v. Smith.—Smith v. Merchant's Bank.—Merchant's Bank v. Cleland.—8th February, 1896.—Consolidation of Actions. Judgment on motion by Edward Smith to consolidate these three actions, or to stay the

first and third till the second is tried. Applicant is a defendant in the first action, plaintiff in the second, and not a party at all to the third, though he was a party to the note sued on in the third. Motion dismissed without costs. Knapp (Prescott) for applicant. F. A. Magee (Ottawa) for plaintiffs.

Ritchie v. Waterloo Mutual Fire Insurance Company.—27th February, 1896.—Renewal receipt R. S. O. ch. 167, sec. 107 and 56 Vic. ch. 32, sec. 9.—Variation of statutory condition No. 3.—Before Armour, C.J., and Falconbridge and Street, JJ. Judgment on appeal by plaintiff from order of County Court of County of Oxford in term dismissing motion by plaintiff to set aside nonsuit entered at the trial in action upon a policy of fire insurance. The policy expired, and defendants issued a renewal receipt for continuance of it for 36 months from its date, and after receipt issued premises became vacant and were burned down. Held, that under R. S. O., ch. 167, sec. 107, as amended by 56 Vic., ch. 32, sec. 9, the effect of the renewal receipt was to continue the policy in force for the period of renewal and the policy still continued to be the only contract of insurance between the parties. Although the loss was payable to one Allenby, yet the policy was subject to all the conditions endorsed upon it, and unless the conditions were complied with the loss could not become payable. The variation of the statutory condition No. 3 on policy, which provided for notice to Company if premises became vacant, is not unjust or unreasonable, having regard to Peck v. Agricultural, 19 O.R. 494. There being no evidence of waiver and none of notice to or knowledge by the defendants of the vacancy, the judgment of Court below must be affirmed. Neither can the cancellation after the fire of the policy, which covered other property under the circumstances to be held a waiver of condition. Appeal dismissed with costs. J. Bicknell for plaintiff. W. H. P. Clement for defendants.

Wanless v. Lancashire Ins. Co., et al.—5th February, 1896.—Co-insurance clause.—"Just and reasonable."—R. S. O., ch. 167, sec. 116. In Wanless v. Lancashire Insurance Company, the defendant company and its co-defendant, the British America Assurance Company, appealed to the Court of Appeal from the judgment of Armour, C.J., in favor of the plaintiff, holding that the 75 per cent. co-insurance clause in the defendant's policies was not within sec. 116 of R. S. O., ch. 167. The co-insurance clause is as follows: "It is a part of the consideration of this policy and the basis upon which the rate of premium is fixed that the assured shall maintain insurance on the property covered by this policy of not less than 75 per cent. of the actual cash value thereof, and that failing to do so the assured shall be a co-insurer to the extent of such deficit, and in that capacity shall bear his, her, or their proportion of any loss." The learned Chief Justice held that the clause in question was not part of the contract between the parties, but an addition to the conditions and not being inserted as required by the statute, but appearing in the body of the policies, was void. He did not decide whether, if the clause were valid it was "just and reasonable."

Lash, Q.C., and H. D. Gamble for defendants British America Assurance Company. McCarthy, Q.C., and Frank Ford for defendants Lancashire Insurance Company. George H. Watson, Q.C., for plaintiffs. Judgment was reserved.

Harding v. Bennett.—20th February, 1896.—Quo warranto.—Unseating Municipal Councillor.—Before Street, J. Judgment on motion in nature of quo warranto to unseat Robert W. Bennett, elected as Alderman for the City of London, on the ground of his being interested in a contract with the corporation, and that he lacked the necessary property qualification. The City Council in 1892 passed by the requisite two-thirds vote a by-law exempting the Bennett Manufacturing Company, Limited, for seven years from payment of taxes, except school rates. Though some confusion exists the learned Judge thinks there is not a shadow of doubt that when the Council passed the by-law there was only one company to which it could apply, and that the partnership existing between defendant and his three brothers, and known as the Bennett Furnishing Company, is that company. But this case is, notwithstanding, clearly distinguishable from Reg. ex rel. Lee v. Gilmour, 8 P.R., 514, because in this case there is no evidence, either in the by-law or external to it, of any contract with the corporation. It simply grants exemption to the company so long as they employ a certain number of hands, etc. The distinction between an exemption founded on a contract and an exemption without a contract seems to be provided for in 56 Vic., ch. 35, sec. 4, amending section 77 of the Municipal Act, 1892. In this case there is exemption without contract and so no disqualification. The learned Judge is further of opinion that respondent was entitled to qualify upon his rating upon the assessment roll of 1895 as joint owner of a freehold estate rated at $10,000, under sec. 86 of the Act, the qualification intended by it not being confined to "electors": Reg. ex rel, McGregor v. Ker, 7 U. C. L.J. O.S. 67. The respondent is also qualified under sec. 73, as he has an interest called for by it, as under the terms of the by-law the company remained liable to pay school rates, and those rates by sec. 110 of the Public Schools Act, 1891, must be levied upon taxable property, and by 55 Vic., ch. 60, sec. 4, the city cannot exempt any ratable property from payment of them. Nor is the case affected by the amendment added to sec. 77 by the Act of 1893, read with sec. 73, because the respondent does not appear to have any property "exempt from taxation," by which must be meant exception from payment of all taxes. Where property is entirely exempt no person is rated on the assessment roll in respect of it, but where only partly exempt, the owner can qualify upon it as property liable to taxation. With regard to the other properties upon which respondent qualified, the learned Judge holds in favor of relator, but the other qualification being sufficient, he dismissed the motion with costs. Hellmuth (London) for relator. Moss, Q.C., for respondent.

Garland v. City of Toronto.—Negligence.—Damages.—New trial. This was an appeal by defendants from order of Chancery Divisional Court setting aside

non-suit entered by Meredith, J., at the trial at Toronto, and directing a new trial of an action for damages for negligence. Samuel Garland, plaintiff, was engaged as a day labourer to work upon building of the new Court-house in the City of Toronto, and while so working had his foot crushed by a derrick, and was seriously injured, owing to the alleged negligence of defendants and of one Alfred Amary, who, as was charged, was entrusted by defendants with the superintendence of the work of lifting stone by the derrick. The trial Judge held that the defendants were not responsible for the negligence of Amary. The Divisional Court held that there was no evidence which should have been submitted to the jury. Appeal allowed with costs, the Court holding that in absence of express authority it is impossible to say that there was any case to be submitted to the jury. It seemed to be a case of two workmen, neither having authority to direct the other. Fullerton, Q.C., for appellants. W. J. Clark for plaintiff.

