LEGAL EDUCATION IN ONTARIO.

By Paul Home.

My object in writing what is here set forth is to make some suggestions to those at present engaged in considering in what way the Upper Canada Law School may be improved.

Just as in deciding an action at law the Judge has to select the correct principle of law, and then apply it correctly to the special facts of the case, so for the training of lawyers it is necessary to have a correct system correctly administered. You have first to decide upon the method of training to be adopted, and then to select professors and lecturers properly equipped to put such method into practice. Many and different views are held as to the proper training for the profession of the law, but upon examination it would appear that these divergent views are largely due to the different opinions held as to the object to be attained. The object is to fit persons to practise the profession of solicitor and barrister, and to quote Mr. W. J. McWhinney, K.C., in a letter addressed to Mr. Shirley Denison, K.C., in 1916:—

> "We must not forget either that the quality of our judges and legislators, as well as of lawyers, depends upon the foundations which are laid and the instruction which is given in the law school."

Now the profession of law being one of the learned professions it is not sufficient only to equip the young lawyer in such a way that he may be able to earn a living by the practice of his profession. It is the duty, pride and privilege of every profession and of every member of it to do their utmost in the interest of the public and of the profession itself to make its members efficient and as useful to the community as possible. There is a tendency in many, in this utilitarian age in which we live, even amongst those aspiring to practise one or other of the learned professions, to despise

all learning that does not appear directly to be of assistance in making money. No one doubts that there have been and are many persons sadly lacking in learning and the culture which learning gives, who have succeeded in making a competence by the practice of law or medicine. But those responsible for the Ontario Law School have a noble and lofty conception of its proper function. They will not be satisfied if its sole achievement is to teach its students enough, and only enough, to enable them to make money by the practice of law. Regard for and obedience to the law itself depends not a little on the character and reputation of lawyers. The more worthy the practitioner the more will the law be held in esteem. The profession generally desires that good government shall become better government, that the laws shall constantly undergo improvement both in themselves and in their administration, and these objects can only be attained if lawyers themselves constantly and steadily improve.

Sir Frederick Pollock's advice to students at Oxford who intended to join the legal profession was to graduate in *Literæ Humaniores*, and then take the examination for the faculty of Bachelor of Civil Law. This is a counsel of perfection. It is only very few who are fortunate enough to have received a classical education at school fitting them to take the splendid course advocated. The same thing *mutatis mutandis* no doubt applies in Ontario, and some students are fortunate enough to attend at and graduate from one or other of the Universities of this great Dominion. But the Ontario Law School must cater for all those who have thus graduated and also for those who enter it direct from school.

There are some who have never had the advantage of a liberal education, who never feel the want of it. There are only two classes of persons who can appreciate its value, namely those who have enjoyed and benefited by it and those whose education was only sufficient to enable them to realize what they have lost by not having more. Just as some people are utterly

incapable of appreciating the value of a university training, so there are highly respectable and successful lawyers who do not appreciate that an Ontario practitioner can get any advantage from studying the Roman Institutes and Digest. In the space at my disposal I cannot adequately discuss this question, but those responsible for the Ontario Law School should seriously consider whether they will not, as do the Inns of Court in England, make Roman Law a compulsory subject for first year students.

In his inaugural address to the law school delivered by a former principal, the late Mr. W. A. Reeve, K.C., in 1889, he quoted from Sir William Blackstone, the first Vinerian Professor of Law in the University of Oxford, as follows:—

> "Making due allowance, therefore, for one or two shining exceptions, experience may lead us to foretell that a lawyer thus educated to the bar in subservience to attorneys and solicitors will find he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know; if he be misinstructed in the elements and first principles upon which the rule of practice is founded the least variation from established precedent will totally distract and bewilder him; *ita lex scripta est* is the utmost his knowledge will arrive at, he must never aspire to form, and seldom expect to comprehend any argument drawn *a priori* from the spirit of the law and the natural foundations of justice."

Mr. Reeve says:—

> "Perhaps broadly stated, the chief function of the law school may be said to be the cultivation of the right understanding of legal principles. In no other department of learning can the knowledge of fundamental principles be of greater importance than in this. I am not sure that it may not be truly said that a thorough understanding of principles is of special importance and necessity in this, because legal principles are in more peril than others. A departure from principle in mathematics

will demonstrate itself and cover the erring one with confusion. Not so in law. Law is a matter of opinion—the opinion of the Judges."

