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The Legal Profession in Ontario

and the

Law Society of Upper Canada

Published by THE CHICAGO SOCIETY
by Honourable Mr. Justice Riddell
of Toronto.

OF

ADVOCATES

1915

BOOK OF

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With the Compliments of

WILLIAM RENWICK RIDDELL.

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and the
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"THE LEGAL PROFESSION IN ONTARIO

AND

THE LAW SOCIETY OF UPPER CANADA."

By

THE HONOURABLE WILLIAM RENWICK RIDDELL, LL. D., F. R. HIST. SOC., ETC., JUSTICE OF THE SUPREME COURT OF ONTARIO.

(Memo. At the request of "the Chicago Society of Advocates," Mr. Justice Riddell addressed them on "The Legal Profession in Ontario" at their inaugural meeting, November 9, 1914. The following contains the substance of his address with some additions, and has been prepared by Mr. Justice Riddell at the instance of the president of the Society.)

So long as Canada remained a French possession there was no distinction in the legal profession. The same person might and often did exercise the function of Advocate or Barrister, Notaire (notary) and even Arpenteur (land surveyor).

No change was made in that respect by the victors on the Conquest in 1759-60, or by the Royal Proclamation of October 7, 1763, which introduced into Canada the English Law, Civil and Criminal. This Proclamation also established a "Province of Quebec" which included in its area not only what is now the Province of Quebec, but also what was afterwards the Province of Upper Canada and is now the Province of Ontario. When the Quebec Act was passed (1774), 14 George III, c. 83[1], it was not considered advisable to modify the existing practice.

[1]In Ontario, as in England, it is the custom to cite Statutes, not as of the year *Nostri Domini*, but as of the year of the reign of the regnant monarch when they were passed. A very convenient practice has however sprung up of prefixing the year of our Lord.

But, April 30, 1785, an Ordinance was made by the Lieutenant Governor, Henry Hamilton[2], being Ordinance of 25 George III, c. 4; this by Article 1 enacted that thenceforth no one should be commissioned, appointed or permitted to practice as a barrister, advocate, solicitor, attorney or proctor at law who had not served during the space of five years under a contract in writing with some advocate or attorney duly admitted and practicing in the Courts in the Province or elsewhere in His Majesty's Dominions or for six years with some clerk or register of a Court of Common Pleas or Court of Appeals in the Province, with a proviso in favour of those called to the Bar or admitted to practice as an advocate or attorney elsewhere in the Empire. The candidate must also have been examined by some of the first and most able barristers advocates or attorneys in the presence of the Chief Justice of the Province or two or more Judges of the Courts of Common Pleas, and be certified by the Chief Justice or the Judges as of fit capacity and character to be admitted to practice law.

Article 2 makes a similar provision for a notary to serve five years with a notary, and to be examined by some of the eldest notaries in the presence of the Chief Justice of the Province or two or more judges of the Court of Common Pleas of the District wherein he served his clerkship, and to be approved by him or them.

Article 6 provides that thenceforth barristers, advocates, solicitors, attorneys or proctors at law, and also land surveyors, should not practice as notaries; that no notary is to act as land surveyor or barrister, etc.; "that these several occupations of practising the law in His Majesty's Courts in this Province * * * and of notary and of land surveyor shall be held and exercised separately and by different

[2]Hamilton first appears in the History of this Continent as Governor of Detroit in 1777. The following year he captured Vincennes whose commander Helm was taken prisoner with a small force of defenders. The well-known George Rogers Clark shortly afterwards besieged the fort; and Hamilton was in his turn forced to surrender. He was treated by Clark with much barbarity, and on Jefferson's order was sent handcuffed to Williamsburg where his treatment was still worse. Probably as an effect of a letter from Governor Haldimand to Washington, Hamilton was paroled; and he got to England in 1781. He was made Lieutenant Governor of Quebec in 1784, filling that position a little less than a year. He was a man of no great capacity and but little judgment, although perfectly honest and sincerely desirous of doing his duty. It is probable that the ordinance of April 30, 1785, was due to the influence of the British newcomers in the Province.

persons to the end and purpose that the functions and duties of the one may not interfere with the other." All practitioners were given twelve months to elect which branch of the profession they would follow[3].

A strong protest was made against this ordinance by some of the French-Canadian practitioners, but in vain. The distinction between the practitioner in the Courts and the notary still obtains in the present Province of Quebec.

In 1788 four Courts of Common Pleas were established in the territory afterwards the Province of Upper Canada, but then part of the Province of Quebec, one for each district; they were, of course, under the same law and practice.

In 1791 was passed the Act 31 George III, c. 31, commonly called the Canada Act or Constitutional Act, which divided the vast territory of the Province of Quebec into two provinces, the western being called Upper Canada and the eastern Lower Canada, each with its own Parliament and Lieutenant Governor.

The first Act of the first Parliament of Upper Canada (1792) 32 George 3, c. 1 (U. C.) was to introduce the English Civil Law; but no change was then made in the constitution of the profession. There were not many in the Province skilled in the English Law; and, accordingly in 1794 was passed an Act, 34 George III, c. 4 (U. C.) which authorized the Governor to grant a license to any number not exceeding sixteen British subjects to practice as attornies and advocates. This may have been, and probably was, due to the institution of the Court of King's Bench for the Province by the same Statute. The Act suspended for two years the operation within Upper Canada of the Ordinance of 1785.[4] During all this time and until the coming into force of the Act next to be mentioned, all practitioners were called "to the degree of an Advocate and to that of an Attorney." The original roll of the Court of King's

[3]The Ordinance is printed in full in both English and French in the volume of "Ordinances * * * the Province of Quebec," 1777 (in the Judges' Library at Osgoode Hall) pp. 67-68.

[4]Those who so received a license were in effect given a monopoly of the practice as they only could charge for their services; and the list included most if not all of the lawyers and some others.

Bench, still extant, sets out the oath to be taken by the applicant and the "degree" conferred.

The Act of 1797, 37 George III, c. 13, (U. C.), was the beginning of our present system. That Act, passed on the 3rd of July, 1797, provided that it should be lawful for the persons now admitted to practice law, and practising at the Bar in the Province, to form themselves into a society to be called the Law Society of Upper Canada, "as well as for the establishment of order amongst themselves, as for the purpose of securing to the Province and the profession a learned and honorable body[5], to assist their fellow subjects as occasion may require, and to support and maintain the Constitution of the said Province." The Society was authorized to frame Rules and Regulations (under inspection of the Judges of the Province as Visitors of the Society) for its own government; to appoint the six senior members or more, for the time being, and from time to time as Governors or Benchers (of whom the Attorney General and Solicitor General for the time being were to be two), and also to appoint a Librarian and a Treasurer.

They were to meet in Newark (Niagara-on-the-Lake) on July 17, 1797, to frame such Rules and Regulations.

Each person practicing at the Bar was allowed to take one clerk for the purpose of instructing him in the knowledge of the laws.

Except those who were practitioners at the time of the passing of the Act, no one should be permitted to practice at the Bar, unless he had been entered of and admitted into the Society as a Student of the Laws, and had remained on the Books of the Society for five years, conformed to all its Rules and Regulations and been duly called and admitted as a Barrister according to the Constitutions and establishment of the Society. Provisc in favor of those who had practised at the Bar elsewhere in His Majesty's dominions, and the time actually served under articles before the passing of the Act should count as part of the five years, *pro tanto*.

[5]In view of the adoption by all Govermental departments and most literary Canadians of the "English" spelling of such words as "honour", etc., it is not without interest to note that in the printed copies of the Statute this word is spelled without the "u."

One might become and act "merely as an Attorney or Solicitor" after due service for five years under articles to an attorney and "standing in the books of the Society" for three years.

This Statute for the first time in our Province established the distinction between Barrister and Attorney, and since it came into effect no one (with an exception shortly to be noted), who had not been called to the Bar by and received the degree of Barrister-at-Law from the Law Society of Upper Canada, has ever been heard by the Courts of the Province. The Courts have no power to permit any other to be heard. There is no international or interprovincial comity or courtesy permitting such a course.