Attorney-General of Ontario v. Cameron.—Special case.—Succession duties payable to the Crown, etc. This was a judgment of the Honorable Mr. Justice Rose on a special case; stated for opinion of the Court as to the succession duty payable to the Crown under 55 Vic. (O.), ch. 6, upon the estate of Alexander Cameron, deceased. The probate value of estate was $556,000. The questions are as follows:—1. Is the whole capital left by the testator subject to duty payable forthwith in satisfaction of all succession duty payable to the Crown? 2. Or, is the only duty payable forthwith a duty on the value of the annuities; and is the computation and payment of the duty on the other legacies and the capital sum postponed until the payment and distribution of each legacy or part respectively; that is to say, when the legatees actually receive them in possession? 3. If duty is payable and paid on the value of the annuities only at present, will duty be subsequently payable on the capital producing such annuities when it becomes distributable in legacies, or as part of the final distribution of the estate? 4. If duty is payable on the annuities is it to be computed on the actual cash value at the time of death of the testator, or upon the value calculated at five per centum per annum, or is the duty to be determined by the rule, method and standard of mortality, and of value employed by the Provincial Inspector of Insurance in ascertaining the value of policies of life insurance and annuities for the determination of the liabilities of life insurance companies? The learned Judge answers the first question in the negative. The second:—The duties on present estates are due and payable at the death of the testator, or within eighteen months thereafter. The duties on future estates, when they take effect in possession or come into actual enjoyment. The third in the affirmative. The fourth:—Duties on annuities payable immediately are to be assessed on the cash value at the date of the testator's death. The duties on deferred annuities are to be assessed upon their value at the time the right of possession accrues. J. R. Cartwright, Q.C., for plaintiff. E. D. Armour, Q.C., for defendant.

Reg. ex rel. Long v. Macdonald.—Quo warranto—Application to unseat Alderman, etc. This was a judgment of the Master in Chambers at Toronto on an application to unseat E. A. Macdonald as Alderman for Ward No. 1, Toronto, on ground that he is disqualified under Consolidated Municipal Act, 1892, and had not at time of election, as proprietor or tenant, a legal or equitable freehold or leasehold or partly leasehold and partly freehold, or partly legal and partly equitable rating in his own or wife's name on last revised assessment roll. Respondent, in showing cause to application, claimed to qualify on freehold and leasehold. (1) On freehold under part of section (73) (1) On Consolidated Municipal Act, 1892, which says that if one is at time of election in actual occupation of any freehold rated in his own or wife's name, he will be entitled to election if value of such freehold is actually rated in assessment roll at $2,000 clear, (2) On leasehold as yearly tenant of room 21, Freehold Loan building, Toronto. Held, as to freehold, that facts as proven in present case do not entitle respondent to qualify under that clause of sec. 73, as contended. As to leasehold, held that evidence as to leasehold given by Mr. S. Small, combatting that of respondent is preferable, and that, arriving at this conclusion, it is unnecessary to consider question as to assessment of room 21 to respondent for year 1895, although respondent certainly not assessed on voters' list or assessment roll used for election complained of. Order to go declaring E. A. Macdonald unseated, and setting aside election with costs to be paid by respondent to relator, and ordering new election. D. Henderson for relator. W. H. Wallbridge for respondent.

Spence v. G. T. R. Company—Negligence—Non-suit—Damages, etc. This was a judgment on a motion by plaintiff to set aside judgment of non-suit entered by Meredith, C.J., in action for damages. While endeavoring to post a letter in the post-office car on a moving train at the Union Station in the City of Toronto, the plaintiff, who was running alongside of the car, fell over a post projecting some inches above the ground, and the wheel of the car crushing his arm, it was afterwards amputated. The post was planted under the direction of defendants, the Grand Trunk and Canadian Pacific Railway Companies, to show the workmen that the station ground was to be filled in to its height, and in ground which it is contended is used by passengers when boarding trains. Counsel contended that the defendants provided under sec. 264 of the Railway Act of 1888, a post-office car, for which they were paid by the Government, with slips in the door to post letters, and invited the public to use it. The non-suit was entered on the ground that the starting of the train revoked the invitation, if any, but it was contended that the question of revocation as well as that of contributory negligence by plaintiff were questions for the jury. Per curiam, the plaintiff was a mere licensee. The invitation, if any, was by the Post Office Department, and not by the defendants. See remarks of Chief Baron Piggott in Sullivan v. Waters, 14 Ir. C. L. Rep. 460, as to duty of defendants to a licensee. Motion dismissed with costs. J. J. Maclaren, Q.C., for plaintiff. Osler, Q.C., for defendants the Grand Trunk Railway Co. Wallace Nesbit and Angus MacMurchy for defendants Canadian Pacific Railway Co.

Jarvis v. City of Toronto, 18th Feb., 1896.—Voluntary grant by municipality to pay costs in action by citizens for public good—Injunction restraining. —Judgment on motion by defendants (the corporation of the city of Toronto, and the Mayor and Treasurer) to dissolve interim injunction granted by Falconbridge, J., restraining the defendants from paying $1,500 to J. T. Johnston to reimburse him the costs incurred by him in an action brought by him on behalf of all consumers of gas in the city against the Consumer's Gas Company. The question raised was whether the City Council could lawfully make a grant of money to Mr. Johnston for the purpose mentioned. Street, J., I am of opinion that the Council cannot do so, for the reason that, as the facts appear before me, the grant of the money means simply the giving away to Mr. Johnston of $1,500 of money of the city. There is no liability to him on the part of the city at all, and the city after paying it will stand in no better position with regard to its rights against the Gas Company than it did before doing so. I can find no consideration for the payment of the money, and there is no authority, express or implied, in the Municipal Act (which is their guide) authorising the Council to make a gift of money under such circumstances. If Mr. Johnston had instituted the action upon a promise on the part of the city corporation to indemnify him it may well be that such a promise would, under the circumstances, have been within their powers, and no one would dispute that it would be simple justice to make it good; but voluntarily to pay him, after the litigation, the costs which he has incurred, without any obligation to do so, would be an act which, if done by an individual, would be one of simple generosity, and which a Municipal Council, in my opinion, has no authority to do: Dillion on municipal corporations, 4th ed., secs. 89, 147 (a); Reg. v. Lichfield, 4 Q. B., 893; Kernaghan v. Williams, L. R. 6 Eg. 228. Injunction continued till the hearing, and costs to be dealt with there unless otherwise ordered. Robinson, Q.C., and John MacGregor for defendants. Shepley, Q.C., and Lobb for plaintiffs.

SITTINGS OF COURT.

Spring Sittings.

A list of the spring sittings of the High Court of Justice will be found in our January and February numbers.

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Supreme Court.

The Supreme Court of Canada holds three sittings annually as follows:—On the third Tuesday in February—The first Tuesday in May—The first Tuesday in October. Date of spring sittings 1896—Tuesday, 5th May.—Last day for filing cases.—14th April. —Last day for depositing factum. —18th April.—Last day for inscribing appeal.—20th April.

Court of Appeal.

There are five sittings of the court each year, at such time as the judges may from time to time appoint. The dates now fixed are the first Tuesday in March and September, and the second Tuesday in January, May and November. Date of winter and spring sittings 1896.—Tuesday, 14th January—Tuesday, 3rd March—Tuesday, 12th May.

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Divisional Courts.

Rule 1,429 says: A Divisional Court shall sit every week except during the long and Xmas vacation, and beginning on Monday of each week shall continue from day to day, except Saturday, until the business before the Court is disposed of. Every notice of motion for appeal to a Divisional Court must set out the grounds of the motion or appeal. The notice must be given 7 clear days, and the motion must be set down two clear days before the first day of the sittings for which notice is given.

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County Court Sittings.