In the same address Mr. Reeve says:—

"Roman Law and Public International Law have been omitted altogether. The importance of these studies cannot well be overestimated. Many think that the proper place for them is in a university curriculum, as being a legitimate part of a liberal education. However that may be, in view of the compulsory feature of the scheme and circumstances of the country and profession, the omission at all events at present seems justified."

Lord Lindley addressed the students of Owens College, Manchester, in the same year, 1889, and said that principles were what the law student had to master to acquire the legal mind which enabled him to settle difficulties as they come. Law must be studied as a science. They must not only know the rules, but know the reasons for them; simply to burden the mind with rules was of no use toward making a man a lawyer. The subject was to be studied in the same way as they studied other subjects—inductively and deductively. The mechanical part of the subject could be learned only in the office of a solicitor or the chambers of a barrister. But an articled clerk would find his knowledge of little use to him without the extra culture he could obtain from the college lectures.

It appears from Mr. Reeve's address which is printed in the 9th volume of the *Canadian Law Times*, at pp. 241-255, that the Ontario Law School is not conducted on the lines he had in view when it was inaugurated in 1889. He contemplated not only lectures and written examinations, but also recitations, oral examinations, and the holding of Moot Courts.

The object which the school through its principal and staff should set before it is to inspire its students with a desire for knowledge, to encourage them to take pride in learning for its own sake, to instil into them an admiration for the noble calling they have chosen,

to endeavour to make of them better lawyers than their predecessors, to point out the merits of the law as it exists and its defects, so that the young practitioner may go forth cherishing an ambition to excel in his profession, and imbued with a keen desire to do his best to improve the law and its administration.

The Ontario Law School has to train its students to become both solicitors and barristers. In England where the two branches of the profession are entirely distinct the barrister learns to draw pleadings and write advice on evidence in counsel's chambers, but here it is necessary in the interest of those who aspire to success as counsel, that the student should be practically trained in the art of pleading and be well grounded in the rules of evidence.

The importance of a thorough grounding in the principles of pleading cannot be overrated. In England there is naturally a very large body of highly skilled and very efficient pleaders. Here we are jacks of all trades, but the Ontario Law School is to be congratulated on having a teacher of this subject who has not much to learn in this very useful and practical accomplishment. There is no student who qualifies from Osgoode Hall who has not acquired a quite considerable knowledge of English and Ontario Law and practice, and the education to be obtained there is admittedly of great benefit to all who attend the lectures and pass the examinations. But it is submitted that without making any too drastic changes the usefulness of the school could be greatly increased.

The writer has read numerous articles and papers on legal education, and on the Ontario Law School in particular, and it may be that it would not be possible or practicable for financial and other reasons to entirely alter the system as it now exists by adopting say *in toto* the method in vogue in the Harvard Law School.

So far as the teaching itself is concerned there are at present lecturers in the school exceedingly well equipped for the duties they have to perform. The lectures delivered and instruction received from them could

hardly be bettered. They are thorough masters of the subjects upon which they lecture, and they and the students lose nothing by the fact that they also have practical experience in their profession. They themselves are deeply interested in the subjects which they seek to impart to their hearers. But even so their purpils, with few exceptions, are content to accumulate the matter in the lectures, and neglect much more than they should do, the book at large, as Sir F. Pollock used to say.

Reforms are most needed in the examinations, but the following suggestions are made in connection with the teaching given in the school:—

(1) That the lecturers do more to induce their pupils to read and study for themselves the more important cases referred to in the lectures. At present the lecturers have not sufficient time at their disposal to adequately teach the leading principles. This can only be done by the student himself reading a large number of cases. By doing this he sees how the Judges apply the principles to concrete sets of facts. The esteemed Principal, Dr. N. W. Hoyles, K.C., advised his pupils to read the prefaces to the Revised Reports. If they will do this and then read the important cases mentioned in them by the learned editor they will not only learn much law, but some at least of them will have awakened in them a real enthusiasm for and interest in our law and in its great expounders of the past. Seeking to learn something more about the great judges of the past they will go to the volumes of Lord Campbell and the Dictionary of National Biography. When the student learns that Lord Tenterden and Lord St. Leonards were the sons of barbers, and reads of the romantic achievements of the two gifted brothers Lords Eldon and Stowell, he will, let us hope, apply himself to the serious study of the law with real enthusiasm born of a desire to emulate the great lawyers of Ontario and England.

(2) The number of lectures delivered by and time allotted to those lecturers who make a real success of their work should be increased.

