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ARCHAISM IN THE LAW OF ALIMONY.

A recent decision of the Appellate Division of the Supreme Court of Ontario has reminded us again that in some cases at least, it is neither just nor equitable that our Courts should be bound by precedents of English law, notwithstanding their age, or the customs and habits of life in vogue at the time the precedent was created. Social conditions change with centuries of time; and while no one with knowledge of the integrity of British Courts of Justice would venture to suggest that our Judges would be influenced in the execution of the duties of their high office either by public or private sentiment, the decisions of any Court must in every case be relative to the prevailing social conditions in so far as such decisions involve social or public problems.

Without discussing or questioning the justice of the decision in question, we can be free to look into the justice of the condition of the law under which our Courts are bound to follow ancient precedent, even though the conditions under which we live today may bear directly on the point at issue and be vastly different from those surrounding the case constituting the precedent.

In this case an action for alimony was brought by a wife against her husband. The claim was based on alleged cruelty and the Courts were called upon to decide as a question of law whether the facts proven at the trial constituted cruelty in the legal sense. The trial Judge held that they did. The Appellate Division held that they did not, basing their decision on a case tried in England in 1790. They quoted at length from the written judgment and applied this finding to a set of conditions that had arisen between husband and wife a century and a quarter

later. The Court held that they were bound to follow this old decision, and in doing so found the acts complained of did not constitute cruelty as defined in 1790, and the wife was held to be not entitled to alimony or any other relief.

The injustice of the whole principle can be expressed in no better language than that of the learned Chief Justice of Ontario: "I reluctantly agree with the disposition of this appeal which is proposed by my brother, Ferguson. I agree with him that we are bound by the authorities to hold that the respondent has not made a case entitling her to alimony; that the law should be as he states it to be in in my opinion to be deplored, and is not in my judgment in accordance with modern views as to the relations between husband and wife. To withhold alimony unless the conduct of the husband is such as to lead to the conclusion that it has impaired, or that it will impair the physical health or the mentality of the wife, is to say that a husband may subject his wife daily and even hourly to such treatment as makes her life a veritable hell upon earth and she is without remedy if she is robust enough to suffer it all without impairment of her physical health or mentality."

English law has undergone a wide development in the last one hundred and thirty years and in no branch has it developed more than in that relating to the rights of married women. A decision scarcely older than the 1790 case goes so far as to say: "The husband both by law power and dominion over his wife, and may keep her by force within the bounds of duty; any may beat her, but not in a violent or cruel manner." Today, such conduct would not only give the wife a good ground for separation with alimony but it would constitute a criminal offence. We have only to go back half a century to find that a married woman could not hold property, make a will, sue to collect a debt or incur a liability, free from her husband; but now by virtue of legislation she enjoys the rights of citizenship possessed by male subjects, even to the franchise.

Yet with all this development the Legislature has not yet conferred on the married woman the right to have the

vows of the marriage contract enforced in their true spirit.

It is not fair to compare the marriage contract with an ordinary mercantile contract. The Courts have quite rightly refrained from releasing the parties to a marriage contract on the same terms as they would release the parties to a civil contract. A very slight breach of the latter will render it voidable; but it is not in the interest of public morals that the marriage contract should be treated in any such manner. There is no doubt, truth in the statement: "The general happiness of the married life is secured by its indissolubility. When people understand that they must live together except for a very few reasons known to the law, they learn to soften by mutual accommodation that yoke which they know they cannot shake off. They become good husbands and good wives, from the necessity of remaining husbands and wives; for necessity is a powerful master in teaching the duties which it imposes." But the truth of this statement applies largely to the less fundamental difficulties of married life and to those cases where there is a mutual desire begot of good breeding to overcome difficulties. However, a great many married people do not overcome the difficulties and do not become good husbands and good wives, yet they may not be guilty of improper conduct in the eyes of the law. Under the present conditions of the law, the wife suffers the whole burden.

The situation is this: If the wife has a violent temper or a mean disposition, she may make her husband's life very unhappy; but he can always find relief in distance. True, he must still support his wife, but he is bound to do that whether he lives with her or not. He may have suffered the loss of her society, but after all in such a case the loss would be a gain. The converse case is very different. If the husband is the one of violent temper and mean disposition, he may submit his wife to all the tortures known to unhappy wives. "The husband may subject his wife daily and even hourly to such treatment as makes her life a veritable hell upon earth and she is without remedy if she is robust

enough to suffer it all without impairment of her physical health or her mentality." If she goes away, she is not entitled to support, even though by reason of her physical condition she be unable to support herself, and in many cases she must leave the society of her children. In other words, the wife must humbly submit or cast herself upon the world.

This condition is made worse by the fact that the Courts are bound to interpret the conditions under which alimony may be granted according to eighteenth century standards. A very elementary knowledge of history tells us that social problems of today ought not to be adjusted in the light of conditions of the eighteenth and nineteenth centures, when it was established as a principle of English law that in order that a wife might be entitled to alimony on the ground of cruelty, she must establish as a principle of English law that in order that a wife might be entitled to alimony on the ground of cruelty, she must establish danger to life, limb or health. The social conditions affecting both domestic and civil life were vastly different from those of today. Slavery was recognised and protected by English Law. It was over a quarter of a century later before the law intervened to prevent the flogging of women. Children of six years of age were employed in factories and mines, being compelled to work fourteen and sixteen hours a day under most revolting conditions. Women worked in mines as mere beasts of burden. The woman was little more than a servant of man.

But this is all altered. Society of today has elevated womanhood to a new level and the Legislature surely ought to give our Courts the right to interpret her rights in the light of modern thought and modern ideals.

It is in the interest of public morals that the marriage tie should be very binding, but it is also in the interest of public morals that the honoured mother and wife in a home be given a legal status and legal rights commensurate with the position she holds in the society of today. It is difficult to see in what way public morals would suffer if the bad

tempered husband knows that he must curb his temper or lose his wife.

The law of alimony could well be modified, and the legislature could surely leave it to the Judges of the Supreme Court to determine what is cruelty according to today's standards and according to the various circumstances surrounding the particular case, in the same way as they determine what is negligence, not so much by precedent as by evidence.

The old doctrine of "Danger to life, limb or health," belongs to another century. It has lived to a ripe old age. Its existence is deplored by so eminent an authority as the Chief Justice of Ontario. The Legislature should make haste to kill it, bury it, and leave the Judges of Ontario free to consider all the surrounding circumstances and exercise their own judgment in determining what amounts to cruelty in an action for alimony.

J. C. McRUER.

THE LETTER OF THE LAW.

It has been said that "the letter of the law killeth, but the spirit giveth life," and the question is not untimely. Is the interpretation of Statute law becoming narrower and more literal today than formerly? Some indications, surely, are in the affirmative. There have been numerous instances where a new statute has come up for the first time for judicial interpretation, and the way has been open to the Court to adopt one of two constructions, the one giving to the Statute a reasonable operation though not as sweeping or extreme as its mere words would warrant, the other, looking not at the practical (or impractical) results, but proceeding solely upon a choice of the meanings to be ascribed to the words used, and in many if not most of these cases the latter course has in modern times been preferred.

Without pretending to be exhaustive, this paper will be confined to what is submitted as one of the most outstand-

ing examples of this mode of interpretation, namely, the time-honoured Statute of frauds, a statute which now exists with slight variations in most if not all the Provinces of Canada and in many or all of the United States. As far as the writer is aware, this Statute has been fairly uniformly construed in the various countries where it has been in force, so that the criticisms which are here offered relate rather to the tendency of an age, than to the shortcomings of any one tribunal in particular.

In its very nature the Statute of Frauds is one which relates to matters of evidence, and does not change the substantive law. "No action shall be brought," implies the existence of a good cause of action, and, as matter of proof, requires that that cause must be proved by evidence of a certain kind. It does not in fact prohibit the bringing of the action, but condemns that action to failure for want of proof. Witness the fact that the action is in practice not only "brought" but tried out in the same way as any other action. But what of the case where no proof is or should be required, that is, where the defendant does not deny, but on the contrary admits the truth of the plaintiff contentions? It is well known that the Courts have consistently held that the action nevertheless fails by reason of the Statute. So that the Court becomes fully cognizant of the existence of a perfectly good cause of action, about which there is no shadow of a doubt, and is at the same time powerless to grant a remedy, by reason of its own decisions.

