# *The State of the Law Courts.*

I

A VIVID public interest has of late been aroused in regard to the administration of justice in this country. The wholesome feeling of reverence that formerly attached to our judges seems now to be on the wane, and in private circles, especially among the legal profession, the conduct of the judicature has been severely commented upon, while the Press has occasionally ventured to darkly hint that the retirement of one of our most eminent judges is desirable in the public interest. On all sides it is agreed that his infirmities unfit him for the efficient discharge of his duties, his judgments show the melancholy decline of a once brilliant intellect, and the continued occupation of his seat upon the bench is a source of danger to the public. And yet such is the state of our legal machinery that his retirement is practically in his own hands. Only by an address of both Houses of Parliament to the Crown can his removal be brought about—an odious and invidious task, which the legislature naturally delays as long as possible, and will only undertake as an extreme measure. Although of recent years there has been a marked improvement in the *personnel* of our judges, so far as bodily vigour is concerned, there are still on the bench aged and infirm men who would have retired but for the necessity of completing the statutory period of fifteen years, at the expiration of which only can their pensions be earned. It is pitiable to see these old public servants, who once ranked among the most brilliant men of their day, attempting to discharge their duties with an obvious effort and at great physical fatigue.

More than enough instances have recently arisen of judges being incapacitated by deafness and other infirmities, and refusing to retire. But public opinion has hitherto been very tolerant, and these distinguished men have been permitted in their declinng years to exercise functions demanding the highest mental activity without exciting adverse comment. That there are defects in our judicial system, not the least of which is the absence of any controlling power over our judges, becomes more and more apparent, and it will be useful, therefore, to bring some of those which are most notorious in the legal profession under the notice of the public.

The judicial system in this country is the most expensive in the world. Our judges, it is true, are men of the highest integrity, and the confidence of the public in their incorruptibility is absolute. In this respect, no doubt, we compare favourably with many foreign nations. But the public have a right to look for something more than a strictly honourable bench, and it is desirable to inquire what we get in return for the enormous annual outlay on our judicature. For the sake of convenience let us begin with the higher tribunals. It will be interesting, in the first place, to study the following table, which shows the numerical strength of Her Majesty's judges, together with the salaries they receive :—

| | |
|---|---|
| 1 Lord Chancellor .................. | £10,000 |
| 4 Lords of Appeal (£6,000) ...... | £24,000 |
| 1 Master of the Rolls .............. | £6,000 |
| 5 Lords Justices (£5,000) ......... | £25,000 |
| 5 Chancery Judges (£5,000) ...... | £25,000 |
| 1 Lord Chief Justice .............. | £8,000 |
| 13 Common Law Judges (£5,000) | £65,000 |
| 2 Admiralty Judges (£5,000)...... | £10,000 |
| 1 Judge Court of Arches............ | £5,000 |
| 33 | £178,000 |

There are, besides, a great number of highly paid officials known on the Common Law side as masters, and in the Chancery Division as chief clerks, who assist the judges by performing minor judicial functions. These gentlemen receive £1,000 a year each. There are also Clerks of the Crown and Associates on the various circuits who receive liberal salaries, as well as a multitude of clerks and other officers who are paid out of the public funds. But it is not our present purpose to consider these minor functionaries, our object being to afford a general conception of the working of the High Courts of Justice without going into unnecessary details. For the information of the curious, however, we may state that the total expenditure for law and justice last year was more than four and a half millions sterling, a sum which it should be understood includes the charges for maintaining prisons and other expenses incidental to the administration of justice.

In face of such stupendous figures the intelligent foreigner may well imagine that we have a judicial system well-nigh perfect, or at least quite adequate to the requirements of a great commercial community. And yet what are the facts? Among members of the legal profession it is a matter of common observation and lament that commercial cases are year by year growing less frequent. For a long time they consoled themselves by attributing this to commercial stagnation. But of late their eyes have been opened to the real cause, and neither by their smiles nor their tears can they win back the vanished litigation that once so satisfactorily brought grist to their mill. On all hands business men declare that, so far from being satisfied with their expensive legal machinery, they absolutely dread the law. They dare not risk its dignified delay, they fear its endless expense, they are terrified at the prospect of being dragged from Court to Court on Appeal, and they have no confidence in the ability of a large proportion of our judges to decide rightly on commercial disputes, especially those involving technical matters.

MR. JUSTICE STEPHEN.

This feeling has doubtless been intensified by the recent case of Vagliano and the Bank of England. It is needless to go into the details of this matter, which are well known to the public. Suffice it to say that a judge of the High Court in 1888 gave a decision contrary to the feeling of business men and subversive of commercial custom in regard to bills of exchange, which was upheld in the Court of Appeal by a majority of five to one. This decision was, however, reversed in the House of Lords in March of this year by a majority of six to two. Thus, after long delay and enormous expense, the case having been heard by fifteen judges, a final decision was obtained that satisfied the commercial community. But the uncertainty of the law is exemplified by the fact that the verdict of seven judges, *i.e.*, six in the House of Lords and one in the Court of Appeal, outweighed that of the remaining eight. And there is no reason to suppose that the judges of the House of Lords who carried the day are men of higher legal ability than those in the Court of Appeal.

Instead, therefore, of waiting months for their cases to be tried, paying enormous fees to leading counsel, and possibly enduring the risk and delay of appeal, men of commerce prefer to submit their disputes to the arbitration of others in their own trade, and thereby get them decided without any delay or legal expense. Innumerable disputes are in this way settled in the City every year, and in some businesses it is a matter of etiquette for men to accept the office of arbitrator when asked to do so without any fee, they knowing full well that the time is sure to come when they themselves will require to have a matter decided in the same convenient and expeditious manner.

It is undoubtedly a great hardship for a commercial community to have to put up with rough and ready justice in this way, instead of having the advantage of highly trained legal minds. But business men cannot afford to wait for the slow machinery of the law, and though they have to maintain the Courts of Justice, they decide to do without them. Doubtless many others would gladly do the same had they equal facilities for arbitration.

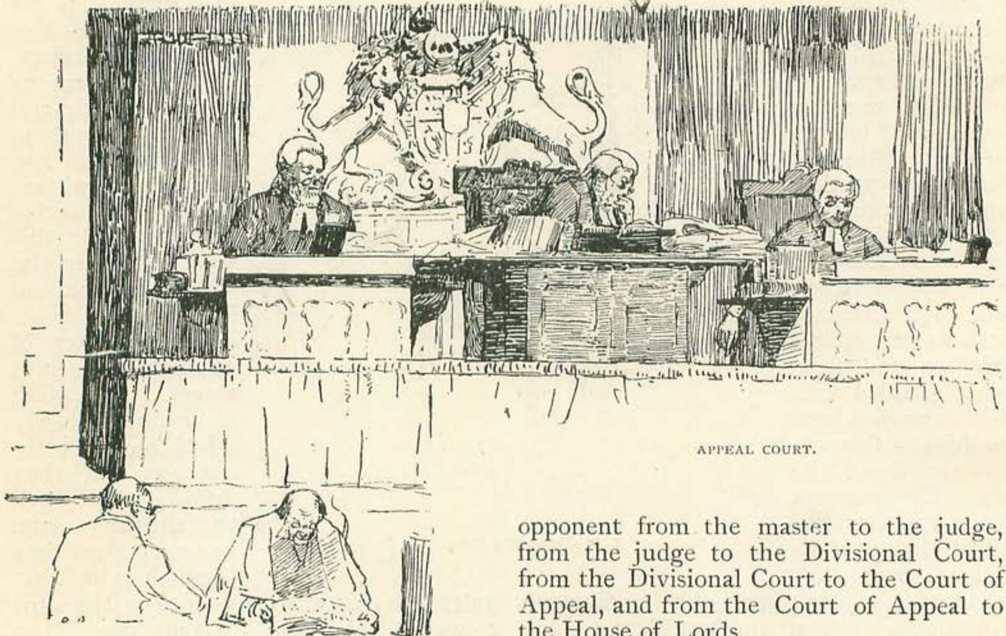
The result of this widening breach between law and commerce is that a large and increasing proportion of the work of the High Court consists of libel, slander, malicious prosecution, and cases of a similar class, together with actions varying in character not at all, and in the amount sought to be recovered only infinitesimally, from those which come within the jurisdiction of the County Court.