Here at the beginning of the Society is found a marked difference between it and the Inns of Court in London. They have no concern with attorneys (or solicitors), every attorney or solicitor must in Upper Canada have been on the books of the Society for three years, (we shall have occasion later to notice the important change made in 1822 by the Statute 2 Geo. 4, c. 5 U. C).

Before discussing the functions of the Society, I shall give a brief record of its history to the present time.

Ten practitioners met at Wilson's Hotel, Newark, on July 17, 1797, and organized the Law Society of Upper Canada; and upon that day conferred the degree of Barrister at Law upon all the practitioners who applied therefor (including themselves). One other (William Weekes) applied two years after (in 1799), and received the degree; the remaining four never applied for and never received it. These four constitute the sole exception to the rule that no one could since 1797 address our Courts except those called by the Society.

The Statute did not make the Society a corporation; but it was a mere association of gentlemen with well-defined functions. The absence of incorporation became a drawback, and in 1822 the Act 2 George IV, c. 5 (U. C.) declared "the Treasurer and Benchers of the Law Society for the time being and their successors * * * to be one body corporate and politic."

This led to some difficulty, which, however, was got over by the Resolution of the Benchers in Convocation in June, 1831, Trinity Term, 1 and 2 Wm. IV, that all Barristers and Students-at-Law entered in the Books of the Society were still members of the Law Society of Upper Canada, though not members of the Corporation of the Law Society of Upper Canada; and this state of affairs still continues; the Treasurer and Benchers alone are the Corporation, but all students and barristers duly entered are members of the Society.

The Government of the Society was by the original Act to be by Benchers or Governors appointed by the Society, the six senior members or more for the time being, of whom the Attorney General and Solicitor General were to be two. At its first meeting the members present appointed the Attorney General and Solicitor General and the four senior barristers as Benchers. At a subsequent meeting November 9, 1799, all the existing barristers were appointed Benchers. Thereafter for a time the practice was followed of the existing Benchers appointing a member of the Society from time to time as a Bencher, his appointment being communicated to him by the Treasurer. No Statute, Rule or Resolution can be found authorizing this method of election, but no complaint seems ever to have been made of the Benchers taking this power out of the hands of the Society, who alone could appoint under the Act of 1797. Of course each new Attorney General and Solicitor General was, according to the Statute, appointed forthwith after receiving his Patent.

This self-perpetuating system was put an end to in 1871 by the Ontario Act 34 Vic. c. 15, which instituted a bench of thirty Benchers to be elected by ballot by all the Barristers on the Roll, and also of *ex officio* Benchers, the Attorney General of the Province and all ex-Attorneys General and ex-Solicitors General (there is now no Solicitor General of the Province), and all retired Judges of the Superior Courts The elected members hold office for five years, when there is a new election.

A natural effect of this was that the older and better known Barristers were elected term after term, and there was little

chance of a young man obtaining the position of Bencher. To avoid this, it was in 1910 enacted by 10 Edw. VII. c. 76 (Ont.) that all those who had been elected at four quinquennial elections should be *ex-officio* Benchers, thus leaving the field open for the younger men. (It had a few years before by (1900), 63 Vic. c. 20, s. I, been provided that every one who had for seven consecutive years held the office of Treasurer of the Society should be an *ex-officio* Bencher.)

The original Act had authorized the Society to appoint a Treasurer. This position did not mean even then simply one who cared for the funds of the Society, but one who was the Head of the Society, President and Chairman. This was an adoption of the terminology of the English Inns of Court[6].

The Society at the first meeting resolved that "the Benchers according to seniority take upon themselves the Treasurership of the said Society annually." We find no close adherence to this rule. The Attorney General was the first Treasurer, and for one year only; then the Solicitor General[7] for three; a prominent member of the bar for four; then the new Attorney General for one year; the new Solicitor General for five years; another prominent member of the bar for [illegible] years; the next Attorney General for four, and his successor for one. Then July 8, 1819, was passed a rule that the Treasurer should be chosen annually in Michaelmas Term by the majority of the votes of the members then present. July 2, 1831, the date was changed to Hilary Term, and September 1, 1859, back to Michaelmas.

The Statute of 1871, which made Benchers elective, fixed

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[6]See for example Herbert's Antiquities of the Inns of Court and Chancery, 1804, p. 228. "The officer of Treasurer is of considerable importance * * * He is the Supreme Officer of the whole Society and has the regulation of its concerns. He admits gentlemen into the Society, etc.

The fact that the Attorney-General John White was an English Barrister, probably accounts for the language adopted. White later (January 1800) was shot and killed in a duel with a gentleman whose wife he had traduced.

[7]This was Robert I. D. Gray, the son of a major in the British service. He was a member of the House of Commons of Upper Canada, for the second and third Parliaments.

In October 1804 he accompanied the Judge, Mr. Justice Cochran, another member of the Bar, the High Constable of York (Toronto), two Indian interpreters, the witnesses and an Indian Ogetonicut who was captured on Toronto Island (then a peninsula), and was to be conveyed by the Government schooner Speedy to the assize town Newcastle (now Presqu'isle) for trial. A storm sprang up, and the vessel was lost with all on board, nothing but a hen-coop coming to land.

It is interesting to note that Grey left certain property to his black servant John Baker who was afterwards at the battle of Waterloo as a British soldier and who survived till 1871, the last of all who have been slaves in Canada.

the date for election of Treasurer; the first term after the election of the new Bench and in Easter Term of each year. This still is the rule.

So much for the Law Society itself; we shall now consider its dealings with the Bar.

The first Rule of the Society appointed Benchers; the second was that every member of the Society should enter into a bond with the Treasurer to pay the sum of £5 (=$20) annually so long as he should continue a member of the Society[8]. In 1831 this was reduced to 11-8 (=$2.33) per term, or $9.33 per annum, payable on or before the last day of every term in each year; and in 1833 to 2-6 (=$0.50) per term or $2.00 per annum, payable on or before the first day of Michaelmas term, i. e., the third Monday in November. This rule is still in force for Barristers; solicitors now pay $15 per annum. The third rule of 1797 was that every student in his admission to the Society should pay the sum of £10 (=$40) and the further sum of £20 (=$80) when called to the Bar, and enter into a bond to pay annually £5 (=$20). The annual payment was reduced after call as we have seen in 1831 and 1833. Whether the fee of £5 annually exacted by Rule 2 of 1797 was exacted of the student as a member of the Law Society before his call, does not very clearly appear[9].

The statutory title of the student admitted on the books of the Society was "Student-of-the-Laws;" this included both those proceeding to the degree of Barrister-at-Law and those intending to become an attorney—technically the former were Students-at-Law, the latter Articled Clerks (the distinction is not always observed). To become a Barrister there was no necessity to serve under articles; to become an Attorney it required five years actual service under articles.

From the very beginning in by far the greater number of cases, an applicant for admission upon the Books of the Society was under articles at the time. Nearly every student became both Barrister and Attorney, but from the first, as

[8]It must not be forgotten that all students duly admitted on the books were and are members of the Society.

[9]January 11, 1808, a rule was passed rescinding previous rules as to fees and requiring every member to pay £5 ($20); every student upon admission to the books of the Society £5, and the same sum upon being called to the Bar.

now, there were a very few who became Attorneys or Barristers, but not both.

There was at first no entrance examination; but the member proposing a student (generally his master) would certify that the applicant was in his opinion qualified by education principles and habits of life to become a member of the Law Society.

In 1808 (Hilary Term, 58 Geo. 3), a rule was passed that no person should be admitted a member unless he should declare to the Society upon his honor that his application was to enable him to become a resident practitioner, but does not seem to have received the sanction of the Judges. No trace of such a declaration appears in the early Summary of Provisions relating to admission of members, in the Form of Petition prescribed or in the minutes of the Law Society. Up to 1803, the applicant was in practice proposed and admitted at the same meeting; thereafter the proposer was required to give a term's notice of his intention to present the candidate[10].

