the basis of the Commentaries; but there is no doubt about the profits of the books to his publisher or, as in the eighteenth century he was called, his "bookseller," being an additional £10,000.

The first volume of the Commentaries on the Laws of England was published in 1765, a year before the author resigned his professorship, of which he had become tired, and the succeeding volumes followed in 1766, 1768 and 1769.

Our own country has some local connection with Sir William Blackstone because his eldest son, Henry, who graduated at Oxford, B.A., in 1783, came to Canada in 1797, at the age of 34, as Comptroller of Customs at St. Johns in the County of Richelieu, where he was utterly neglectful of his duties as well as insolent to his confrères, and being removed he was appointed Sheriff of Three Rivers where, after removal from that office, he lived for many years upon a small annuity.

Having married in Lower Canada, in 1801, the widow of Pierre André Godefroi de Tonnancour, they had one child, Henry William Blackstone, who removed to Upper Canada, and was admitted a student in 1831, and called to the Bar in 1837. He settled at Newmarket, and removed to Holland Landing, both in the county of York. He does not appear to have attained any eminence in the profession although there is no reason to doubt that he was a popular character, and he was a fine musician. H. W. Blackstone died in 1852.

HERBERT M. MOWAT.

LEGAL EDUCATION IN ONTARIO.

As Legal Education is now exciting some attention, a reference to its history and present position in Ontario may help. Changes made without adequate knowledge of the object to be improved may be dangerous, and the comparative novelty of the subject here has led to a discussion which takes but little account either of what is now going on or of what is practicable.

Education has always been one of the aims of the Law Society. Its creation in 1797 was in part:—

"For the purpose of securing to the Province and the Profession a *learned* and honourable body to assist their fellow subjects as occasion may require and to support and maintain the Constitution of the Province."

For many years, however, the facilities for learning were meagre. There existed between 1822 and 1825 an Advocates' Society in the Town of York, which provided some unofficial legal instruction.

For years, however, the Society demanded some pre-legal education. Before 1858 the student required a bowing acquaintance with Cicero, after 1858 he must also know mathematics. Lectures on law were delivered during term, which after 1855 became compulsory for students keeping term.

In 1873 the Law Society appointed James Bethume, Charles Moss, Z. A. Lash and Alexander Leith (four famous names), as lecturers, and thus the first Law School began. It furnished part time voluntary instruction, but it drew too many students to Toronto and its efficiency caused its death. The country practitioners complained, and in 1878 the school was abolished.

In 1881 it reopened. Again it was lucky in its teachers, but comparatively few students attended. Office work and private study under the menace of examinations were still the chief source of learning.

In December, 1888, a Committee of Benchers, after visits to one or two schools in the United States and other investigations, made a report, which the curious will find in 25 C. L. J. 51. Its proposals were, in the main, adopted and on October 7th, 1889, the present Law School was formally opened in the presence of a number of Benchers and of its scholars. This event is remarkable as being perhaps the only time when Benchers and students have met as a body, and as being the only public function in which the school took part. Students enter the Benchers' room to be called to the Bar, but otherwise there has been very little intercourse between Olympus and the plains.

The staff consisted of a principal (salary $4,000 for full time work) and four lecturers (salary $1,500 each for part time). Attendance remained voluntary at first for the first year, but was compulsory for the second and third years. Later it became compulsory for all. About 630 lectures have been given each year, roughly one-half by the principal.

Two demonstrators were afterwards appointed, who instructed in practical conveyancing and practice. The principal's salary rose to $6,000, the lecturers' to $2,000 and the demonstrators from $500 to $750. The earlier official announcements stated that the course "Embraces lectures, recitations, discussions and other oral methods of instruction and the holding of Moot Courts." The Moot Courts were dreadful affairs. Though the students' arguments were usually well prepared, they did not impress their fellows, and a general sigh of relief went up when they were abandoned. With this exception the instruction has been by lectures. The attention has been uniformly

good, the students work hard in the class, and for years past they have set a standard of courtesy towards the staff, which is probably unexcelled in any college. The classes create the impression that their members are learning law, and one ventures to hope that they do so.