But though a great number of the suits

may be of slight importance, the cost of litigation is by no means insignificant. The court-fees, it is true, are not proportionately so high as in the County Court, although they might with advantage be largely reduced; but the average charges for legal assistance are enough to make the boldest litigant pause.

In an ordinary action for £100, supposing the defendant to be unsuccessful, he will probably have to pay, in addition to the £100, not less than £120 to his opponents' solicitor for the costs taxed against him, as well as, say, £150, the little account of his own attorney. Supposing he conscientiously believes the verdict to be unjust, and determines to go to the Court of Appeal, he will have to pay at least £100 more if unsuccessful. This brings his bill up to £470, instead of the original £100. A rational litigant would in such a case be unlikely to want to go beyond the Court of Appeal, but supposing he should desire to avail himself of the highest tribunal that a generous country places at his disposal, and takes his case to the House of Lords, he will be put to a further expense of about £200.

On the other hand, the successful suitor would also be at a considerable loss, the costs that he would have to pay being far in excess of the £100 recovered. By such a system a powerful and dangerous weapon is undoubtedly placed in the hands of a wealthy litigant who chooses oppressively to take his opponent from court to court. In many cases the costs are augmented to a scandalous degree by the multiplication of interlocutory proceedings. It is monstrous that in an action to recover a sum of £100 a wealthy and perverse litigant should have the power, on some incidental question of interrogatory, to take his opponent from the master to the judge, from the judge to the Divisional Court, from the Divisional Court to the Court of Appeal, and from the Court of Appeal to the House of Lords.



APPEAL COURT.

An evil hardly less grave than the law's expense is the law's delay. In a common law action of the simplest character, with little or no interlocutory proceedings, the period that must elapse between the issue of the writ and the trial of the action is little short of twelve months, while in the event of appeal nearly another year will be lost. In the Chancery Division the delay is still more marked.

At the commencement of the legal year, namely, October 24, 1890, there were 448 Chancery cases set down for trial. Of these, when Christmas arrived, only 74 had been decided, that is, after about one-third of the judicial year had elapsed. At that rate of progress—without allowing for the setting down of additional causes, which is, of course, continuous throughout the year—there would only be, of the 448 causes set down in October, 1890, 222 disposed of by October, 1891, thus leaving still unsettled

half the cases that litigants were ready to try twelve months before.

The appointment of an additional Chancery judge is by many advocated for the purpose of battling with these arrears. It is, however, notorious that, owing to the higher scale of costs in Chancery than in Common Law, solicitors prefer the former for the purpose of trying their actions. In consequence of this, a large number of cases that should properly come before the Common Law judges are tried in the Chancery Division. Surely the effect of removing this gross anomaly should be seen before further expenditure be imposed upon the nation.

Few probably will go so far as Jeremy Bentham in laying down that the State should provide for the administration of justice free of expense to litigants ; but there is a very general consensus of opinion in favour of a simplification of procedure and a limitation of the powers of appeal, and these are reforms that a willing legislature might well undertake.

To return to the judges of the High Court, it will be instructive to inquire how they earn the liberal salaries set forth in the foregoing table. Commencing at the top, it will be well to consider the position of that august official the Lord High Chancellor of England. And whatever remarks we may find it necessary to make, we wish it to be distinctly understood that we mean no disrespect to Lord Halsbury, the present learned and capable occupant of the post. It is merely our object to criticise the office, and our observations, therefore, will have no personal bearing. In the first place, it is worthy of note that the most highly paid temporal office in England — that of the Lord Chancellor — is given rather as a reward for political than for legal success. Of course, to occupy the post of Attorney-General, the stepping-stone to that of Lord Chancellor, a man must be a lawyer of considerable ability. It has, however, been very well said that a good lawyer can be nothing else ; and it is obvious that an Attorney-General must be a man of some political as well as legal capacity. It is quite conceivable that there may be a dearth of legal talent on any political side, and that a moderate man may be chosen as the chief law-adviser of the Crown in consequence. Indeed, such a state of things has happened before now. It by no means follows, therefore, that the Lord Chancellor is necessarily a man of transcendent legal ability. It is probable, in fact, that, as a rule, he is not so good a lawyer as the judges who receive half his salary. And here it may be well to remark that, although the Lord Chancellor is nominally at the head of the bench, he can exercise no efficient control over the judges. He can make appointments to the bench, but judges, once made, can, as already stated, only be removed by the act of both Houses of Parliament. Thus a judge, even if obviously suffering from mental decay, may continue to exercise his functions, to the miscarriage of justice, for a considerable period before the legislature can be set in motion to bring about his retirement.

The Lord Chancellor occasionally (when any of the Lords Justices are absent from illness or other cause) sits in the Court of Appeal, which is held in two sections—one hearing cases from the Common Law side, and the other those from the Chancery Division. The principal duty of the Lord Chancellor, however, consists in presiding over the House of Lords—the final Court of Appeal both in Common Law and Chancery matters. The House of Lords, as an appellate court, consists of the Lord Chancellor, the Lords of Appeal, and such peers as are, or have heen, holding high

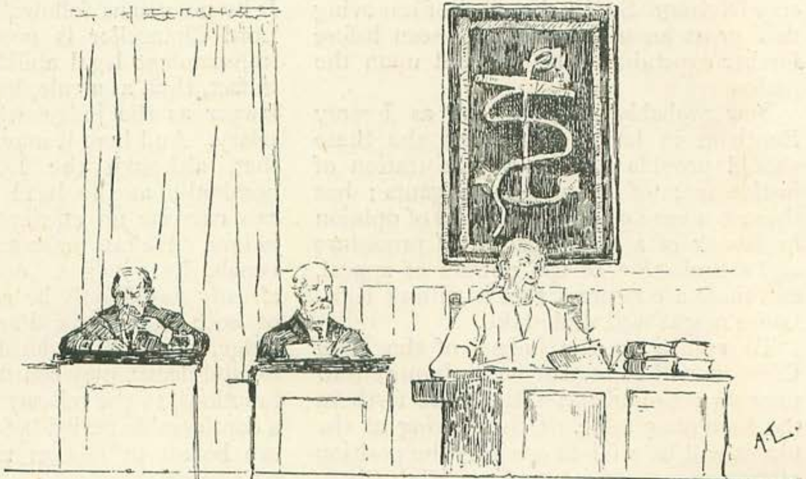
MR. JUSTICE JEUNE.

judicial office. Ordinary peers, however, have also the right of sitting and giving judgment, and, in consequence of this anomaly, the judges of final appeal have sometimes had the assistance of an eccentric nobleman endowed with a fancy for the law, whose vote has carried as much weight as that of the Lord Chancellor himself. The judicial work of the House of Lords is light. Indeed, it will not be understating the case to say that the House does not dispose of more than sixty or seventy causes in the year. It is thus not difficult to calculate, supposing these cases to occupy an average of half a day, and taking into consideration the salaries of the Lord Chancellor and the Lords of Appeal, together with the heavy pensions paid to ex-Chancellors and other expenses, that the Court of Final Appeal exercises its judicial functions at a cost of something like a thousand pounds a day!

