

tinued close observation, and a satisfactory decision arrived at. This course also could be followed with respect to the more important cases coming before the local tribunals or superior courts, as regards which conflict of evidence may make continued examination by skilled and impartial men alike desirable and necessary.

Not the least advantage of such institutions would be that they would encourage the early treatment of mental diseases, hitherto too frequently retarded, inasmuch as the patients who pass through an Observation Hospital would not have the adhering stigma of residence in a lunatic asylum. It may be added that, in localities where the number of doubtful cases would not be sufficient to justify the establishment of a separate OBSERVATION HOSPITAL, the desired object might be accomplished by instituting a detached OBSERVATION WARD in connection with a general hospital.

III.—*Amalgamation: being some Considerations on Proposed Changes in the Relations of the Legal Professions in Ireland.*
By T. S. Frank Battersby, B.A., Barrister-at-law.

[Read Friday, 5th February, 1886.]

NOT seldom are complaints made of the unwillingness of a legislature to enact reforms until compelled to do so by agitation. In some cases this procrastination has its advantages. Instances indeed are not unknown in which resistance to popular clamour became the duty and the reason of a government. In such cases it behoves the thoughtful few to examine the pretensions and restrain the violence of the hasty and self-interested many. To-night, however, I propose to draw your attention to an agitation for reform which is being carried on, not by unlearned and heedless men, but by members of an ancient and honorable profession, whose claims to our respect are all-powerful, and to whose proposals careful consideration must be given, whether we may agree with or differ from the conclusions at which they have arrived. I refer to the question of amalgamation of the solicitors' profession, and that of the bar, and to other kindred topics which have recently occupied the attention of the Incorporated Law Society in this country, and have resulted in an elaborate report upon which their final decision is to be given in a few days. That report was drawn up and approved of with but three dissentients, by a large and representative committee, after giving a full and anxious consideration to the question of amalgamation, and after a very complete examination of the constitution of the legal profession in foreign countries, and in the colonies—their labours extending over a period of eighteen months.

It may be remarked in passing, that the committee before commencing their enquiry, invited the co-operation of the law societies of Belfast and Cork, but these bodies were "unable to concur" with their Dublin brethren as to the necessity for such an investigation. The conclusions arrived at are therefore those alone of the metro-

politan members of the profession, and so far as appears from the report or blue book, have not the sanction or authority of the general body of practitioners in Ireland. This, however, is a matter of minor importance, and from the resolutions arrived at by the committee, it will be seen that the interest of country as well as town solicitors has been well looked after. It is indeed self-evident that whatever may have been the intention of the original movers in the matter, the committee in their reports had before them the good of their profession, and the good of their profession only, and only remotely, if at all, the public weal. This is the more evident on looking at the reasons given by the dissentients for their dissents, which with one exception are placed, not on public grounds, but because the resolutions do not sufficiently protect their branch of the profession against the possible encroachments of the bar. As one of these gentlemen put it, the bar "could through their own friends and connections "acquire some of the business which at present is ours; and in doing "so, each of us would lose more or less of our legitimate income." Another dissentient, whose sense of humour is as deficient as was the sense of fairness shown by the last quotation, actually considers the "mutuality" of the proposed changes "unequal"! And so it is; but not in the direction he would have us believe—for what were these resolutions? To state briefly, they were as follows:—

- (1) That amalgamation is undesirable.
 - (2) That an absolute right of transfer from one profession to the other should exist.
 - (3) (a) An extension of the solicitors' right of audience to all chamber business, all *ex parte* applications, and as advocate in all actions where the sum claimed is under £50, and in all criminal cases.
 - (b) Two solicitors to appear and act for the same client, either in criminal cases or in the inferior courts.
 - (4) To open to solicitors certain appointments, such as recorder, county court judge, resident magistrate, receiver and liquidator.
 - (5) To exclude barristers from being appointed in any department to the office of solicitor.
- Lastly—a suggestion of a conference between the two professions to consider certain grievances complained of, and a "reform of the regulations of the bar, so as to secure the client the services for which he pays, and to make the barrister responsible for his neglect or omission to perform them."

One of the dissents was on the ground that the resolutions were but a step towards amalgamation, another because they did not declare for amalgamation, while the third considered the proposals "unfair and injurious" to solicitors!

In what must necessarily be a rapid survey of the matters thus presented, I shall first glance at them from the point of view of the general public, next consider them from a professional standpoint, and conclude with such general criticism and suggestions as appear to me to be pertinent. So far the discussion has been all on

one side. The movement has been a spontaneous one on the part of the solicitors; and although it might be supposed that any change should be primarily for the benefit of the public for whom both the professions exist, it is somewhat remarkable that so far from there being any expression of public opinion upon the subject, the manifesto of the Incorporated Society has not called forth a solitary cry for reform from the community at large. To be sure it may be said that when people have long suffered from abuses, they become to some extent inured to them, while those who do not directly suffer from them, or do not realize from what source their suffering comes, are liable to become indifferent to the abuses which are thus perpetuated. But when the advisers have met in solemn conclave, and announced before the public the injuries from which their clients are suffering, it is unusual to find the oppressed displaying an absolute indifference to their wrongs, and one may therefore be pardoned for questioning whether the so-called evils may not, after all, be the mere conjurings of active minds released from a too constant strain of work, and of those who, like the restless intellects of ancient Athens, must be ever hearing or telling some new thing. And it is rather with the aim of obtaining in this society an independent expression of public opinion upon the proposed reforms, than of enunciating my own, that I have ventured to bring a not unimportant question of legal reform before your notice.