COUNTY OF YORK.

Monday 13th April, non-jury sittings.

Tuesday, 12th May, County Court and General Sessions.

Tuesday, 8th September, County Court and General Sessions.

Monday, 19th October, non-jury sittings.

Tuesday, 1st December, County Court and General Sessions.

COUNTIES OTHER THAN YORK COUNTY.

Tuesday, 7th April, non-jury only.

Tuesday, 9th June, County Court and General Sessions.

Tuesday, 6th October, non-jury only.

Tuesday, 8th December, County Court and General Sessions.

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Changes in Circuits.

Mr. Chief Justice Meredith will take the jury sittings at Brockville on the 18th May, and Mr. Justice MacMahon the non-jury sittings at Belleville on the 9th March.

Mr. Justice MacMahon will take the St. Thomas non-jury sittings, beginning 16th March, instead of Mr. Justice Street, and Mr. Justice Street will take the Owen Sound non-jury sittings, 1st June, instead of Mr. Justice MacMahon.

FARM CROSSINGS OVER RAILWAYS—SEVERANCE OF OWNERSHIP—ABANDONMENT OF EASEMENT.

The Court of Appeal in England have recently (Midland Railway Company v. Gribble, '95, 2 Chancery 827) decided an interesting and important question upon which there does not seem to have been any express decision hitherto either in England or in this country.

As the provisions of our statutes are similar to those of the English Act this decision will probably become an authority in our courts. A line of railway being made through the land of R., a level crossing was provided pursuant to an award under the Railway Clauses Consolidation Act, 1845, s. 68, and the owner's right to a right of way over the crossing was reserved to R. and his successors in title by the conveyance, in which the company covenanted to maintain the crossing. Afterwards R. sold his land on one side of the railway to P., and subsequently the land on the other side was sold by R. to G. In the conveyance to P. there was no grant of a right of way to P. over the land then retained by R., and there was no reservation by R. of any right of way over the land conveyed to P. Under these circumstances G. insisted on his right to use the crossing over the railway, but it was held by the Court of Appeal that upon the conveyance to P. there was no further right to use the crossing, and that the company were at liberty to stop it, notwithstanding their covenant and the provisions of the statute above quoted, which is as follows: "The company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, that is to say, such . . convenient gates . . . and passages over . . the railway, etc.' The Court point out that this crossing was made by the railway company for a special purpose, namely, to maintain a communication between the lands of the same owner or occupier which have been intersected by the railway, and that as soon as such special purpose is at an end, the accommodation being no longer required, the obligation to furnish it also ceases. Upon a severance of the land without any reservation of any right of way, there was an end of the right of way over the railway, the easement, it was held, was finally abandoned and would not be revived even if the lands on the two sides of the railway should again become vested in the same person. The importance of this decision

and its applicability to the law in this country arises from the fact that the right to such crossings (called in our Railway Act 51 Vic. chap. 29), "farm crossings," is likewise restricted by section 191 of the Act, to persons across whose lands the railway is carried and for whom the railway company shall make crossings convenient and proper for the crossing of the railway by farmers' implements, carts and other vehicles. This case is said by Lord Justice Lindley, in delivering his judgment, to have raised a point which, so far as he is aware, was new but, in his opinion, not difficult.

A. MACMURCHY.

THE LAW SCHOOL,

Osgoode Hall, Toronto.

Notes.

The law school at Osgoode Hall will close on Thursday, April 30th, and the examinations will probably begin on Thursday, May 7th. It is thought that the same time table will be adhered to this year; of having the pass papers written on in the morning, and the honors papers on the same subject in the afternoon of the same day. Students will be allowed three hours on each paper. The hours are: mornings, pass papers, 9.30 a.m. to 1 p.m. Afternoon, honor papers, from 2 p.m. to 5 p.m.

*

Students in the third year must pay the examination fee of $160, before presenting themselves for examination.

*

Applications for the examination must be filed with the Secretary of the Law Society, at least one week before the date of the examination.

*

It is estimated that the work of the final year covers 10,500 pages, exclusive of the heterogenous mass of Rules of Practice, etc., badly arranged, and the bulk of the Revised Statutes.

*

It is said that the winner of the Queen's Plate at the Woodbine next May will have one of the final year as a mount.

*

A small distinguished looking gentleman, called Mr. Smythe, hopes to be down to 75 lbs. by that date. Who will deny that final year reading is a good way to reduce weight.

*

The cricket club will have its annual meeting in a few days.

*

Nearly eighty per cent. of the students in attendance at the law

school are now out of their offices reading for the examinations.

*

The final year picture has been taken this year by Farmer Brothers, photographers, Yonge St., and will be ready by May 1st.

*

We hear that several members of the third year class are to become Rt. Hon. Benedicts immediately after the results of the final year are announced.

*

Osgoode will receive a fair sprinkling of "good sports" from Varsity, Queen's and Trinity next September, and football ought to boom once more.

*

The Law Students Helper published in Detroit, Mich., is the brightest law paper we have seen.

*

It is an example of what law students can do when they try. The paper has a regular correspondent at each law college in the United States; and a perusal of this column contains in a nutshell what is going on in the many excellent law colleges of the United States. We regret we do not hear more of Yale, Harvard, University of Michigan, and the other law colleges across the line.

*

The Case He Tried.

He was a friend of college days,
Conversant with his books—
At least I take it that he was
If one might judge from looks.

He spoke of Coke, and Lyttleton,
Of Stephen, and the rest;
Of all the legal writers held
That Blackstone was the best.

He was a Latin whirlwind,
He floored me with his Greek;
His learning towered o'er me
Like a mountain's hoary peak.

I have watched this legal comet
With his world-illuming tail,
But the only case I've found he tried
Was a case of English ale.

IMPORTANT DIVISION COURT JUDGMENTS.

Young v. Ward.—1st Division Court, York.—Important Division Court Judgment. This is an application on notice to the plaintiff's solicitor, for an order under Rule 256 of the Division Court directing the clerk of this Court to enter satisfaction in the Procedure Book on the ground of payment of the judgment and costs.

The facts are shortly these. The plaintiff, having obtained a judgment in this Court, issued an execution against goods, which was returned "nulla bona," and thereupon pursuant to sec. 8 of 57 Vic., ch. 23, Ontario, sued out of this Court an execution against the lands of the defendant and placed the same in the hands of the sheriff of Ontario. Other ex-

ecutions were then in his hands against the defendant, but not issued out of any Division Court. Before anything was done under this execution against lands, the defendant paid to the sheriff the amount of the execution and costs.

The plaintiff now contends, and the other execution creditors also who appeared by counsel, that though the money was paid by the defendant in full of this execution, still it must be distributed by the sheriff amongst all the execution creditors pro rata in pursuance of the Creditors' Relief Act and therefore the judgment in this Court would only be satisfied in part, and therefore no satisfaction should be entered.

I am of opinion that this Act does not apply. It only has its operation by virtue of a levy under an execution issued out of the High Court or County Court, and not out of the Division Court the money levied by the sheriff on a Division Court execution must by sub-sec. 3 of section 8, of 57 Vic., ch. 23, Ontario, be paid by him to the clerk of the Division Court out of which the execution issued The sheriff of Ontario must therefore pay the money realized under the execution in this Court to the clerk of this Court, and cannot distribute it as contended for by the plaintiff, and the other executio. creditors. The order must therefore go, directing the clerk of this Court to enter up satisfaction of the judgment in the Procedure Book as soon as the sheriff returns the money to him.