Applicants must still have their names posted conspicuously for thirty days by the Secretary of the Society, and if no objection be taken they are entered as of the term in which their application was made. Curiously enough much the same practice was followed in the case of three applicants in Easter Term, 56 Geo. 3, 1816.

In 1820 Hilary Term, 60 Geo. 3, a rule was passed that after that term all applicants for admission should be required in presence of the Benchers to give a written translation of a portion of Cicero's Orations or perform such other exercise as might satisfy the Society of their acquaintance with Latin and English composition, "and that no person who cannot

[10]John Anderson was the last to be presented under the old practice, Easter Term 41, Geo. 3, 13 April 1801. John Macdonell, afterwards Attorney General of Upper Canada, the first under the new, Hilary Term, 43 Geo. 3, 6th April 1803. Macdonell was Adjutant to Sir Isaac Brock in the campaign of 1812 and was fatally wounded at the Battle of Queenston Heights, gallantly fighting for his country.

give these proofs of a liberal education shall hereafter be admitted upon their books.''[11]

In 1821, a voluntary association called the Advocate Society was formed in York (Toronto) by students-at-law for discussions, moot courts, etc., but it lasted only a very short time, going the way of all such voluntary organizations[12].

In 1825 (July 1st of Trinity Term, 6 Geo. 4), the Law Society took a further step, and required all candidates for admission on its books to exhibit in his examination ''a general knowledge of English, Grecian and Roman History, a becoming acquaintance with one of the ancient Roman poets, as Virgil, Horace or Juvenal, and the like acquaintance with some of the celebrated prose works of the ancients such as

[11]It is at least interesting to note that in examination of a candidate to practice medicine for long after this time, the practice seems to have been to examine in Latin first—a sort of matriculation examination—and to proceed with the professional subjects only if the candidate exhibited some familiarity with that language. We find the Board of Toronto writing the sister Boards in Montreal and Quebec in April 1847:

"The course this Board pursues in the examination of candidates is as follows: 1st. Some acquaintance with the Latin language is required. With this view, if the candidate cannot construe some paragraphs of Gregory's Conspectus, a portion of the Pharmacopoela Londinensis or a Latin written prescription is substituted; in the event of a total failure in these, the professional examination is not proceeded in. If the Latin examination is satisfactory, then follow," professional subjects.

It may seem anomalous to begin a professional examination with an enquiry into the knowledge of Latin possessed by the candidate; but it must be borne in mind that in those days everyone of education had some knowledge of Latin—and an ignorance of that language indicated if it did not absolutely prove a lack of general culture.

"Examination for License to Practice Sixty Years ago" by Hon. Mr. Justice Riddell, Canada Lancet, June 1913.

After this rule of 1820 the entries in the Law Society's Books read, "the Society being satisfied of his qualifications do admit him on the Books accordingly."

The last to be entered without examination was John Mulrhead, and the first to be entered after examination was Marcus F. Whitehead, Nos. 82 and 86 on the Common Roll, (not the Barristers' Roll).

[12]The Books containing the proceedings of this Society are still extant and are safely kept at Osgoode Hall.

There had been a "Junior Advocates Society" which, April 2, 1822, resolved itself into the "Advocate Society" composed of Members of the Law Society only, each paying every Term 3s, 9d (75¢), increased later to 5s. In discussing questions the Rules of the House of Commons were to be observed, all students at Law might attend below the Bar without introduction; every member of the Society might "express his sentiments freely. The elected Prothonotary was required every term to inspect the Rule Book of the King's Bench and enter every new Rule in the Rule Book of the Society. The Society had a Great Seal and a Keeper thereof.

The first meeting was in April 2, 1821 at which several students attended, some of whom afterwards became very well known at the Bar. The last meeting recorded was June 20, 1826.

From the first, the Society was often forced to adjourn its meetings for want of a quorum. I have not found any meeting at which more than nine members were present.

It met until February 1822 in the office of the Solicitor General Henry John Boulton, son of Mr. Justice Boulton, afterwards Chief Justice of Newfoundland; and afterwards the meetings were held in the York Court House.

The qualification that to become a member the applicant must be a member of the Law Society was occasionally relaxed in favour of an Articled Clerk who had not yet been able to pass the preliminary examinations before the Benchers of the Law Society. While it has been said more than once that the Society was composed of Barristers and Students-at-Law I find that only one Barrister was admitted.

It appears from the Minutes that the Students at Law at Kingston formed a similar Society in 1822, and also that there were members of the Society itself residing in many parts of the Province, e. g. Kingston, Port Hope, Hallowell (Picton). It seems to have gone to pieces when Robert Baldwin was called to the Bar.

Sallust or Cicero *De Officiis* as well as his orations . . . and it is also expected that the student will also show the Society that he has had some reasonable proportion of mathematical instruction." This rule was never approved by the judges and never acted upon; it was formally placed in abeyance January 6, 1827. From the written minutes of the Advocate Society already mentioned, it appears that it was by no means an uncommon practice for a student to article himself before he was able to pass the examination; if he was able to pass the examination within two years of entering articles he did not lose time as an attorney, as it was necessary to be five years under articles but only three years on the books of the Society, to be admitted attorney. Even the necessity of being three years on the books was taken away, as we shall see, in 1822.

No supervision was had by the Law Society over the education of the student. If a student at law, he attended the chambers of some barrister; if an articled clerk he served in the office of an attorney, his master. At the end of five years the budding Barrister produced to the Law Society a certificate of the Barrister in whose chambers he had studied that he had so studied for five years, and was called to the Bar by the Society, receiving the degree of Barrister-at-Law. With the mere Articled Clerk the Law Society had nothing further to do than admit him on its books, thereby making him a member of the Society, and to certify at the proper time that he had been on its books for three years. The Articled Clerk appeared before the Court of King's Bench, produced an affidavit by himself of service and a certificate from his master, and was admitted by the Court as an Attorney-at-Law. The Barrister continued to pay to the funds of the Law Society, the Attorney did not.

Then came the Act of 1822, 2 Geo. 4, c. 5 (U. C.) which by section 3 rendered it unnecessary for any Articled Clerk to be entered on the books of the Law Society; so that even the slight control over Attorneys which the Society had by reason of its preliminary examinations ceased. Members of the Law Society thereafter were Barristers and Students-at-Law only.

In 1828 (Hilary Term, 8 Geo. 4, c. 1), a rule was passed that all students to be thereafter entered on the books of the Society should keep four terms at York (Toronto) during their five years entry[13]. At this time the Benchers were considering a scheme for the erection of a building for their meetings. Theretofore they had met in various places, Wilson's Hotel, the Treasurer's Office, the Parliamentary Library, the Court House, etc. In 1820 (Michaelmas Term), 1 Geo. 4, they decided to expend £500 (=$2,000) in "erecting a building for their use to be called 'Osgoode Hall'"[14]. They already had a plot of land, but were not satisfied with it, and were negotiating for another site. May, 1828, they bought the present site from the Attorney General, John B. Robinson, for £1,000 (=$4,000), and proceeded, the next year, to erect what is now the East Wing of Osgoode Hall, having determined to spend about £3,000 (=$12,000) for that purpose.

