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CURRENT TOPICS AND CASES.

The addition to the appeal list at Montreal, between May and September, was not inconsiderable. The May list was so completely exhausted during the term that only eighteen of the cases which appeared on that roll are to be found on the September list, and these are cases which were continued at the instance of the parties. But 34 new cases have been added during the four months which intervened between the May and the September Terms. Of the 52 cases on the September list fifteen are from the rural districts.

With the greatest possible deference to the opinion of the learned gentlemen who sat upon the Committee appointed by the General Council of the Bar to inquire into the question of the examinations for admission to the profession, we find considerable difficulty in accepting the principal recommendation of their report. The majority report proposes that degrees from a law faculty shall dispense those who present them from any examination whatever as to their legal attainments. Even if this change be advisable in itself, it cannot be pretended that the reason urged in the report is a very cogent one. The

committee lay considerable stress upon the fact that inconvenience is caused by the number of candidates to be examined. But an inconvenience of this nature—of the precise extent of which we are not able to judge—does not appear to be a strong reason for so radical a change in our system of admission to the profession. The acceptance of a degree from the law faculty of a university as equivalent to an examination would seem likely to re-introduce the inequality of standard which was removed some years ago by the law which enacted that there should be but one general examination for the whole province, instead of the old system under which there was a separate examination in each district. Again, will the bar be able to maintain efficient control over the curriculum of every law faculty, present and future? The change suggested has really the effect of making the various law faculties equivalent to so many sub-committees of the General Council. Will they be content to assume that position? If but one university existed, or could legally exist, in the province, the matter might be easily regulated. But three law faculties already exist, and the number may be indefinitely increased. Our impression may be ill-founded, but we are disposed to think that undue importance has been attached to an inconvenience, perhaps temporary in its nature, in the present system of examinations, and that further investigation of the subject will disclose some less revolutionary method of meeting the difficulty. Both the majority report and that of Mr. Languedoc indicate a careful examination of the subject, and these documents merit the serious attention of the profession.

The resignation of the Hon. Mr. Justice Fournier, as a Justice of the Supreme Court of Canada, is announced. The learned judge has been a member of the Supreme Court since its organization in 1875. He was called to the bar of Quebec in 1846, and appointed a Q.C. in 1863.

He has been *bâtonnier* of the Quebec district and also *bâtonnier général* of the General Council of the Bar of the province. He was one of the editors of *Le National* of Quebec in 1856-58. He was elected to Parliament for Bellechasse by acclamation in 1870 in a bye contest, and again in 1872 and 1874. He also represented Montmagny in the legislature of the province. On the formation of the Mackenzie administration he was given the portfolio of Inland Revenue, but later was transferred to the ministry of justice, and subsequently to the post office. In 1875 he was appointed a puisne judge of the Supreme Court of Canada. Mr. Justice Fournier's published opinions have evinced a careful appreciation of the merits of the cases submitted, and a sound judgment on the legal issues involved.

THE BAR EXAMINATIONS—REPORT OF SPECIAL COMMITTEE TO THE GENERAL COUNCIL OF THE BAR.

The committee appointed by you on the 23rd of February last to consider the subject of examinations of candidates for admission to practice at the Bar of this Province, beg leave to report:

At the time of the appointment of the Committee it was understood that considerable dissatisfaction was felt at the result of the examinations held in January last.

Meetings of the members of the Bar of the Quebec Section had been held in reference to the matter, and a meeting of the members of the Bar of the Montreal Section had also been held. A conference had been held with the members of the Law Faculty of the University of Laval, and of the University of McGill, and it was understood that an arrangement was being discussed to provide for the prolongation of the law course to four years, and to effect some change in the system of examinations of graduates before the Law Faculties.

Since that date however, the members of your committee have taken occasion to consult with members of the faculties of the universities, members of the Board of Examiners of the Bar, and other members of the Bar, on these subjects, and have received suggestions from various quarters.

Your committee learn that the Universities have not come to an agreement as to the prolongation of the law course.

The Law Faculty of McGill seems to be rather in favor of a four years course, while the Law Faculty of the University of Laval in the city of Montreal seems to consider that a three years course with the number of lectures as now required, ought to be considered sufficient.

It is unnecessary to give at length in this report the reasons urged on the one side in favor of the four years course, and on the other in favor of the three years course.

The Act of 1894 (57 Vic., cap. 35) having been so recently enacted by the Legislature, it does not appear to be desirable or proper to insist at

present upon such changes as would necessitate a prolongation of the term of students' clerkships to four and five years, as they were before the Act of 1894.

Your committee conceive that the opinion which influenced the Legislature of 1894 in abbreviating the terms ought to be respected for at least a reasonable length of time, in order that the legislation may have a fair trial, particularly as there is much force in the arguments in support of it.