Besides the Lord Chancellor, the Lord Chief Justice is by some legal fiction supposed to exercise control over the judicial bench. As a matter of fact, however, the judges are practically under no control whatever save that of public opinion, as represented by the press, which should never hesitate to expose their shortcomings when they come to light. It is the duty of those on whom, by force of circumstances, the public are obliged to rely to safeguard their interests, not to relax their supervision out of deference to the high repute in which our judges are held. Under the old system, when the Courts of Common Pleas, Exchequer, and Queen's Bench existed, each division had a chief who was responsible for the work of his court and the mode in which it was administered. The judges now hold a meeting, at which they make their own arrangements for circuits and for appointments to the various courts. Although the Lord Chief Justice is supposed to control the order of work, the judges in effect have a free hand as regards their own duties.

With the development of modern civilisation and the increase of democratic strength, the social status of the judges has materially changed, and it is by no means in accordance with "end of the century" ideas to grant them the almost despotic power that they held of old.

The Judicature Act did something towards diminishing their prestige, and nowadays many of them are disappointed perhaps to find that their office does not command a high social position.



ADMIRALTY COURT.

Notwithstanding the decadence of the social status and prestige of the judges, on circuit they maintain a pomp and splendour, it is true somewhat tawdry, which finds its only counterpart in the mimic state of the Lord Mayor. Quiet gentlemen who have been accustomed all their lives to carry their own bags down to chambers, suddenly find themselves, after being raised to the Bench and especially when going on circuit, surrounded with unwonted splendour. They are attended by a smart young gentleman who costs the country three guineas a day while the Assizes last, as his reward for acting as judge's marshal, or a sort of groom-in-waiting. If he fulfilled the functions of clerk, perhaps there would not be much cause for complaint; but the judge has a clerk of his own, to whom the nation pays a liberal salary, and the marshal's duties are purely ornamental.

It is true the cost of the splendid equipage, generally drawn by four hack horses

HATS AND WIGS.

Many of them also are frequently absent on ordinary working days from other causes than illness. These delinquents are well known to the members of the legal profession, and it is unnecessary to mention their names.

The hours of sitting are nominally from 10.30 in the morning to 4 in the afternoon, with an interval of half an hour for lunch. Some judges, however, do not generally take their seats until a quarter to 11, and often later, and one or two are known occasionally to steal a little time from the end of the sitting. It is also a matter of common observation that the orthodox half-hour for lunch is very often spun out to three-quarters. So that, including the short sitting on Saturdays, when the courts rise at two o'clock, the judges do not sit much more than an average of four hours a day.

from the local livery stables, the trumpeters, the javelin men, and all the paraphernalia of the judge's progress from his lodgings to the Court, falls upon the High Sheriff, and not upon the country; but it is, nevertheless, a vexatious impost and an intolerable anachronism.

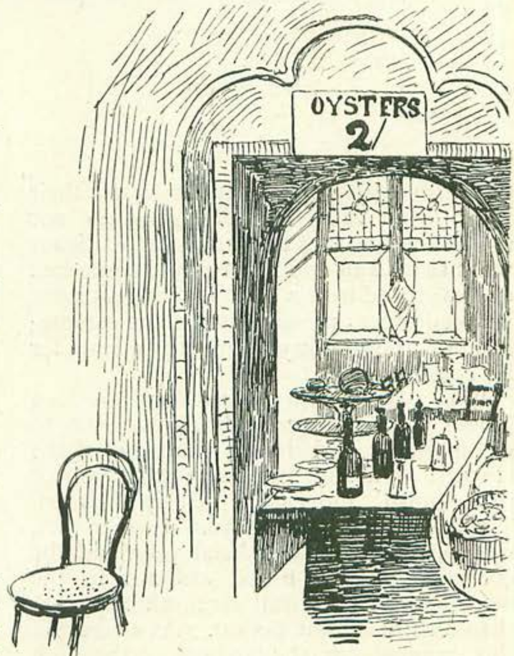
The prerogatives of the judges still far exceed those of any other public servants; they are permitted to perform their duties almost at their own pleasure; even the Legislature refuses to recognise any power over them, and they have also much patronage vested in them, such as the appointment of revising barristers, chief clerks and masters, who exercise judicial functions.

The holidays enjoyed by the members of the judicature are far in excess of those in any other profession.

The following figures will give an idea of how many days out of the 365 are occupied by the judges in earning their salaries:—

| | | |
|---|---|---|
| Christmas holidays | 21 | days. |
| Easter " | 12 | " |
| Whitsuntide " | 10 | " |
| Long Vacation | 72 | " |
| Queen's Birthday | 1 | " |
| Sundays (besides those included above) | 36 | " |
| Courts sit | 213 | " |
| | 365 | |

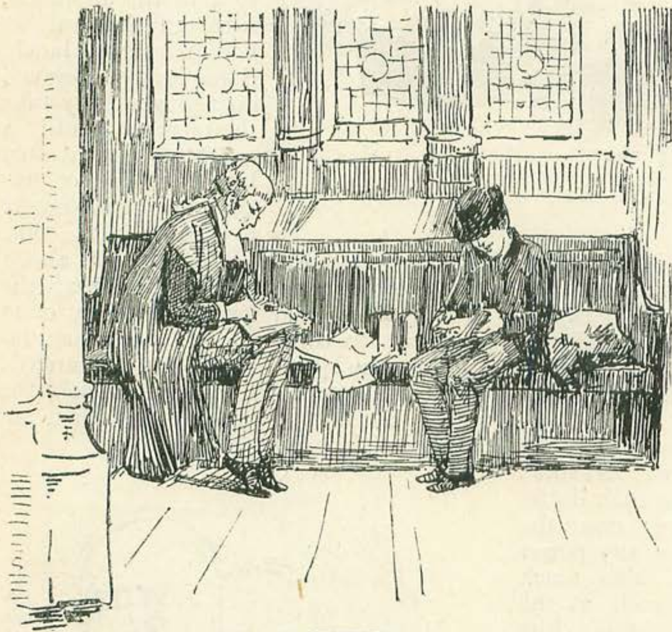
Although there is no statutory authority for the closing of the courts on the Queen's birthday, the judges have recently, with one or two exceptions, made a point of showing their loyalty by doing no work on that day.




LUNCHEON.

Even if we give them credit for $4\frac{1}{2}$ hours a day, reckoning their salaries at £5,000 (though many of them receive more) we find that the payment they receive for their work comes to over £5 an hour. At such a price it is only reasonable to expect them to give the fullest attention to their duties. But, alas, for human fallibility! Even judges sometimes nod.

It is true that our system is at fault in permitting our judicature to be conducted by men whose physical infirmities prevent them from giving due attention to their work. But such considerations do not soothe the breast of the unfortunate litigant who has paid an eminent counsel a hundred guineas to address a sleeping judge, or one whose deafness prevents him from comprehending the weighty arguments offered for his consideration.



A MESSENGER.

It is part of the duty of the fourteen judges of the Queen's Bench Division to go on circuit, and during the time of the circuits, as a rule not more than two or three puisne judges are left in London. These judges are absent from town, in fact, fully one-half of the judicial year, and the occupants of the bench are not in the metropolis in their full strength for more than a third of that period. As a result of this arrangement, the business of the high courts, so far as the trial of actions is concerned, is absolutely at a stand-still during the greater part of the year. The cause lists become congested, suitors wait vainly for their cases to be settled, and a multitude of the suits entered never come on for trial at all, many of them being more or less amicably arranged out of court, while others bring about their own culmination through death or other causes. It is notorious that many of the judges, when they observe that a case is of a complex character, involving long and tedious investigation, will bring strong pressure on the parties to induce them either to settle the case or to refer it to an arbitrator. Such pressure it is dangerous for either side to resist, and it results in further fees, further costs, and further delay.