A recent Ontario amendment makes this situation more striking. The law-makers became convinced that in the case of actions for remuneration for the sale of land, legislation should be more paternal, or maternal, towards the defendant, than in actions for remuneration for any other kind of service. They therefore enacted that no such claim should be maintainable unless evidenced in writing duly signed by the defending party or his agent. Then, lest the way of the honest plaintiff who was so credulous as to trust his fellowmen had not been made sufficiently difficult, a further amendment required that the writing must

be "separate from the sale agreement." I do not desire to be led aside from the theme into a discussion of the wisdom or justice of this legislation. That is a topic which might be fruitfully discussed by itself. Under this state of the law, at least one case arose where the agreement to pay commission was in the hand-writing of the defendant, or his agent and incorporated in the acceptance of the offer to purchase and signed by the defendant, and out of the mouth of the defendant were proved (1) his signature (2) his knowledge of the contents (3) that the plaintiff had been instructed by him to sell the defendant's property (4) that the defendant knew the plaintiff to be carrying on the business of a real estate agent, and (5) that the plaintiff had been the effective means of selling the defendant's farm on the terms accepted by the plaintiff. Yet the Appellate Court dismissed the plaintiff's claim with costs.

In other words, while "he who comes into equity must come with clean hands," if it is law, he may, in the alternative, keep his hands in his pockets. He need not show his hands, but, without affirming or denying, may leave the plaintiff, with the just cause, to play a lone and losing hand.

In the first volume of Blackstone's inimitable "Commentaries" he says:—

"The most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it; or the cause which moved the legislator to enact it. For when this reason ceased, the law itself ought likewise to cease with it. An instance of this is given in a case put by Cicero, or whoever was the author of the treatise inscribed to Herennius. There was a law, that those who in a storm forsook the ship should forfeit all property therein; and that the ship and lading should belong to those who staid in it. In a dangerous tempest all the mariners forsook the ship, except only one sick passenger, who by reason of his disease was unable to get out and escape. By chance the ship came safe to port. The sick man kept possession, and claimed

the benefit of the law. Now here all the learned agree that the sick man is not within the reason of the law; for the reason of making it was, to give encouragement to such as should venture their lives to save the vessel; but this is a merit, which he could never pretend to, who neither staid in the ship upon that account, nor contributed any thing to its preservation."

Over and over again, the conviction forces itself upon one that we have wandered somewhat from the wholesome principles on which this decision was based, and that if that case had arisen today, the sick man would have been awarded the ship and contents.

If the operation of the Statute of Frauds had from the first been limited to cases where the facts on which the claim was based were denied under oath, would it not have served one hundred per cent. of the purposes for which it was intended, without having itself become, as it undoubtedly has, the father and protector of many hundreds of frauds?

We are familiar with the reasoning of the Courts in these matters. They say, "If the Legislature had intended the operation of the Statute to be limited in that way it could very easily have said so." But the same reasoning could have been adopted with equal ease and with equal injustice in the instance cited by the learned author above named. If the legislative body in that case had intended to confine the benefits of the decree to persons who "voluntarily" stayed with the ship, it could very easily have said so by the addition of one word.

The fallacy of this reasoning, it is submitted, consists in the fact that it involves the supposition that the Legislature is omniscient, instead of assuming, as is universally appreciated, that the Legislature cannot possibly foresee all possible situations which may arise and so must rely on the Court to give reasonable operation to the Statute, having regard primarily to the purpose for which it was passed.

It is rather fruitless, of course, to expatiate on these evils without pointing to a remedy, and the tendency has been too

long in the one direction to warrant the hope that it might suddenly change at the sound of the voice of one crying in the wilderness. One suggestion, however, might be recorded in the spirit of hope that it might yet be taken up and brought to the rescue. In the language of the Courts, "The Legislature can easily say so." In other words the remedy is in the hands of the Legislature. Within the past few years there has been introduced into the practice in the Ontario Courts what has become commonly known as the "affidavits of merits," though not so designated in so many words in the rules. The effect of the provision under which this affidavit is required is, briefly, that in certain classes of actions the defendant is not entitled to defend, and judgment may go against him, without the taking of any evidence, unless he says in writing under oath that he has a good defence and discloses in like manner the nature of that defence. This practice has resulted in the saving of much idle and costly litigation and has served its purpose without any resulting hardship. Could not an analogous provision be added to the Statute of Frauds requiring the defendant to deny under oath, either in affidavit or otherwise, the facts set up by the plaintiff, or deny in partial degree and to a sufficient extent to be an answer in law to the plaintiff's claim, before being allowed to set up the Statute of Frauds as a bar to the action? This would be no hardship to an honest defendant, and would prevent many a dishonest defendant from setting up, as a shield against the payment of honest obligations, a Statute itself designed to prevent fraud.

ARTHUR A. MACDONALD.

A NOVEL LAW SUIT.

The Supreme Court of the United States is, we are told, to be asked to determine whether the Bible can be legally excluded from the public schools of that country. It is said that prominent men in the various Presbyterian Churches are heading a movement to bring a test case

before the nation's highest tribunal. It appears that "the State of Washington, which officially excludes the Bible from its public schools, will furnish the basis for the case. The line of attack will be based on the Declaration of Independence, which, it is maintained, is a covenant between the American nation and God. Hence, the study of the Bible by American children is held to be essential to an understanding of the covenant and to full knowledge of God. To exclude the Bible from the public schools, it is contended, is to violate one of the essential clauses of the opening paragraph of the Declaration of Independence."

Apart from any religious aspect of the subject, with which a legal journal has no concern, history demands the acceptance of the fact that an open Bible has proved to be, without doubt or cavil, ,the great elevating, educative ennobling and energising force which has given to the world its highest and best form of civilisation. All lovers of their country should be hopeful that the result of the test case may be to carry out the thought of those who drew the Declaration of Independence. It would be well, for the future of this Dominion if its children were given without stint the benefits of this great uplifting and purifying force.

CLASS LEGISLATION.

In an address delivered at the annual banquet of the Illinois Bar Association, Mr. Nicholas Murray Butler made some pertinent observations worthy of note in the present condition of things in this country.

As we all know, the game of party politics is an old one. Probably its origin is at least as ancient as that of the game of chess, hidden in the mists of bygone centuries; not however as respectable, if the saying of the elder Disraeli is to be accepted as correct. He said:—"Politics is the art of governing men by deceiving them." Speaking on the subject of politics in connection with "The changing foundations of Government," Mr Butler said:—"A labour party, or a farmers' party, is as un-democratic and as un-

American as a millionaires' party or a shipowners' party would be." In speaking of a recent American statute Mr. Butler said:—"This law established a privileged class among us and thereby increased the cost of living to every man, woman and child under the American flag." He then referred to a kindred class of legislation in language which has much of interest in some of the Provinces of this Dominion:—"The use of the power of the State to enforce some particular rule of conduct, which those to whom it appeals describe as moral, may easily differ only in form and not in fact from the long since abandoned use of the power of the State to enforce conformity in religious belief and worship. Private morals and private conduct are matters for the conscience of the individual and not for regulation by some majority which, at best, can only be temporary."

The speaker must have been taking notes as he passed throuhg Canada.

THE PRESIDENT OF THE CANADIAN BAR ASSOCIATION.

The splendid service rendered to the Bar of Canada by Sir James Manning Albert Aikins, K.C., Lieut.-Governor of Manitoba, in connection with the Canadian Bar Association has found expression in a striking and unusual manner, and comes, we may also say, from an unexpected quarter. The Anglo-Saxon mind, though quietly appreciative, is slow of, and stolid in expression as compared with the brighter, warmer, more imaginative and genial temperament which characterises the Celt. It is to the latter feature that we now call attention to in a graceful tribute to the one whose name we here refer to.