In the consideration of all the questions your committee believe that the Bar ought to retain within the limits of its own corporate powers the absolute right of admission of members to the profession, and that no infringement should be permitted upon that principle. At the same time the mere duty of examining candidates to obtain a knowledge of their qualifications so far as educational attainments are concerned, is a mere matter of obtaining evidence; and there may be other means of obtaining that evidence quite as satisfactory as the present system affords.

To make the evidence satisfactory, the examinations in whatever form, or by whomsoever conducted, should be as thorough as is reasonably possible, while at the same time made equitable to the candidate.

It must be admitted that the present system has worked fairly well, though it may not have proved in all respects perfect.

A great many suggestions have been made to members of your committee, who feel bound to report these suggestions in order that they may be considered by the council even though your committee do not see fit to approve of them.

The law students themselves have made suggestions, some of which have commended themselves to the approval of some of the members of the committee. It will be well perhaps to deal with these first. They are as follows:

1. That examinations start at the time fixed.
2. That there be an option given upon the number of questions, or a lesser percentage required, or a greater number of questions given, and especially in the major subjects.
3. That the student be allowed to have his paper back if he wishes, and be entitled to know in what subjects he is plucked.
4. That all papers on certain subjects only be examined by special committees, to the end of bringing about a uniform system of correcting papers; and that the present system of submitting papers to the sub-committees be abolished.

The first of these suggestions arises from a complaint that the examinations of candidates do not begin at ten o'clock on the first day.

The examiners explain that this is unavoidable, as the by-laws require that the questions to be submitted to candidates shall not be prepared until that day, and the forenoon consequently of the first day is inevitably consumed in the preparation of the questions.

If there is any inconvenience or expense caused to candidates by the by-law respecting this matter, it might be obviated by some change in the procedure, or in the notices to candidates.

The second suggestion would be a means, no doubt, of making the examinations more favorable to the candidates and perhaps fairer; but it will be observed that if a greater number of questions are propounded, the effect would be to prolong the sitting of the Board, both in the preparation of the questions, and in the examination of the answers, thereby increasing the expenses both to students and to the corporation.

3. "That the student be allowed to have his paper back if he wishes, "and be entitled to know in what subjects he is plucked."

While some of the members of the committee approve this suggestion, others consider there are grave objections, particularly to the first part

of it. Some of your committee are opposed to allowing the papers to be given back under any circumstances, feeling that no good is likely to result from such a practice, either to the student or to the Board.

There is not so much objection to informing the student as to the particular subject in which he has failed.

4. "That all papers on certain subjects only, be examined by special "committees, to the end of bringing about a uniform system of correct-"ing papers; and that the present system of submitting papers to the "sub-committees be abolished."

In this suggestion a distinction is made between "special committees" and "sub-committees." This distinction, as well as the suggestion itself, is one which has commended itself to many of the present members of the Board of Examiners, several of whom at least, are in favor of dividing the work of the Board into parts,—assigning "special subjects" to "special committees," and abolishing the system of sub-committee as heretofore has been found necessary.

This suggestion is somewhat favorably considered; but before making any decided recommendation as to its adoption, your committee are of the opinion it would be wise that the Board of Examiners should be asked to express their formal opinion respecting it.

A fifth suggestion is as to the length of time allowed candidates in which to answer questions.

It is quite possible that in some cases the time allowed has been scarcely sufficient, but in this matter a change in the direction desired would also have the effect of prolonging the sitting and increasing expenses;—an effect which ought to be avoided if possible.

A sixth suggestion has been made to the effect that the examinations should be annual instead of semi-annual;—the January examination to be dispensed with;—retaining only the July examinations, at which time the Board could have a longer sitting.

It is doubtful whether this suggestion would prove satisfactory. A candidate who has failed to obtain admission, either to study or to practise, would thereby be thrown back another year, which would be felt to be a great hardship.

The seventh, and perhaps the principal objection, is to the effect that the composition of the Board of Examiners should be changed.

This suggestion was discussed at the conference held after the last January examinations. It was suggested that the Board should be composed partly of members of the Bar appointed by the sections as at present, and partly of members of the Faculties of the Universities:—practically that the Board should be composed of nine members, two from the Faculty of the University of Laval, two from the Faculty of the University of McGill, and five from the Montreal and Quebec Sections.

Your committee is averse to having any changes at present in the composition of the Board. They would require to be sanctioned by the Legislature, and it is quite probable that any such would be opposed as infringing to some extent upon the privileges of other sections as they at present exist. Your committee do not consider that there is any necessity for such a change.