The judges, while on circuit, receive a travelling allowance of seven guineas a day. This is a comparatively recent arrangement, the travelling expenses having formerly been paid in a lump sum. It would be interesting to compare the average length of time occupied by the judges on circuit under the old and under the new system. A great deal of time is utterly wasted. For instance, a whole day is devoted to what is termed "Opening the Commission." This is nothing but an antiquated ceremony of no possible use, consisting of the reading of the Royal Commission under which the judges hold the assizes. It occupies about a quarter of an hour, the remainder of the day being lost. The assizes are often concluded within a less number of days than the time assigned to them, and the judges take advantage of this to enjoy a welcome holiday, with a solatium for their enforced idleness of seven guineas a day.

Our present circuit system undoubtedly leads to a scandalous and deplorable waste of judicial time and public money. For instance, on the South-Eastern Circuit, the largest towns of which are Cambridge and Norwich, there is practically no business whatever; and yet all the paraphernalia and expense of assizes goes on for eleven or

twelve weeks every year in respect of cases that might be disposed of in London in about a week by one judge. On other circuits, too, time is wasted in an equally reckless manner, the judges on several days being absolutely idle.

Surely there is no necessity to allow a week for the judicial work at a town where there are only a few cases that could easily be disposed of in a couple of days. The public, who pay the bill, unfortunately have but little opportunity of having the shortcomings of the judges brought under their notice. Not only are the latter protected by the respectful feeling, the result of ingrained reverence, that the judicial bench has always been able to inspire ; but it is also a fact that those whose position makes them most capable of criticising the judges find it contrary to their interests to do so. Barristers who have to make their way at the bar, and who are well acquainted with the peculiarities of the judges, are afraid to speak of them, for to do so would be to their own professional detriment, and clerks and underlings, who have to rely on the patronage of the judges, cannot be expected to tell what they know.

In the present article it is to be hoped we have done enough to show that defects exist, and that one of the most needed reforms is the establishment of a complete and efficient controlling power over our judicial bench, for judges, after all, are only human, and no human beings, however honourable, can be relied upon always to perform their duty to the public with thoroughness and energy if left entirely to their own devices.

The fact that private arbitration, especially in commercial cases, has in a great measure superseded the Courts, forms a most damaging comment on our judicial system. The case, then, that we allege against the judicature may be briefly summed up, the chief points being as follows :—

(*a*) Excessive cost.

(*b*) Unreasonable delay in getting to trial.

(*c*) Unnecessary multiplication of appeals with consequent delay and expense.

(*d*) Waste of judicial power on Circuit and Divisional Court arrangements.

(*e*) Incapacity of individual judges.

(*f*) Unreasonably long holidays.

It is our intention in subsequent articles to bring forward further particulars, and without going so deeply into technical details as to be uninteresting to the ordinary reader, to suggest remedies with a view to bringing our judicature more in touch with the people, and making it adequate to the needs of a great commercial community.

# *The State of the Law Courts.*

## II.—THE COUNTY COURT.

THE COURT GATES.

THE County Court in every respect presents a marked contrast to the High Court, which formed the subject of our article last month. So widely, in fact, do these tribunals differ, that it is difficult to imagine that they both form a part of the same judicial system—if, indeed, such a word, which certainly implies cohesion and method, can properly be applied to our judicature at all. While the work of the High Court is continuously and (unless some reforms be introduced) permanently congested, that of the County Court is for the most part performed with celerity: while the High Court is mainly supported by the State, the expenses of the County Court are mostly covered by the fees extorted from suitors: while there is common complaint (which we by no means endorse) that there are not enough High Court judges, it is impossible to deny that, having regard to the amount of work they perform, there are too many for the County Court. Whatever the defects of the County Court may be, it is essentially a popular tribunal. It is interesting from many points of view, and not more so to the legal student than to the student of human nature. Probably nowhere are more curious and varied types of humanity to be observed than those gathered together at a busy County Court. The humorous and the pathetic are strangely mingled; there are rapacious creditors and broken-down debtors; there are victims of confidence in their fellow men, and wolves that prey upon the unwary. Witnesses and suitors of every class wait about the corridors for their cases to be called: some of them talking together and discussing their

prospects with their solicitors in high spirits at the certainty of success ; while others in blank despair await hopelessly a foregone conclusion, which probably means the seizure of their goods and perhaps their imprisonment.

Sometimes the proceedings are relieved by an amusing scene, such as that shown in our illustration, where a voluble young lady is sued for the price of a pair of boots, which she declares to be a misfit. "They are too large," she persists. "She said she would not have them if they were tight," the plaintiff protests. Such an opportunity to bring off smart witticisms is not neglected by the counsel on either side. Eventually the learned judge decides to see the boots tried on, and, sinking the lawyer, figures for the nonce as a judge of feminine fashionable attire. Cases of this sort are by no means rare. Only the other day a County Court Judge had to give a decision as to the fit of three elegant gowns supplied to an actress and her two sisters. It is a curious fact that the most amusing cases in the County Court are usually those in which members of the fair sex are engaged. Ladies, as a rule, seem unable to appreciate the laws of evidence, and when in the witness-box often take the opportunity to indulge in family reminiscences, and to pile satirical obloquy on their opponents. The judges (who, when the parties to a suit are without professional assistance, examine the witnesses themselves) have great difficulty in keeping them to the point, and nothing but the fear of being committed for contempt will induce some excited females to give their evidence in a lucid manner. Incidents of this sort frequently relieve the tedium of the proceedings, but they are a source of considerable delay, and this is a serious matter to those suitors and witnesses who have had to give up a day's work in order to attend the Court. It is indeed a hardship for suitors who, perhaps, have brought their witnesses from long distances at serious expense, to have their cases postponed from one sitting to another in consequence of unexpected delays. But this only happens occasionally in the busy Courts, the working of the County Court being, as a rule, expeditious enough.

"A MISFIT."

A glance at the history of the County Court is enough to show that from very early times it has always been the most

popular of all legal tribunals. It is, in fact, the oldest of our Courts, having been instituted, according to Blackstone, by Alfred the Great. Mr. Pitt Lewis, in his most valuable work on County Court practice, remarks that the origin of the County Court is to be traced in the Folkmote, the gathering of the people, of Anglo-Saxon times. Hallam, in his "Middle Ages," describes it as the "great constitutional judicature in all questions of civil rights," and states that to it an English freeman chiefly looked for the maintenance of those rights.

The Court was, at the time referred to, an assembly of the freemen of a county, presided over by the Bishop and the ealderman of a shire; "the one to teach the laws of God, and the other the law of the land." The actual judges, however, were the freemen themselves. The ancient functions of the County Court comprised the election of knights of the shire, the election of coroners, proclamations of outlawry, and "consultation and direction concerning the ordering of the county for the safety and peace thereof." It exercised jurisdiction in ecclesiastical suits, and appellate jurisdiction in certain criminal cases; it was empowered to try all civil cases where the amount in dispute did not exceed forty shillings (a large sum in those days), and by special authority, all personal actions to any amount. It will thus be seen that in old times the County Court possessed all the elements of a popular institution. It flourished for many centuries in full vigour, and to such a degree had it gained the confidence of the public that it practically exercised civil jurisdiction to the exclusion of all other courts.