F. M. Morson,
J.J.

7th March, 1896.

This judgment was appealed on a motion for prohibition and was argued on March 19th, before Boyd, C., who reserved judgment.

THE RULES COMMISSION.

The commissioners for consolidating the rules held a further meeting on Saturday, March 21st, when various amendments of the practice were discussed. Amongst others the following:

(1) Restoration of the former practice as to appeals from Masters and from orders-in-chambers.

(2) The adoption of the last English rules respecting actions by and against firms or persons carrying on business under a business name.

(3) The manner of making the interest of a partner in a firm available for the payment of his individual debts.

(4) The admission of evidence at the trial of the depositions or parts thereof of officers of a corporation examined for discovery.

(5) The garnishing of persons or corporations, even though not within Ontario, in respect of

debts for which the primary creditor could sue within the jurisdiction.

(6) The inspection of property, the inspection of which is necessary for the proper determination of the questions in dispute in an action, though the property may not be, strictly speaking, the subject of the action.

(7) In bailable proceedings the substitution of procedure similar to that in force in England for the present Ontario practice. The effect of this would be to abolish bail to the sheriff and require security corresponding to special bail to be given to the plaintiff at the outset of the proceedings.

It is understood that the commissioners will be glad to receive any suggestions from the profession on these subjects. Suggestions may be communicated to Mr. Thomas Langton, Q.C., Toronto.

THE LAW SOCIETY OF UPPER CANADA.

David B. Reid, Q.C., in his Lives of the Judges, says: "The bar of Ontario is in some respects the offspring of the bar of Quebec, as it existed prior to the division of the old Province of Quebec into the two separate provinces of Lower Canada and Upper Canada."

From the same work we find that in 1785 there was passed in the province an ordinance, one of the provisions of which enacted: "That no person shall be commissioned to practice as a barrister, advocate, solicitor or proctor, unless examined by some one of the first or most able barristers in the presence of the Chief Justice or two justices of the Court of Common Pleas, and found of fit capacity."

This was really the first step in the formation of the Law Society. An old parchment note book, one of the treasures of the Osgoode Hall library, contains the minutes of the first meeting held for organization purposes, of which the following is an extract: "Newark, July 17th, 1797. —In obedience to the direction of an Act passed this session in the Parliament of the said province, the following assembled in Wilson's Hotel, at eleven o'clock in the forenoon of the above day: John White, A.-G., Robert D. Gray, S.-G., Angus Macdonell, James Clark, Christopher Robinson, Allan McLean, William D. Powell, Alexander Stewart, Nicholas Hagerman, R. C. Beardsley."

In his account of this gathering Mr. Read says: "The subject of the meeting being taken into consideration, it was moved by the Attorney-General that the Act of Parliament of the prov-

ince be read, and it was read accordingly by Mr. Beardsley, the junior."

*

"The subject of the meeting referred to was the carrying out of the Act read by Mr. Beardsley, 37 George III. cap. 13, passed 9th July, 1797, entitled 'An Act for the better regulating the practice of the law,' by which the persons theretofore admitted to practice in the law, and practising at the bar of any of Her Majesty's courts in the province, were authorized to form themselves into a society, to be called 'The Law Society of Upper Canada,' 'as well for the purpose of establishing of order among themselves as for the purpose of securing to the province and the profession of a learned and honorable body to assist their fellow-students, as occasion may require, and to support and maintain the constitution of the said province.' "

Newark is now known as Niagara.

The records show that there was no convocation of benchers of the society from 1812 to 1815. Read says: "This hiatus of three years was doubtless occasioned by the war which during that period raged with the United States."

*

Up to 1825 the curriculum for law students was what would be described by the students of today as a cinch. In that year, however, a change was made, as shown by a resolution passed by the benchers, and which appears in the Law Society's Journal of 1st July, 1825. It reads: "That whereas no small injury may be done to the education of that portion of the youth of the country intended for the profession of the law by confining the examinations to Cicero's Orations, and it is advisable further to promote of the sixteenth rule of this society, passed and approved of in Hilary term, 60 George III., it is unanimously resolved that in future the student, on his examination, will be expected to exhibit a general knowledge of English, Grecian and Roman history, a becoming acquaintance with one of the ancient Latin poets, as Virgil, Horace or Juvenal, and the like acquaintance with some of the celebrated prose works of the ancients, such as Sallust or Cicero, De Officiis, as well as his orations, or any author of equal celebrity which may be adopted as the standard books of the several district schools; and it will be expected that the student will show the society that he has some reasonable portion of mathematical instruction."

*

The journal of the society shows that the benchers decided in the first year of the reign of George IV. "that the society apply a sum, not exceeding £500, in the erection of a building for

the use of the society, to be called 'Osgoode Hall.' The site then chosen is not quite clear, but the present Osgoode Hall is on the land purchased of Sir John Robinson in 1828, or about that time, for £1,000 .The society had labored under disadvantages for "want of buildings wherein to transact business, collect and deposit a library, and to accommodate the youth studying the profession."

*

Here is another extract from the Journal: "At a convocation of the benchers, held on the 26th day of June, 1828, 'the Attorney-General (John B. Robinson) proposed that a hall and buildings, sufficient for the present purposes of the society, not to exceed £3,000 in expense, and to form the central edifice of future buildings, to be extended laterally as the increase of the society may hereafter require, should be undertaken.

"The Solicitor-General (Henry J. Boulton) proposed a smaller building, which might cost about £700, to be built near the street, for the present purpose of the society, and at a future day answering some other subordinate use of the society.

"The proposal of the Attorney-General was approved, and a plan to that extent for that purpose was desired to be obtained."

*

In his "Toronto of Old," Dr. Scadding refers to Osgoode Hall at length. Following is an extract: "The east wing of the existing edifice was the original Osgoode Hall, erected under the eye of Dr. W. W. Baldwin, at the time treasurer of the society. It was a plain, square, matter-of-fact brick building, two storeys and a half in height. In 1844-46 a corresponding structure was erected to the west, and the two were united by a building between, surmounted by a low dome. In 1857-60 the whole edifice underwent a renovation, the dome was removed, a very handsome facade of cut stone, reminding one of the interior of a Genoese or Roman palace, was added, with the court-rooms, library, and other appurtenances on a scale of dignity and in a style of architectural beauty scarcely surpassed by the new law courts in London (Eng.)"

CHARGES LACK OF UNIFORMITY.

For Non-Ligitous Business.

For years back a source of dissatisfaction to Ontario practitioners has been the want of some standard or regulation of fees in business not in court. The profession is well aware that any given two offices will be found to charge very different

fees for the same services, and that in 50 per cent. of the offices there are different sets of fees for different clients and different sets of fees for different sets of circumstances—and yet for all practical purposes the work being the same.