Whatever defects exist, or whatever complaints have arisen, do not flow from the manner in which the Board of Examiners is composed. Your committee feel satisfied that the members of the Board as composed since the changes in the Charter of the Corporation effected in 1886 by the 49-50 Victoria, chapter 34, have administered justice in conducting examinations as well as would have been possible under the same system, however the Board might have been composed.

The defects, if any, arise rather from three causes:

1. That there is a large number of candidates to be examined;

2. On a great variety of subjects;
3. In a very limited time.

It is to meet and overcome some one or other of these circumstances that any changes in the law should be considered. If the number of candidates to be examined were diminished, the complaints might be avoided. If the number of subjects could be lessened, the evils complained of might disappear. If the time to be devoted to the work could be extended, complaints would likewise disappear. None of these changes can be brought about by a change in the composition of the Board.

1. It is desirable to find a remedy, if possible, without prolonging the time consumed in the examinations.

2. It is not possible to lessen the number of subjects in which candidates should be examined, therefore no remedy can be found in that direction.

3. The only direction in which it seems possible to bring about a change without either prolonging the time of examinations, or lessening the subjects on which examination is to be held, is to lessen the number of candidates to be examined.

There is but one way of accomplishing this change, and that is by accepting a degree from a University as sufficient evidence of the qualifications of a candidate so far as his educational attainments are concerned.

Your committee are in favor of adopting this change. They have confidence in the belief that it would prove efficient in a great many respects. It would not infringe upon the principle of the control of admission remaining as at present in the hands of the corporation.

Your committee suggest that the present Board of Examiners should be continued in its present constitution: that all candidates should appear before them as at present, in person and with their credentials: and that article 3552 of the Revised Statutes should remain in force as at present, thereby controlling the educational training of students at the universities. It is under this article that the principle of retaining control by the Board is conserved to the Bar. The third paragraph is cited here for the sake of convenience:

"The General Council may from time to time determine the subjects "which shall be studied, the number of lectures which shall be followed "in each subject in universities and colleges to constitute a regular law "course.

"The programme once adopted shall not be altered except by a vote of "two-thirds of the members of the General Council.

"The law course given and followed in the university or college, and "the diploma or degree in law granted to students, shall avail only in so "far as the said curriculum has been effectually followed by the "university or college, or by the holder of the diploma conferring the "degree.

"The General Council may make such by-law as it may deem ex-"pedient to give effect to these provisions."

Under these provisions of the Charter, the Board will continue to retain its control over the education of students at the Universities.

Your committee conceive also that it is in the interest of the profession to encourage candidates for admission to practice to obtain their legal education from the Law Faculties of the Universities.

The members of these Law Faculties are either members of the Bench or of the Bar, both of whom, it is confidently believed, have as deep an interest in the welfare and future of the profession as even the members of our Boards of Examiners; with better opportunities for examining candidates as to their qualifications; and there is no solid reason for believing that they cannot be entrusted with the duty of examining.

Not only have the members of the Faculties of the Universities an equal interest in the profession, but they have also the reputation of their University to conserve by not sending candidates forward into any profession who will afterwards bring reproach upon their *Alma Mater*.

This latter interest is a guarantee to the Bar that the candidate who comes forward with a degree has merited it, and has become qualified to enter into the profession if otherwise worthy.

There are many other reasons why it is in the interest of the profession to encourage and foster legal education at the Universities.

The exigencies of the present day have forced upon practising advocates the necessity of doing their office work by the aid of stenographers and typewriting, to such an extent as prevents the intercourse between patron and student, which, fifteen or twenty years ago, was wont to exist.

It has become almost impossible in the office of a practising attorney, to give any useful assistance to a student in his legal education, while the demand for a higher standard has undoubtedly increased the severity of the final examinations.

Unless a student at the present day attends one or other of the Universities of the Province, he can only come forward at the end of his term a self-educated man, and under great difficulties.

This fact has become so universally recognized, that a large per centage of the candidates—a per centage annually increasing—are now coming from the Universities, where they realize they can alone obtain that assistance and those advantages so necessary to the advancement of the student, and which he can no longer obtain in the office of his patron. It will therefore be in the best interests of the profession to encourage by every possible means the legal education afforded to the young men of the Province by the Universities.

In the consultations had with the Law Faculties of Laval and McGill, your Committee are pleased to know that both are prepared to meet any reasonable demands that will tend to improve the standard of legal education in these Universities, and are willing to make some changes in their examinations before granting degrees.