Much of this is due to Dr. Hoyles, who was principal from 1894 to 1923. A sound lawyer, a highly educated man and eloquent speaker, his forensic qualities well fitted him for the position; and he added to that, dignity, simplicity and friendliness in his dealings with the students. He proclaims by his life and with a courage amounting to chivalry that he is a servant of God, and his influence upon characters still in process of formation has been immense. The imponderables in teaching, as in life, outweigh technical and material considerations.

The School has not greatly changed either in method or equipment during the last 30 years, but the attendance is much larger. Registrations till 1910 varied from 120 (the lowest in 1906) to about 200, and classes had from 25 to 75 scholars. Since 1913 the yearly attendance has been more than 300, except in 1917 and 1918. In 1923-4, 391 students were enrolled. Osgoode Hall stands number 20 amongst 150 Law Schools on this Continent, so that numerically it is one of the most important. Since 1889 about 2,500 lawyers have graduated from it.

The equipment consists of three class-rooms built years ago, and much too crowded now, a library of about 2,500 books, two small common rooms, one for men and the other for women, and cloakrooms in the basement. The principal has a room and the lecturers and demonstrators share one amongst them. Convocation Hall is used by permission for dances or debates, and the main library is also available for students under certain restrictions.

There is no gymnasium, campus or other place for exercise. Any sports must be arranged for outside. Apart from dances or debates the writer only once saw students amusing themselves at Osgoode Hall, and then his unintended entrance broke up a foursome engaged in African Golf.

The School has no name, no year book, no separate budget and no public function at which students about to graduate, or who have won laurels, may ask their friends to see them crowned. There is no public recognition of the successes of its scholars. Frequently it has won the Intercollegiate Series of Debates, and in past years it excelled in hockey and football, but our self effacing institution takes no official notice of these achievements.

Worse still, we have no public memorial to those students who went to war; some of whom were called upon to die in their youth.

It remained for the Prince of Wales in 1919 to pay public tribute to them. His words were:—

"I do now want to express to you my admiration for the wonderful war service of this Inn (sic). You had 300 barristers serving in the War, and still almost more wonderful, *out of 330 students you had 300 serving at the front.* I do congratulate you most heartily on such a record.

"With you I mourn the loss of those 70 barristers and students who will never return. I offer to you my deep sympathy for the splendid men you have lost."

These deficiencies explain one of the chief needs of the School, a real *esprit de corps.* There is no outside interest in the School, therefore it has not been held in much esteem. People are not proud of attending or of graduating from it. Our profession is efficient and businesslike, law is administered without undue delay, we do not impede justice with useless technicalities, and the standard of honour and behaviour is high. Surely a school which has functioned for a generation has contributed to these results and its record is a proper source of pride. It is time to bespeak greater professional interest in and constructive criticism of its work.

It would also be well to co-ordinate the different branches of its work. The Benchers control it through the Legal Education Committee. The principal reports once a year formally to the Committee and his reports are printed. The printed proceedings of Convocation, however, indicate that the Committee deals chiefly with routine matters, admission of students to the Society and to the Bar. Questions affecting the welfare of the School rarely appear in the published proceedings. The principal does not regularly attend Committee meetings, nor have the Committee and faculty met officially for many years, if ever.

The examiners work independently of the lecturers, except for submitting their questions to the latter before printing. There is no co-operation between the School and the profession to assist students in getting proper office practice. This is vital under our apprenticeship system. Good office training is the best experience the student can have. It is in keeping with modern university teaching of the practical sciences where a certain amount of "shop work" is demanded. It is the crying need of Legal Education in the States, but the student who comes to Toronto for lectures is not

assisted in his quest for good office experience. No doubt with proper encouragement the profession would be glad to co-operate with the School in improving its "out patient" department.