(3) The lecturers should at half term, and at the end of the term, examine their pupils orally. A good lecturer will so handle this matter that his pupils will be ashamed to sit mute or give foolish answers. The spirit of emulation will do its work, and the result cannot fail to be highly beneficial. I do not suggest written papers as well, only because I do not wish to put too heavy a burden upon teacher and students.

(4) Some lecturers have their eyes fixed only on the examination paper and their sole object is apparently to give their students enough and only enough to enable them to pass the examination in their subjects with the minimum of thought, learning and work. This method is absolutely wrong. It is misdirected kindness.

(5) The object of lectures is not to impart merely the essence of text books. It is to inspire the student with enthusiasm and love for his studies, to encourage him to read widely, to guide him in the understanding and appreciation of principles of law which undirected he may not fully appreciate, or not understand at all if left to study text books and cases unaided. Also the lecturer has to and does keep up to date himself, and he has to and does refer his hearers to Ontario and other cases not to be found in the text books, and also to the most recent cases which have not yet got into the text books.

(6) More time should be put at the disposal of the lecturer, whose informed and very practical lectures on pleading are of the utmost value to the budding counsel. The tasks set by him should be marked by him and the marks awarded should be taken into consideration in placing the student according to merit at the end of the third year.

No lawyer of experience will differ from me when I say that the importance to the lawyer of acquiring the habit of accurate expression cannot be overestimated. The greatest lawyers have been men of great learning whose mastery of the English language was such as to enable them to speak and write in such a way as to leave no room for doubt as to their meaning. Large sums of money are wasted annually in litigation

caused solely by the fact that the lawyer-author of some document has expressed himself ambiguously. The imperfections to be remedied are to be found more in the system of examining than in that of lecturing.

The examiner's aim should be to pass only those students who have acquired a sound grasp of legal principles. The means at present in vogue are very far from satisfying this requirement. Every young lawyer recently qualified from the Ontario Law School knows that very high marks can be obtained in the examinations by simply cramming the notes of the lecturers, which if he be a good lecturer are excellent, as far as they go, and if he be an inferior lecturer are inaccurate and misleading, rather because of what they omit, than because what is said is not accurate as far as it goes; and nothing is worse, especially for the lawyer, than false knowledge.

Readers of this magazine hardly need to have pointed out to them how utterly bad a system is which makes this possible. Lord Lindley in his address already referred to, said that the one good thing about cramming was that it cultivates a habit of close attention without which a man would not be good for much in the legal profession, but that to master his subject the student must get hold of general principles and he could not do this by cramming.

It is true that attendance at a percentage of the lectures is compulsory, but it is the fact that a student who pays little or no attention to the lectures and does not take a note can qualify as a solicitor and barrister by borrowing the notes of some student, or ex-student, and cramming them for a very short period before each examination.

It is laid down that students are examined on the prescribed text books, statutes and lectures, and in a sense this is true. But as already remarked any intelligent student with a little industry can get a very high percentage of marks, or even reach the highest place in the examinations by reading only the notes and glancing at some of the sections in some of the prescribed Statutes.

It is surely quite wrong to award medals and substantial sums of money in scholarships to those obtaining the first places in examinations conducted in this way.

Questions can be asked, and answers judged, in such a way as to satisfy a qualified examiner that all candidates who get a certain percentage of marks, have sufficient knowledge to justify their being sent out into the world to practise law. But if in addition to writing papers each candidate is examined orally, the examiners' task is made much easier and much more certain and so far as competitive examinations are concerned they should always be conducted partly in writing and partly *viva voce*.

As at present conducted it is to the candidate's advantage to answer all the questions set and each question can only be answered very shortly.

The aim of the examiner should be to thoroughly test the candidate's grasp of principles, and the system in vogue at the universities should be adopted instead of asking a question which can be easily answered by the average student sufficiently to obtain a high percentage of marks by cramming for a very short time before the examination.

If ten questions are set in a paper, the candidate should be asked to answer not more than six questions to be selected by him. It is only when all have ample time given them to do full justice to the questions asked, that the examiner is really able to discover from the answers what each candidate really knows. Nothing will discourage cramming and encourage wide reading and a study of case law more than such a system of examination, provided of course that the examiners themselves are fully competent to examine in this thorough manner in their respective subjects.

It is also recommended that each candidate be examined orally, or if this is not considered practicable, that the medals, scholarships and honours be only awarded to candidates who undergo an oral examination as well as the written one.