None but those of our legal fraternity hailing from the Province of Quebec would have thought of the presentation which they made to Sir James on the anniversary of his 70th birthday. We all know something of what he has done for us; we have all heard of his princely gift to the

endowment fund of the Association; but few know of the time and labour he has expended in developing and fostering a venture which most men thought could not succeed by reason of the vastness of the territory over which are scattered the legal fraternity of Canada, and the almost unsurmountable difficulties and expense in gathering them together in one central spot.

The occasion referred to was a meeting of the Manitoba Bar Association at a luncheon tendered to Sir James as a mark of hearty appreciation of the many qualities which endeared him to his professional brethren and which had won for him their esteem as the Lieutenant Governor of Manitoba and as President of the Dominion Bar Association.

The incident we specially refer to on this occasion was the presentation to Sir James, by one chosen for that purpose, of a very handsome loving cup sent to grace the event by the Bench and Bar of Quebec. The gift was accompanied by a letter of congratulation signed by Chief Justice Lemieux of Quebec on behalf of the donors. We regret that space does not permit our publishing it in full. It was a long and eloquent reference to the service, character and personal attributes which had won the esteem of Sir James' brethren of the Bar of Old French Canada; and it was couched in the graceful and affectionate language which told of its origin. We are glad to say that we of the Anglo-Saxon Provinces are of the same opinion, concurring on all points with no dissenting voice.

THE VOCATION OF AN ADVOCATE

Address by Rt. Hon. Sir John Simon, K.C.V.O., K.C., delivered at the annual meeting of the Canadian Bar Association.

It is quite impossible for me to enter upon the discussion of the subject which I have set for myself this evening without in my first sentence thanking you for the warmth and kindness of your welcome and assuring you that I

regard it at once as the greatest and the most pleasant compliment that has ever come to me in my life as a private professional man that I should have received the invitation which Sir James Aikins sent me to attend the meetings of the Canadian Bar Association. This Association, modelled on the lines of an older association in the United States, is to everybody who takes an interest in the science and in the fellowship of the law one of the most interesting and surprising of societies. I hope nothing that I shall say tonight will be thought to belittle the professional patriotism of English barristers, but it would be quite impossible by any inducement to call together a great convocation of English barristers in the first week of September—(laughter)—and, realising as I do from the acquaintances and the friendships that I have made during my stay amongst you, that here gathered in the capital city of the Dominion you have men of the law, busy men, overworked men, I dare say, in need of a holiday, as all lawyers are, who have deliberately travelled enormous distances, both from the East and from the West, in order to join with their colleagues in these debates and discussions, I cannot tell you with what interest and admiration an English barrister like myself, and, I am sure, like my friend Sir Molcolm Macnaughten, finds himself amongst you.

If anything could add at once to the pride and to the pleasure with which I find myself here as your guest, it would be to come here when the Society is showing all indications of rapid and vigorous growth which your munificient president, Sir James Aikins, year by year leads to greater triumphs, and to find myself at your annual meeting under the chairmanship of my old friend Mr. Justice Duff. (Applause.) Mr. Justice Duff and I made one another's acquaintance long since. We shared the labours of a difficult and anxious time eighteen years ago, and it is one of my pleasantest memories that from the time down to today, the friendship between us has always remained close and constant.

But indeed, ladies and gentlemen, happy is the practising English barrister whose work takes him in those directions which make him the colleague of the Canadian bar. There are no more generous colleagues; there are no more kindly

opponents; I hope I may say with truth, there are no more considerate critics, than the lawyers of Canada with whom some who practise in England from time to time come in contact. And when I think of this great association and all that it represents, all that it stands for today and all that I am convinced it is going to do for Canada, for peace, for good government and for the profession of the law in times to come, it seems appropriate in addressing this assembly to choose as my subject the Vocation of an Advocate.

So much, ladies and gentlemen, in the comfortable language of mutual praise. (Laughter.) But this is the Palace of Truth and we may as well begin by admitting that, whatever be the explanation, there is in some quarters a painful prejudice against Lawyers. (Laughter.) I think many of my Canadian colleagues must feel, as so many of us feel at home, whether in our professional sphere, our strictly professional sphere, or whether in the public work which lawyers have in time of crisis so often undertaken, that we are a misunderstood class. We are denounced for vices which we never practise, and, what is even more surprising, we are acclaimed for virtues which we seldom attain. (Laughter.) By novelists, for example, and by dramatists, and, I suspect, by a large part of the general public too, a lawyer at his worst is an unprincipled wretch who is constantly and deliberately engaged in the unscrupulous distortion of truth, by methods entirely discreditable, and for rewards grotesquely exaggerated. (Laughter.) Even at his best, a lawyer in the minds of many people is marked only by a supernatural coolness and an almost infernal cunning, by means of which he discovers at the last moment an argument which nobody has thought of, or produce a witness from some forgotten corner as a conjurer produces a white rabbit from the tails of his evening coat and thereby, when all seems lost, overthrows the obstinate and rescues the innocent.

Speaking to my brother lawyers and here in the Temple of Truth, don't you agree with me that both those pictures are exaggerations? (Laughter.) It is not true that a lawyer spends his life in the dishonest and unprincipled pursuits of distorting fact and colouring truth; and it is not true either that by waving some rhetorical wand in

Court he works miracles and compels agreement. The truth about the matter is that a lawyer is a very plain matter-of-fact, hard-working person, who devotes long hours in private to preparing what may not show for very much in public; and I say with great boldness to you that a lawyer is neither so unscrupulous nor so ingenious as some people make out—at any rate, I make bold to say that we know of other lawyers who are neither as unscrupulous nor as ingenious as some people suppose.

We lawyers "conscious as we are of one another's shortcomings" are prepared to deny the popular description of the character of the advocate's art, and I stand here tonight to contend on behalf of our lawyers' craft that just as it is true there is no royal road to success or fame without unremitting labour, so on the other hand, it is a vocation which calls for, and which does not call in vain for, the nicest sense of honour and the strictest devotion to justice. (Hear, hear, and applause.) Therefore it is as a lawyer who is proud of his profession, who believes it is a great and necessary calling, which contributes much to social justice and is essential for the progress of society, that I invite you to consider for a few moments some characteristics of the vocation of an advocate.

And first, ladies and gentlemen, allow me on behalf of the practising members of the profession to get rid of one antiquated fallacy. It is astonishing what a number of people believe that as indeed somebody once said, that the bar is not a bed of roses, for it is either all bed and no roses, or else it is all roses and no bed. I for my part find it very difficult to believe some of the stories that are told of the uninterrupted and continuous labour, hour after hour, night and day, which has been undertaken in the pursuit of our profession by some distinguished advocates in the past. I have been assured, however, for example, by the son of a former Lord Chancellor, that when his father was at the Bar he never went to bed for a week. (Laughter.) Well, that is hearsay evidence.

I have heard a successful English barrister declare that there are only two things needed for success at the English bar; the first of them is a good clerk, and the second is a good digestion. (Laughter.) But I happen to know that that particular member of the bar never argues a case

without having very fully and carefully studied his brief; and I think our talk tonight would not be without its value if it would do something to disabuse the public mind of the idea that advocacy is a sort of tour de force in which a man, under some sudden inspiration, whether by the superior or the inferior deities, dashes in, and, relying upon the divine afflatus, delivers himself of some overwhelming argument, couched in language of the most elaborate rhetoric, and thereby proves that the worse is the better reason. It is not true at all. I do not believe that there is any great profession in which honourable success is attained without unremitting labour. The old definition that genius was an infinite capacity for taking pains is open perhaps to the objection that genius is so rare a quality that no analysis will discover how to attain it; but that no man unless he is prepared to devote everything that he has in can attain a great position in our profession of the law his powers of mind and concentration upon the work he has to do and the preparation for the case he has to argue, is, I am convinced, the experience of all those who have tried this strenuous competition, and all doctrines to the contrary are quite unfounded.