After a careful consideration of the whole subject, your Committee have no hesitation in suggesting an amendment to the present law affecting examinations of candidates for admission to practice, and of recommending that, in the event of the Universities granting the degree of B. C. L. only after a final examination on all subjects at the end of the course, the Bar examiners should receive the degree as sufficient evidence of the qualifications of the candidate, so far as his legal attainments are concerned, and dispense him from any examination further than the investigation of his certificates as to moral character and fitness in other respects.

This change would overcome one of the causes of difficulty, by lessening the number of candidates to be examined; remove many of the grievances complained of, and would not lessen public confidence in the profession.

With this in view, your Committee have framed the amendment which they suggest, the adoption of which would also have the effect of lessening both the labors devolving upon the practising members of the profession who are members of the Board of Examiners, and the expenses of the corporation under the present system.

Your Committee believe that the change recommended by their proposed amendment to Art. 3554 would not only be the most simple, but would prove the most effective remedy for the evils complained of.

The whole respectfully submitted.

(Signed) TH. CHASE CASGRAIN,
WM. WHITE,
JOHN DUNLOP.

Montreal, 27th April, 1895.

An Act to amend the Law respecting the Bar.

Whereas it has been deemed expedient in the interests of the Bar, of Students-at-Law, and of the Universities of the Province, to amend the law respecting the Bar of the Province of Quebec by further encouraging the law students to follow a law course and curriculum approved by the General Council and adopted by the Universities;

Therefore, Her Majesty, by and with the consent of the Legislature of Quebec, enacts as follows:

1. Article 3554 of the Revised Statutes of the Province of Quebec is hereby repealed and replaced by the following:

"3554 (1). It is the duty of examiners to inquire into the morals, character, reputation, "knowledge and capacity and qualifications of candidates, and for such purpose they "have the right to summon and examine under oath administered by one of them, the "candidate or any other person, and to put to them any question pertinent to the in-"quiry.

"(2). A diploma in law conferred upon a candidate by any of the Universities or Col-"leges wherein a law course and curriculum approved by the General Council in accord-"ance with Article 3552 have been adopted and followed, shall be sufficient evidence of "his knowledge, capacity an qualifications, and shall dispense the candidate from any "examination by the examiners except as to his morals, character and reputation.

"(3). Such examiners, or the majority of them, have the same powers as the Superior "Court to compel witnesses to appear and to answer under oath in the manner and "under the penalties prescribed by the Court of Civil Procedure."

2. This Act shall come into force on the day of its sanction.

Report by Mr. Languedoc.

I regret to say I cannot concur in the report of the majority of the committee on examinations appointed by the General Council of the Bar at its meeting of the 23rd of February last, and the subject seems to me of such vital importance, that I feel it my duty to give herewith my reasons of dissent.

We are all agreed that it is essential to the existence of our body that it should not only retain in an implied manner, but actively exercise itself the power to recruit itself by the admission of new members. The question which divides us is as to whether or not examinations held in the universities and degrees obtained thereby should avail as tests of legal knowledge so as to relieve the Bar from the responsibility of further enquiry in the matter.

Following in the footsteps of the majority I shall first advert to the dissatisfaction felt in some quarters at the result of recent Bar examinations.

It is a subject which I have already had occasion to mention in annual reports to this council. Unfortunate candidates at all times are prone to believe themselves the victims of injustice, or of a bad system, and often get their friends and relatives to share this view. This is inevitable under any circumstances, but it must be borne in mind that since 1886 when the new charter came into operation, one of its chief objects was to effect a reform by raising the standard of legal education required for admission to the Bar. Examinations became at once more severe and very properly so. To carry out the reform a holocaust had to be offered, but the results were generally satisfactory. Complaints were only made by the unfortunates, but the successful students themselves (who after all knew better than any one else) invariably acknowledged the fairness of the examinations, and I can bear witness that they agreed with the examiners in the estimate of incapacity of their rejected comrades.

In the session of 1894, without any expression of opinion from the Bar and without deigning to afford it an opportunity to declare its views, at the request of the students, the Legislature abridged the term of study from a five and four to a four and three years' term. Students actually under indentures were given the benefit of this amendment.

The result was what might have been expected. At the examinations of July and January last, the ordinary number of men came up and in addition to them all those who in the usual course should have had to wait another year. The examiners had to deal with twice the number

of candidates, one half of whom, no doubt, by the force of things, were unripe. They were of course mostly rejected, and as their number was unusually great the outcry was proportionately loud. Among the victims a great number, indeed I may say the majority, held University degrees, and two or three were prizemen or as they are known at Laval "licentiates with distinction." This latter circumstance no doubt was a painful one to the Faculties and it may have caused their members, as well as some of the general public, to think that there was something wrong about the Bar examinations.