Wherever legal business is done there will be found at least some who wish to get their work done for small fees, and who are always willing to occupy a half hour in an endeavor to strike a good bargain. This class of client has had concessions so often and has whispered it so often to his friends, that the class is soon found to grow rapidly and to gather after the manner of the snowball that is rolled through a field of snow. Eventually you get used to it and look upon it as a regular thing to have to reduce your charges. But in this disagreeable position you are not alone, for you soon run across similar transactions in the offices across the street and around the corner. By and by, too, you find that the man whose patronage you thought you had permanently secured by your good nature, has taken his business to your opposition across the street. You have been keeping him by cheap fees, but you have now to find that you have been under-bid. Some will say that this is exaggeration, and that, after all is said, clients will go to the lawyer they want regardless of difference in charges. But often the client has no choice or the business in hand can be done about as well by one as by another. And as to those who do—for certainly there are some who are not influenced by law charges—they can generally be narrowed down to two classes. When a man has ample means he goes to the legal adviser who suits him, and is not to be lured to another office by cheapness; and when very serious consequences are involved men generally secure the best lawyer from their point of view, without a thought to the difference in his charges from those of others. But there is certainly an important element everywhere that the profession unhappily cannot be independent of, whose patronage is secured by the office giving legal services below the usual price. The new practitioner has a horror of being unprofessional, and firmly holds out to his reasonable and time-honored fees, but he soon finds he has lost a client to a rival in the next block, and he resolves to "fight the devil with fire." He remembers there is such a thing as retaliation, and soon the account is squared as between those two lawyers by the second one having gone one better; but as between them and their two respective clients it is obvious that the clients are still ahead. There is only one avenue of relief from such a condition of affairs, and that is a tariff of fees voluntarily subscribed to by all the profes-

sion in a particular locality. The natural sub-division is into counties, and by means of the associations formed in nearly every county for the formation of county law libraries it would seem the arrangement of tariffs should not be matter of great difficulty. It would, moreover, we think, tend to bring about those cordial and friendly relations which grow out of associations with common interests and objects. No one can be blind to the fact that as in every walk in life where every vocation is more or less a competition, there is more or less a professional jealousy among lawyers; and if this feeling sometimes increases to bitterness we think a good deal of it can be traced to this system of underbidding. In some counties tariffs have already been arranged for, and are found to be a great improvement on the old system. But where the old system continues, and everyone regulates his charges by a regard for making himself solid with the client, or so as to spirit away another's client, we would be inclined to look upon that district as Hamlet did on his country when he said,

"There is something rotten in the state of Denmark."

Not long since a subscriber to The Barrister, after abusing in good round terms his professional brethren, who he said were responsible for the trouble, wound up by saying to us, "Well, I can stand it if they can." Certainly it looks as though things sadly needed mending when they reach such a stage.

WIG AND WIT.

The City of Hamilton contains some celebrated horse sports, who figure in all the big events every May at the Woodbine race track. One of these well known and popular gentlemen is named Mr. H——— (sr.) The story is told of how Mr. H——— was, up to the very eve of the celebrated race, in need of a "light weight mount" for one of his entries at the Woodbine. He had searched day and night for weeks for the proper man, but without success, and had just made up his mind not to start his horse, when he was informed by a well-known Hamilton brewer that if he went down to Toronto he would find what he desired in the person of "Little Tommy F———," said to be an office boy in the employ of Bain & Co., barristers. Accordingly Mr. H——— went down to Toronto on the following morning and, swinging the door of the law office open, merrily said, "Is there a boy called 'Little Tommy F———, here?" Little Tommy

F———— happened to be in the front of the office, and hearing his name, turned around and said, "I'm the man you want." Mr. H———, to his amazement, was confronted by the gigantic presence of a 319-pound barrister, who afterwards became one of our ablest High Court judges, and is styled "Hon. Tommy F————."Mr. H——— left the office swearing vengeance on the perpetrator of this trick.

*

At a public dinner in Philadelphia some years ago, the presiding officer, with a cigar in hand, asked Mr. Evarts for a match, meaning that that gentleman should hand him the box just beyond on the table. When Mr. Evarts said, "I have none," the presiding officer rejoined, "Very well, I shall have to introduce you as the matchless orator from New York." And yet some people say that Philadelphia is "slow."

*

Q.—What crime involves the least risk?

A.—A safe burglary.

Q.—Why are oysters poor lawyers?

A.—Because they lose all their cases as soon as they come to the bar.

*

Principal H———, at the Law School, Toronto, was lecturing on "Torts" to the second year. He was telling his class that there was no such thing as "legal fraud," but that they might just as well talk of legal snow or legal heat. At this, a student at the end of the class asked, "Isn't there such a thing as a 'legal light.'"

*

An old Chicago lawyer tells of a case he once had which he didn't keep. An old Irish woman sent for him in great haste one day. She wanted him to meet her in the Criminal Court. He hastened to the Court House all out of breath. The woman's son was to be placed on trial for burglary. When the lawyer entered the court-room the old woman rushed up to him and in an excited voice said:

"Mr. B———, Oi want ye to get a continyuance for me b'y, Jimmie."

"Very well, madam," replied the lawyer. "I will do so if I can, but it will be necessary to present to the court some grounds for a continuance. What shall I say?"

"Shure, ye can just tell the court Oi want a continuance till Oi can get a better lawyer to try the case."

The lawyer nearly fainted when he heard this, and after telling the old woman that she would have to get another lawyer to get the continuance, he hurried back to his office a very angry man.

*

A prisoner was in the dock on the serious charge of stealing, and the case having been presented to the court by the prose-

cuting solicitor, he was ordered to stand up.

"Have you a lawyer?" asked the court.

"No, sir."

"Are you able to employ one?"

"No, sir."

"Do you want a lawyer to defend the case?"

"Not partickler, sir."

"Well, what do you propose to do about the case?"

"We-ll-ll," with a yawn, as if weary of the thing, "I'm willin' to drop the case, far's I'm concerned."

*

Hon. Mr. Justice ——— was once a candidate for the House of Commons for the electoral village (?) of Hamilton, Ontario. He said to his agent-in-chief, "I know what I'll do. I'll lay in a big supply of plug tobacco and every time I meet one of the hayseeds I'll offer him a chew."

"You will do nothing of the sort," said his agent-in-chief. "You will go out without a bit and borrow a chew from every man you meet. Haven't you got sense enough to know that the man you are under obligations to always feels warmer towards you than the man you have done a favor?"

Candidate ——— carried the riding by 277 majority.

*

A liquor case was on trial, and one of the officers who had made the raid testified that a number of bottles were found on the premises.

"Liquor, your honor."

"What kind of liquor?"

"I don't know, sir."

"Didn't you taste it or smell of it?"

"Both, your honor."

"What! do mean to say that you are not a judge of liquor?"

"No, sir; I'm not a judge; I'm only a policeman."

The witness was excused from answering any further questions.

*

The officious police officer, puffed up with a little authority, is the same the world over. In London, England, our contemporary, "Law Notes," finds it necessary to intimate to a metropolitan magistrate that these officers, when conducting the prosecution, should be kept in check. The same journal gives the particulars of a case in Boston, where the officer, in crossing swords with a lawyer, exhibits great insolence and outrages all the rules of court procedure. In Toronto some of these over-zealous gentlemen have at last got a lesson in the Kelly case, and it is hoped they will be less high-handed in future.

