

IV.—*The Fusion of the two Branches of the Legal Profession.* By William Lawson, LL.D., Barrister-at-Law.

[Read Tuesday, 15th March, 1892.]

THE question of the fusion or amalgamation of the two branches of the legal profession is no new one in this country. It was fully discussed in this Society in a paper read by Mr. T. S. Frank Battersby on February 5th, 1886, which will be found in vol. 9, p. 30 of the Society's Journal, and to which I shall presently refer. That paper was a criticism on the report presented by the Incorporated Law Society of Ireland, by a committee appointed on the 16th April, 1884, at a meeting of that society. On the 11th January, 1884, at a meeting of the Incorporated Law Society of Ireland, a resolution was proposed and seconded that it would be to the advantage of the public and of the profession that the professions of barrister and solicitor should be amalgamated, so that all members of the legal profession should have the same rights and privileges. To this resolution an amendment was proposed that it was premature to record any decision upon the resolution proposed regarding the amalgamation of the professions of barrister and solicitor, inasmuch as it was a question primarily affecting the interests of the public, and the society had no reason to believe that the public was dissatisfied with the present mode of conducting litigation.

At an adjourned meeting of the society, on the 16th April, 1884, the resolution and amendment were withdrawn, and it was referred to a committee to consider and report "whether it is desirable that this society should take any, and if any, what steps towards promoting an amalgamation of the two professions, and in the event of their being of opinion that it is not desirable to do so, to consider and report what steps, if any, this society should take to promote an absolute right of transfer from either branch of the legal profession to the other." This committee reported that it was undesirable that steps should be taken by the Incorporated Law Society to promote an amalgamation of the professions of barrister and solicitor, and that it was desirable that the society should take active steps to bring about an absolute right on the part of each member of both professions of not less than five years' standing to an immediate transfer from one profession to the other, subject only to the applicant passing such an examination as would insure adequate knowledge to qualify him for the profession to which he desired to be transferred. This report, to which there were three dissentients on the question of amalgamation, and to whose reasons I shall presently refer, was considered at a meeting of the society on the 11th January, 1886, and at an adjourned meeting on the 15th February, 1886, the resolution of the committee disapproving of amalgamation was adopted by an overwhelming majority of the members present. In the meantime a discussion had taken place in this society upon the reading of Mr. Battersby's paper of the 5th February, which elicited a concurrence of opinion against amalgamation from all those who took part in it, barristers and solicitors alike. The resolution of the

committee as to the right of transfer was considered and adopted at a subsequent meeting of the Law Society.

Since then I am not aware that there has been any discussion of the subject in this country. I have gone into the history of the question at some length in order to show that the proposition advanced by Mr. Murphy, namely, that it scarcely needs proof that the distinction between the two branches of the legal profession is capable of justification, can hardly be maintained. It may be said, however, that the opinions I have referred to are those of members of the legal profession, and, therefore of persons who are or may be interested in the maintenance of the *status quo*, and that the question should be regarded from the view of the public and on principle with regard to the public. I cannot do better than quote from a leading article which appeared in the *Times* after the passing of the resolution of the Incorporated Law Society of the 15th February, 1886. The writer says :—

“ It remains to look at the question from the point of view of the public. At the Irish meeting, perhaps, the greatest extra-professional argument adduced against amalgamation was the fact that the public had not expressed any desire for the change. This is not a very strong reason, for it must be allowed that the question is one which cannot be fairly and fully weighed by the non-professional critic. Moreover, the public could only support amalgamation on the ground of pecuniary economy to be attained thereby, and even were economy compassed, which is doubtful, it would not necessarily mean any advantage; cheap law is not good law. It is true that some of the arguments advanced are not trustworthy. To say, for instance, that amalgamation would not effect any cheapening of litigation, inasmuch as lawyers do not earn excessive incomes as things are is an obvious fallacy. If law was cheaper there would be more of it, and even if that were not so the aim of the law is not merely to support a certain number of lawyers. But nevertheless the arguments against innovation preponderate greatly over those for it: what the public really want is good law and efficient lawyers; and it is pretty clear that amalgamation would tend to the production of neither the one or the other. In countries where no distinction exists between the two professions public opinion is anything but undivided on the advantages of that system. However, there is no analogy between a young and an old country. At an early period there was only one class of lawyers in England. Natural evolution has divided that class; and to re-unite it would seem to be a retrograde step. In this country there is a vast bulk of legal decisions apparently more or less conflicting in their nature. Special study, such as a general practitioner could never undergo, is absolutely necessary to resolve, and perhaps in future to codify, these. The functions of a solicitor and a barrister are, in fact, so widely different that it may be accepted as a truth that no man versed with those of the former could ever become a great advocate; moreover, he could never, in the proper sense, become a great lawyer.”