By co-ordinating its various activities and giving the School a definite identity not only would it impress itself upon the public mind, but improvements could be made as they are needed. A small Board (controlled, of course, by the Benchers), but including also members of the staff and perhaps a student representative, and meeting frequently, could keep closely in touch with problems of teaching as they arise, and recommend desirable reforms. A small closely knit and efficient controlling body could work wonders. If the Benchers could also meet the students officially now and then it would promote a better feeling. Why couldn't they dine the students once or twice a year? If well attended by the Benchers these ceremonies would help the students to realize that they are really members of an honourable and important society.

A serious obstacle to progress at present is that there are not enough teachers. The classes were quite large enough when only 35 to 60 were present; now that we have from 100 to over 150 in a class the problem is hopeless. There is nothing for it, but long distance instruction by formal lectures, and the teacher never gets into personal touch with his audience. It would help matters greatly if more lecturers were appointed and the classes divided, or if tutors were employed who would meet students individually and in small groups and guide them in their studies. This brings up the problem of the part time school with part time lecturers. It is too large a question for useful discussion here. Office training is so important that school hours should not result in its abolition or relegation to the summer months when office work is scanty. Even the part time lecturer too, engaged as he is in active practice, has his points. The objection (and it is serious), is that training exclusively under such condition is superficial. The love of learning, Sir Edward Coke's "delight" in the study of the law, is not developed, and we are not creating a class of lawyers, who by research, study and authorship are equipped for introducing or criticising reforms in a scientific spirit. No great native progress in law reforms is possible without much learning, and that this is lacking in Ontario is shown by the fact that our important statutory improvements and codifications have been borrowed from England. This field of law school work is as yet entirely untilled in Ontario.

Improvements in the School will cost money, and a glance at finances is desirable. The following figures are only approximate

because no separate Law School balance sheet is published, so that certain receipts and payments in the Law Society's financial statement cannot be accurately apportioned. Administration expenses are not, for instance, charged to the Law School. The student ordinarily pays admission, examining, tuition, call and solicitors' fees, aggregating $570 plus some minor charges of no great importance. Roughly speaking the school has always paid its way, if we credit to it all sums paid by students. From 1919 to 1923 inclusive, since the flood came, their fees have far exceeded the outlay on them. The Law Society revenue for these five years was $727,173.32, of which the students paid $443,958.53, over 60 per cent., and the School cost $140,303.46 excluding administration, or less than 20 per cent., leaving a surplus of over $300,000. The ordinary expenses of the society no doubt absorbed part of this, but the total five years' surplus shown by the Society's revenue accounts is $206,305.96. As there is no published capital account the actual surplus on hand cannot be stated, but the annual interest returns show that it must be large. There is evidently ample money for a present endowment of $200,000 and every prospect of sufficient future revenue to justify a great extension of its school activities.

Further, the education of Law students, unlike Arts and Medical students, does not cost the country anything, and much less is spent on him than on the others. The average yearly cost of a Law student, between 1918 and 1922 inclusive, was about $79 or $80. According to statements furnished to the Commission on University finances a Toronto Arts student costs $170 (excluding administration), and a Toronto Medical student $150 in 1919-20; though on an average he costs $260. A Queen's Medical student costs, including administration, $318. In 1922 each Harvard Law student cost $234, while in the same year the Osgoode man cost $70.

Harvard is the banner Law School of this Continent, and we can scarcely hope to emulate it, but a glance at its budget shows that pre-eminence is expensive. In 1922 its total revenue was $276,567.25. Osgoode students contributed $71,014, of which $49,642 was credited to the Law School. Harvard spent $242,611.80, of which $110,750 were salaries paid for instruction and research. Osgoode spent $23,929.71, of which $20,930.93 was for salaries. Harvard's revenue from law school endowments alone that year was over $75,000. Osgoode has endowments for scholarships, aggregating $500 a year, and for the School Library about $500 a year. Harvard spent for prizes, scholarships, fellowships and loans to students, $28,292.46. Osgoode students for medals and scholarships cost about $1,200.