Public Considerations.

Taking the resolutions in order; and as to the first, it is not possible to assert why the committee disapproved of amalgamation. But from the tenor of their views and reading them along with the dissents, it is not too much to suggest that the reason may have been founded on the consideration that, apart from the interest of suitors, such a change would not be for the exclusive benefit of solicitors. To that question I shall return, and therefore do not discuss it in this place, and for the same reason postpone the consideration of resolution No. 2.—agreeing as I do with the third dissentient, that transfer and amalgamation mean one and the same thing, or if there be a difference, it is of consequence to the profession alone, and not to the public. And I may at once get rid of the fourth and fifth resolutions, by expressing my entire approval of them, with one important modification. The exclusion from the position of police or resident magistrates and registrars of any court or judge of all persons not members of the legal profession, is a reform imperatively demanded. The post of resident magistrate, more especially, is one which, though partly administrative, is still more a judicial post—one therefore which requires no inconsiderable knowledge of the methods and forms of law as well as its principles and practice: yet under the present system many, not to say the majority of appointments are made from the ranks of non-professional men—retired army officers for instance, than whom no more ill-qualified persons to fill such positions could well be found. Unacquainted with the people, ignorant of law, save the rough and ready methods of court-martial, military men are singularly unfitted to give a patient

hearing, a calm consideration of the law, and a deliberate judgment; and these the public require, and are more likely to get from the members of either branch of the legal profession. I do not further pursue this matter, which has been exhaustively treated in a previous paper read before your society.* The office of recorder and county court judge is entirely different. So far as the class of men from whom these judges are taken is concerned, the public has no reason to complain. These positions require to be, and are filled by barristers of learning and experience, whose capacities and standing entitle them to be placed upon the bench in the superior courts, and whose knowledge of law must, if possible, be even wider than is required by the judges of the latter. All questions come before them. They must be acquainted equally with equity and common law, and as competent to determine questions of probate and admiralty as those coming under the Land Act or the Statute of Frauds.

Nothing daunted, the committee of the Incorporated Law Society for Ireland, demands that solicitors should be appointed to these important posts. Be it so; but why stop there and exclude from their dreams of ambition the bench in the superior courts? There can be no logical reason for drawing the line at Recorders. Concede the present demand, and they will soon enough prove that. The qualifications for the two positions of judge in the superior and inferior courts are the same; and if solicitors be capable of filling the one, they are equally capable of discharging the duties of the other. But are they capable? By that question I do not mean for an instant to dispute their mental qualifications. A solicitor's natural capacities I will admit, for the sake of argument, to be of a higher quality than those of a barrister. His practice may be large, his experience wide. But is that enough? Are his avocations not to be considered? Are we to exclude the routine of his every day business from our minds in estimating this question? Is his training of no account? Let me illustrate my meaning by a powerful example. The greatest thinker of this century, the man whose philosophical theories give the key note to contemporary thought, the greatest exponent after Comte of the social science, and along with Darwin and Wallace of evolution, is Herbert Spencer. Yet, suppose one relying on his wisdom and asking his opinion on some disputed Greek text, or the controversy as to Homer's blindness, what would be his reply? "Knowing absolutely nothing of the masterpieces of ancient literature in the original" as he states † his opinion would be valueless, yet not much more so I fear than would be the judgment of any solicitor, however eminent, who should to-morrow be appointed county court judge or recorder, and who should be called upon to decide some of the knotty cruxes that arise on resulting trusts, contingent remainders, or interest under diminuent limitations, and reconcile conflicting cases and muddled statutes, unaccustomed to these legal pyrotechnics, and bewildered amid the multitude of light.

* "Magisterial Reform," by W. F. Bailey, B.L., *Journal of Statistical and Social Inquiry Society of Ireland*, vol. viii., p. 595.

† *Study of Sociology*, p. 415.

The only resolutions then of public general interest are the third and last. Of the former—that dealing with the claim to extension of the right of audience—it does not appear in what way the public would be benefited by the proposed change. Would the work be better done? This is not contended. Would there be saving in point of time? There is no such suggestion. Would the expense be lessened? That at least is doubtful. The fee to junior counsel who alone have audience in the coveted motions, is a guinea. A solicitor in practice would not give his time in court for less, and the terms of the proposal do not admit of his appearing by his clerks who at present do so much of the business, for his appearance on which he is well paid.