*

The third-year class of 1892 at the Law School contained many bright young men, who in their time are sure to make their mark. One of the lecture courses

consisted of an attempt at active practice. The class was formed into law firms, who, under a code of rules, engaged in all sorts of legal warfare. The counsel chose their own clients and improvised actions to their own suiting. Everything was established by affidavit, and the rule was that no one could contradict anything previously sworn to by the other side. In a spirit of humor the class started actions by and against their class mates. Two young gentlemen from Hamilton, Ont., figured largely in this court. One young man, who was pretty chummy with spirits, was made the defendant in an action for false arrest. The plaintiff, his great chum, swore that he was proceeding down Leader Lane in Toronto when he met the defendant opposite a certain inn known as "The Hub," that defendant precipitated himself in his way and prevented his approach towards Colborne street; that he then endeavored to retrace his steps towards King street, when defendant threw himself violently in his way and forced him into the said inn, and did then and there compel him to partake of various strong drinks and detained him there against his will. The cream of the story is in the defendant's statement of defence. He openly admits the accuracy of the statements of the plaintiff, but he states that both the plaintiff and defendant are residents of the City of Hamilton, and he submits that no action lies, inasmuch as to act as stated was the "custom of Hamilton."

*

The friends of the same defendant brought an action in his name against the Benchers of the Law Society to compel them to heat the lecture room better, and in due course Mr. S. F. H. appeared in court, where Mr. Alfred Marsh, Q.C., was presiding as judge. These lectures, it seems, were held at 9.30 in the mornings. After reading his affidavits showing that plaintiff was losing the benefit of the lectures on account of the coldness of the room, Mr. Marsh said, "But I have understood, Mr. H., that your client keeps up an internal fire." The learned counsel replied, after the laugh had subsided, "Quite true, my Lord, quite true, but it is apt to run down in the morning."

THE BAR AS A PROFESSION.

The Lord Chief Justice of England and Justice Holmes.

In the Youth's Companion for February 13, the Lord Chief Justice of England, better known in this country as Sir Charles Russell, the great advocate discusses the subject of The Bar as a Pro-

fession, giving his views as to preparation and as to the qualities essential to success. We give below an epitome of his paper.

Originally the bar was recruited from the aristocracy and well educated because of the prejudice against trade and because somewhat of the conceit of learning. The opportunities to wealth which trade now offers have somewhat removed this prejudice, however, for the bar does not offer the same opportunities. It promises only distinctions and adequate means for those who bring to its pursuit the necessary qualities of mind and character. That talent which shows itself in smartness and facility of speech does not so surely as of old destine a youth for the bar. Glibness of speech is no guarantee of success in the practice of the law. Facility of speech is not capacity to speak. A man may have nothing to say and say it with grace and ease, but the Lord Chief Justice observes that he has never known any man who had something to say which was worth saying who, whatever his difficulties of utterance or natural poverty of language may have been, has not been able to say that something forcibly and well. "Clearness, force and earnestness are the qualities which produce conviction." In this connection it is interesting to observe that one who was considered, while at the Bar, such a master of eloquence sets so little store by the quality in others. It is the unfit men who fail, he says. A man with suitable natural gifts, accompanied by industrious patience, he has never known, who did not in time have his opportunity at the Bar and his success.

The considerations which ought to determine the choice of the Bar as a profession, the Lord Chief Justice enumerates as follows: I. The love of the profession for its own sake, so that the aspirant may bear up during the necessary years of watching and waiting until his opportunity comes. Success, he says, is rarely and still more rarely safely, reached at a bound. II. Physical health and energy, for the pursuit of the profession of the law involves long hours of close confinement, often under unhealthy conditions. He has known only two men of weak physique who achieved marked success, namely, the late Sir George Mellish and the late Lord Cairns. III. Clear-headed common sense added to competent legal knowledge. This he places far above grace of imagination, humor, subtlety, even commanding power of expression, although these have their due value. But this is essentially a business, a practical age. IV. The ability to wait. As said above, success rarely comes at once, and his lordship thinks the youthful wearer of the forensic toga may consider him-

self fairly lucky if, after three or four years at the Bar, he is making enough to keep body and soul decently together. "But," he says, "I do not desire to take too gloomy a view. If a man really has the love of his work in his heart, and has the spirit of a worthy ambition within him, he will find it possible to live on little during his years of waiting and watching, and will find it possible to acquire that little by the exercise in some direction of his energy and ability." In this connection he speaks of dining in frugal fashion, when a struggling junior of four years' standing as the guest of two able young barristers, who were almost in the depths of despair, one of whom was considering the question of migration to the Straits Settlements, and the other was thinking of going to the Indian Bar. But they finally concluded to fight it out and one of them became Lord Herschell, twice Lord Chancellor of England, and the other was Mr. William C. Gully, Q.C., now Speaker of the House of Commons. If the young aspirant for the Bar has the qualities above enumerated, success is, humanly speaking, certain.

In taking up the subject of the necessary preparation for the Bar, he says, "In considering the character of such preparation, regard ought to be had to the legitimate outcome of success, viz., a career in Parliament and on the Bench." He mentions first, a university training and a university degree, but as a word of warning so that his meaning may not be misunderstood, he says: "A university career is not an end, but a means only to an end." It is not the battle of life, but only the equipment for it. The profession of the law has one peculiarity in which it differs from all others, viz., That there is no such thing as knowledge which is useless in this profession. The lawyer cannot know either two much or too many things. So much as to general knowledge. As to the special training for the Bar, which usually begins when the university career ends, he speaks of the law schools and then says: "But the real work of education in law, as, indeed, in other fields of knowledge, is the work of self-education pursued conscientiously and laboriously by the man who endeavors to get at the principles of the law, and who does not content himself merely with skimming the surface." He suggests a short clerkship in a lawyer's office for the experience before entering upon active practice. As a special subject of reading for the Bar, Lord Russell recommends the "Corpus Juris Civilis," or the body of the civil or Roman law, for, as he says, a great body of our law finds its source in the Roman law, and in the "Corpus Juris" the law is presented systematized in a way for which our English law has no parallel.