Of course it was hardly to be expected that our ancestral law-makers would allow such a satisfactory state of things to continue, and in the reign of Henry I. it was virtually "improved" away by the establishment of itinerant justices, the predecessors of our present judges of assize. It appears, however, that the new arrangement did not work very well. There were numerous complaints of delay and expense that prevented suitors from obtaining justice. So, to meet this difficulty, James I. established the "Courts of Requests" throughout the country, with a limited jurisdiction, and it was not until the year 1846 that these Courts were abolished, and that the County Court was established in its present form.

SOLICITOR AND CLIENT.

The modern County Court is, as may be imagined, a very different affair from its predecessors. While retaining part of its ancient jurisdiction in common law, its powers have been altered and extended to such a degree, that they now cover a vast field of contentious matter.

It has jurisdiction in all actions of contract for less than £50, and in all actions for wrongs where the amount claimed does not exceed £50. To this general rule, however, there are many exceptions, with which it is unnecessary to trouble the reader.

The County Court also has a limited equity jurisdiction, and powers have been conferred upon it in many other matters. These include actions of contract remitted from the High Court up to £100, and actions for damages to any amount in respect of wrongs may likewise be remitted, when the defendant, if unsuccessful, is unlikely to be able to pay the plaintiff's costs. Cases to the amount of £1,000 are remitted to it from the Court of Admiralty, besides

WAITING TO BE CALLED—OUTSIDE THE COURT.

which it exercises jurisdiction in numerous special cases under various Acts, including the Married Women's Property Act, the Coal Mines Regulation Act, the Building Societies Act, the Friendly Societies Act, the Employers and Workmen Act, the Industrial and Provident Societies Act, and, most important of all, the Employers' Liability Act. But the Court is principally useful to the public as a tribunal for the recovery of small debts, and this is proved by the fact that in 1889, out of 1,034,689 plaints entered, no less than 1,022,295 were for sums not exceeding £20.

Upwards of 500 Courts are held in the various districts of England and Wales, and these districts are divided into circuits, which are distributed among the County Court judges, and are fifty-nine in number. The majority of circuits have one judge, but some have two.

Undoubtedly many of the judges in London, and in large provincial towns, have a great deal, though not by any means an excessive amount of work devolving upon them.

In some of the busy Courts, such as those of Brompton and Whitechapel, they are fully occupied, but, on the other hand, there are Courts in some provincial districts where the judges have so little to do that their office is almost a sinecure. In either case, however, the salary is the same, the County Court Judge receiving £1,500 a year, whether there is any work for him to do or not.

The judges were formerly paid by fees, but now they draw fixed salaries from the Consolidated Fund.

In addition to their salaries, they are allowed travelling expenses, to enable them to visit the various Courts of their circuits, in each of which they are bound to hold a sitting once a month, except in September, which month is a holiday. In many of the little villages that they have to needlessly visit, the opening of the Court is a mere matter of form, and it is not, perhaps, without justice that many of them complain of the irksome travelling that is thereby occasioned.

In 1889 the judges on no less than thirty-three out of the fifty-nine circuits held only 150 sittings in the year, and in some cases the sittings were less than a hundred. A large proportion of these sittings, too, were merely nominal, an hour or less being quite enough to enable the judges to get through the business of the Court.

It follows, therefore, by the present system

that, while a taxpayer may have to wait several weeks for a pressing case to be decided in his own district, he is actually contributing towards the means by which judges in other parts of the country enjoy idleness with dignity, and £1,500 a year. It would seem fairer that the local authorities should pay their own County Court judges, as they do their stipendiary magistrates.

It is to be regretted that in the appointment of County Court judges sufficient care is not always taken to secure the selection of competent lawyers. Unlike the appointment of judges of the High Court, with which, as a rule, little fault can be found, many County Court judges have obtained their posts in consequence of no better qualification than the command of backstairs influence in high places.

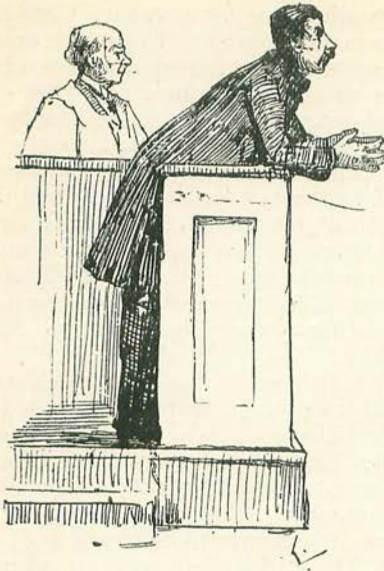
Any barrister of seven years' standing is eligible to become a County Court judge, and appointments have often been obtained by men quite devoid of any practical legal knowledge. Many of the judges never practised at the bar at all, and never had any prospect of doing so with success. The County Court judges, therefore, it will be observed, need no further qualification than is required by a young student for a call to the bar, and these are the men who have to weigh the arguments of able counsel in complicated Admiralty and Employers' Liability cases. The Lord Chancellor, it is true, has power to remove any judge on account of inability or misbehaviour. This, however, is an extreme measure hardly ever enforced, and it is notorious that many of the County Court judges are totally unfit for even the decent performance of their work. Some of them are worn-out, old men who are quite incapacitated by deafness and other infirmities, to say nothing of ignorance, stupidity, and querulousness, and their retention on the Bench constitutes a great evil to suitors as well as a public scandal.

They may, with the consent of the Lord Chancellor, retire on a pension of £1,000 a year if suffering from permanent infirmity. As a matter of fact, however, no man likes to have £500 a year deducted from his income, and the consequence is that the judges retain their positions until they are long past their work. It is much more convenient to appoint a deputy than to retire, and out of the multitude of briefless barristers a deputy can be obtained for a very small sum. Indeed, there have often been scandalous instances of a judge retaining his salary while paying a deputy £200 a year or so to do his work. This was at one time so common, and the men appointed were often so grossly incompetent, that it was found desirable that the names of all deputy judges should be submitted to the Lord Chancellor for his approval. But, notwithstanding this restriction, abuses are still very numerous, for though the Lord Chancellor may take care that the deputy is a more or less capable man, he cannot dictate the amount of his payment. Thus the judicial "sweating system" continues to flourish as before.

The judges of the County Court are greatly assisted in their duties by the Registrars. These officials, who are appointed by the judges, exercise judicial functions, and receive a salary which is regulated by the number of plaints entered in their Courts, but may in no case exceed £1,400 a year. The duties of the registrar, who must be a solicitor of five years' standing, are multifarious, and include the hearing of Bankruptcy cases and undefended suits. The office of Registrar will in future include that of High Bailiff, for the last-named functionary is by the Act of 1888 to be allowed to die out, that is to say, vacancies are not to be refilled, and the Registrar will undertake the duties of High Bailiff in addition to his own at an increased salary. The High Bailiff is responsible for executing the process of the Courts, and is assisted by sub-bailiffs, of whom there are a varying number for each Court.

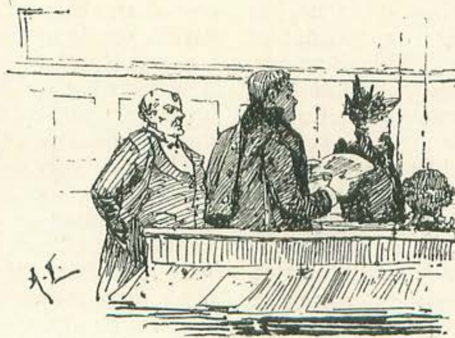
From what we have already said, it will have been gathered that in populous commercial districts a County Court judge may be kept largely occupied with cases of as much importance, and involving as difficult legal questions, as the bulk of those tried in the High Court. In other words, legislation has imposed upon the County Court the same class of work as that which was, until a comparatively recent period, confined to the High Court. In 1889 no less than 1,902 cases were remitted from the superior Courts.