There is a further proposal, that a solicitor should act as advocate in all cases in which the claim is for an amount under £50. This suggestion evidences one of two things—immature thought, or careless diction. The limit is entirely misleading, and for this reason that all actions are not for liquidated sums, and the language of the resolution is only applicable to such. In a numerous class of cases there is no sum claimed either as debt or damages. But unless the meaning of the resolution be that a solicitor may act as advocate in actions for liquidated sums alone, and not in cases of contract, right of way, suits in equity and so forth, I fail to see any meaning whatever in it. Supposing, however, that the intention was such as the language implies, the public will hardly submit to its realization; for it comes to this, that the client in all cases under a £50 demand is to be deprived of the assistance of counsel, although it is a matter of everyday experience that questions frequently arise of vast importance in cases in which but a few pounds may be at stake, while on the other hand there may be, and often are, actions for large sums in which no difficulties arise, and no law is required—so that to place a limit at £50, or any sum, and say to counsel, So far shalt thou come, but no further, is contrary to the experience of every member of the profession, and in practice would work incalculable harm to the public.

But in addition to these reasons there is another which has been altogether lost sight of, because it consists of an indirect evil arising out of the principle of taking all small cases out of the hands of the Bar and making them the perquisites of solicitors, and it is this: If you, as you declare you do, wish to keep the two branches of the legal profession distinct, if you desire to maintain the Bar as an institution of public utility, you must not take from it its means of subsistence. The barrister does not live upon big cases any more than does the solicitor. Small returns and large profits is the true motto of the professions, and if you withdraw the main source of his income, extinction will be the result. An advocate may be “born,” but he is certainly more usually made. As an old writer has it, “A young lawyer is a strange fruit, first rotten, then green, and then ripe;” but ripeness does not come with age, but by experience and exercise of his faculties, and if he be deprived of the experience which he now gains in small cases, he will never become fit to hold a brief in a large one. An advocate can only acquire

the qualities of readiness, confidence, fluency, and ease, by practice, which practice he now obtains in cases requiring merely intelligence on his part, and costing the client no more than he would have to pay a solicitor acting alone; while if these cases be filched away, the means whereby he earns a precarious subsistence and trains his mind for the real difficulties of his profession will vanish into the air or the solicitors' pockets; the junior benches will become deserted as the walls of Baclutha and the extinction of the bar be but a question of time. It is well to impress this clearly on the public—that, if they desire an efficient bar, they must be content to pay for it, just as they pay the medical man who lets a gum-boil and prescribes a poultice or a bread pill, or the architect for inspecting their houses; or the engineer who surveys their three acre field—services no doubt of little importance, and no difficulty, but which from their very unimportance and small rewards are a frequent source of revenue, and without which the professional income would become so curtailed, that in the absence of epidemics, whether of disease, building, or engineering, and other godsend, the professions themselves might even cease to exist.

Professional Standpoint.

Having thus briefly glanced at the question from the public vantage ground, let us view it from that of the Bar. And here at the outset permit me to disclaim any intention of posing as the spokesman of the Bar, or in any way authorized to speak on its behalf. The Bar of Ireland, indeed, unlike its English counterpart, has not as a body considered the question. Individual opinions as to its merits have no doubt been formed; but unfortunately the bar has no corporate existence such as the Associated Society. It has no council or other representative body to take charge of its interests or declare its opinions—the Benchers of the King's Inns, who are nominally the conservators of its privileges and power, sitting aloft in Olympic dignity, careless of the storms that rage beneath their feet, and only displaying a consciousness of their former life at the occasional apotheosis of one of the favored few. When, therefore, I venture to criticize the resolutions as a member of the Bar I express my own views alone; although I may add that I am aware that those views represent the feeling of a large body of professional friends. I am not opposed to reform, believing on the contrary that changes in certain directions are necessary, and at the conclusion of this branch of my argument, I shall set them out in detail.

To clearly understand the position of the question, it is necessary to bear in mind the chief and the only distinction between a barrister and a solicitor, namely—the distinction between court work and office work. Formerly the line was not so narrow. In ability, education, training, and social status, the solicitor, or as he was then styled, the attorney, was inferior to the barrister. The very name "attorney" became a term of opprobrium. The Bar could afford to despise the attorney, because there was no possibility of rivalry, and even the idea of equality between the professions had no existence. In evidence of this, one has but to examine the history or the

literature of previous centuries to find the abundant proof of this fact. We have changed all that. In each of those qualities I have mentioned, the solicitor is now the equal of the barrister, and there is no reason why he may not be his superior. But the fundamental difference still exists, and does so because it is an economically sound one. There must be in legal as in all other business division of labour. One man cannot be his own scrivener, pleader, client—interviewer, and advocate. In so called amalgamation, the difference exists as strongly marked as it is in the divided system. The one member of a firm must be at his desk while the other is consulting his books, or appearing in court, and except for the difference in name and attire there is in practice, in countries in which amalgamation prevails, no material alteration in the relations between the office worker and court worker from those which exist here. An individual who carries on many different employments in places often necessarily far apart must waste much time in moving from one to the other; but this time is saved by attaching himself exclusively to one employment. In large firms this principle is carried out: one member receives clients, another superintends correspondence, while a third instructs counsel, or they divide their work into Chancery business, Common Law business or Bankruptcy, or some other more convenient system of division of labour. By these means there is not only effected an economy of time but of power, and without them a solicitor would often be employed doing what a clerk could equally well perform, and a man of skill and natural capacity for some particular branch of his business let his powers remain dormant for the larger part of his time, while employed in occupations for which some other member of his firm was better qualified. The advantages to be obtained by division of labour being so self-evident, it is both unpractical and unscientific to destroy them by encroachments of either worker into the domain of the other. We have already seen that such encroachments lead inevitably to the extinction of the worker, upon whom the encroachments are made, and that the ultimate result must be amalgamated systems of which the report disapproves. Increased facilities of audience then really aim at doing by a slow process what the proposers fear to do at a stroke. It is starvation instead of the knife.