The Hall was to contain not only a convocation room, etc. for the Benchers, but also rooms for the Court of King's Bench and bed rooms, dining room, etc. for Barristers and Students-at-Law. Students were expected to keep their terms in the hall about to be built. It was finished in 1832. The first meeting of the Benchers in it was held Thursday, Feb-

[13]This rule was in great measure due to Dr. William Warren Baldwin for that and several other years. He was an Irishman from near Cork, and had graduated in medicine from Edinburgh University. He practised for a time in his native land but toward the end of the 18th century emigrated with his father to Upper Canada in consequence of the troublous times of the Rebellion of 1798. He settled in Durham country (near what is now Bowmansville), and for a short time practiced medicine there. He then came to Toronto and unsuccessfully tried school teaching. He received a license to pratise law in 1803 from the Hon. Peter Hunter, the Lieut-Governor, under the Act of that year, and was called to the Bar Easter Term 43 Geo. 3. He became a very active practitioner, Bencher in 1807 and Treasurer 1811-1814; 1824-1828. He was the father of the well-known statesman, Robert Baldwin. It was in great measure due to his efforts that Osgoode Hall was built.

[14]Called after William Osgoode the first Chief Justice of Upper Canada. One historian make him an illegitimate son of George III, and certainly he was *persona grata* with that King. After being Chief Justice of this Province 1792-1794, he became Chief Justice of Lower Canada 1794-1801. He then returned to England where he died in 1824, aged 70. He left no mark on our jurisprudence.

This building, erected under the eye of Dr. William Warren Baldwin, was what is now the East Wing, "a plain matter-of-fact white brick building two and a half stories high." The west wing of similar character was begun in 1844 and finished in 1846, and at the same time the two buildings were connected by a building surmounted by a dome. In 1857-60 the whole was renovated, the wings faced with cut stone, the central building replaced by another faced in the same way but without a dome. The central building accommodated the Library and the Courts of Queen's Bench and Common Pleas; the West Wing the Court of Chancery. Part of the East Wing still remains the property of the Law Society, the Law School being built to the rear. The remainder of the building is now the property of the province by deeds of July 1, 1874 and November 26, 1885.

The East Wing was somewhat changed interiorly about 20 years ago, and the Government of the Province has within the last few years made some additions and changes in the way of Court Rooms, Judges' Chambers, etc.

Those acquainted with modern Toronto may be interested to know that Osgoode Hall was beyond the then existing limits of the Town of York.

ruary 6th of that year (Hilary Term, 2 Wm. 4), and all meetings since that time have been held there.

A standing committee called "The Committee of Œconomy" was formed February, 1833 (Hilary Term, 3 Wm. 4), and charged with "the government, management, and control of the œconomical household and domestic arrangements of Osgoode Hall," and their regulations are still extant f[illegible]wing suitable arrangements made for the accommodation with rooms, bed and board (including wine for the Barristers only). The hall was much used by Barristers from out of town during term time when they came up on motions before the Court, and more by students.

In the meantime, July 2, 1831 (Trinity term, 1 and 2 Wm. 2), Convocation took away the necessity of a certificate from his master of the fitness of the candidate and for the first time an examination was ordered of all applying for admission to the books of the Society, which was to be "upon full and strict examination in open convocation by the Benchers present" as to "habits, character and education." The questions on the subjects prescribed in 1820 were put through the Treasurer or such of the Benchers as might be appointed. A candidate for call to the bar was examined in like manner. At the same time a somewhat curious provision was made that all members of the Society who had not taken a degree in it, (i. e., all Students-at-Law), should be formed into classes under the Presidency of a Barrister for the reading of essays, disputation of points of law either in the shape of cases or of questions, discussion of questions of general, constitutional and international law, stat[illegible]inations on standard authors, etc., etc. Each class wa[illegible]et at least eight times per year, and a report of the mee[illegible]gs was to be sent to the Treasurer of the Law Society. This made a kind of Students' Society and was perhaps intended to fill the place of the Advocate Society now defunct.

In June, 1832 (Trinity Term, 2 and 3 Wm. 4), a class to be called "The Trinity Class of Students of the Law Society of Upper Canada, "was formed to meet at Osgoode Hall with much the same objects in view."

In November of the same year (Michaelmas Term, 3 Wm.

4), the students on their examination for admission were divided into three classes, Junior Class, Senior Class and Optimes. The Junior Class to be examined in the English and Latin languages, in mathematics and geography or history; the senior class in the English and Latin languages, geometry, algebra, moral philosophy, or the Greek language, astronomy and history; the optimes in the English, Latin and Greek languages, in goemetry, algebra, moral philosophy, metaphysics, rhetoric and the Belles Lettres, geography, astronomy and history. No advantage was derived from the higher standing except that the grade was stated in the certificate of admission granted to the successful student.

The examination for call was "similar to that passed on admission and moreover * * * in the principles of the Law of England, in the science of special pleading, the law of evidence, the law relating to trials at Nisi Prius and the practice of the courts."

All this was of consequence in the case of Barristers, but Attorneys continued for some time to be admitted as before.

As has been mentioned, the section of the Act of 1797 in which three years on the books of the Society were required, was repealed in 1822 by 2 Geo. 4, c. 5, s. 3, so that thereafter the Law Society had no control over Articled Clerks as such. Of course by far the greater number of Articled Clerks were also Students-at-Law, and the Society had control over them in that capacity; but no examination could be prescribed for admission as attorney; that was for the Courts—and the Courts prescribed none.

While the Law Society made no arrangements for the education of students, it should be mentioned that the scheme for a Provincial University submitted to the Governor in 1826 provided for a Professor of Law and a course in Civil and Public Law. King's College was opened in 1843, and had on its staff a Professor of Law. In 1850 the college became the University of Toronto, and the lectures in law continued till 1853, when the chair was abolished[15]. The other universities

[15]The first Professor of Law was William Hume Blake, B. A. (T. C. D.) afterwards the Chancellor of Upper Canada, the father of the Hons. Edward and S. H. Blake. During his illness, his place was filled by Mr. (afterwards Chief Justice) Draper, and Mr. (afterwards Vice-Chancellor) Esten. On Blake resigning in 1848, he was succeeded by Skeffington O'Connor LL. D. (T. C. D.) who was afterwards (in 1863) a Justice of the Queen's Bench.

had and have Faculties of Law, but, as in the present system in the University of Toronto the lectures are of an academic nature, Constitutional Law, Federal Law, Roman Law and the like.

Such lectures were of little use to teach a lawyer his business and the want of any safeguard against a licensed practitioner being ignorant of his profession was a matter of common concern. As a legal writer says a little later (1855), 1 Can. L. J., O. S., at p. 163.

"Existing laws afford no guarantee of fitness. A young man whose only qualification for entering the study of the law is ability to read and write, may be articled to an Attorney, spend five years copying and serving papers or idly kicking his heels against the office desk, or in doing the dirty work of a disreputable practitioner. At the end of that time, armed with a certificate of service, he claims to be sworn in as an attorney of Her Majesty's Court, and is sworn in accordingly. He may know nothing whatever of professional duties, may in fact be grossly illiterate and deficient in every requirement that would enable him to act with safety and advantage for a client; and yet the law entitles him, simply on proof of service under articles, to the certificate enabling the holder to undertake the most important duties of an Attorney."

An editorial in the following year, 1856, 2 Can. L. J., O. S., at p. 50, after pointing out the precaution taken to secure a learned Bar by an examination, preliminary and final, proceeds: "The Attorney is subject to no examination whatever, preliminary or final. The Barrister must have proved his fitness, the fitness of the attorney is presumed."

The Legislature at length gave the Law Society jurisdiction over Attorneys as well as Barristers. In 1857, the Act 20 Vic. c. 63. (Can.) required the Law Society, before any person should be admitted as an attorney or Solicitor (the Court of Chancery had been instituted in 1837 and reorganized in 1849, and practitioners of that Court corresponding to Attorneys in the Common Law Courts were styled "Solicitors"—practically all Attorneys were Solicitors and vice versa), "to examine and enquire by such ways and means as they should think proper touching the fitness and capacity of such person

to act as an Attorney or Solicitor;" and then and not otherwise the Judges might, on production of the Law Society's Certificate of fitness, admit the candidate as an Attorney and Solicitor; and this still is the law.

No Court can hear a Barrister who has not been called by the Society. No Court can admit a Solicitor without the certificate of the Society. The Society is the sole judge of the fitness and capacity of either, and the legal profession is master in its own house.