It was Plutarch, I think, who said, in his account of Demosthenes, that when Demosthenes was asked what was the first and most important thing in oratory Demosthenes replied, "Action." And when he was asked what was the second most important thing Demosthenes again said "Action." And when he was asked what was the third most important thing Demosthenes again said "Action." Well, I have often wondered how Demosthenes ever came to talk such nonsense; but perhaps the explanation is that somebody has misunderstood Demosthenes, and that when he spoke of action he must really have referred to the necessity of unremitting and continuous work.

Let me for instance remind you of an incident in the life of a great lawyer, Charles Bowen. Charles Bowen was one of the two juniors in the famous Tichborne litigation. Mr. J. C. Matthew was the other, who was afterwards Lord Justice Matthew and a very distinguished and powerful commercial judge in England. The Tichborne litigation was a case in which the plaintiff's cross-examination lasted

22 days. The hearing of the plaintiff's case lasted 70 days. The opening speech for the defence lasted a month. (Laughter) And, most astonishing of all, the summing up of Chief Justice Cockburn in the subsequent proceedings for perjury which were taken against the person who claimed to be the inheritor of the Tichborne estates—the summing up of the Chief Justice Cockburn lasted 18 days and occupied 188 columns of the Times newspaper. Well, that was something like a case. (Laughter.) And Charles Bowen's biographer points out that Mr. Bowen was engaged as a junior in that case from the middle of 1871 to end of February 1874, and his biographer says this: "He devoted to it the whole of his powers, intellectual and physical. His familiarity with every fact of it was complete. He used to say that he did not believe that there was a single fact or a single date in the evidence of which he was not fully cognizant and of which he was not prepared on the spur of the moment to give an immediate and correct account." And yet, ladies and gentlemen, when that Tichborne case was over, when the Tichborne estates down there in Hampshire were confirmed in the hands of the man to whom they really belonged, and when this unhappy claimant had been sentenced to seven years' penal servitude, I should doubt whether there was a single fact, or a single date, or a single circumstance in the whole of that immense accumulation of detail—all of which was in Charles Bowen's memory—that was of the slightest permanent value or interest to anybody on earth.

There is the real character of a lawyer's life. He is constantly under the duty—and if he regards his profession seriously it is a most solemn duty—of learing the detail about his client's business with a precission and a minuteness which passes long beyond the bounds of what is interesting or permanent, and when he has done it he has to face the circumstance that this vast and detailed study may very well, to a large extent, be wasted labour. Truth may lie at the very bottom of the well, and all the pumping out of the liquid that lies above it only serves to find at last the one small point, which a practising lawyer so often discovers to be the key and heart of the mystery.

Next to the advocate's willingness to seize upon, analyze

and understand the details of the case which he is preparing for trial—I myself would put next in the armoury of the advocate the power to select out of this vast mass of detail the things that really matter, and the courage to reject, in the face of his client's reiterated desires, in the face of every other temptation, the accumulation of unnecessary material, which is better left undealt with. The Tichborne litigation was of enormous length and there may have been good reasons why it lasted so long but in my judgment and so far as my own experience goes, other things being equal, the shortest argument is the best.

I have heard advocates say that it is always necessary to repeat an argument at least three times, especially if you are addressing a tribunal which consists of more than one judge. (Laughter.) You have to repeat it for the first time in order that one judge may understand it; you have to repeat it for the second time in order that he may explain it, while you are repeating it, to his brethren (laughter.); and you have to repeat it for the third time in order to correct the erroneous impression which he has unfortunately conveyed. (Loud laughter and applause.) Sir James Aikins, this is a meeting of the Canadian bar. (Laughter.) The judges are here only by sufferance, and I am speaking not of the duty of a judge—it is a thing of which I know nothing at all—but on the wholly different subject of the vocation of an advocate and it is selecting out of a great mass of matter of that which is really important which is really going to tell, which is really going to carry the day. It is a thing which requires sureness of judgment, and it requires strength of character. The lay client is so familiar with his own case that he sometimes finds it very difficult to communicate all the relevant facts of the case to his professional adviser, but on the other hand it is extraordinarily difficult for the lay client to believe that his professional adviser, if he omits any fact in the case, is not doing so either from ignorance or from indolence, or from indifference, or, it may be, from a desire to get as soon as possible into another court. And yet, recalling after an experience of twenty years the arguments that have really impressed me—both arguments in point of law and arguments on questions of fact—I feel more convinced to-day than ever

that one of the most important things at which every advocate ought to aim is this economy of his material which enables him to present a picture in which everything that is critical and salient stands out, and where there is no danger that anybody will fail to see the wood for the trees.

Speaking now from the point of view of advocacy, I do not greatly admire the famous speech of Portia in the Merchant of Venice. Of course she was a lady barrister—(laughter)—and I believe it was her first brief; so on both grounds we must speak with indulgence and consideration. But I don't greatly admire her performance as a matter of advocacy. No doubt that was a very fine passage all about the quality of mercy, and it would have been a most admirable way of addressing the court, supposing that Antonio was going to be convicted; but when she had got in reserve that point about the pound of flesh, I must say I think she ought to have brought it out immediately. If I had been the Duke of Venice, though I should have decided in Portia's favour, I should have made her pay the costs of the first half hour of the hearing. (Laughter.)

But then, lawyers and barristers and judges are notoriously impervious to the influence of poetry and the drama. I remember to have been told a story of a very shrewd, but peculiar English judge, who, I believe, was one of the best judges of a horse that ever sat upon a bench (laughter), but who sometimes avowed curious literary opinions, meeting one day in the Temple, in London, with Serjeant Taulford, who, besides being one of the King's serjeants, was a great Shakesperian authority, this lamented judge said to Taulford: "Taulford, you know about Shakespeare, I believe. Tell me, what is the best play of Shakespeare to read, for I have never read any of them?" Serjeant Taulford gave the rather surprising advice that he thought the best play to begin with was the tragedy of Romeo and Juliet, and meeting the judge about three weeks afterwards, asked what he thought of it. "What do I think of it? Why, I don't think anything of it. It is a tissue of improbabilities from beginning to end." (Laughter.)

So far as I have been insisting that in the outfit of the advocate, apart altogether from any question of knowledge

of law or knowledge of man, or knowledge of women, all of which are very necessary ingredients in his composition—I say nothing of the even more necessary knowledge of judges (laughter)—so far I have been insisting that in the outfit of the advocate the two things that are most important are: first, the ability and the willingness to work, so as to accumulate all the material available; and, secondly, the judgment and the character which will winnow out of these materials and select what is really necessary for the purpose in hand. Accumulation, selection, rejection,—those, I think, are the reading, writing and arithmetic of advocacy.

I know it is said, and some people believe it most fervently, that since advocacy is the art of persuasion the most important thing in advocacy is to make a flowery speech. Well, forensic eloquence has, so we are told by historians, flourished in various ages, but I cannot bring myself to belief that highly rhetorical periods really ever have had, either on judge or on juries, quite all the influence which historians and biographers assure us they did have in the case of the particular subject of their admiration. At any rate, it is a product which does not keep. Can anything be more depressing than reading the rolling periods even of great speeches like Brougham's defence of Queen Caroline—I would almost say, of Burke's impeachment of Warren Hastings?

I think it is said of Lord Erskine that on one occasion when he appeared for a candle maker before a common jury at the Guildhall in the City of London, in an action for libel, he began by saying: "Gentlemen of the Jury, the reputation of a tallow chandler is like the bloom upon a peach. (Laughter.) Touch it, and it is gone forever." (Laughter.) I feel certain that Lord Erskine got justice and considerable damages for his client, but I have great difficulty in believing that it was his rhetorical language which greatly weighed the scales in the plaintiff's favour.