Dealing with the question on principle, the existence of the distinction between barrister and solicitor is justified by the different functions each has to discharge; in other words, by the division of labour, which obtains in this as in all other employments. The distinction is maintained, not because the solicitor or solicitor's clerk, who draws up a brief in a case, is necessarily incompetent to address the court and examine the witnesses in the same case, but because experience has shown that these particular duties (which are only

instances of the different kinds of work that has to be done by the solicitor and by the barrister) are better discharged by two persons than one. Illustrations of this will be found in the interesting reports (placed at my disposal by our president) collected by the committee of the Incorporated Law Society from various countries, where the distinction between barrister and solicitor does not exist. These reports deal also with the other objections advanced, namely—the question of needless expense, and the inconvenience said to result from the client not having direct verbal communication with the lawyer who is to conduct his case in court. As regards these objections, it may be answered, that, even if additional expense is caused, *e.g.*—by the necessity of drawing up and sending a statement of the case to counsel, it is not needless expense, if it enables the lawyer, as it undoubtedly does in most cases, to conduct the case of the client in court better. As regards communication between counsel and client, there is nothing to prevent the client seeing his counsel, if he wishes, and, as we know, in many cases he does.

Let me now refer briefly to the experience of other countries. Three members of the committee pronounced in favour of amalgamation, on the ground (amongst others) that the professions were amalgamated in twenty-four countries, states, or colonies, while the system of separate professions existed in only four countries, states, or colonies, and that the preponderance of opinion was in favour of retaining amalgamation where it existed.

It will be found, however, that in most of these countries the distinction sought to be abolished in this country never existed, and therefore opinions derived from them are not in point, and besides that many of them are new countries compared with Great Britain and Ireland, and further, that in the European countries, where the distinction does not exist, a different system of jurisprudence from ours prevails.

When the reports are examined it will be found that the preponderance relied on by the dissentients is not really so great as they would make out. Take Europe, and we find one class of lawyers only has ever existed in Bavaria, Germany, Norway, Spain, Portugal, and Wurtemberg; in France the professions are separate, there is the *avocat*, the *avoué*, and the *notaire*; in Denmark and Italy there are advocates and solicitors, but the same person can practise in both branches. In Sweden there are no lawyers at all; from Russia, Turkey, and Greece, we have no reports.

In Holland the professions were separate as with us, till 1879, when a law was passed, declaring that every advocate might be admitted and practise as a proctor; opinion is there divided as to the new system, for though the expense of lawsuits is reduced, clients sometimes suffer from the hands of young and inexperienced men. In the United States there has been but the one class of lawyer, the attorney, and even there we find opinions strongly against the system, notably that of a leading New York lawyer (Report, p. 23), and that of a Louisiana lawyer (Report, p. 18)