The Statute of 1857 required Articles of Clerkship to be filed in the office of the Clerk of the Crown and Pleas within three months of their execution; this prevented post-dating and fraud. Every Articled Clerk was required to attend the sittings of the Courts at Osgoode Hall during at least two terms under rules to be laid down by the Law Society[16].

In August, 1859 (Trinity Term, 23 Vic), the rules were recast. Students-at-Law on their admission were classed: 1—University Class; 2—Senior Class and 3—Junior Class. The first class were graduates of a British University and were examined on one or more of the following books: Homer's Iliad, Book 1; Lucian, Charon, Life or Dream of Lucian and Timon; Horace, Odes; Mathematics, Euclid, Bb. 1, 2, 3, 4, and 6, or Legendre's Geometrie, Bb. 1, 2, 3 and 4, Hind's Algebra; Metaphysics, Walker's or Whately's Logic, and Locke on the Human Understanding; Herschell's Astronomy; Ancient and Modern History. For the Senior Class the books and subjects named for the University Class. For the Junior Class, Horace, Odes, Bb. 1 and 3; Mathematics, Euclid, Bb. 1, 2 and 3, or Legendre's Goemetrie by Davies, Bb. 1 and 3, with problems.

An applicant who, having his degree, passed the examination for the University Class could be called in three years instead of five. If he failed, unless rejected *in toto,* he dropped into the Junior Class as was the case with an applicant for the senior class. There was no other than sentimental advantage in passing for the senior rather than the junior

[16]This legislation, much needed and very valuable, was due in great measure to Hon Robert Baldwin, Treasurer, 1847 and 1850-1858.

class; the time was not shortened for a member of the senior class[17].

Education was now provided for all those proposing to become Barristers. Every Student-at-Law was obliged to attend for four terms all the lectures given by the lecturers of the Society, two in number, in Law and Equity respectively[18], who were also examiners for call.

On the examination for call, there were two classes, "Call" simply, and "Call with Honors." The former was examined on Blackstone's Commentaries, Bk. 1, Addison on Contracts, Smith's Mercantile Law, Williams on Real Property, Story's Equity Jurisprudence, Stephen on Pleading, Taylor on Evidence, Byles on Bills, Public Statutes relating to Upper Canada, Pleadings and other books and subjects as the Benchers or Examiners might prescribe[19].

By this time the use of Osgoode Hall as a boarding house had come to an end, but still Articled Clerks were obliged by Statute to keep two terms. They did not take the lectures as Articled Clerks, but as Students-at-Law if they were such, just as Students-at-Law as such were no longer required to keep terms as such, but if Articled Clerks they must keep two terms as Articled Clerks. The Student-at-Law passed a preliminary examination, the Articled Clerk did not.

In the first Parliament of the Province of Ontario[20], by Statute (1868), 31 Vic. 23, it was provided that an Attorney or Solicitor must during the year next but two before his final examination pass an examination to the satisfaction of the

[17]Applicants were examined in the presence of a standing committee of the Benchers, but by the "Examiner for Matriculation." Mr. Hugh N Gwynne, B. A. (T. C. D.) was appointed to this office; he had been from 1842 Secretary and Librarian.

[18]There had since 1855 been temporary lecturers appointed, but in March 1858 S. H. Strong (afterwards Hon. Sir. Henry Strong, Chief Justice of Canada) was permanently appointed Lecturer in Equity, and J. T. Anderson, Esq., in Law. See 4, Canada Law Journal O. S. 60. Strong was one of the ablest equity lawyers Canada ever produced. On the permanent establishment of the Osgoode Hall Law School, it was hoped for some time that he would become its first principal, but he finally declined the offer.

[19]The Examinations for admission was conducted orally by the "Examiner for Call" in the presence of a Committee of the Benchers. Those for Call and Certificate were first in writing under the supervision of the "Examiners for Call" and if 50% were taken by the Candidate he then went up for an oral examination by the Benchers in Convocation; if 50% were not taken, the Candidate failed.

The examinations were fairly stiff. Examples may be seen in (1860), 6 Can. L. J. O. S. 31, 78. Often a large percentage of those examined were refused certificates. At one examination as many as 14 out of 22 candidates, nearly 65%, failed.

[20]What had been for many years the Province of Upper Canada became the Province of Ontario July 1, 1867, by the British American Act.

Law Society and another to its satisfaction not less than one year thereafter.

I do not stop to detail what was done under this Act as it merges into that next to be mentioned.

The state of affairs was improved somewhat, but not sufficiently. In 1872 the Law Society's petition to the Legislature to enable them to extend the advantages of legal education was acceded to, and a new Act passed, 35 Vic. c. 6. That enabled the Society to require that all Clerks thereafter to be articled should pass a preliminary examination, and that their term of service under their articles should not run until they had passed this examination. The Benchers also were empowered to make rules for the improvement of legal education, appoint readers and lecturers, require the attendance of Articled Clerks and Students-at-Law at reading and lectures and an examination thereon as a prequisite to call to the bar or admission as an attorney, etc.[21]

The Benchers accordingly, June 7, 1872, laid down a curriculum for the preliminary examination of the Articled Clerks; Caesar's Commentaries, Bb. 5 and 6; Arithmetic; Euclid Bb. 1, 2 and 3; Outlines of Modern Geography; History of England (W. Douglas-Hamilton); English Grammar and Composition; Elements of Bookkeeping. The Students-at-Law passed an examination on Horace, Odes Bk. 3; Virgil's Aeneid, Bk. 6; Caesar's Commentaries, Bb. 5 and 6, Cicero, Pro Milone; Mathematics, Arithmetic, Euclid Bb. 1, 2 and 3, Algebra to end of Quadratic Equations; English History (W. Douglas-Hamilton); Outlines of Modern Geography, English Grammar and Composition. It will be seen that the curricula have much in common, Caesar, Arithmetic, Euclid, Geography, History of England, English Grammar and Composition. The Student-at-Law took also Horace, Virgil, Cicero,

[21]This Act was promoted by the Hon (afterwards Sir) Oliver Mowat, the Prime Minister, who had been a Vice Chancellor and took a great interest in the profession; but the matter had received long and careful consideration by the Benchers, culminating in a Report by the Committee on Legal Education, December 8, 1871 (Michaelmas Term, 35 Vic.). The Chairman of this Committee was Thomas Moss, afterward Chief Justice of Ontario; and the Report recommended an application to Parliament. The Act of 1868 was generally known as Blake's Act from its author Hon. Edward Blake, Prime Minister of Ontario, Member of the House of Commons of Canada and afterwards Member of the Imperial House of Commons. He was long a Bencher and for some years Treasurer of the Law Society.

Algebra; the Articled Clerk, bookkeeping[22]. There was, however, a rule that no one admitted as a student at law need pass a preliminary examination as an Articled Clerk. Graduates in Arts of a British University were not subjected to any examination, and there was no longer to be any division into Senior and Junior classes.

A Law School was established with four lecturers: 1—General Jurisprudence, 2—Real Property, 3—Commercial and Criminal Law and 4—Equity; but attendance on the lectures was made voluntary. There was no building, the lectures were given at Osgoode Hall and were fairly well attended.

Every Student-at-Law before his final examination for Call was required to pass two intermediate examinations, the first in his third year, the second in his fourth. These corresponded to the two examinations prescribed for Articled Clerks by the Statute of 1868. The curriculum prescribed for each was the same, namely, for the first Intermediate, Williams' Real Property, Smith's Manual of Equity, Smith's Manual of Common Law, Act respecting the Court of Chancery, Consolidated Statutes of Upper Canada, chapters 12, 42 and 44. For the second Intermediate, Leith's Blackstone[23]; Greenwood on Conveyancing (Chapters on Agreements, Sales, Purchases, Leases, Mortgages, Wills), Snell's Treatise on Equity, Broom's Common Law, Consolidated Statutes of Upper Canada, c. 8, Statute of Canada, 29 Vic. c. 28[24], Insolvent Act. Four scholarships of considerable value were established, one for students under one year's standing, one for for those under two, one for those under three and one for those under four. The curricula were for the first, Stephen's Blackstone, vol. 1; Stephen on Pleading, Williams on Per-

[22]These examinations were conducted by the "Examiner for Matriculation" Mr. Gwynne, before a Committee of Benchers appointed for that purpose and were partly *ore tenus*. Papers were prepared and printed in (1) Latin, (2) Mathematics, (3) History, Geography, English Grammar and Composition. If the candidate did not pass a satisfactory written examination he could not offer himself for the oral. All distinction of Senior and Junior Class was abolished.