The Law Society's annual contribution for medals and scholarships has remained at $720 for over thirty years.

In conclusion, two questions which excite popular interest might be touched upon. One is pre-legal education, the other the case system.

The intending student must be a graduate or the holder of an Ontario certificate of complete pass matriculation. This standard is not very high and many, including Dr. Hoyles, would like to see it higher. The American Bar Association is agitating for two years at College, and some Law Schools accept only graduates. There is a well grounded opinion that the standard of the profession is higher ethically when its members have a good general education; naturally its legal attainments will be greater. These views, however, do not altogether take account of the difference between voluntary and compulsory schools. The Ontario neophyte must attend the Law School. He may be, and generally is, hard up. There are no formal grades in our profession. The same course is necessary for the future humble practitioner and for the coming leader of the Bar. If we make the course too expensive and difficult democracy will seek some other approach to the profession and the Law Society will endanger its present strict and beneficial control over its members. This, broadly speaking, happened many years ago in the States, and now its best lawyers lament in vain the absence of efficient control of those who practice law and the low standard of education necessary to qualify them. There is no reason why our school should not have two departments, a compulsory pass course for all, and an optional honour course with proper pre-legal qualifications for those far-seeing students who wish to excel in their profession. This would avert the charge made by one newspaper in the States that the American Bar Association is "slamming the door on brains."

The other matter is the case method. Case books exist in England and are used by teachers to induce students to read and analyse cases for themselves. In some United States Universities they have practically supplanted other forms of teaching and are published by the score.

Dean Langdell of Harvard introduced teaching in this way in 1871. He was a great lawyer, with an original mind and a strong personality, and through his efforts and those of his successors it became extremely popular. Any great teacher will ultimately popularize any method he employs. It appeals to the full time voluntary schools whose students get no concurrent office experience, and it lays a very necessary emphasis upon legal principles. It

necessarily usually ignores local legislation, it is slow and renders the orderly development of a topic difficult.

If pursued to the exclusion of lectures the student finds it hard to obtain a general view of any large branch of law. It is regarded as excellent mental training, but this is apt to depend upon the skill of the teacher in posing problems and leading the student to think them out. It takes so much time that it is impracticable in a part time school, and many teachers also regard it as undesirable unless preceded by a general survey of the subject through lectures or text books. Dean Langdell in later years did not always adhere to this method. He not only delivered set lectures, but read them from his manuscripts. The case method cannot be ignored, but its adoption in a compulsory Law School for a pass course calls for careful and critical investigation. While very generally adopted in full time schools in the States, the comments upon it are not always enthusiastic.

Toronto. SHIRLEY DENISON.

DUTIES OF OCCUPIERS AND OWNERS OF DANGEROUS PREMISES.

(*Concluded.*)

III. Duty to Trespassers.

Duty Stated.—The occupier of premises owes no duty to trespassers who unlawfully enter upon his premises, except that he must not deliberately or wilfully entrap them to their injury. Since the trespasser does not enter by permission, the occupier need not even warn him of the dangers existing on the premises. The general rule is that a man trespasses at his own risk, and cannot complain if he is injured through the insecurity of the premises. In one leading case[52] the facts were that the plaintiff was a trespasser on a railway train which was wrecked by the negligence of the servants of the railway company. The train was not in use as a passenger train as the plaintiff knew, and the plaintiff had taken a precarious stand on the platform in disobedience of a by-law of the company, and was subsequently injured. It was held that there was no breach of duty to the plaintiff by the railway company which was merely "under a duty to the plaintiff not wilfully to injure him; they were

[52] *Grand Trunk Ry.* v. *Barnett*, 1911, A. C., 361; *Bondy* v. *Sandwich Ry. Co.* (1911), 24 Ont. L. R., 409.