In the issue for February 20th, Mr. Justice Oliver Wendell Holmes, jr., of the Supreme Judicial Court of Massachusetts, contributes a paper on the same subject, which is really a review of Lord Russell's paper in the preceding issue. The learned Justice does not agree with Edmund Burke that the law sharpens the faculties by narrowing them, but holds that instead of making men think of themselves and their own interests, as does trade, it broadens and ennobles the mind, because when you try a case you think about ways to win it and the interests of your client rather than about your own selfish interests. In his article the learned Justice views the practice of the law in that practical light in which we Americans view it rather than from the high scholastic point of view of the English, that is, he does not give by any means so much weight to a college education as a preparation for the Bar as does Lord Russell. The scholastic type of man, he says, has more chance of success in England than here. While a college education is very useful and important to a man as a man, he thinks that in this country it is not quite so important to a lawyer as a lawyer. He says this is not to make light of going to college, but by way of encouragement to those who doubt whether their inability to go there does not take away hope of success in the law. To young men beset with this doubt, he says, it is no ground for despair. One reason why a university training is less important to the lawyers of this country than to the lawyers of England is the superior system of legal education in vogue in this country. Here the principles of law are taught as a science in the law schools of the country, so that the lack of an early college education may be very much made up to a young man who will study under the professional teachers of the law schools rather than in a lawyer's office. Mr. Justice Holmes would also spend some time, say six months, in a good office to see how things are done and, perhaps, to get a little of the usual law student's conceit rubbed off before beginning practice, but, he says, what needs time is not the learning of the routine of clerk's offices or what a writ looks like, but to master profoundly and in detail the great body of the law, which can be done much better in a law school than elsewhere. He dissents from Lord Russell's view of the importance of the study of the Roman law, but quite agrees with him as to the value of the study of jurisprudence. With regard to the chances of success, he relates that Lord Justice Bowen, then already a successful practitioner, once told him that he thought that besides patience and talent a man must have luck, but, observes the Justice, "so far as I have noticed, luck generally comes to patience and talent, if

coupled with love of the thing, as the Lord Chief Justice so truly says." In this country there seems to be as good a chance to succeed at the Bar as in other callings, and he does not think that much depends on luck for a man of the right sort.

To this article Lord Russell contributes a rejoinder, but does not change any of his views. One remark, however, will interest us: "Mr. Justice Holmes spoke truly and with just pride of the system of legal education in the United States. It is in my opinion far superior to that existing in these islands. Its superiority, I think, mainly consists in its systematic teaching of the historical and scientific aspects of the law before the actual, practical, workaday law is dealt with. To the absence here of this system I largely attribute the facts —which I deplore—that with but few exceptions our legal treatises are analyses of decided cases, our legal arguments at the Bar are a nice discrimination of those cases, and the deliverance from the Judges but little more than efforts to establish analogies or differences between the case in hand and reported authority." By this we understand the Lord Chief Justice to mean that the English lawyers are what in this country we somewhat contemptuously term "case lawyers" as distinguished from lawyers who are sufficiently well and properly educated to base their opinions upon principles rather than upon precedents. His lordship's article closes as follows: "In 'The Bar as a Profession,' I have suggested a high ideal of the accomplished lawyer—one who may make a great advocate, a great judge, a great writer, or a great legislator, or all of these. I do not deny that without the liberal equipments which I would desire, men of ability may make large incomes and even have distinguished careers at the Bar, but I maintain that their careers would have been still more distinguished, their mark on their generation graven still deeper, and their contributions to the wisdom of the world still weightier, had they possessed it." The Youth's Companion, Boston, in which the articles above epitomized appear, will have, during the coming year, quite a number of articles of interest to lawyers and law students, such as the "Incomes of Lawyers," "Preparation for the Study of the Law," etc., all by distinguished members of the profession.

THE DIVISION COURTS.

Now that the Legislature is in session it may be opportune to bring before them a few of the many desirable reforms that have been under discussion more or less continually for years back. We have always understood that the intention was to make this Court the people's Court, and that there was an idea originally that its procedure should be so simple that the parties would conduct their own causes without the assistance of legal counsel; and that it was in this light that the Legislature left the successful party to pay his own costs, except under the increased jurisdiction cases. Time has demonstrated, however, that nine out of ten suitors employ counsel, even though confronted with the certainty whether winning or losing of having to pay the fee. It thus happens that to collect $20 due and owing a fee of $3 or $4 has to be paid to a lawyer, and this even though the presiding Judge feels that the defendant in resisting the action has acted perversely and dishonestly and without a color of defence. Now, in cases of over $100 and up to $200 in the Division Court the Judge has authority to order a fee of from $5 to $10 to the successful party; and we think there is positively no reason whatever why a similar discretion might not be given in all cases. While some might be inclined to think the lawyers would increase the number of cases in hope of the fee, we believe the contrary would be the effect, as litigants who now leap with precipitate eagerness into a legal contest knowing they have little to lose, would be more cautious. Of course there should be no fee unless there was a contest in Court or unless the parties had come to Court prepared for a trial. On the general subject of the Court fees we wish to jog the memory of our lawmakers, and to trust that all that was said on "Law Reform" just before the last Ontario election, is not forgotten. It has been made pretty clear that these fees can be greatly reduced A correspondent in the Globe of February 7th suggests that parties be allowed to serve their own summonses, as in the High Court at present. We think there is no reply that can be made to this suggestion. A move in the right direction was made when a maximum sum of $1.65 was fixed, to include both bailiff's and clerk's fees down to judgment in cases not over $10, and as the work in a $100 suit is not in any particular different from one under $10, it is obvious that all cases might properly be brought under the $1.65 rule. These matters are clear as daylight, and we think the Legislature knows it as well as we do. But, of course, there is a reason for everything, and if the powers that be up in the Queen's Park have a disinclination to take action in the premises, it is out of regard for the Division Court clerks and bailiffs throughout the province. It looks plain that the shoe would pinch these gentlemen, and we do not pretend to say that they should be ignored entirely. But we think that in a great province a reform like this should not be delayed or hampered by consideration for a class of officials. What we think is that

if these officials are underpaid it is because there are too many of them. We are far from admitting that the actual services rendered call for a larger fee. The Government should arrange it so that there would be only one clerk and one bailiff where there are two of each at the present time. With such an arrangement there would be something in it for the officials. But these considerations should not delay a reduction of fees.

THE CANADIAN BAR.

The Junior Bar Association of St. John, N. B., met lately and adopted a constitution. Every young barrister is eligible for membership, but when he shall have been practising fifteen years he becomes an honorary member and ceases to vote. The officers are: G. G. Ruel, president; John L. Carleton, vice-president; A. G. Blair, jr., secretary-treasurer; D. Mullin, H. A. McKeown, H. F. Puddington and J. E. M. Baxter, members of council. Meetings will be on the second Saturday of each month from October to May.

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The members of the Ottawa County Bar had a most enjoyable time on January 8th, when Mr. Fleming, Q.C., gave a banquet in their honor, which took place in Rouleau's Hotel, Hull. Those present were: Hon. Judge Gill, Montreal; J. M. McDougall, Q.C.; T. P. Foran, Q.C.; Mr. Rochon, Q.C.; C. B. Major, Mr. McMahon, L. N. Champagne, A. McConnell, Henry Aylen, Jules Beauset, W. H. Kenny, A. G. Gordon and J. S. Brooks.

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The annual meeting of the Hamilton Law Association was held, with E. Martin, Q.C., in the chair. The report of the secretary, Thomas Hobson, showed the present membership to be 71. The number of volumes in the library is 2,836, of which 65 were added during 1895. The annual fees paid in amount to $342.50. All liabilities have been paid except a loan of $400 due the Law Society. The following officers were elected: E. Martin, Q.C., president; F. Macelcan, Q.C., vice president; W. F. Burton, treasurer; Thomas Hobson, secretary; E. Furlong, William Bell, P. D. Crerar, S. F. Lazier, Q.C., and George Lynch-Staunton, trustees; legislative committee, S. F. Lazier, Q.C., A. Bruce, Q.C., T. H. A. Begue, the president, vice president and secretary, with power to add to their number.