Although we cannot attach much weight to the legal systems set

up in our colonies, when considering the expediency of changing the system that has prevailed so long in the mother country, yet it is worth while to glance at them in passing, especially as they throw some light on the suggestion advanced in Mr. Murphy's plan. In Australia, till recently, the professions were distinct only in Victoria and New South Wales; in Victoria an act abolishing the distinction came into operation on 1st January, 1892, and a bill with the like object is stated to have been introduced in New South Wales. In Victoria the act in question (I can only quote from the Sydney correspondent of the *Freeman's Journal*, 19th January, 1892) enables barristers to act as solicitors, and solicitors as barristers, makes both classes liable to be sued for malfeasance or neglect, and both equally capable of suing for fees, and all persons admitted to the practice of the law are in future to be admitted only in the dual capacity. Considerable dissatisfaction seems to have been manifested amongst the Melbourne bar at this measure, and it remains to be seen how it will work. In New Zealand there are two rolls—one the roll of barristers, the other the roll of solicitors. A lawyer may be, and generally is, on both rolls. Partnerships there are the rule. The prominent advocates are at the head of large firms. If a very big case is coming on for trial the report informs us, and this is not unimportant in the view of the suggestion that one man will do all the work, that it is quite usual for the advocate, in order to escape interviews with clients, which in the office he could not avoid, to absent himself for a few days and read up the authorities at home. India is not mentioned in the report, but we know that the professions are distinct there, as they are in the Cape of Good Hope, whilst they are said to be united in Natal, the Transvaal, and the Orange Free State (Report, p. 12). In Canada the system is the same as in New Zealand, and has always been so. Partnerships are the rule, the intermediate examinations are common to both branches of the profession, but the final examinations are separate—they are held by the one body, and during the one week, on different days. The Canadian system is said to be much cheaper for clients, and to give fair play to young men who enter the profession, for if they find out they have not the talents necessary for an advocate, they may yet be a great success as advising counsel or in ordinary solicitors' work. The minority report of our Law Society's committee suggests, in default of complete amalgamation, the adoption of the Canadian system.

Assuming, for the sake of argument, that a change in the relation of the professions is desirable, it will be seen that Mr. Murphy's draft bill is practically the same as the Victoria and Canadian systems. It does not amalgamate the two professions into one, but enables a person to be a member of both at the same time. Instances not unfrequently occur with us of a barrister becoming a solicitor, or *vice versa*; but in each he has to give up the one profession before he can adopt the other. This means loss of time and money, and Mr. Murphy's suggestion would obviate this. But what would be the result of this scheme? It would affect the lawyers of the present and the lawyers of the future. As regards

the latter, everyone intending to be a lawyer would become both solicitor and barrister—the only thing he would have to do to become a barrister would be to pass some additional examination or possibly attend additional lectures. Partnerships between lawyers would be more common than they are now between solicitors, as it would be impossible, except in the simplest cases, for one man to conduct all the proceedings in a suit for a client. As regards the former, the change might have a very serious effect. A solicitor might prefer to remain as he was unless he was ambitious to shine as an advocate; a barrister, on the other hand, except, perhaps, one in the first rank of his profession, would either have to qualify as a solicitor, or be liable to be passed in the race by his younger brethren who had been admitted to both professions. Even if he qualified as a solicitor, it would be of little use to him without a connection, and his only course would be to seek a partnership with a solicitor. Again, the advantage to the barrister of having a legal right to recover his fees would be counterbalanced by the liability of being sued for negligence by dissatisfied clients, while the solicitor would no longer be able to protect himself by having taken the opinion of counsel. Lastly, the effect of the change on judicial decisions, and in time on the judiciary itself, is not to be lost sight of: the better a case is argued on both sides, the easier it is for the judge to arrive at a right decision. We know how much weight is attached to a decision in a case which is argued on one side only. If the advocate of the future is to do all the work of solicitor besides, how can he have time to read up the latest decisions, and assist the judge in coming to a proper conclusion? In time, too, the judiciary would be recruited by these solicitor-barristers, and it would be possible, especially in this country, where promotion goes oftener by politics than by merit, for the seat of justice to be occupied by men who were lawyers only in name.

The client who looks only for cheap law may not dip so far into the future, but it is the business of statesmen to look ahead, and the legislature, if it is ever asked to sanction this change, will not lose sight of the fact, that the due and proper administration of justice is a matter of the highest public concern, and that though cheap law may be a good thing, bad law is worse.

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V.—*President's Address.* By William Findlater, Esq., D.L.

[Read Tuesday, 24th May, 1892.]

I DEEPLY feel the honour which was conferred upon me in electing me President of this society on the occasion of the demise of our late lamented President, Mr. Justice O'Hagan, who was an eminent lawyer and scholar, a writer of great literary ability, and a man of a most kindly and genial nature. My only fear in accepting the position was caused by my intense consciousness of my inability to satisfactorily and creditably discharge the duties of an office which