Let that pass, however, and assume that the proposed reform has actually taken place, and that solicitors are at liberty to practice in the High Court in all cases—where would any solicitor with only his present training find himself in competition with a trained pleader and advocate. Take any of the leaders of the Chancery or Common Law Bars who are now brought into every case, because of their special training and fitness, and what chance of success would the most eminent solicitor have in opposition to them; or I might add, in opposition to the leading members of the junior bar? In putting the case thus I do not detract for one moment from the ability of the members of the other profession. I admit and insist on it; but I maintain that their training renders them as unfit for counsel's work as that of the Bar renders its members for the working of a solicitor's office.

The course of training through which a solicitor goes is admirable for the duties of his own profession; it is better and more practical than that of a bar student for the duties of his profession; but that fact is no reason why the former should usurp the functions of the latter—it is only a reason for the improvement in the training which a law student usually obtains.

Pleading requires special training; advocacy requires it; to carry on a law argument requires it; and this special training barristers have and solicitors have not. This will readily be understood when it is recollected that two of the principal features in such training consist in listening to arguments in court, and reading up the latest text books and current numbers of legal reports of cases decided in this country and in England. Where could solicitors find leisure for this tedious course of education?

Solicitors acknowledge the superiority of the bar in their special branch, by employing barristers in cases in which they could themselves act alone. Then they are met by this dilemma. If the bar maintains its superiority, why should clients be deprived of the services of its members in actions for less than £50? Or if they are not more competent, why are their services retained for work which solicitors could transact without them. I use the word “deprived,” because the assumption being that solicitors are capable of conducting alone all such cases, the natural inference is that in those cases counsel will not be employed.

To give a few instances of the employment of counsel where solicitors can dispense with their assistance. (a) Since the passing of the Judicature Act, pleadings need not be signed by counsel, yet, although nearly ten years have elapsed since that statute became law, pleadings are invariably, or with but very few exceptions, sent to counsel, and the few exceptions are set aside as bad. Why is this? Not from lack of ability, but of special training. (b) Solicitors are probably the best conveyancers; but as a rule titles and conveyances are sent for approval to counsel. Why? Again, I say, not for lack of ability, but because nice questions of law are often involved, and require the consideration of a man whose business it is to study them, and who has leisure and capacity to note up decisions upon them. (c) In the Court of Bankruptcy, if a point of law arises unexpectedly in a case in which counsel are not instructed, at once a back sheet of a brief is handed to counsel, and the solicitor is content to instruct. Why? Because the solicitor has his time occupied with practical matters, and cannot afford the time which is required to make up the law and keep *au courant* with its modifications. (d) Before the recorders and county court judges solicitors have the right of audience, yet in every equity civil bill, and often in ordinary cases, they avail themselves of the assistance of the junior bar; not that they do not know the facts of the case (with which they must be more conversant than a barrister who has only a rough brief of the evidence thrust into his hands when the case comes on, or perhaps no brief at all), but that they feel that a barrister's training is for court work, and that they have another vocation, as onerous and as honorable, but of a different character.

These are four examples out of many that could be cited to prove the admitted superiority of the bar for its peculiar duties, some of which are now being coveted and striven for, despite such proofs of admitted want of competence on the part of those so greedy for more.

I am aware that it is often urged that counsel's assistance is sought, not for the reasons I have stated, but to relieve a solicitor from responsibility. No doubt that is an additional reason, if not an element in all cases. Such an argument, however, reacts against their contention, and is in favor of the present system, which relieves solicitors from the anxiety caused by responsibility, and a possibility that an action may be hanging over their heads in every instance in which they have tendered their advice to their clients, drawn demurable pleadings, or misconducted a case. Solicitors are not willing to take upon themselves responsibility of advising clients in difficult cases, because they feel that it is not their function, and because too, no doubt, they are liable to a bias which would often take the course of advising an action, where a barrister, viewing the facts from an absolutely impartial standpoint, might, devoid of prejudice, conclude the case was a hopeless one.

The proposal for facilitating transfer between the professions is reasonable, and I even go further than the report, and suggest the equalizing both of the fees payable for admission to each, and of the respective periods of probation. I do not believe there is any general desire on the part of the members of the two bodies to interchange; but individual cases occur, in which either from circumstances, or because some special fitness for the other profession may have become developed, a member of one of them may find it convenient to change; and in such cases sufficient facility should be afforded him, consistent with a due regard to his competence for discharging unaccustomed duties.

Needed Reforms.