[23]This was an edition of that part of Blackstone's Commentaries which relates to Real Property. The Editor, Mr. Alexander Leith, Q. C. was a very distinguished Real Property lawyer in Toronto, and in this work he gave the law as modified by our legislation so as to adapt Blackstone to the circumstances of this Province; otherwise of course Blackstone would be very misleading. It has always been the policy of the Law Society to prescribe Ontario books where possible.

[24]That is, the Statutory law of Property and Trusts in Upper Canada. Before the British America Act of 1867, the two Canadas had been for about a quarter of a century united in one Province of Canada.

sonal Property, Griffith's Institutes of Equity, Consol. Stat. U. C. cc. 12, 45. For the second, Williams on Real Property, Best on Evidence, Smith on Contracts, Snell's Treatise on Equity, the Registry Act[25]. For the third, Real Property, Statutes relating to Ontario, Stephen's Blackstone, Book V, Byles on Bills, Broom's Legal Maxims, Story's Equity Jurisprudence, Fisher on Mortgages, vols. 1 and 2, chapters 10, 11 and 12. For the fourth, Smith's Real and Personal Property, Russell on Crimes, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis's Equity Pleading, Equity Pleading and Practice of this Province.

The Articled Clerk had a final Examination on Leith's Blackstone[23], Watkins on Conveyancing, Ninth Edition, Smith's Mercantile Law, Story's Equity Jurisprudence, Leake on Contracts, The Statute Law, The Pleading and Practice of the Courts. The Student-at-Law if he did not go in for honors, Blackstone, Volume 1, Leake on Contracts, Watkins on Conveyancing, Story's Equity Jurisprudence, Stephen on Pleading, Lewis's Equity Pleading, Dart on Vendor and Purchaser, Taylor on Evidence, Byles on Bills, The Statute Law, The Pleading and Practice of the Courts; and if he desired Honors, also Russell on Crimes, Broom's Legal Maxims, Lindley on Partnership, Fisher on Mortgages, Benjamin on Sales, Jarman on Wills, Von Savigny's Private International Law (Guthrie's Edition), Maine's Ancient Law. All final candidates might be and not infrequently were examined also on the Intermediate subjects.

The Law School thus established began its career in October, 1873[26], and very many students availed themselves of the

[25]This is, the Statutory provision as to Registration of Titles to Real Estate.

[26]The Staff was composed of Alexander Leith, President and Lecturer in Real Property; James Bethune, Lecturer in General Jurisprudence; Zebulon A. Lash, Lecturer in Commercial and Common Law, and Charles Moss, Lecturer in Equity. Mr. Leith was the well-known Real Estate Lawyer, editor of Blackstone, vol. 2. Mr. Bethune became one of the most prominent men at the Bar, a member of the Legislature, whose too early death was much lamented. Mr. Lash (now K. C.) was afterward Deputy Minister of Justice of the Dominion, but returned to active practice and still adorns the Bar. Mr. Moss was afterwards Chief Justice of Ontario.

In December, 1874, Mr. Bethune resigned and was succeeded by William Mulock (now Sir William Mulock, Chief Justice of the Exchequer Division).

In May, 1876 (Trinity Term), the term of engagement for Lecturers was made one, two, three and four years respectively, and they were made ineligible for reappointment. Mr. Moss was elected for one year and made President, lecturing on Common and Commercial Law; Mr. Mulock for two, lecturing on Equity; Mr. John S. Ewart (now K. C.) for three years, lecturing on Real Property, and T. D. Delamere (afterwards K. C., now deceased), for four years, lecturing on Criminal Law and Law of Torts. After the abolition of the Law School, Mr. Ewart for some time gave a weekly lecture on Chancery practice and Mr. Delamere on Common Law Practice.

opportunities thus given for a legal education. Students who would otherwise have served their term in the country were attracted to Toronto. It became a matter of complaint of the country practitioners that they were deprived of their clerks—particularly so as the term of service was reduced by attendance on lectures and passing the law school examinations. A student could reduce his term by from six to eighteen months by this means. One requires no imagination to conceive the very great inducement this was to a capable and ambitious student.

Finally by a vote of 8 to 4, Convocation determined, November 24, 1877, Michaelmas Term, to abolish the Law School from and after the last day of the succeeding Easter Term, June, 1878.

This step was the subject of much discussion in the profession and in the press, legal and lay. All kinds of opinion were expressed as to the means, but most agreed as to the propriety of some form of education being provided for. It had been proposed that the Law School should be affiliated with the University of Toronto, but that course had not recommended itself to Convocation; a law college was suggested by some. In May, 1881, the formation of associations like the Osgoode Legal and Literary Society throughout the Province was recommended, with a sufficient number of students to ensure a good attendance and of Barristers disposed to deliver lectures. It was recognized that the Law Society would not create or direct these societies, but could only recommend. Some such were formed, but did not last long nor were they very useful while they did last.

Petitions came in from students in large numbers; and in Michaelmas Term of 1881, the Society re-established the law School for a period of two years to begin December 12, 1881, with four lectures the senior of whom was to be chairman, attendance still to be voluntary[27]. In view of the many petitions for the re-establishment of the school, the attendance

[27]The Lecturers appointed were Thomas Hodgins, Q. C. (afterwards Master-in-Ordinary of the Supreme Court of Judicature for Ontario), Chairman and Lecturer on Constitutional Law, etc. Thomas D. Delamere, already mentioned, who lectured on Pleading and Practice, Joseph E. McDougall (afterwards Q. C. and Judge of the County Court of the County of York) and E. Douglas Armour (afterwards K. C.), author of several works on Real Property.

was very disappointing, but it was decided to try the experiment till the end of the two-year term.

In June, 1883, the school was continued till the early Easter Term, 1884[28]. A proposition to establish law schools outside of Toronto failed. In Easter Term, 1884, the school was continued until the last day of Easter Term, 1886. In 1887 the project of establishing a teaching faculty in the University of Toronto was taken up by a committee of the Benchers with the Senate of the University, and an elaborate scheme was drawn up. This was vigorously criticised not only in convocation, but out of it, especially by those interested in other universities[29]. The committee was reappointed with additional members and directed to take the question up with all the universities in the Province; they did so, but in the long run without success[30].

January 4, 1889, it was decided "to continue and reorganize the school and to appoint a President[31], who should have supervision and general direction of the school," not less than two lecturers and two examiners—the lecturers theretofore having been also examiners. Attendance was made compulsory for the first time. All Students-at-Law and Articled Clerks were required to take the second and third years of the school course. If they resided in Toronto during the last three years they must attend the full three years' course. A small fee was imposed, by no means enough to pay for the support of the school.

Lectures had been given in Osgoode Hall, but for a long

[28]The Lecturers were Messrs Delamere and Armour already named. W. A. Reeve (afterwards Principal and a Q. C.) and Alfred H. Marsh (afterwards Q. C.).

[29]The scheme will be found printed at length in 24 Can. L. J. N. S. pp. 130 sqq. See one criticism at pp. 151-153 of the same volume; another pp. 182-173.

[30]The report is printed in 24 Can. L. J. N. S. at pp. 393-397; another will be found in 25 Can. L. J. N. S. 51.