The truth is that at its best forensic eloquence is like dry champange—if indeed I may be permitted (laughter) in this part of the world to make such a reference. (Laughter.) That is to say, however effervescent it may be when the bottle is first opened, it is impossible to preserve it in a good state for very long. There is not, after all, very much

difference, at any rate in courts of law, between bathos and pathos, and the line even in greatest oratory is a very fine one. Everybody who takes an interest, as all lawyers must do, in the art of speech, recalls perhaps the most famous, most moving passage ever spoken in the British House of Commons in the last century,—the passage in John Bright's oration dealing with the Crimean War which contains the famous phrase: "The Angel of Death is amongst us. You may almost hear the beating of his wings." And yet it is a good House of Commons tradition that when Mr. Bright went out into the lobby and received the congratulations of his friends, one of them said "It is just as well you said 'beating', for if you had said 'flapping' we should have laughed." (Laughter.)

Now, Mr. Justice Duff, I had intended in what I first sketched out for myself to occupy some portion of my time, and perhaps a major portion of the time, in discussing a question always, I think, interesting, and one which is of importance both to professional lawyers and to those of the public who take an interest in the law,—the question as to how it is possible to reconcile the duty and function of an advocate with the dictates of morality. But after I had accepted the invitation which Sir James on behalf of the association so kindly conveyed to me, I found that last year there had been delivered at a meeting similar to this, and is recorded in the transactions of the association, a most admirable address—if I may be allowed to say so—on this subject by Chief Justice Mathers. I have read it—I hope everybody has read it—with the greatest interest and appreciation. Therefore I will curtail what I had intended to say on this subject, though I will not entirely omit it. The problem is a familiar one. Most members of the bar have been challenged at at some time or other with the question "How it is possible, Sir, that you should be prepared to defend a guilty man?" We all know that question, and it is worth considering for a moment, because it has a direct bearing on the question as to what is the real nature of the vocation of the advocate.

Now is it consistent with the duty of honour and candour to espouse what may be the worse cause, and perhaps, still more, to resist an argument which may turn out to be, and may upon its face appear to be, founded on truth? How is

it possible that the member of an honourable profession should lend his powers of intellect, judgment, experience, argument, to the wrong side? And I venture to put the real answer in my own way. The real answer, ladies and gentlemen, is that an advocate does his work under strict and severe restrictions of professional duty, imposed by a strict code of honour, for the very purpose of securing that he may discharge this difficult task, which is essential to the administration of justice, without selling his own conscience or being false to the duty to which he owes to justice and to the state. The function of an advocate is not to ascertain the truth; the function of an advocate is to present from one side of the case all that can be usefully and properly said, in order that it may be compared with what is presented from the other side of the case, so far as that can be usefully and properly said, and in order that the tribunal may then have before it these competing considerations and may hammer out on which side the truth really lies.

Take for instance the true position of an advocate who has the duty of prosecuting in charge of crime. There are a great many people—you see it in magazines and story books constantly—who really believe that a barrister who has a brief to prosecute a criminal is aiming at securing his conviction at all costs. That is a libel and a travesty upon the whole profession of the law. The business of an advocate who is prosecuting a criminal is to be in the strictest sense a Minister of Justice. His duty is to see that every piece of evidence relevant and admissible is presented in due order, without fear and without favour; and unless there be some other advocate to assist the accused, it is his duty to present the evidence which is in favour of the accused with exactly the same force and fullness with which he calls attention to the circumstances tending to make a suspicion against him. His business, in Othello's words, is this "Nothing extenuate, nor set down aught in malice." And I would say that fundamentally the position of a barrister who is prosecuting a criminal is a mere example and epitome of the kind of honour and the sort of conscience which ought to be shewn in all branches of the advocate's work.

Take the case of defending a criminal. What is the real

duty of an honourable man who has put upon him the heavy burden of defending a person accused of a serious crime? First to develop the whole power of his mind and all the resources of his experience to the task. There is an honourable tradition, at any rate of the English bar, that even a man who may be busy with many different cases, if he undertakes and is called upon to defend the meanest criminal charged with a crime, is bound to give his own personal attention to that work, odious and unremunerative as it may be, to the exclusion of all other business coming his way. And in what spirit should it be discharged? It is, I venture to say, essential to the cause of justice that we should have the service of a man professionally trained who will defend those who are accused, and will defend them by making sure that the most is made of every flaw and of every gap in the net which seems to be closing round the unhappy man; who will make certain what all shall be said on the accused's behalf which the accused could properly say if he were not embarrassed in his situation and thereby largely preventing him from speaking.

True it is, Mr. Justice Duff, that the law, in its effort to secure that the accused should get fair play, has according to some people done nothing but make things worse for him. Time was when a man accused for a crime under the old common law of England stood there without counsel—unless indeed somebody could find a flaw in the indictment and counsel were assigned to argue the point—and juries and judges refused to convict such people because they felt they were not having fair play. And then there was interposed the benevolent but possibly mistaken intervention of the legislature, which deprived the accused person of that advantage and gave him the right to employ counsel. It was still possible that he could not afford it, and thereupon the legislature came forward and deprived him also of that excuse by arranging that in proper cases he should be provided with counsel for nothing. There remained now only one further refuge for the unfortunate man, who wanted nothing better than that he should still sit in the dock and say nothing and do nothing until the thing was over. It was always possible for his advocate, when everything else failed, to say "Ah. gentlemen of the jury, you have heard

evidence against this unfortunate man, but his lips are closed; he has no right to take the witness stand and testify out of his own mouth as to what happened." Thereupon Parliament intervened and said, "Oh yes, you may testify," and the last protection and refuge which the common law had cast round the person who was short of an adequate explanation (laughter) has been removed—has been removed by the legislature in the supposed interests of the accused. (Laughter.)

But, after all, the real object of the law in this matter is not that guilty people proved to be guilty should escape; the fundamental object of society is that while the law should be vindicated, justice should be done as far as fallible human society can do it, and that, whatever happens, we should run no risk that the innocent should suffer without cause. Therefore I would say—and I am addressing myself more particularly to those who are not lawyers—I would say to those who have been seriously concerned (ladies quite as much as men) as to how an advocate can justify his appearing on the side which may be the wrong side and defending a man in respect of a crime which there seems every reason to think he may have committed, I would say, remember that the object of criminal courts is not to punish those who in their hear of hearts know that they are guilty; the object of a criminal court is to administer proper punishment to those who are proved by adequate and forcible evidence to be guilty; and it is vital, if you are going to protect innocent people from the results of unmerited suspicion and unfortunate coincidence, that you should have the trained assistance of an advocate, bound by strict rules of honour as to the part which he has to play, in order that he may test this alleged chain of evidence in every link and may see whether there be not good ground for urging that at some point it fails.

It is for that reason that by the universal tradition of every bar which follows the old methods and principles of the common law, no advocate in any circumstances should ever permit himself to assert his own belief in the merits of the case which he is arguing. I think probably even the most experienced of us have sometimes found it difficult always to obey this rule, but it is a rule which is vital if justice is going to be done; for if once a man who is honestly

convinced that he is arguing on the right side of a cause is at liberty to assert his own personal belief in the cause which he is arguing, the day is not far distant when the cause which is not so obviously just will either have to go without defender or, what is even worse, will be in the hands of men who are prepared to stimulate and to assert a personal belief in a cause in which they do not really believe. It is for that same reason that it is as impossible and unthinkable that an honourable advocate should manufacture evidence as that he should conceal or distort obvious, available testimony. And it is these principles, which are most simply illustrated in the case of criminal trials, which, as I think, are the very life and soul of the honour of the bar.