Although opposed, then, to some of the changes suggested in the report of the Incorporated Society, for the reasons I have sketched out, I do not go so far as to maintain that no amendment to the present system is required or would benefit the public. Persons who profit by abuses are usually the most vehement opponents of reform, and no doubt barristers and solicitors have interests distinct from and occasionally even antagonistic to the simple duties and prompt enforcement of the law. Yet I trust that the bias is not so powerful as to destroy the power of seeing from any other than the professional standpoint; and the few suggestions I shall have to make are certainly not advanced in the interests of either branch of the legal profession primarily, although in the end I am confident that both would gain by improved expedition and simpler process of law. The expense and tedium attending the present system keeps many a case from entering a solicitor's office, and as Judge Boyd is reported to have said on the 22nd ult.—“Creditors frequently would rather “take 5s. in the pound outside than 10s. in the court. . . . the “business of the court would increase tenfold if it became known

"that things were going ahead." This observation was applied to the Court of Bankruptcy; but who can deny that it is equally applicable to the business of the High Court of Justice in Ireland!

(a) The first and most crying evil is the long vacation. There is no class of men who have harder or more trying work than lawyers, or who are better entitled to a holiday. But that in addition to the relaxation afforded by circuits, which occupy eight weeks, and the short vacations, making up a fortnight, not to mention thirty-five days in the year that are neither vacation nor sittings, there should be a vacation lasting two months and a half, is a trial of public patience about which the only marvel is that it has been so long endured without complaint. Six weeks in July and August would be ample time for renewal of exhausted energy, more reasonable as to the period in which the vacation occurs, and more for the interest of the public. At present, every one has returned to town, and trade is in full swing during the month of October, yet the courts remain closed, and Irish justice luxuriates in German watering places and Alpine valleys, regardless of the suitors' anxious glances at the deserted halls of Themis. (b) With the alteration of the long vacation should come that of the circuits, which at present go out in March and July, leaving the country eight months without justice, as well as inconveniencing country people by the months chosen; whereas, by shortening the long vacation more convenient months could be selected, and a period of only six months elapse between each assize. As a corollary to the foregoing changes, the sittings should be lengthened so that the present system of having periods of inaction, though not of rest, between the sittings—semi-holidays—which tot up in the year thirty-five days, should be simplified, and one sitting run to the commencement of the next. It may be said of course that business is not so flourishing as to require these changes; but it is worthy of consideration whether such changes would not encourage business which is warned off by the law's delay. Is not delay the chief blot in the county courts, and the most constant cause of complaint? This question leads naturally to another and much needed reform. (c) Give the county court judges higher salaries, and make the courts sit coterminously with the High Court, and so put an end to the adjournments, blind motions, and other petty means at present adopted to shelve cases from sessions to sessions, and so deprive the plaintiff of speedy justice. The judges of the High Court frequently animadvert upon the many actions for miserable sums brought into their divisions, and which should have been tried in the courts below; but it is well known that speedy justice is more readily attainable in the superior courts than in the county courts, and as long as this continues the former will be preferred to the latter, even at the disadvantage of incurring greater costs. (d) In the Land Judges Division, the recent order relating to the appointment of receivers, whereby two motions have been amalgamated and the suitors pocketed by so much relieved, has set an example in the right direction, and should be logically followed out by enabling motions for final judgment for leave to defend, etc., if unopposed, to be marked by the solicitor in the proper office, instead of putting parties to the costs incidental

to the employment of an ornamental counsel. And as this would tell solely against the junior bar, equal justice should be dealt Queen's Counsel by compelling new trial motions to be on notice, and abolishing the expensive and formal sham of a conditional order. (e) Another improvement, from a solicitor's point of view—and it is surprising that it is overlooked in their agitation—is the getting rid of the, to them, prejudicial and often unfair system of fixing sums for costs—*verb. sat. sap.*

I now come to a cry, on the face of it reasonable, but in reality an insidious and misleading attack upon the bar, and stamped as such by the resolution of the sub-committee—the protest, namely, against the impropriety of a barrister taking a fee without performing any work therefor. Baldly stated it is irrefutable; but what are the facts? How often is counsel's opinion obtained without a fee? What is paid for library opinions? And yet the counsel must not complain. But because a solicitor chooses to brief a man, who is overburdened with business, and who, because he is not Sir Boyle Roach's bird, may be absent when the particular motion comes on for hearing, the profession is to be branded with unfairness and injustice, and measures are to be taken to put a stop to the scandal. In the first place the matter is in the hands of the solicitors themselves. They can employ whom they like. There are competent counsel not overwhelmed with work, and who could not afford to treat their clients with scant consideration. The fee need, and frequently is not, paid till the work be done. Be it remembered that a barrister's fee is only an honorarium. He cannot sue for it, and as many a one knows to his cost, he has to do many things for nothing for the solicitor, who cries out at the mere idea of being paid without giving value in return. Of course the solicitor is shocked. He would not be guilty of such conduct.

But in reality the complaint is far-fetched—not to use a stronger term. The instances in which an evasion of paid duty take place, are few, and those in which the fee paid is not returned when no work is done are fewer still. Whatever be its faults, the bar of Ireland has not lost its sense of honour, and does not merit the stigma thus attempted to be cast upon it.