In point of fact there had been nothing wrong about them, so far from that, the Board had by extraordinary energy and industry done the double of their accustomed work as efficiently as ever. The whole cause of the trouble, was the improvident and hasty action of the Legislature in amending the Bar charter (with the levity with which they deal with the municipal code). I can see nothing to respect in the opinion by which it was influenced, and so far from admitting that there is any force in the arguments in support of it, I have not been able to find out what those arguments are. The only reason urged by the supporters of the bill before the committee on legislation was that it restored a pre-existing state of things, and that it was desired unanimously by the students and by a number of members of the Bar.

The dissatisfaction at the result of the recent examinations was not shared in by the Bar. On the contrary, at a meeting held in Montreal section, the action of the Board of Examiners was endorsed and approved of. The Quebec section asked for explanations, but took no further action condemnatory or otherwise. No other opportunity has been afforded the Bar as a body to express its opinion on the subject.

At a meeting of this council held in Quebec on the 6th of December last, the following took place, as appears by the minutes:

"The Secretary draws the attention of the council to a rumour current in the press that Law Students or some other persons are endeavouring to obtain from the Legislature a bill to change the mode of admission to the Bar by taking from that body the power of examining candidates, as to learning, and giving it to the Universities.

"It is moved by Mr. Methot, seconded by Mr. Dunlop, that this council strenuously protests against any attempt to interfere with the rights, immunities and privileges of the Bar:

"That the power of selection of its members to the exclusion of all others is essential to the existence of the Bar and was conferred upon it in the public interest, to insure the exercise of the functions of advocate by those only who are fit and worthy;

"That no change in the manner of making such selection provided by the existing law is desirable and, should the occasion arise, it will be demanded by this council in the name of the profession and not left to strangers, still less to those who, as regards the Bar, are *in statu pupillari*;

"That the Bâtonnier général, the Secretary treasurer and all the members of this council who are or will be in Quebec during this session of the Legislature be specially requested and authorized to do all in their power with the government and members to prevent the carrying of any measure in the direction above mentioned."

In consequence of this resolution, I had the honour to appear before the committee of the Legislature at the last session to which the bill therein mentioned had been referred, the object of which was to bring about very much the mode of examination commended in the majority report. This committee was composed among others of the leading lawyers in the House. The question of the examinations was fully discussed with the result that the committee reported against the bill and it was dropped.

Under such circumstances it seems to me it would be more than inconsistent for the Bar to seek a change at all in the mode of examining candidates. I could not see in such a course anything short of an ignominious striking of its colours. It is all very fine to say that the Board of Examiners is to be maintained as at present constituted, that they shall have the right to see the candidates and to inquire into their character and reputation, that the council is to approve of the curriculum adopted by the Faculties, that the members of these faculties are themselves members of the Bar or Bench, and as much interested in the welfare of the profession as in the reputation of their *Alma Mater*. All these considerations do not alter the fact that the proposal of the report is to transfer the power of ascertaining the legal knowledge of candidates from the Bar and its Board of Examiners to the Universities.

Is this wise? I say emphatically no.

Consider what the Universities are in this country. They are private independent bodies over which the State itself has no control. Can it be seriously pretended that the Bar can ever hope to exercise such a control? Take the teaching given to day in the law faculties of McGill and Laval. It is not at all the same, it is not founded on the same plan. Can you expect to get Laval to adopt McGill's programme or *vice versa*, or can you imagine the two faculties to adopt a plan of your own? Never! In the continental countries of Europe, notably in France, a degree in law from the University of France is sufficient evidence of legal knowledge for admission to the Bar, but there and wherever the same state of things obtains, the University is a state University under the control of public authority and stands alone, so that the conditions under which its degrees are granted are uniform for the whole country. In England, where the system is analogous to our own, the Inns of Court have always most jealously kept to themselves the exercise of the power of admission to the Bar both in respect of legal instruction and of social and moral standing. In recent times, since the former has been made an essential requisite and examinations have become so severe, University degrees in law are only accepted to relieve the candidate from examination in Roman or civil law, which, as we know, has much less importance with them than it has with us. The party led by the late Lord Selborne in their attempts to incorporate and otherwise reform the Inns of Court, never dreamt of interfering with their examinations.

On the above ground alone, namely, the independent status of our Universities and the fact of there being several between which competition may arise, I am of opinion that it would be most dangerous to surrender into their hands a fraction of a power so essential to our existence and improvement as a body. But I feel I would lay myself open to a charge of disingenuousness if I did not further declare my conviction that examinations by the Universities will ever be conducted in the interest of these bodies and not in that of the Bar. No one can serve two masters, and I have no doubt that with the best intentions, the most high minded professors would, as is natural, give a first place in their hearts to their venerable *Alma Mater*. And I further think that there is cause to dread that the interest of these great institutions may not always be that of the Bar, and, in case of conflict, it is easy to foresee which would have to give way in the minds of learned professors.