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The annual meeting of the Bar Association of Western Ontario was recently held in London, Ont., the president, Mr. Matthew Wilson, Q.C., of Chatham, in the chair. The attendance was large. The report of the secretary, Mr. Percy Moore, London, showed that thirty-four sittings of the weekly High Court had been held here during the year, at which seventy-eight motions were heard. Though the working of the court had been on the whole satisfactory, the usefulness of the Act had been greatly impaired by the omission of a provision which would enable practitioners in western counties to make motions as of right in London, and by the necessity of mak-

ing in Toronto all motions in which infants and idiots are interested. The committee suggested an amendment to the Act providing that where the solicitors for all parties reside in Essex, Kent, Lambton, Middlesex, Elgin, Perth or Huron, they may make the motion as of right in London, without going to Toronto, and without asking consent of adversaries. The committee also considered that reporters should be provided for all County Courts and Sessions and county judges' Criminal Courts, and where deemed necessary by the Crown Attorney for magistrates' courts. Mr. George C. Gibbons, Q.C., moved that in the opinion of the meeting the time had come when an official guardian resident therein should be appointed for the counties of Perth, Huron, Middlesex, Elgin, Kent, Essex and Lambton, and that the Inspector of Public Prisons and Public Charities should be represented by a solicitor resident in one of the said counties, in respect of estates of luatics in these counties, that such infants' and lunatics' estates would be more economically administered, and with better results, under the supervision of a local guardian or solicitor, as the case might be. The resolution was carried unanimously. The bars of all western counties will be urged to assist in obtaining these amendments. The meeting also resolved that county judges should have power to issue and continue injunctions where the solicitors for all parties reside in the county, subject to the power of the judge of the High Court to dissolve or vary the injunction. The following officers were elected: Mr. Matthew Wilson, Q.C., Chatham, president; Mr. M. D. Fraser, London, first vice-president; Mr. A. H. Clark, Windsor, second vice-president; Mr. Duncan Stewart, London, secretary-treasurer. The midsummer meeting will be held in Stratford in July.

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Judge R——, at the present non-jury sittings, was despairing of getting anything out of a witness called M———, the defendant in person, after his examination for two hours in the box. The witness could not remember anything. He was non-committal, and told the judge he could remember things that occurred five years ago better than what occurred yesterday. Just as the witness was about to leave the box the judge said, emphatically, "Witness and Defendant M———, I don't know what to make out of you. You are either a fool or either very cunning or very stupid." The witness, who was honest enough but very absent-minded, said in reply, "I guess we (emphatic) are both.

RECENT TESTIMONIALS.

"We trust your deservedly popular publication will meet with continued success. With its new cover The Barrister, is indeed a thing of beauty, and as bright and interesting in its contents as the exterior is attractive."—C. H. Werner, Editor New York Law Review.

"Law Notes," London, Eng., one of the best written law journals in England says: "The Barrister, a Canadian paper, as usual has some good things

which we must lift for our reader's benefit."

The Barrister, is a monthly legal journal published at Toronto, which has just commenced the second year of its existence. The number for January last is an excellent one, full of useful information and also of light legal literature, and there is no reason why our legal journals should not aim at being interesting and amusing. We find in it a number of recent important English cases noted up, e.g., Liles v. Terry and Strachan v. Universal Stock Exchange. Amongst other matter we were much interested by some notes on "Lawyers from a student's point of view," and we quote the following passage, which, though, not as elevated in its nature as the Lord Chief Justice's remarks in his article in the strand magazine, yet possesses a sound measure of truth.—The Jurist and The Law Student's Journal, London, England.

"Some of the paragraphs of humor in this number of The Barrister, are so good that we cannot refrain from quoting a few as we are sure they will interest our readers."—Ibid.

Law for the first time is made interesting by that bright journal, The Barrister, which is always a welcome visitant to this office.—The Globe, St. John, N. B.

The Barrister has won the hearts of the Nova Scotia people by its magnificent sketch of Sir John Thompson, which, from a literary standpoint, ranks with the best we have ever read.—The Herald, Halifax.

The Barrister is the brightest journal on our exchange list from America.—The Brief, London, England.

We are always glad to receive The Barrister, and quote a few of its bright sayings.—The Juridical Review, Edinburgh, Scotland.

If we are to judge by The Barrister, the leading Canadian law journal, the Canadians must be a very witty people.—The Irish Law Times, Dublin.

The Barrister, in its advocacy of uniform laws, is doing a great work for Canada.—The Counsellor, New York.

We congratulate The Barrister upon its cosmopolitan spirit in dealing with the great profession of law.—Chicago Law Journal.

The Barrister's kind words on behalf of the American Law Association will not soon be forgotten by the profession of this country.—The Michigan Law Journal, Detroit.

THE BENCHERS (Some Facts as to).

The Revised Statutes of Ontario, 1887, chapter 145, sets out the functions of the Benchers of the Law Society of Upper Canada. The benchers have extraordinary powers, and practically control the bar. At present 30 of the benchers are elective—the ex-officio benchers consist of all retired High Court Judges, and Attorney-Generals of Ontario; or Ministers of Justice of Canada. Barristers only are entitled to election, and barristers only can vote for such election.

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The term of office is at present five years; but it is proposed to

shorten the term to two years; the benchers fill vacancies caused by death or otherwise.

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The powers and duties of the benchers are: They can make rules for the government of the Law Society, conduct enquiries into the conduct of barristers and solicitors, and they may disbar, strike off the roll, suspend or fine for misconduct towards the public, non-payment of fees or disobedience to the rules of the Society. In such cases a solicitor has the right to appeal to the Courts, he not being a complete member of the society, a barrister cannot. The control of the law school and the subject of legal education is under their control. The benchers arrange for the courses of study, curriculum, examinations, etc., and exact fees for admission to practice. They are also empowered to appoint reporters of judicial decisions.

CORRESPONDENCE.

Letter to the Editor:—

Sir,—I desire to ask the profession throughout the Province to consider the advisability of forming a central or Provincial County Law Library Association, comprising the several County Law Library Associations of the Province, and having for its objects the establishing of Law Library Associations in the counties where not now established, and improving those already established, also securing law reforms and reforms beneficial to the profession. It has seemed difficult in the past to procure regulation or legislation beneficial to the profession, particularly outside of Toronto, because the profession has been unable to emphasize their desire in concerted united effort. For instance, it will be generally admitted by the profession outside of Toronto, that they suffer an injustice in being required to pay the same fees to the Law Society as paid by the Toronto practitioner. This injustice might be removed by a united effort to reduce outsiders' dues or increase the grants to the Law Library Associations in the different counties. A great many of the profession have felt that they have suffered an injustice by reason of every Tom, Dick and Harry being allowed to do conveyancing and other similar work that should properly be done by the profession. Others have complained that Ministerial officers in the outside counties sometimes trench upon the field of the lawyer. These and other grievances arising from time to time might be dealt with by the Association as above suggested and the influence resulting from the united effort throughout the Province would certainly be more efficacious in accomplishing the desired result, whether asked for from the Judges, Benchers or legislators, than at present.

Hoping that the members of the profession throughout the Province may be led to think and act upon this matter,

I remain,

Yours truly,

W. C. MIKEL.

Belleville, March 16th, 1896.

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