Bankruptcy cases involving property of unlimited value and most delicate and difficult points of law, Employers' Liability cases, Admiralty cases, and a variety of other legal work requiring the highest judicial capacity can now be tried in the County Court. And yet, by some absurd superstition, an ordinary common law action for contract for £50 or above can only be tried by a judge of the High Court.



FATHER OF EIGHT CHILDREN—AND NO WORK!

Side by side with the enforced idleness of many of the highly paid County Court judges, there is in the High Court, both on the Equity and the Common Law side, a growing accumulation of arrears. Many of these cases involve comparatively small sums, and they might very well be tried before a competent County Court judge. A litigant at the present time entering an action for £51 in the High Court will be subjected to a delay of at least twelve months; whereas if he sues for £49 in the County Court, even in a busy district, he may reasonably expect to have his case settled within a month. By a reorganisation of the County Court system, properly distributing the work among the judges, cases up to £100 might always be tried before them, and the congested state of the High Courts would be thereby relieved, without the necessity of appointing new judges with salaries of £5,000 a year—a remedy frequently advocated. But that only thoroughly reliable men should be appointed as County Court judges is a *sine quâ non.*



A FAIR DEFENDANT.

Besides these matters the Legislature might reasonably address itself to the evils resulting from imprisonment for debt; or, as it is now, out of respect for the humanitarian tendency of the age, euphoniously termed, contempt of Court. Six thousand five hundred and fifty-four debtors were actually imprisoned in 1889. There were no less than 213,831 judgment summonses, and 63,836 warrants of commitment issued. It is a somewhat melancholy fact that the number of judgment summonses in 1889 was nearly 80,000 in excess of what it had been ten years previously. It is, however, satisfactory to observe that in the number of imprisonments in the same period there was a decrease of 1,358.

Many Courts are occupied with sixty or more judgment summonses a month. The practical result of the working of the present system of imprisonment for debt is that persons of good position are very rarely committed. Nearly all the imprisoned debtors are very poor persons, and the amounts that they owe are very small, the average not exceeding £10. It is melancholy to see delicate, half-starved women, some of them with babies, come into Court after trudging miles in order to save their husbands, who perhaps have got a bit of work, from imprisonment.

Many judges are most careful and painstaking in their efforts to find out whether the debtors are, or are not, able to pay, while others perform these duties in a very perfunctory manner. In illustration of this it may be mentioned that in the year 1889, while one judge heard 2,256 judgment summonses and granted 855 warrants of commitment, another heard 1,220 judgment summonses and committed 1,043 persons to prison.

The statute gives the judge power to commit if satisfied that the debtor has means at the time when the order for imprisonment is sought, or has had means since the liability to pay was incurred. The latter provision permits the monstrous injustice that because six months ago a man had money that he was obliged to expend on the necessaries of life, he may

be imprisoned for a debt previously contracted, and his family thereby deprived of the means of support.

It is a moot point whether imprisonment for debt might not with advantage be abolished altogether. The State has to keep the imprisoned debtor, whose wife perhaps has to go to the workhouse, a double burden thus being thrown on the public.

If there were no imprisonment for debt, people would certainly be more careful in giving credit, and a corresponding decrease in litigation would no doubt be the result.

The annual cost of the County Courts is about £566,000 and of this no less than £443,000 is provided by the suitors in fees and stamps. It is not consistent with the spirit in which justice should be administered that it should be paid for by the litigants. This was the view expressed by the County Court Commissioners, but no effect has been given to their opinion. There is no reason in justice or expediency why the County Court, the poor man's court, should be supported by the suitors themselves while the High Court, the rich man's court, is mainly paid for by the State.

We have endeavoured to point out, in a temperate spirit, the chief defects of the present County Court system. Its greatest merit lies in the rapidity with which its business is transacted; but this is only accomplished with a serious waste of judicial strength.

No doubt a thorough reorganisation is required. A re-grouping of the districts over which the judges exercise their functions is needful, so that time may be economised on busy circuits, and more work given to those judges who have little or nothing to do. In these days of facile railway communication many of the Courts in little villages might be dispensed with, and central Courts established in convenient places, where they could easily serve the surrounding country.

In some cases, at present, judges have to hold Courts at a number of little villages within a few miles of each other, and all of them on a good line of railway. Obviously much time would be saved if one central Court were made to serve for all, and the inconvenience to suitors would be so slight as to be quite insignificant.

DISCUSSING THE CASE.

Several circuits where there is but little business might, on this principle, be consolidated. Many judges being thus made available for extra work, their jurisdiction should be extended so as to relieve the High Court, and the salaries should be increased to such a standard as would secure the services of competent men. The Court fees for plaints should at once be reduced from one shilling to sixpence in the pound, and for hearing from two shillings to one shilling. It is scandalous that the cost of

process is greater in the County Court than in the High Court, and the State nndoubtedly ought to contribute towards the maintenance of the County Court in the same proportion as it provides for the High Court. But most of all is it desirable to be rid of that not inconsiderable number of County Court Judges whose flagrant incapacity renders them a scandal to the bench, and to inaugurate a new system of appointment, so that the administration of justice may be placed in the hands of only such men as are able to command the full confidence of the public.

WITNESSES.

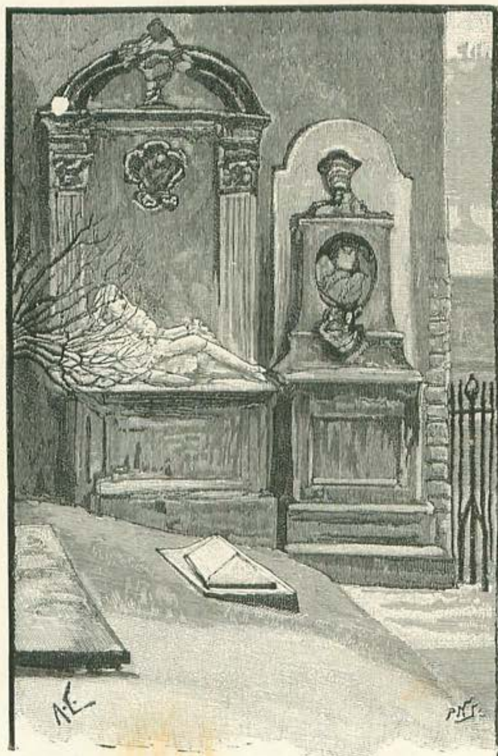
## *The State of the Law Courts.*

### III.—THE BAR.

UNDOUBTEDLY the Bar possesses a charm that belongs to no other profession. Not only are its possibilities magnificent, extending as they do to the Woolsack, but it has the further attraction of being the one calling wherein the youthful aspirant may rely upon his personal attributes even more than upon industry and training for success. Many instances could be mentioned of eminent leaders who have been inundated with briefs, and have easily made their £10,000 or more a year, not on account of their legal lore, but because they have been brilliant and persuasive speakers, charming of manner, and quick at repartee.

Perhaps it is natural that most of the smart young graduates who swell the ranks of the Bar should feel themselves fully equipped, if not in their store of learning, at least in personal qualifications. But it is unfortunately a fact that this feeling of youthful confidence, admirable in itself, has in a great measure led to the growth of a numerous army of needy barristers, many of whom are only too anxious to pick up an occasional guinea at the County or the Criminal Courts.