But I think, Mr. Justice Duff, if one is trying to give a correct account of this branch of the subject, one ought also, for the benefit of those who are not practising lawyers or judges, to add this. The real truth of the matter is, ladies and gentlemen, that the question, "How can you espouse the wrong cause?" is to a large extent based on a fallacy and a confusion. Law is a very complicated thing. We live in a society where fair dealing and justice are secured by a system under which the judges will ascertain how the law applies to the facts of the case, so that one man may be treated in the same way as any other man in the same circumstances. That is equality; that is justice; that is liberty; that is democracy. But in nine case out of ten it is only at the end of the case, and not at the beginning of the case, that anybody knows which side is the right cause. After all, one of the great merits of the bar is that people do not go to law unless there is a real problem to be solved. I have always thought that the profession of a lawyer in this respect compares favourable with the profession of the doctor, and I perhaps might even say, with the profession of the spiritual adviser. People go to doctors when they are not really ill; and one, I believe, of the most useful attributes of a fashionable physician is a bedside manner. People consult their spiritual advisers on problems which sensible men or women can, I think, very often decide for themselves. But nobody outside a lunatic ever went to law unless there was something very much the matter with him,—unless their is at stake either his life, or his reputation, or his wealth, or his home, or his honour, or

one of these things for the sake of which a man will think it worth while to sell all that he has in order that he may fight for that which he prizes. Therefore the profession of the law, in that respect, is one which all of its members ought to regard as calling for the most special and unremitting devotion to duty. The case, my brethren of the bar, may seem to be a small, unimportant case to us. It may be a small incident in the course of a long professional career and when it is disposed of it passes from one's memory. But there is probably somebody to whom that little case which occupied so small a fraction of our own professional life means everything that is important, or everything that is dear. I think one of the noblest things, one of the finest things about the profession of the advocate is that it is to him that men and women must turn in moments of the greatest personal anxiety. They put the whole issue into the hands, it may be, of a man whom they do not know, of whose record they may be imperfectly acquainted, but who, at any rate, has this recommendation that he is a member of an honourable profession which will devote itself to the end and to the last to serve the man or the woman who trusts his fate to his charge. (Applause.)

At the same time I think it must be admitted that difficult cases do sometimes arise in the course of advocacy under this head: "How are you to act when the contention or the case put before you conflicts with your own knowledge or judgment of the circumstances? You remember, I have no doubt--perhaps I may be allowed to recall—the hard case and the sad case of Mr Charles Phillips. Mr. Phillips was an Irishman; not the first Irishman that came to the English bar, nor the last, but an Irishman with many of the great qualities of that great race, who attained a great reputation, in largely defending criminals, in the middle of the last century, in London. Charles Phillips was called upon to defend, in the year 1840, a Swiss valet whose name was Courvoisier. Courvoisier was the personal servant of an old gentleman—I think he was 73 years of age —Lord William Russell. He saw this gentleman to his bedroom the previous night. He left him in his chamber. Courvoisier himself lived in the basement of the house, and slept there until morning, and when the morning came and

one of the women servants first went to rouse Lord William Russell she found the place in fearful confusion, she found her master horribly murdered in his bed, signs of blood and violence on every side, and all the indications that there had been in the night a savage attack upon him, apparently for the sake of robbery. They not only found that, but they found that there were marks upon the floor which led to the outside premises at the back and there was every indication that the authors of the dreadful crime had forced their way in through this door and made their way to the old man's bedroom while he was asleep and there had foully murdered him. And Courvoisier, this Swiss servant, for reasons which the police believed to be adequate —it was in the very early days of what was then the new police in London, started by Sir Robert Peel and known as "Bobbies" and I think they were very zealous in their duties—this Swiss fellow Courvoisier, being suspected, was put upon his trial for murder, and Charles Phillips undertook his defence. He defended him with very great vigour and skill. The evidence against Courvoisier was serious, because some, at any rate, of the things which had been stolen had not been carried away from the house, but were found hidden in places where it seemed more natural that a servant who knew the premises would hide them than anyone coming from outside; and, what was worse, Courvoisier, the valet, who used to wear when he was waiting at table white linen gloves, had apparently got a pair of white linen gloves much stained with blood, which he had been at pains to conceal. And in the middle of that trial at the Old Bailey, when Phillips was doing all that he honourably could, with his intense Irish brilliance, to defend this Swiss servant, Courvoisier indicated that he wanted to speak to Charles Phillips and he told Charles Phillips that he had committed the murder; and, having conveyed this surprising piece of information he said: "And now I rely upon you to do the best you can to prove that I have not."

I believe that many people think that this ofen happens in the course of a criminal lawyer's experience. I am quite sure that it is not so. I am quite sure that the natural temptation of a man who means to fight against a charge of crime, to deny the imputation in the face of the world, is a temptation which also affects him in communicating

with his professional advisers. At any rate it has always been so in my experience.

Well, what was Mr. Phillips to do? It so happened that in addition to the Chief Justice who was trying the case there was sitting on the bench another and very famous judge, Baron Park, and to Baron Park, who was not himself trying Courvoisier, but was none the less sitting there beside the Chief Justice, this unfortunate Charles Phillips went in the greatest distress, and he enquired from Baron Park what course in the learned judge's opinion he as an honourable advocate. And Baron Park told him that unless Courvoisier released him from the obligation which he had accepted to act as his advocate his duty was to go on with the defence, notwithstanding the fact that this confession had been made to him.

Charles Phillips is dead now, of course. I confess I think that a grave injustice had been done to his memmory. Acting upon the advice which Baron Park gave to him he was quite right, and so far as I have been able to follow what subsequently happened, it seems to me that Mr. Phillips behaved with propriety. It was said of him long afterwards, but I think quite, quite falsely said, that in the course of the defence which he set up, after having had this confession of guilt, he used arguments which endeavoured to throw the suspicion of the crime upon some other person. I do not think he did; although I entirely agree that if he did so, it would be highly improper thing in the circumstances to do. But I tell that story because it does indicate what I believe is a very rare situation in the history of practical advocacy. It does illustrate how that situation must be dealt with in cases where it arises.

On this part of the subject let me end by reminding you of a quotation from Boswell which puts the point with the greatness neatness. Boswell records Dr. Johnson as saying:

"We talked of the practice of the law. Sir William Forbes said, he thought an honest lawyer should never undertake a cause which he was satisfied was not a just one. 'Sir,' said Mr. Johnson, 'a lawyer has no business with the justice or injustice of the cause which he undertakes, unless his client asks his opinion, and then he is bound to give it honestly. The justice or injustice of the cause is

to be decided by the judge. Consider, Sir, what is the purpose of the courts of justice? It is, that every man may have his cause fairly tried, by men appointed to try causes. A lawyer is not to tell what he knows to be a lie; he is not to produce what he knows to be a false deed; but he is not to usurp the province of the jury and of the judge, and determine what shall be the effect of evidence,—what shall be the result of legal argument. As it rarely happens that a man is fit to plead his own cause, lawyers are a class of the community who, by study and experience, have acquired the art and power of arranging evidence, and of applying to the points at issue what the law has settled. A lawyer is to do for his client all that his client might fairly do for himself, if he could. If, by a superiority of attention, of knowledge, of skill, and a better method of communication, he has the advantage of his adversary, it is an advantage to which he is entitled. There must always be some advantage, on one side or the other; and it is better that advantage should be had by talents than by chances. If lawyers were to undertake no causes till they were sure they were just, a man might be precluded altogether from a trial of his claim, though, were it judicially examined, it might be found a very just claim.'"

CANADIAN BAR ASSOCIATION.

ANNUAL MEETING, 1921.

REPORT OF THE COMMITTEE ON LEGAL EDUCATION.

The Committee of Legal Education are pleased to be able to report a very encouraging response from the various provinces of the Dominion to the recommendations made by this Association last year regarding a uniform curriculum of legal education in the Common Law provinces of Canada.

The reports received by the Committee from the different Provinces, taking them in their order from West to East, are to the following effect:

British Columbia—From British Columbia it is reported that the Benchers there have formally adopted the curriculum recommended by the Canadian Bar Association with

what has been called the very slightest or practically no amendment.

Alberta—From Alberta it is reported that the Benchers are discussing arrangements with the University of Alberta under which the University will undertake the teaching of law in that Province. While matters are still in the stage of discussion and organization, members of the Committee from Alberta are of opinion that satisfactory arrangements will be made between the Benchers and the University and that, when such arrangements are completed, the curriculum recommended by the Canadian Bar Association is likely to be adopted.