I do not, however, intend, nor would it be in the interests of either branch of the legal profession, to reply to the accusation against the bar by recrimination. The dignity of its name, the firm belief in its incorruptibility, and the desire for more cordial relations between its members and those of the sister branch, unite in restraining any counter attack which might degenerate into an unseemly controversy, lower both professions in the eyes of the public, and confer no benefit on either. I rather appeal to the feelings of consideration and friendship which have hitherto existed, and which are powerful enough to withstand the strain attempted to be forced upon them.

(f) The last suggestion I make with diffidence, as it was vigorously opposed by Blackstone* when mooted in his day; but even

* Com. L. E., vol. i., p. 32.

in the face of his argument I cannot but think that it would be desirable to oblige every law student to pass a certain term of probation, even but a year, in a solicitor's office. It would be more practical than the semi-defunct plan of eating dinners in London. It would acquaint him with the actual working of an action. It would teach him method. He would gain information valuable to him at the bar, nor feel in danger of being nonplussed by some simple question of a clerk at the library door.

General Observations.

Such are a few of the alterations most needed from the public point of view, and such should be the aim of those who are endeavouring to simplify the legal procedure, under the guise, no doubt, of philanthropic and profound pity for the present pilfering of the public purse; but in reality, as it appears to me, to cloak a disposition on the part of certain ambitious leaders of the other branch of the legal profession to claim a larger share than hitherto they have had in the conduct of litigation. Their *bona fides* is tested by the light of amalgamation and found wanting. They will not amalgamate because it would be injurious, at least so they think, to themselves, even though it might—but this is doubtful from their own report—benefit the public. But if they can whittle away the small but frequent gains by which the bar exists, they will so reduce its earnings that it must succumb and leave them masters of the field. Whether this be their object, it is undoubtedly the natural result of their proposals; but the public have a voice in the matter, and the public may be of opinion, *pace* those restless and ambitious spirits, that the bar is at least as useful a servant of the community as the solicitors, and should be saved from destruction, even at the cost of being deprived of the advocacy of solicitors in all cases under £50.

If, however, the public think amalgamation to be for its benefit, the bar, as I should conceive, will not take action to oppose any movement in that direction. Amalgamation pure and simple will be more to its advantage than its detriment. Each member of it may count, as is pointed out in the blue book, on obtaining some business at present in solicitors' hands, and how extensive that business is may be inferred from a comparison of the statistics of practising barristers and solicitors. The latter number considerably over 1,200, while the sum total of practising members of the bar only amounts to 400, or rather under that figure. But yet certain solicitors are not satisfied with an employment which gives remunerative occupation to so many, but are endeavouring to encroach upon the precincts of the bar. The vast majority, however, of solicitors, do not desire to act as advocates, and will continue, in all probability, to employ barristers in preference to transmogrified members of their own profession. Office work and court work must remain distinct as hitherto, and one advantage would perhaps accrue, in that the doctrine of selection of the fittest would operate in a manner that it necessarily fails to act to-day, when a man goes to one or the other branch of the profession

voluntarily, urged by fancy or suspected powers alone; whereas if amalgamation were carried, the members of a firm would soon crystallize each into his proper place, and the one most fitted for court would stay there, while the man most suited for office work would remain in the office, and society would to some extent be compensated for the loss of a specialized and trained body of advocates.

But were solicitors so ill-advised, as some would have us believe, as to insist on undermining the resources of the bar, and persevere in their hostile proposals, there is a remedy to which in extremity the bar could resort, and to which in self-defence and not in any spirit of retaliation, they should resort, and it is this—the relaxation of bar etiquette—the only present restraint on its members—and the interviewing of and direct personal instruction by the client without the intervention of a solicitor. Were this done, few suitors would decline to avail themselves of counsel's advice in the first instance, and save themselves the petty and all the more vexatious costs preliminary to and consequent upon a case for approval of counsel under the present system. This would be a serious step, and from many points of view an undesirable one—one never to be taken without undue provocation—but one which it is as well to bear in mind when threatening to deprive the bar of all actions and suits under £50. Having said so much in view of the antagonism suggested by some of the proposals of the committee, it would be ungracious to pass over in silence the friendly and politic report of sub-committee No. 3, appointed to consider the "neglects" and "omissions" in duty of the bar. The sub-committee was of opinion "that the interests of the public and of their own profession will be better secured by the maintenance of the friendly intercourse and relations between the two professions, rather than that our profession should endeavour to adopt any hostile position, such as is indicated by the question submitted to us." With that observation, and the spirit in which it is made, I heartily concur, and hope and believe the same tone will animate the majority of the Incorporated Society when finally disposing of the questions now before them.