In conclusion, I think it is the plain duty of the Bar to jealously guard and keep intact the privileges conferred upon it, that the chief one among them is the process of selection of its members, that the main feature of this process is the ascertaining the legal knowledge of aspirants, and that it should not shrink one jot from the responsibility of exercising this power.

I do not think the present system of examinations perfect. It seems to me the idea of representation, so excellent in our political institutions, degenerates into an abuse when imported into everything.

I see no reason for it in the constitution of the Board of Examiners. Why must all the sections be represented? I cannot see it. The consequence of this is that gentlemen are brought down to Quebec or up to Montreal at a great inconvenience to themselves, without, it seems to me, any necessity. My idea of a Board of Examiners would be one composed of members of the Bar, taken from any part of the Province, of such standing as to make them representative of all that is good in the body and therefore above suspicion or cavil. They need not be very numerous, but they should be remunerated for the task imposed on them. Examining is work, hard work and most important work, and for this adequate remuneration should be provided.

Finally it seems to me that the matter in hand is of such importance that the council, bound as it is by its own recent resolutions and action, should deal with it with the utmost care, and at least take in a regular manner the views of the sections to which it should be referred.

W. C. LANGUEDOC.

LONDON POLICE COURTS.

In this article I shall endeavor to describe the system administered by our London stipendiary magistrates. Many persons, especially those of the criminal class, who have come to regard them as an inevitable evil, one of the vices of a constitution, calling loudly for reform, will be surprised to learn that they are comparatively a modern creation.

Until 1792 the police of the metropolis was administered by the Lord Mayor and twenty-six aldermen, sitting in rotation every forenoon at the Guildhall and Mansion House for the city; and at Bow Street by three magistrates sitting in rotation every day for Westminster and those parts of Middlesex, Surrey, Herts, Essex and Kent lying within the metropolis.

Old Bow Street Police Court was nearly opposite the present one, and close to Covent Garden, then, as now, one of the worst neighborhoods in London. Is it the irony of Fate or some economic law, that among the choicest flowers of our English gardens are found our rankest human weeds, that the howl of the midnight ruffian and the oath of the harlot are heard side by side with the strains of Mozart and the voice of Patti?

"Throughout a great part of the eighteenth century," says Sir James Stephen (History of the Criminal Law of England, 1, 229-230), the business of magistrates in that part of London which was not included in the city was carried on by magistrates who were paid almost entirely by fees. What the fees precisely were, and by what law their execution was justified, I am not able to say, nor is it worth while to inquire."

Townsend, a well-known Bow Street runner, who had been in the police since 1782, in giving evidence before a committee of the House of Commons in 1816, said: "At that time, before the Police Bill took place at all, it was a trading business; and there was Justice This and Justice That. Justice Welch in Litchfield was a great man in those days, and old Justice Hyde and Justice Girdler, and Justice Blackborough, a trading justice of Clerkenwell Green and an old ironmonger. The plan used to be to issue out warrants and take up all the poor devils in the street, and then there was the bailing of them, two shillings and four pence, which the magistrates had; and taking up one hundred girls, that would make, at two shillings and four pence, eleven pounds, thirteen shillings and four pence. They sent none to gaol, the bailing them was much better."

"Look with thine ears: see how yond justice rails upon yond simple thief. Hark in thine ear: change places and, handy-dandy, which is the justice, which the thief?"

The author of "Tom Jones," "that exquisite picture of human manners," thus describes his experience as a justice for Westminster: "By composing instead of inflaming the quarrels of porters and beggars (which, I blush to say, has not been usually practised), and by refusing to take a shilling from a man who most undoubtedly would not have had another, I reduced an income of about five hundred pounds of the dirtiest money upon earth to little more than three hundred pounds, a considerable proportion of which remained with my clerk; and, indeed, if the whole had done so, as it ought, he would be but ill paid for sitting almost sixteen hours in the twenty-four in the most unwholesome as well as nauseous air in the universe, and which hath in his case corrupted a good constitution without contaminating his morals."

Five hundred pounds, I may state, is the salary which, with three exceptions, the Legislature has since assigned to the chief clerks of the metropolitan police courts. At Bow Street and Great Marlborough Street the salary is indefinite, and at West Ham it is eight hundred pounds.

Fielding adds: "A predecessor of mine used to boast that he made one thousand pounds a year in his office, but how he did this (if indeed he did it) is to me a secret. His clerk, now mine, told me I had more business than he had ever known there. I am sure I had as much as any man could do. The truth is, the

fees are so very low, when any are due, that if a single justice of peace had business enough to employ twenty clerks, neither he nor they would get much by their labor. The public will not therefore think that I betray a secret when I inform them that I received from the Government a yearly pension out of the public service money."