The prizes of the Bar are only for the few, and the disappointments for the many. This uncertainty itself, perhaps, is an attraction to some of the numerous aspirants who would emulate the successes of Cockburn, Ballantine, Russell, Davey, and other great counsel. The advocates' profession is a very ancient one, and goes back to Roman times. The independence of the Bar has always been its greatest boast. Whether it has worthily maintained that characteristic of recent years is a question that we shall discuss later on, but that it did so formerly there can be no doubt. In illustration of this, we may relate a story of a counsel named Wilkins, who was defending a prisoner before Baron Gurney, a very severe judge. Wilkins thought that the judge had made up his mind to convict the prisoner, and, in the course of his address to the jury, he had the temerity to say: "There exist those upon the Bench who have the character of convicting judges. I do not envy their reputation in this world, or their fate hereafter!" The prisoner was in the end acquitted, but whether as the result of this attack, which Baron Gurney felt very keenly, or not, it is impossible to say. It may be doubted whether any advocate nowadays would venture to speak in a similar way. It is possible, however, that Baron Gurney was unaware of his reputation for severity, and Mr. Wilkins' remarks may have had a salutary effect upon him.



THE TEMPLE: "HERE LIES OLIVER GOLDSMITH."

The appointment of barristers is now effected by the four Inns of Court, namely, the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn. These Inns are voluntary associations, having no statutory powers, and it is only by virtue of

NEW COURT, MIDDLE TEMPLE.

ancient custom that they enjoy the right of calling students to the Bar. They are respectively governed by a self-elected body called "Benchers," who consist of the judges, a number of Queen's counsel, and a few veteran "juniors." The barristers as a class have no voice in the management of the Inns, or in the discipline of their profession. The social status of the Bar has of late years deteriorated, although it is true that barristers are generally drawn from a much higher social level than solicitors. Individual merit is, somewhat erroneously perhaps, supposed to be as great a factor for success as interest, and this, together with other considerations that we have already alluded to, induces a large proportion of the most accomplished University graduates to devote themselves to the Bar in preference to any other profession. University men, however, are not the only aspirants to the Woolsack, whose first step is to obtain a call to the Bar. There is quite a gathering of coloured gentlemen in the Middle Temple, including natives of India, many of whom, no doubt, intend to practise in their own courts; Hottentots, Negroes, Mongolians, dreamy-eyed Japanese, and perhaps an occasional Redskin—many of whom seem to take to the methods of European civilisation quite naturally.

The Inner Temple is considered more fashionable than the Middle, and is preferred by University men, especially perhaps those who are prejudiced in favour of uniformity of colour in their fellow-students. Lincoln's Inn and Gray's Inn call comparatively few men to the Bar.

Some particulars of the process of being "called to the Bar" may be of interest. The aspiring barrister must remain a student for three years, and will have to pay nearly £200 in stamp duty and fees to his Inn. Exception is, however, made in the case of solicitors, who, under recent regulations, can be admitted to the Bar without delay on payment of the fees. Within the last fifteen years an examination has been instituted for all students except solicitors, the latter having been examined by their own society; but, before that time, it was only necessary to eat twenty-four dinners a year for three years in the Hall of the Inn, besides paying the fees, in order to become qualified for the Bar. The dinners are still retained, and although it is not pretended that students insensibly imbibe legal knowledge with their meals in the atmosphere of the picturesque old dining halls, there can be no doubt that the dinners serve a useful

MIDDLE TEMPLE LIBRARY.

purpose in enabling the future barristers to form each other's acquaintance. With what mingled feelings these dinners must be looked back upon in after life! Of two boon companions in student days one may, perhaps, be judge of the High Court, while the other is still struggling for a precarious livelihood in the County Court.

Students coming from the Universities are only expected to eat twelve dinners a year. The reason for this distinction is shrouded in mystery, but perhaps some solution may occur to the ingenious mind of the reader. It is usual for students to read with junior counsel in large practice, to whom they pay a hundred guineas a year. In return for this they have the run of the papers, from which they are no doubt enabled in some degree to familiarise themselves with the advocate's profession; if they require tuition, they must employ a regular coach. The examinations, however, are by no means severe. They secure a certain amount of legal knowledge on the part of the barrister, which can easily be acquired by a few attendances at the lectures held at the Inn, and a not very assiduous reading of Roman and Common Law. Upon the completion of his three years, the student is called to the Bar, by going through the solemn ceremony of taking a glass of wine with the Benchers of his Inn, and, together with a crowd of his compeers, listening to a friendly monition from the Senior Bencher, or some other venerable greybeard. Having purchased his wig and gown and a brand-new blue bag, the young barrister is then started on his career. He takes chambers in the Temple or Lincoln's Inn, which he probably shares with some other aspirants, and then proceeds on his way to the Woolsack.

CORRIDOR, INNER TEMPLE HALL.

The sensations of a young barrister when he first addresses the Court are usually somewhat agonising. Serjeant Ballantine describes his first experience as follows:—"I rose, but could see nothing; the court seemed to turn round and the floor to be sinking. I cannot tell what I asked, but it was graciously granted by the Bench."

He sat down with a parched throat and a sort of sickening feeling that he would never succeed. "Most successful advocates," he adds, "have experienced these sensations, and to this day I believe that many rise to conduct cases of importance with some of their old emotions."

The work of the Bar is divided into several sections, so that the beginner has a fairly wide choice as to which department of his profession he will make his own. There is the Parliamentary Bar, the Common Law Bar, the Equity Bar, and the Criminal Bar; and besides these, several barristers are exclusively occupied with Patents and Conveyancing

But there are sections within sections, consisting of small coteries of specialists who devote themselves to the Divorce Court, to the Privy Council, or to Admiralty work.

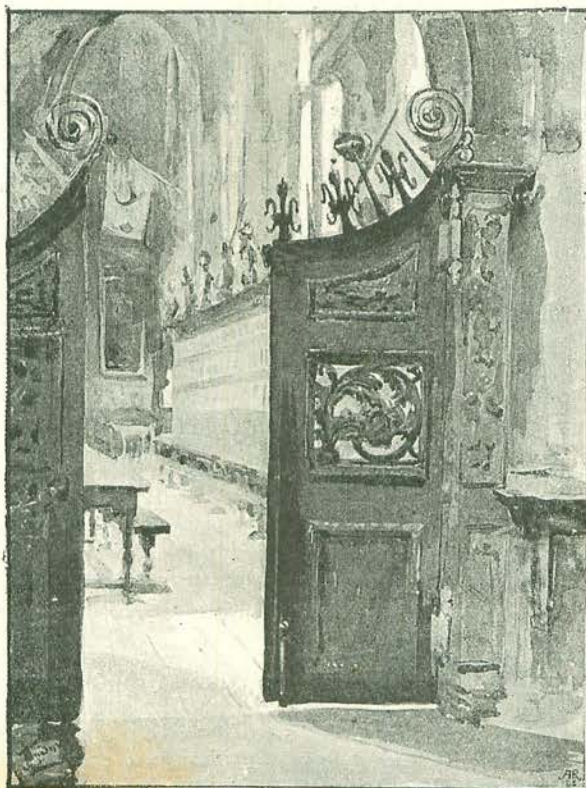
While the majority of barristers pass the legal year in the Metropolis, except when on circuit, there are a good many who settle down in populous districts and become known in the profession as local barristers. Both Common Law and Equity men who are, through the pressure of competition, unable to make their way in London, or who perhaps have the advantage of being related

to some eminent firm of provincial solicitors, prefer the certainty of making a decent livelihood in a busy manufacturing town to the keener competition of the Metropolis.