Saskatchewan—From Saskatchewan it is reported that the curriculum recommended by the Canadian Bar Association has practically been adopted. Advices received from Dean Moxon at the University of Saskatchewan and from the Secretary of the School at Wetmore Hall, Regina, indicate that the curriculum is already in operation or will be within the coming year.

Manitoba—Dean Thorson, of the Manitoba Law School, reported to the Committee that the curiculum adopted in Manitoba follows the curriculum recommended by the Canadian Bar Association with the exception of one subject, namely "Shipping or Railway Law" in the third year.

Ontario—The reports received by the Committee from Ontario indicate that, while the Ontario Bar Association have within the past year expressed a keen interest in the matter of legal education and have made representations to the Benchers of the Law Society of Upper Canada with a view to bringing the Law School at Osgoode Hall "to such a state of perfection as will make it the equal of any of the great schools in other jurisdictions" the Benchers of Ontario have not as yet taken any action regarding curriculum.

Quebec—Dr. Ira A. MacKay, of McGill University Law School, reported to the Committee that the curriculum adopted at McGill for the course in Common Law follows the curriculum recommended by the Canadian Bar Association with only such minor adaptions as are necessary to suit their special conditions.

New Brunswick--From the Province of New Brunswick the Committee has had no report, as none of the members of the Committee from that province is in attendance at this meeting.

Nova Scotia—The curriculum at Dalhousie Law School is the same as that recommended by the Canadian Bar Association. The curriculum prescribed by the Nova Scotia Barristers' Society has not yet been brought into line but it is hoped that within the coming year action will be taken by the Society in that direction.

Prince Edward Island — The reports to the Committee from Prince Edward Island indicate that no action has so far been taken in that Province, but there is a prospect of the matter being pressed upon the attention of the Law Society of Prince Edward Island this coming year and the hope is expressed that some action may be taken.

On the whole, therefore, with regard to the reaction of the various Bars to the recommendations of the Canadian Bar Association, the Committee feel very much gratified and very much encouraged.

The Committee considered the question of a further increase in the preliminary educational training which should be required from students entering upon the study of law and decided to offer no recommendations at the present time. The Committee, however, noted with approval the intention, as reported to the Committee, of the Manitoba Law School and the McGill Law School to make effective next year regulations which will require from students entering upon the study of law an educational standard equal to that of a student at the end of his second year in Arts.

In this connection, it may be well to recall that this Association at the meeting held in Winnipeg in 1919 recommended that a student entering upon the study of law should have an educational preparation equivalent to that represented at the end of his first year in Arts. So far as the Committee are aware this standard is now in force or about to be put into force in all of the Common Law provinces, with the exception of Prince Edward Island and New Brunswick. In Prince Edward Island the standard required is the

equivalent of junior matriculation and something more, while in New Brunswick the standard, unless the Committee are misinformed, is scarcely the equivalent of even junior matriculation. Your Committee, without presuming to dictate to the authorities in charge of legal education in these provinces, ventures to direct attention again to the difficulty that such disparity of preliminary requirements is likely to cause for practitioners seeking to move from one province to another, and would repeat the statement in last year's report that uniformity of legal curriculum should not be expected to remove all barriers to the transfer of practitioners. There should also be uniformity in the preliminary education required from a student entering upon the legal curriculum. For there would be obvious unfairness in allowing a student to enter upon and complete even a standard curriculum in a province where the preliminary requirements for admission to study were low and then to transfer to a province where higher preliminary requirements were exacted from its own students. Your Committee notes with satisfaction that the Benchers in Ontario have within the past year raised the standard required from students entering Osgoode Hall from junior matriculation to senior matriculation, and the Benchers of Saskatchewan have done likewise.

Your Committee gave further consideration to the question, debated on previous occasions, of requiring from every candidate seeking admission to practice at least one year of uninterrupted service in the office of a practising solicitor before being called to the Bar. Your Committee decided to make no positive recommendation on this question at this time, although they strongly favoured the view that all students before being admitted to the Bar should be required to attend for not less than three years at an approved law school and that following upon such attendance they should be required to put in at least one year of uninterrupted office practice before being called to the Bar.

Your Committee also considered the question of offering some recommendation in respect of methods of teaching law and particularly as to the advisability of making a larger

use of what is known as the case method of instruction. Your Committee note that more and more the case method of instruction of some modification thereof is being used in Canadian law schools and, without recommending it for general adoption, suggest that teachers in all Canadian law schools give the question of its adoption, partially at least, the consideration which its success in other places seems to warrant.

Your Committee also gave consideration to the question of how uniform teaching material in the way of case books, source books and text books might be made available for the study and teaching of law in Canada. The question is necessarily related to the question of uniformity of methods of teaching and your Committee for the present confines its recommendations to recommending co-operation on the part of those engaged in the teaching of law to the end that duplication be avoided and that books be produced in co-operation or collaboration by such teachers and others which can be used in all the Common Law provinces.

One other matter engaged the attention of your Committee this year and that is the question of post graduate study for students who have completed such a course of study as is indicated by the curriculum recommended by this Association and now so widely adopted throughout Canada. At the present time for students who may seek to prosecute further their legal studies after obtaining their LL.B. degree at a Canadian law school there is no school within the Empire where courses suitable to their needs are furnished. In this connection your Committee were of opinion that if a school were established in London, England, where courses of the kind referred to could be given it would be the best possible solution of the question.

A resolution dealing with the establishment of a great British School of Law at London was prepared and discussed by the Committee and, while the Committee abstained from formally proposing it as a resolution, they felt it might be read to the Association and merely submitted for such action as this meeting might consider wise. The resolution was as follows:

Whereas it is in the opinion of the members of this Association desirable that there should be established a great British School of Law which would be worthy of the legal tradition of the British Empire and would serve as the centre of legal instruction and research for all the British Dominions,

And whereas such a school would be most fittingly established at the ancient home of our Common Law, where the most plentiful records of its past growth and development are to be found, and where it still receives it most authoritative exposition and application,

Therefore be it resolved by this Association that representations be conveyed through appropriate channels to proper authorities and persons in England suggesting the possibility and desirability of establishing at London, England, a British School of Law which would aim to provide complete, thorough and systematic instruction and training in law to meet the needs of students not only from the British Isles but from all parts of the British Dominions;

And in connection with the establishment of such a school, this Association would venture to make the following suggestions:—

Location—That the School be located near the Law Courts at London where students may have daily opportunity of attending the Courts and observing proceedings therein, so that they may not only see how proof is properly made and legal rules ascertained and applied, but also that they may have an opportunity of observing and becoming acquainted with the ethical and professional standards which obtain in those Courts;

Curriculum—That careful attention be devoted to framing the curriculum of the School, to the end that it may be broad enough to cover all branches of the law and thorough enough to ensure adequate preparation for students entering upon the practice of the law;

Staff — That the School be equipped with an adequate staff, sufficient in number to enable each member thereof to become thoroughly master of his subject, and that in creating such a staff an effort be made, with a view of making

it broadly representative, to secure men of the best teaching experience not only from the British Isles but also from the British Dominions and from the United States of America;

Methods of Teaching—That careful attention be given to working out the best methods of teaching to be employed in the School, particular regard being had to the results obtained by the use of the case method of instruction in a number of the leading law schools in the United States of America;

Teaching Material—That it be one of the objects of the School to provide, not only for the use of students at the School but for the use of students at other law schools throughout the Empire, suitable teaching material in the way of case books, source books and text books, especially designed for the use of students;

Research—That special attention be devoted to fostering legal research and the scientific study of legal problems and rules of law, the proper basis for such rules, and that to this end the regular teaching duties of the teachers be not made too onerous, so that they may have time and energy to devote to such research and to directing the conduct thereof by their students;

Teaching Standards—That the School endeavour to establish proper standards of instruction in the various subjects of a law course, with a view to determining the proper content and extent of the various courses of instruction;

Recognition of Overseas Law Schools—That, for the purpose of satisfying the requirements which may be prescribed by the School for its degrees, credit be allowed to students for courses taken at Overseas law schools wherever such courses conform to the standards established by the School;

Special and Graduate Courses — That the School endeavour to give special courses to meet the special needs of students from Overseas Dominions wherever such special courses may be necessary, and particularly graduate courses to meet the needs of students who have completed courses of instruction at Overseas Law Schools.