The "hostile" spirit on which I have animadverted, is entirely absent from most of the speeches delivered at the society's meetings, and my observations are not directed against any but those who from the tenor and purport of their proposals, have invited attack, who fail to see that the interests of the two professions are the same, or to esteem it a blessing for brethren to dwell together in unity. To meet the unprovoked agitation against the bar it is clear something must be done. Something more is wanted than government, by Benchers who, from their position and constitution, being self-elected, and consisting of judges and members of the inner bar exclusively, have little or no interest of a material kind in what concerns the mass of the profession. The other learned professions of medicine and engineering have, like the solicitors' profession, organized themselves, and it is high time for the bar of Ireland, like that of England, to follow their example. "Why should not a bar association be constituted under public authority,

with a governing body truly representative of the profession, empowered to enforce discipline, to settle authoritatively all matters affecting the practice of the bar generally, and keep watch over the interests of the members,"* guard their professional rights, consider legislative proposals affecting them, and see that their material interests should not be neglected.

Among other and more material matters investigated by the sub-committees of the Incorporated Law Society was one of minor importance but of historical interest, namely—the question, "When did barristers first obtain the exclusive privilege of audience in the superior courts?" and there is a note to the effect that "The question is one which cannot easily be answered." It is superfluous to remark that it was not as historians or archæologists that they investigated the question. It was with the object of showing, if possible, that the privilege was not one of time memorial. This they failed to do. Sub-committee No. 1 made a very interesting report, frankly admitting that the "custom is probably the most ancient known in legal procedure." That supposition is quite accurate, although their enquiries did not go quite far enough to prove it. Broom, Stephen, and Manning give very useful information so far as they go; but their observations are, so to say, incidental only to the purposes with which they wrote. There is not, as a matter of fact, in the United Kingdom, any regular history of advocacy—that is one of the books of interest which remain to be written; and information on the subject has to be collected from general history, biographies, chronicles, year books, and reporters. Had not the genealogy of the bar escaped the recollection of the sub-committee, they would have sought for and found in French literature the information they required.†

The tracing of matters of this kind, although not devoid of a certain interest, is nevertheless more within the domain of the antiquary than the practical lawyer. But since the sub-committee No. 1 considered it of sufficient importance for an enquiry, I take this opportunity of adding a few facts to the information they have given us.

"The epoch of customary law," writes Sir H. Maine, "and of its custody by a privileged order, is a remarkable one. . . . The law thus known exclusively to a privileged minority, whether a caste, an aristocracy, a priestly tribe, or a sacerdotal college, is true unwritten law."‡

Roman jurisprudence, he elsewhere informs us, has the largest known history of any set of human institutions, and the history of the Roman jurisconsults is the history of the rise and development of advocacy.

In truth, the bar can trace its descent from the great Roman lawyers Gaius, Scævola, Sulla, Cicero, and the rest of that first legal

* Turner and Wolstenholme, *Conv. Acts*, p. vii.

† *L'Histoire Abregée de l'Ordre des Avocats*, by Bouchier d'Arci, followed by the more copious volumes of Fournel—works of interest, learning, and research, bring down the history of advocacy from the earliest period of French history to the present time.

‡ *Ancient Law*, p. 13.

aristocracy which has left its impress upon all succeeding time. The vivid pictures of the jurisconsults life may be found in Maine. They, like the bar, pleaded as advocates alone, and did so for a honorarium—they were the court, not the office workers—they studied law, its technicalities and principles, as distinct from the collection of evidence and the other practical minutiae of an action—they were the mouth-pieces and not the advisers and agents of the public.

When the Franks seized Gaul in the fifth century, the bar of France enjoyed the highest consideration. The conquerors were the first to proclaim the calling noble. The capitulary of Charlemagne makes honorable mention of them. In the earlier and dark period of French history, when the lamp of learning was kept alit by the church, none were advocates but the clergy. Cyprian, Augustine, and Ambrose followed the profession, and it was not till 1217 that Honourous III issued his prohibition forbidding ecclesiastics to study or to teach the civil law.

In England, prior to the conquest, there had been no profession of advocacy; but William introduced the French procedure and established the *curia* or *aula regis*, which, as Austin remarks, was a court of justice, as well as the supreme legislature. The administration of justice in that court continued for rather more than two centuries, although, for convenience, causes, according to their different natures, were gradually assigned to different committees, to which, as is well known, may be traced the titles of the various courts. Meanwhile, laymen had begun to enter the Inns of Court, and practise as pleaders,* while law became a necessary portion of polite learning. I regret to have to admit as an impartial chronicler that after the introduction of the lay element, serious changes appear to have been made, and were credited against the profession; for six hundred and eleven years ago we find the first suggestion of the kind in the statute of Westminster I (3 Ed. I. c. 29), which was an—

“Act inflicting penalty on a sergeant or pleader who should do any manner of deceit or collusion in the King's courts, or consent unto it in deceit of the court for to beguile the court or party.”

It is a pleasing reflection that this statute, although unrepealed, is virtually a dead letter, as no one could now, suggest, or even suspect a sergeant or a pleader of beguiling the court, throwing dust in a jury-man's eyes, or hoodwinking a judge who was not over wise!