Fate, which had condemned Fielding, like his contemporaries, Johnson and Goldsmith, to toil for the booksellers, ordained also that the hand which drew Sophia and Amelia should sign mittimuses for blear-eyed Molls and Molly Segrims. But vex not his ghost, oh, let him pass!

> "Here lies poor Ned Purdon, from misery freed,
> Who long was a bookseller's hack;
> He led such a damnable life in this world,
> I don't think he'll wish to come back."

Fielding was succeeded as justice for Westminster by Saunders Welch, who, Boswell tells us, "established a regular office for the police of that great district, and discharged his important duties for many years faithfully and ably." He was the friend of Johnson, who, when Saunders Welch's health gave way, obtained for him through Chamier (Under-Secretary of State) leave of absence to go to Italy, and a promise that the pension of two hundred pounds a year should not be discontinued.

Johnson who "had an eager and unceasing curiosity to know human life," told Boswell that "he had attended Mr. Welch in his office for a whole winter to hear the examinations of the prisoners, but that he found an almost uniform tenor of misfortune, wretchedness and profligacy."

In spite of one or two magistrates like Fielding and Welch, the state of the metropolis was so serious that 32 Geo. III. c. 53 was passed, establishing seven public offices: at Queen's Square, St. Margarets, Westminster; Marlborough Street, Oxford Road (as Oxford Street was called then); Hatton Garden, Holborn; Worship Street, Finsbury Square; Lambeth Street, Whitechapel; High Street, Shoreditch; and Union Street, Southwark. Three magistrates, two clerks, and six constables were attached to each office. The fees were paid to a receiver, as they are now, and by him distributed among the different offices, none of them receiving more than two thousand pounds. The salary of the magistrates was four hundred pounds each, and no other Middlesex or Surrey justice was allowed to take any fee within their

jurisdiction. Two of them are still remembered, Monias Leach and Patrick Colquhoun, author of a treatise on the Police of the Metropolis, which passed through seven editions in ten years, and of which the Select Committee of the House of Commons (1838) say: "The merit of being the first to point out the necessity and practicability of a system of preventive police upon a uniform and consistent plan, is due to Mr. Colquhoun."

Leach is described by his biographer in the Dictionary of National Biography (that most catholic work which embraces murderers in its fold) as "an able man," but it is added, "ill health made him irritable." The last feature would scarcely distinguish him from many of his successors on the bench, but he is remembered as the editor of Hawkin's "Pleas of the Crown," and of numerous Reports.

It was while the court was in Hatton Garden that the father of the present Sir George Lewis, whose offices are still in Ely Place, laid the foundation of the business which Sergeant Ballantine describes with loving care, and to which he, Sergeant Parry, Mr. Montagu Williams, and other members of the race of Chaffanbrass, owe their rather doubtful fame.

A singular thing about the Old Bailey, the final cause of the police courts, and which once shared with them the favors of a certain class of counsel more largely than now, is the blight which seems to fall upon its practitioners. Whether a legacy of death hangs round those grey walls, or that the shadows of a hundred years fall like a pall upon the living, the fact is unquestionable. Except parts of Erskine's closely reasoned, but rather turgid speech for Hardy, and Sergeant Shee's defence of Palmer, an admirable piece of reasoning and eloquence (the peroration is one of the most beautiful and pathetic passages in the language), and neither Erskine nor Shee was an Old Bailey man, none of the speeches delivered there survive—can be quoted as literature.

Although the new police courts did much to relieve the mischief which led to their creation, grave evils remained. This was partly the fault of the criminal law, even now, as Sir Edward Fry called it, a thing of "threads and patches," but then still more defective. For instance, it was not an offence to receive cash, or bank notes, or bills, knowing them to be stolen, as for that purpose they were not regarded as chattels. According to Colquhoun, there were upwards of three thousand receivers in the metropolis alone. The thefts, in small sums, from houses, shops, warehouses, etc., were something like seven hundred thousand pounds a year. An immense trade was done in counterfeit coin, two persons together being able to produce from two hundred to three hundred pounds of base silver coin in six days. As usual, the unfortunate attorney was the scape-goat. "No sooner," says Colquhoun, "does a magistrate commit a hackneyed thief or a receiver of stolen goods, a coiner or dealer in base money, or a criminal charged with any other fraud or offence punishable by law, than recourse is immediately had to some disreputable

attorney, whose mind is made up and prepared to practice every trick and device which can defeat the mode of substantial justice."

Tindal might well speak of "Christ, our attorney, suffering for us."