Lawyers Lyrics

CRACKING HIS SHELL.

With profound apologies to a learned legal author.

(SEE LVII. C.L.J. 284).

How doth the little busy bee!—No, no, I don't mean that,
But how doth the busy lawyer, now and then,
Forsake the rigors of the Law, its mots and precepts pat,
To amuse himself with oddments of the pen.

For instance, here's the grave and reverend author E. D. A.
Whose time we all supposed to be engrossed
In pondering some ancient saw, or quip with time grown gray,
Or wrestling with Coke or Blackstone's ghost.

A'bursting into poetry—Oh Laws! Can this be true?
It is, it is; I've seen it for myself—
Coquetting with the modest Lyric muse till all is blue,
While his legal tomes lie idly on the shelf.

How sweet with coy Enterpe, when the daily task is done,
To toy beneath the spreading linden trees!
To cast aside the tiresome tomes, whereby our bread is won,
And revel in one dignity and ease!

And that our grave and reverend friend has evidently learned;
Subdued by the attractions of his charmer.
Ah! Well! Let us acknowledge that her wre [illegible] is fairly earned,
She has clearly found the crevice is his armour.

F. P. B.

London, Ont.

Bench and Bar

DEATH OF TWO GREAT JUDGES.

THE EARL OF HALSBURY.

Perhaps the most striking figure of modern times in the legal world, has passed off the scene at the great age of 98, on 4th December, 1921. Hardinge Stanley Giffard, who was called to the Bar in 1850, soon took a prominent place among his fellows. He took silk in 1860. The next year he was elected Treasurer of the Inner Temple. He was Solicitor General from 1875 to 1880. He sat in Parliament for Launceston, and was Lord High Chancellor from 1895 to 1905. He was Baron Halsbury in 1885 and in 1898 was created an Earl, with the additional title of Viscount Tiverton. He is best known to the profession in these days in his connection with the volumes which bear his name, "Halsbury's Laws of England."

LORD LINDLEY.

Lord Lindley died at Norwich on the same day as Lord Halsbury, aged 93. He was a greater lawyer than the latter, but possessed of the same attractive and forceful personality.

Nathaniel Lindley was the son of John Lindley, Ph.D., F.R.S., Professor of Botany at University College, London, and was born on Nov. 29, 1828. Called to the Bar by the Middle Temple in November, 1850, he was a pupil of Charles Jasper Selwyn, afterwards Solicitor General and Lord Justice. His books no doubt contributed to his success, the first being an "Introduction to the Study of Jurisprudence." His great work on "Partnership," which in its successive editions has held its own without a rival, appeared in 1860. Lindley took silk in 1872, and soon acquired a large practice.

In May, 1875, he was appointed by Lord Chancellor Cairns to be a Justice of the Common Pleas in succession to Huddleston, who was transferred to the Exchequer. On

November 1, 1881, he was appointed a Lord Justice in succession to Bramwell. His judgments possessed much of the excellence, without the massiveness, of the late Lord Watson.

On the resignation of Lord Esher, Lindley was, on October 25, 1897, appointed Master of the Rolls, and on the retirement of Lord Morris was on May 14, 1900, created a Lord of Appeal in Ordinary, with a life peerage under the title of Baron Lindley of East Carleton, in the County of Norfolk. In 1905 he resigned.

We copy from The Times a characteristic sketch of the career of these two great jurists:—

"We announce, with much regret, the deaths, full of years and honour, of Lord Halsbury and Lord Lindley, the two great surviving legal figures of our day. Both were born in the reign of George IV., and both were links with a long-vanished legal past.

Lord Halsbury died in the early hours of Sunday morning. Born on September 3, 1823, he was educated at Merton, and, in 1850, the same year as Lord Lindley, was called to the Bar by the Inner Temple. He chose the Common Law side, and acquired by his eloquence, intellectual quickness, and skill in cross-examination a very large practice. But, unlike Lindley, he was also an ardent party politician, one who never wavered in his allegiance to the pure Tory creed—indeed he may be regarded as the last of the old Tories. In Parliament was a good, but not a great debator, and became in due course Solicitor-General.

Afterwards those who might have been his rivals fell out of the race, and he became Lord Chancellor in 1885, and again from 1886 to 1892 and from 1895 to 1905. Thus he held the Great Seal for a longer period than any other Lord Chancellor or Lord Keeper save only Lord Elden. The expectations of some that he would not prove quite equal to the demands of his great office were signally falsified. Indeed, though he sat constantly with Judges of rare ability, his ascendancy only became more and more marked. Moreover, his influence in politics steadily increased, and he played a great part in the councils of his party, though he never hesitated to reprove it when he thought it weak or wavering. Political courage he had in plenty, and he was never afraid to speak out.

Lord Lindley was no politician, but a great lawyer and a great Judge—indeed, he will take rank among the greatest of the Victorian Age. In length of service he had few rivals; he had the unusual experience of being promoted from the Chancery Bar to the Common Law Bench; he was the last of the Serjeants-at-Law, and the last of those who had ever sat in the historic Court of the Exchequer Chamber."

THE ENGLISH BENCH—CHANGES AND TITLES.

The elevation of Sir Alfred Tristrom Lawrence to the High position of Lord Chief Justice of England was followed by his being created a Peer. This is in accordance with the precedent of the three previous Chief Justices who were elevated to the peerage, Lords Coleridge, Alverstone and Reading, and a discussion has arisen in connection with the above incident. It is also stated that in some ways it is useful for the Lord Chief Justice to be in the House of Lords. The Law Times speaking on this subject says that this practice is strictly in accordance with an almost unbroken custom since the appointment to Chief Justice Murray (Lord Mansfield 1756). The only Chief Justice without a peerage since 1756 has been Sir Alexander Cockburn who repeatedly declined the honour.

In connection with this subject it occurs to us to mention that it would be a convenience to the public and save some search to have at least all life peerages under the surname of the appointee. After the lapse of a very short time the identity of some one well known to the profession and the public is lost by his taking a title which indicates nothing as to his former career. For example why should we have to enquire who Lord Birkenhead was? We all knew him by the good old honest name he bore in previous years. Why should we not know without enquiry that the Viceroy of India once bore a name honoured by the Hebrew race, which had nothing to do with the Town of Reading. Even lawyers cannot be expected to remember everything.

Book Reviews

Principles of Contract: A treatise on the general principles concerning the validity of agreements in the law of England. By The Right Hon. Sir Frederick Pollock, Bt., K.C., D.C.L., of Lincoln's Inn; correspondent of the Institute of France; Associate of the Royal Academy of Belgium; Honorary Fellow of Trinity College, Cambridge, and Corpus Christi College, Oxford; Honorary Doctor of Laws in the Universities of Paris, Edinburgh, Dublin, Harvard and Christiania. Ninth Edition. 1921. London: Stevens and Sons, Limited, 119 and 120 Chancery Lane; Canada Law Book Company, 84 Bay Street, Toronto, Sole Agents for Canada.

As the author says in his preface, many changes will be found in this edition; and this is an expected event on account of the late war. This remark applies with special force in connection with the impossibility of performance of contracts. The cases are collected in the index under the heading "Frustration"; a somewhat new word in this connection, but singularly appropriate in these days of destruction and negation. This subject is referred to at some length in the preface as well as in various places in the body of the work. A study of it is a new source of interest to those who keep track of developments in the law of contracts.

Anything from the pen of this great jurist, Sir Frederick Pollock, is of recognized weight and importance in all circles interested in the interpretation of the law; and in this volume every help is given to the reader in the shape of an interesting Preface, a full Table of Contents and of Cases Cited and that most necessary thing, a copious, comprehensive and scientific Index.