[31]It had been hoped to secure Mr. Justice Strong of the Supreme Court of Canada for this position, but he declined, and, July 3, 1889, W. A. Reeve, Q. C., was appointed Principal.

The new Principal was instructed to visit the Law Schools in New York, Massachusetts and such other places as might be thought advisable, with Messrs. E. Martin, Q. C., and Charles Moss, Q. C., to acquire information on the Law School systems in vogue. He did so, and reported, Sept. 3, 1889, to Convocation, and the School was formally opened, October 7, 1889. The Lecturers were Messrs Marsh and Armour; the Examiners were Mr. P. H. Drayton (afterwards Official Arbitrator) and Mr. R. E. Kingsford (afterwards Police Magistrate, Toronto).

When in Easter Term, 1890, the number of lecturers was increased to four, Messrs Drayton and Kingsford were appointed Lecturers and Messrs F. J. Joseph and Aytoun-Finlay and Malcolm Cameron, Examiners.

time the proposition had been under consideration to erect a building especially for a Law School. Tenders had been obtained as early as December, 1880, but the matter dragged. It was taken up in earnest in the fall of 1889, plans were obtained and building proceeded with in 1891 and was ready in 1892.

The society in 1889 dropped their preliminary examination, the last to be Hilary Term, 1890. Thereafter the examination of the University was accepted instead, and now a degree of Arts or Law of a British University or Graduation Diploma of the Royal Military College, the examination of a university on prescribed subjects, or a matriculation certificate, a certificate of the further examination at the R. M. C. is sufficient, and one of them is required.

I shall not trace the trifling changes which have been made in the curriculum of the Law School; but here set out the present[32].

SUBJECTS OF STUDY.

III.

FIRST YEAR.

GENERAL JURISPRUDENCE.

Holland's Elements of Jurisprudence.

CONTRACTS.

Anson on Contracts.

REAL PROPERTY.

Williams on Real Property, except Parts III and VII.
The Land Titles Act.

COMMON LAW.

Odger's Common Law.

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[32]The present Staff is as follows:

FACULTY.

Principal:—Newman Wright Hoyles, B. A., LL. D., K. C.
Lecturers:—John King, M. A., K. C., John Delatre Falconbridge, M. A., LL. B., John Shirley Dennison, K. C., Samuel Hugh Bradford, B. A., K. C.
Demonstrators:—Christopher Charles Robinson, B. A.; Harold William Alexander Foster, LL. B.
Examiners:—Archibald Douglas Armour, M. A. Senior Examiner, Neil Douglas McLean, B. A., Patrick Kerwin, George Franklin McFarlane, LL. B., John Alexander Soule, LL. B.

CONSTITUTIONAL HISTORY AND LAW.

Bourinot's Manual of the Constitutional History of Canada. Todd's Parliamentary Government in the British Colonies (second edition 1894). The following portions, viz:

Chapter 2, pages 25 to 63 inclusive.
Chapter 3, pages 73 to 83 inclusive.
Chapter 4, pages 107 to 128 inclusive.
Chapter 5, pages 155 to 184 inclusive.
Chapter 6, pages 200 to 208 inclusive.
Chapter 7, pages 209 to 246 inclusive.
Chapter 8, pages 247 to 300 inclusive.
Chapter 9 pages 301 to 312 inclusive.

EQUITY.

Maitland's Lectures in Equity.

PRACTICE AND PROCEDURE.

Judicature Act and Rules of Practice.

STATUTE LAW.

Such Acts and parts of Acts as shall be prescribed by the Principal.

SECOND YEAR.

CRIMINAL LAW.

The Criminal Statutes of Canada.

REAL PROPERTY.

Kerr's Student's Blackstone, Book 2. Armour's Real Property.

PERSONAL PROPERTY.

Williams on Personal Property.

CONTRACTS.

Pollock on Contracts.
Rawlins on Specific Performance.
Pollock on Partnership.

TORTS.

Underhill on Torts.

EQITY.

H. A. Smith's Principals of Equity.
Underhill on Trusts.

EVIDENCE.

Powell on Evidence.

CONSTITUTIONAL LAW.

Lefroy's Canada's Federal System.

PRACTICE AND PROCEDURE.

Statutes, Rules and Orders relating to the jurisdiction, pleadings, practice and procedure of the Supreme Court of Canada, the Exchequer Court and the Courts of Ontario.

STATUTE LAW.

Such Acts and parts of Acts as shall be prescribed by the Principal.

EQUITY.

Underhill on Trusts, 1914-15, De Colyar on Guarantees.
Bell and Dunn on Mortgages, 1915-16, De Colyar on Guarantees.

TORTS.

Pollock on Torts.
Smith on Negligence, 2nd edition.

EVIDENCE.

Best on Evidence.

COMMERCIAL LAW.

Chalmers on Sales.
Maclaren on Bills, Notes and Cheques.

PRIVATE INTERNATIONAL LAW.

Foote's Private International Jurisprudence.

CONSTRUCTION AND OPERATION OF STATUTES.

Hardcastle's Construction and Effects of Statutory Law.

PRACTICE AND PROCEDURE.

Statutes, Rules and Orders relating to the jurisdiction, pleadings, practice and procedure of the Supreme Court of Canada, the Exchequer Court and the Courts of Ontario.

COMPANY LAW.

The Ontario Companies Act and Amendments. The Companies Act, R. S. C. Chap. 79, and amendments. The Winding-up Act, R. S. C. Chap. 144, and amendments. Palmer's Company Law.

MUNICIPAL LAW.

The Municipal Act.

Such Acts and parts of Acts as shall be prescribed by the Principal.

NOTE.—In the examination of all the years, students are subject to be examined upon the *matter of the lectures* of those years respectively, as well as upon the text books and other work prescribed.

Any person who desires to qualify for the practice of the law as a Barrister and Solicitor in Ontario, and who does not come under the rules in special cases, is required:

1—To be admitted into the Society as a Student-at-Law.

2—To serve a practising Solicitor as his clerk for the prescribed period.

3—To attend lectures at the Law School for three years.

4—To pass the prescribed examinations.

5—To pay the prescribed fees.

(If he does not wish to be admitted as a solicitor he need not serve under Articles at all, but must attend a Barrister's Chambers for the same time. This is in practice never done now).

The time of service for a graduate is three years; for a non-graduate five; fee for admission to the Society is $51, school fees per term $100, for call to the bar $100 and for admission as Solicitor $60. The title "attorney" has not been in use since 1881, all members of that branch of the profession are now called solicitor[33].

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[33] I have gone thus particularly into the history of the Law Society to show the variations from time to time of public opinion and the experiments which have been tried. Let me tabulate.

	BARRISTERS.	ATTORNEYS (OR SOLICITORS).
1792	Adoption of French Canadian System, all before the Court and called both as Advocates and Attorneys.	for five years under articles, examined
1797	Must be five years on Books of Law Society and the same time in Barrister's Chambers. No examination. The five years requirement, except in special cases, still continues.	Must have been under Articles five years, and three years on Books of the Society. No examination. The five years requirement, except in special cases, still continues.
1818	Examination for admission to the Society on one of Cicero's orations, etc., before the Benchers.	
1822		Attorneys, no longer members of the Law Society. No examination required at any time.
1825	Examination on Latin Prose and Poetical Authors, and in the Mathematics before the Benchers.	
1828	Students must keep four Terms in Court.	
1831	Formed classes for educative purposes.	
1832	And especially one at Osgoode Hall.	
1857		Must attend two terms in Court and be examined and certified by the Law Society.

It will be seen that the Legislature has ultimately placed in the hands of the profession not only the regulation but also the education of practitioners of all kinds. This has proved so beneficial that the like provisions have been extended to the professions of Medicine, Dentistry, Pharmacy (the Medical Council indeed does not educate owing to the existence of our efficient established Medical Colleges). There is no fear of the standard being debased; no advantage is derived by the profession from graduation of a large class, i. e. the admission of a great number to the Bar who will be competitors of those already practising, and any attempt to make the standard too high would be restrained by a wholesome regard for public opinion. It must however be said that though it has twice happened in the history of the Province (in 1794 and 1804), that the Legislature thought there were not enough lawyers, it is hard to conceive of our community (or perhaps any other) ever thinking that again.