The plunder from ships in the Thames alone was so enormous —nearly half a million a year—that in 1798 a marine office, with two magistrates, was established at Wapping New Stairs. At first it confined itself almost wholly to offences committed on the river or connected with the stores in arsenals, but gradually its jurisdiction extended until it became the present Thames Police Court.

The glories of Ratcliffe Highway have faded, but readers of DeQuincy's immortal history of the murders of Mar and Williamson, can form an idea of what it was eighty years ago, when the largest ships discharged up stream, and the purlieus of the docks were "full of strange oaths," and the haunt of sailors of every race. Then, and until the advent of the large cargo steamers and short voyages, the Thames was the busiest police court in London, and it was not uncommon to hear as many as sixty summonses in a single day for wages alone—often for considerable amounts.

Thirty or forty years ago it supported four solicitors, all making good incomes; now it provides a bare living for two gentlemen who, with the aid of the police, maintain a close preserve, from which trespassers are jealously excluded. Some years ago a friend of mine, an able man and an excellent lawyer, endeavored to establish himself in Arbour Square, but was boycotted so effectually (one of the two gentlemen remarking that he would sooner do a case for nothing than let it go to him) that he was obliged to abandon the attempt.

Another difficulty to which Colquhoun refers is the absence of any provision for backing warrants, but this was supplied by 2 and 3 Vic., c. 71; 11 and 12 Vic., c. 42; 11 and 12 Vic., c. 43, and 42 and 43 Vic., c. 49. These statutes, added to 10 Geo. IV., c. 44, placed our police upon its present footing. Part of their effect is to enable the Queen to establish thirteen police courts (in addition to Bow Street), and to appoint any number of magistrates up to twenty-seven; the chief magistrate with a salary of one thousand eight hundred pounds, the others one thousand five hundred pounds each. There are now fourteen courts, with Bow Street, but only twenty-six magistrates.

The powers and duties of magistrates are derived, in the first instance, from the commission of peace, which directs them to "keep the peace," and "to keep and cause to be kept" all statutes for the maintenance of the same, and to bind over or commit any person guilty of threats of assault or fire. In addition to this, an ever-increasing load "tam immensus aliarum super alias acervaturum legum cumulus," both ministerial and judicial, is laid upon them by the babblers at St. Stephen's, upon whom, in

a pious moment, the late Thomas Carlyle prayed that our "only general" might "live to turn the key."

In indictable cases the magistrate's duty is clear, to commit, if there is a *prima facie* case, although I have known so experienced a magistrate as Mr. Hannay tell a defendant that he had no doubt of his intention to defraud (which he had no right to say unless he meant to commit), and then dismiss the charge on the ground that no jury would convict.

One of the weakest parts of the system is the way in which depositions are taken. Statements are often put on the file which could never become evidence. Of course, in indictable cases, such a thing can do little harm beyond burdening the depositions uselessly; but injustice is often caused by the omission of material facts. No means exist of compelling magistrates' clerks, many of whom, as Sir James Hannen said of the present Attorney-General, "sometimes seem to preside over the court," to make note of anything which they may consider unimportant. The consequence is, that any witness who may have made an inconvenient admission, and who finds that it is omitted from the depositions, to which he may have access at any time through his solicitor, "plucks up heart of grace" and repudiates it altogether.

I have no wish to attack magistrates' clerks. They are an industrious and underpaid body. One, Mr. Martin, joint author of "A Magisterial and Police Guide," is an accomplished lawyer. But it must not be forgotten that while a barrister, to become a clerk, must be of fourteen years' standing, although seven years are sufficient to qualify him for the bench, the post may be filled by a solicitor just admitted, and with no experience at all of criminal work.

With regard to witnesses, a great deal of nonsense has been talked about their treatment by counsel and solicitors. To hear the dithyrambs of the press, one would think we had returned to to the days of Peacham, "examined before torture, in torture, between torture, and after torture." My own experience is that witnesses are quite able to take care of themselves.

There is one class, the police, of which I ought to say a word in conclusion. They have been attacked as if they had been born with a "double dose of original sin." My experience is that they are much as other men are. No doubt they are inclined to make rather ample drafts on the magisterial faith, which are, perhaps, honored a little too readily. Possibly magistrates feel that if they begin to doubt anything, they may end, like Gibbon, by believing nothing. Of course it is obvious that, by making a man one of a class, with his chance of promotion depending upon his reputation as a smart officer, as well as upon the good will of his comrades, you give him a direct interest in securing a conviction and in supporting others in doing so.

If I were asked for my advice, it would be that of Talleyrand, "Surtout pas trop de zèle."—*W. Holloway, in "Green Bag."*