It was not until the statute of Merton (20 Hen. III. c. 10) which authorised—

“Every freeman who oweth suit to the county, try-thing, hundred and wapen-take, or to the court of his lord, may freely make his attorney to do those suits for him.”†

That, in order to save him from the necessity of attending the assizes in person, which he must otherwise have done on the possibil-

* In earlier French judicial works, advocates are called *plaidours* or *contours*, from which have arisen our term pleader. Barrister is derived from French *barre*, *barrière*, the enclosed wooden space in a court where the accused person was placed and whence the advocate pleaded.

† Orig. *Atorne*. O. F. substituted or delegated. Littré : Dict. Fr.

ity of being a litigant—they had no writs and process-servers in these days—notice of action was not essential, and therefore a man only became aware of proceedings against him by being present in court—that a suitor was first permitted to appear, and if necessary, instruct counsel by attorney. Until this period the attorney had been merely the adviser of the client. He conducted the case until it went into court, and brought the client and advocate into contact, but was not permitted to appear upon the record. From the statute of Merton, followed by the statute of Westminster II. (13 Ed. I. c. 12), which first authorizes the making of general attorneys in all pleas, various statutes were passed regulating an attorney's duties, some even less complimentary to them than the statute of Westminster I. was to the bar; as for instance, the 3 Jas. I. c. 7, which among other things was "to reform the multitudes and misdemeanours of attorneys and solicitors at law, and to avoid suits and charges at law." These various statutes were consolidated and amended by the 6 & 7 Vic. c. 73.

The conclusions of the sub-committee are then well borne out by history. Under the Roman, French, and Anglo-Norman legal systems, certain professed advocates were given audience. That privilege of audience was a right never disputed until now, when certain aspirants for forensic fame have ventured to question it. They have failed.

In this paper, I have left out of consideration the elaborate and interesting reports (occupying about one-half of the Society's blue book) of the relations of the legal professions in various countries, and I have done so for the following reasons—In the first place, the question of amalgamation is not one to be decided upon precedents. It is one of expediency. Precedents, moreover, such as the majority of those contained in the report, which are derived from new countries and colonies, whether of America or Australia, are entirely misleading. As correctly pointed out by the New York correspondent, in new countries the original lawyers are naturally attorneys, who are from the necessity of things obliged to practice as barristers, and the system thus inaugurated as long as it works smoothly, will not be questioned. "The public knows no other system," and therefore "there has been no attempt to change the present order of things." The American system is then an experiment only, and as such morally a failure. I trust the time is far distant when our judicial, any more than our political system shall be fashioned on the American model. Misguided admiration for everything American is a dangerous tendency of the times. We blindly praise what we do not understand, and ignorantly admire what we have never seen. The corruption of the American judicial system is simply unparalleled. Their own writers admit and deplore it. Even the state of New York is polluted with judicial fraud. "With one honorable exception—the judges in the state are notoriously corrupt. . . . It was well known that one judge received 10,000 dollars for giving judgment in a case, and he still remained upon the bench."* "If," remarks another writer, "we were to re-

* Jennings : *Rep. Govt. U. S.* 91.

"late one-half of the rumours which are afloat, and which are fully "credited too, by the most intelligent and discreet members of the "bar, we should draw a picture as appalling as anything to be found "in the books of the prophets Amos and Micah."* If amalgamation produces a system and a body of men capable of so great scandals, save us from such a curse.

In the next place, of the nine European countries (including Wurtemberg in Germany), mentioned in the report as possessing legal professions, amalgamation holds in five; and if to the four remaining we add Great Britain, there is an end of the precedent, without even considering the great relative importance of those five to the rest of Europe.

The present system has the sanction of two thousand years. It is the result of natural growth. It has outlived all dynastic changes. It flourished under the Roman Empire, the Carlovingian kings, and the French Empire and Republic; and it is part of the historical development and social life of England and Ireland. From the time of Sir John Davis, the Irish have utilized it, and "there is no reason to believe that they are dissatisfied with it," or wearied of a profession which O'Connell, Holmes, Sheil, Curran, Whiteside, and Butt were proud to adorn. Who are its assailants? Certain members of the other branch of the legal profession—I am too well convinced of the good sense, good feeling, and pride in their honorable path of life, to believe that the solicitors of Ireland will join in the attack—whose motto would appear to be "take all, give nought," and who, instead of approaching the bar for redress of any grievances, if such there be, prefer to take a "hostile" course, to pose before the public as its champions, and cast a slur upon a profession of which they appear to be envious, and which might reply in sorrow and in truth—"First cast out the beam out of thine own eye, and then shalt "thou see clearly to cast out the mote out of thy brother's eye."

IV.—*American Railways.* By Charles Eason, Jun., M.A.

Read Tuesday, 23rd February, 1886.

AMERICAN railways have attracted a great deal of attention during the past twelve months. The fall in the prices of stocks, the decrease of dividends, the bankruptcies of some companies, the war of rates and the general decrease in earnings, have all indicated a more than ordinary disturbance in the economic condition of the companies. The capital invested in these undertakings, is very large—the stocks and bonds amounted to about 1,000 millions of pounds sterling in 1880, and to not less than 1,450 millions in 1883. Such a field for investment must obviously comprise securities of widely different character, and it is important to ascertain how the good may be distinguished from the bad.

* *North American Review*, Jan. 1867, pp. 148-176.