It will be seen that we have tried all the methods of education that can be suggested. We have had the student left to the teaching of a master, for long the method in England. We have had the students directed to band themselves together in Classes for mutual benefit and with lectures from Barristers. We have obliged them to attend terms of Court. We have tried to make satisfactory arrangements with the Universities. All these have proved wholly insufficient, and in the long run the lawyers of Ontario have put their hands into their own pockets, erected a Law School building, engaged and paid lecturers and examiners and have determined to educate the young men to become competitors of themselves; and this they did for a long time at an annual loss of a considerable amount. That I think can fairly be called altruism if it is also *esprit de corps*.

We should have been much better satisfied if the Universities or one of them had established a real and practical Faculty of Law with a curriculum satisfactory to us; but we should always have insisted on conducting the examinations for Call and Admission ourselves just as is done in Medicine,

Dentistry, Pharmacy, etc. The reasons for this are apparent and need not be specified.

We have found, too, that the same curriculum should be prescribed for all lawyers whether Barristers or Solicitors, just as the same curriculum is prescribed by the Medical Council for all doctors whether surgeons or physicians.

The control of the Law Society over practitioners is complete and it is exercised without flinching though judicially. The accused has notice of the charge against him and is summoned to attend the hearing of evidence. He may cross-examine by self or counsel, give his own or (and) other evidence and in all respects has the right of an ordinary litigant.

Very early indeed one member was disbarred, and there has never been any hesitation to exercise the wholesome jurisdiction.

We have continued the distinction of Barrister and Solicitor. Although all but a very few have from the beginning been both Barrister and Solicitor that has not been universal[34], moreover a few who have been admitted as solicitor have ceased to take out the annual license to practise as such; about 4% are in that case, a rather smaller percentage have never been called. At one time when the curriculum and prerequisites were different from the two branches of the profession, the omission to qualify for both was not unnatural or uncommon; but now the curriculum is exactly the same, and it may be confidently expected that this will be even less common. The Articled Clerk serving in the office of a solicitor

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[34]There was a time about fifty years ago when some attorneys seemed to think they were entitled to act as Counsel in the County Courts and with the usual costume of the Barrister: (See 2 Can. L. J. N. S. p. 253) but this was soon checked.

The Barrister is clothed in black with white linen and necktie (or bands), and a black gown. If he is a King's Counsel his costume is of a peculiar cut corresponding to the usual costume of a gentlemen in Queen Anne's time, his gown is also of a peculiar cut and made of silk; the Utter Barrister, i. e., one not a K. C., wears black clothes of any seemly cut and a "Barrister's Gown" of stuff.

In the day when cloth bags were commonly carried—say thirty years ago—the Attorney carried one of black colour as did the student; the Barrister's was blue, the Queen's (King's) Counsel's red, and the Judge's green. These are still occasionally seen, and it would be as grave a breach of decorum for one to carry the bag of another grade as for a corporal to carry a colonel's insignia or vice versa. Most, however, of all grades now carry a black leather bag, the "brief-bag" as it is called.

Since 1857 the branches of the profession have been gradually assimilated, and the courses of study continually extended until the present time when the courses are identical and reasonably difficult.

The first and second Attorneys General, being English Barristers, did not sign the Attorney's Roll, and a few others from the mother-land were in the same condition. In the first twenty-five years of the Law Society only 3 out of 64 Attorneys did not become Barristers,—less than 5%. The proportion increased after the Act of 1822, so that by the time the Act of 1887 was passed, the percentage was nearly 30%. This tendency was checked by the Act of 1857, and now the percentage is negligible.

is at the same time attending the Chambers of the Barrister.

This apparent anomaly is only apparent and not real. Just as in the sister profession of medicine practically every one on this continent is educated in both medicine and surgery, and many become not only M. D. but also C. M.; they are both physicians and surgeons and all have the same curriculum and examination. This is not so in England. The Royal College of Physicians and the Royal College of Surgeons are not the same; just as there the Barrister is not a Solicitor or the Solicitor a Barrister.

Nevertheless it is recognized on this Continent as well that the office of the Surgeon is not the same as that of the Physician although the dividing line may often be uncertain. And so, no matter what the name, the office of the Solicitor is not the same as that of the Barrister, although the dividing line is often uncertain. In Ontario many doctors devote themselves mainly or wholly to surgery and do not meddle with medicine although wholly qualified and licensed as Physicians and so some Lawyers devote themselves mainly or wholly to "Counsel Work" the function of the Barrister. This has been found to be of very great advantage as he who devotes himself to surgery acquires a skill and dexterity to which the ordinary "General Practitioner" cannot attain, so he who devotes himself to conducting cases in Trial and Appellate Courts attains skill and dexterity beyond that of the ordinary lawyer. This is of as much advantage to the litigant as that to the patient; and of as much advantage to the Solicitor whose client has been taken in hand by the Counsel, as that of the general practitioner whose patient has been taken in hand by the Specialist. It must not be forgotten that a trial is a "major operation" desiderating skill and experience at the best of times and with the best of judges.

As a consequence, while practically every lawyer is licensed to conduct his own cases at the trial and in appeal, in a large percentage of cases one of those who are known to devote themselves largely to Counsel work is employed on those occasions. Generally the solicitor himself will take part as Junior Counsel in his capacity as Barrister. There is noth-

ing in the way of *esprit de corps,* custom, public opinion, etc., to prevent the solicitor taking his own brief—and many do so—any more than a physician is prevented from operating on his own patient—and many do.

In some cases the client himself insists on counsel being employed, just as some patients and their friends insist on a specialist surgeon. The only objection I ever heard to this custom is the fear expressed that the Counsel will steal the client. The very expression of such a fear indicates an extraordinarily low state of morals in the profession where such a fear can be more than the merest illusion. Any one who would steal a client would steal a sheep if it suited his purpose; and there is in our system about as little chance of the one as of the other. I have never heard it so much as suggested that any Counsel ever stole a client and I cannot think that such a thing could ever take place.

The Brief is brought or sent to Counsel by the solicitor himself. If the client brings it, he must bring either the solicitor or a letter from him. The client cannot in the first instance be so much as seen without the solicitor's consent, and the solicitor is always kept informed of everything that is being done with or for his client. The client is sent back to the solicitor; no Counsel would directly or indirectly accept as a client of his own, one sent to him by a solicitor. If any counsel were even to come under suspicion of such improper dealings, his practice would dwindle to the vanishing point. If it were proved against him he should be suspended or disbarred.

Counsel make their money by taking cases for others; prudent regard for their own pockets (if no higher reason) would keep them from "filching and stealing."

No one would, if he had to frame a system for the profession *de novo et ab origine,* think of making a formal distinction between barrister and solicitor, but we are an essentially practical people; we care nothing for logical consistency; if we find an institution work reasonably well in practice we do not discard it because it seems anomalous in theory. We would never think of applying to the Legislature to make the

distinction if none existed but we find it come down to us from the past as an existing institution and we find it does no harm, and accordingly we retain it.

But whatever the form, there must always be in fact a marked distinction in function. There must always be in fact abilities, acquirements which tend to enhance proficiency in one or the other capacity, and often the acquirements or abilities most useful in one are not so but perhaps rather the reverse in the other. On that I need not enlarge, but content myself with saying that nothing but good can be the result of a specialization as Counsel of a sufficient number of lawyers whose talents lie in that direction, and the liberal employment of these by practitioners less well qualified in that regard.

In conclusion permit me to say how glad I am to meet the Society, to wish it a long, prosperous and useful career and to add that I shall most gladly do all that is in my power to further its objects and enhance its usefulness.

William Renwick Riddell.