They are somewhat looked down upon by their brethren in London, the work in the provinces being of an inferior kind, mainly confined to the police courts, county courts, and quarter sessions.

The occupation of the local barrister, in fact, does not commend itself to the majority of the Bar, notwithstanding that a few are able to make their £2,000 or £3,000 a year.

The Parliamentary Bar, probably the most lucrative branch of the profession, is engaged in Private Bill business before Parliamentary Committees. A popular Parliamentary Q.C. will make as much as £20,000 a year, and sometimes even those figures are exceeded. The leading "silks" have always a great number of cases going on at the same time before Committees of the Lords and Commons, and they spend their day in walking from one committee-room to another, opening a case here, replying on a case there, and cross-examining witnesses whose evidence-in-chief they have never heard. This perambulatory practice led to such abuse that in 1861 the committees decided not to allow a barrister to cross-examine who had not been present during the whole of the examination-in-chief, and recently Mr. Hanbury has endeavoured to enforce this rule. No doubt it is, generally speaking, a wholesome regulation, for the reiteration by successive counsel of the same questions leads to an inordinate waste of public time and money. It ought, however, to be enforced with moderation, for it by no means follows that a counsel who has not heard the examination-in-chief is the less able to cross-examine effectively. One of the objects of cross-examination, it should be understood, is to elicit fresh facts, and in that respect it is not necessarily dependent upon evidence-in-chief.



INNER TEMPLE HALL.

Undoubtedly cross-examination is one of the most difficult as well as one of the most important of a counsel's duties, and a barrister who makes his mark in this particular function is pretty certain to be in general request. It is no less important to know what questions to put than what to refrain from asking. Many counsel are too apt to imagine that by browbeating a witness, and overwhelming him with a multitude of questions, they are conducting their cross-examination effectively. Baron Alderson once withered up an advocate of this character by remarking: "Mr. So-and-so, you seem to think that the art of cross-examination is to examine crossly."

The Parliamentary Bar certainly numbers within its ranks several highly-talented counsel, not the least eminent of whom are Mr. Pope, Mr. Bidder, Mr. Littler, and Mr. Pembroke-Stephens, of whom we give portraits. We have already referred to the great incomes that are made in this department of the Bar, and when it is remembered that the work is limited to the time during which Parliament is sitting, it becomes apparent that the fees paid to leading

MR. LITTLER. MR. PEMBROKE-STEPHENS. MR. BIDDER. MR. POPE.

counsel must be enormous. Indeed, the fees marked on their briefs often amount to hundreds of guineas, and the junior gets a sum equal to two-thirds of the amount paid to the leader, except in cases where the latter receives a special fee. And, added to this, both receive a refresher of fifteen guineas a day. Surely such payment is excessive.

In one very essential particular the members of the Equity Bar differ in their customs from other branches of their profession. Practising before the five Chancery judges and the Chancery Court of Appeal, the leaders of the Equity Bar attach themselves to particular Courts, and invariably decline to leave their own favourite sphere of operations to appear in another Court without a special fee. The result of this arrangement is that litigants employing eminent counsel in Chancery cases can be almost certain of their attendance throughout. However heavy may be the fees paid to counsel of the Equity Bar, it can at least be said that they generally give full value for their money—a gratifying compliment that can hardly be extended to other branches of the profession. But satisfactory as the system may seem to be from the client's point of view, experience shows that it is not without its serious disadvantages. The continuous contact of particular counsel with particular judges is varying in its effects. In some cases it leads to an undue influence on the part of the counsel over the judges, while in others the judges use their power to such an overbearing extent that even eminent Queen's counsel are sometimes subjected to a degree of abasement that is painful to witness. The demeanour of one or two of the Equity judges is, in fact, characterised by an absurd pomposity, and, however great their abilities, they are not so high-minded as to disdain the petty delight of trying to humiliate the leaders of the Bar. There have been several instances of a judge taking a personal dislike to a counsel, and by making him feel it on every possible occasion, practically dismissing him from the Court. Thus it will be recognised that the system gives judges too much power over members of the Bar.

There are always two favourite "silks" in each Court, who practically divide the work between them. The special fees that we have already referred to are, however, frequently obtained by eminent Queen's counsel. The greatest advocates of the Equity Bar—like Sir Horace Davey or Mr. Rigby — do not attach themselves to any Court, and will not, in fact, appear in Court at all without a special fee. The incomes made by some of the most eminent Equity counsel are prodigious. Lord Selborne, when Sir Roundell Palmer, is said to have made over £30,000 a year ; and rumour has it that neither Sir Horace Davey nor Mr. Rigby are earning much less than that amount.

Although, as a rule, the members of the Equity Bar do not shine in public life, it has nevertheless associated with it several distinguished names, such as those of Westbury, Cairns, and Selborne, all of whom found in the Chancery Courts the stepping-stone to fame.

The Criminal Bar of London congregates at the Old Bailey (which is the Assize Court for the Metropolis and part of the Home Counties) as well as at the Middlesex and Surrey Sessions, held respectively at Clerkenwell and Newington. In speaking of the Criminal Bar, the brilliant exploits of such men as Ballantine, Parry, Huddleston, Gifford, Hawkins, and Clarke naturally occur to one's memory. But what a sad

falling off is now apparent! There is not a single name of distinction now associated with the historic Court that has in the past resounded to the eloquence of so many splendid advocates. Nowadays the mention of the Criminal Bar only brings to mind such men as the Government prosecutor (official in all but name), Mr. Poland, and a crowd of lesser lights, among whom Mr. Forest Fulton, M.P., and Mr. Gill stand forth as the most talented. There are at the Criminal Bar a number of newly-fledged barristers, and several indigent and disappointed men who are content to gain a small and precarious livelihood. A handful secure a respectable living, and comparatively large incomes are only made in two or three cases, notably among those who have Treasury work. The compulsory litigants, who often have to send the hat round among their friends for the purpose, can for the most part only provide small fees, and small as they are, they do not always reach the hands of counsel.

MR. POLAND. MR. FOREST FULTON. MR. BESLEY. MR. C. MATTHEWS. MR. C. F. GILL.

It may be interesting to mention here the curious fact that barristers cannot recover their fees at law. The fee, it appears, is an honorarium, and nothing more. Of course, while barristers have no legal claim for their fees, no action for negligence, however gross, can lie against them; and it is obvious that, if the power were accorded to them of recovering their fees at law, they would also be liable to action in case of negligence. If we may judge by the very rare occasions of actions for negligence being successful against solicitors, there is no reason why they should have any terrors for counsel. It would certainly be satisfactory to see the barrister's profession put upon a more business-like footing. Advocates are, under the present conditions, sometimes the prey of unscrupulous solicitors, who hand them briefs marked with tempting fees that are never paid, and when these harpies have tired out the patience of one guileless counsel, they devote similarly undesirable attentions to another. Happily, such solicitors are comparatively few; but even respectable firms often avail themselves of the inability of counsel to recover fees by taking unconscionable credit.

The system should be changed, and if barristers were made liable for negligence it would, perhaps, have a wholesome effect in preventing some of them from accepting briefs to which they or their clerks must know that they cannot attend.

To return to the Criminal Bar, one cannot help observing how great is the disadvantage at which a prisoner is sometimes placed. The unfortunate man has perhaps been unable by himself or his friends to find the necessary funds to instruct a counsel, or perhaps he has managed to scrape together a guinea, which he hands over the dock, as his case is called, to some inexperienced barrister, who thereupon finds himself face to face with a wary and experienced advocate like Mr. Poland or Mr. Gill. The prisoner's chances of vindi-

cating himself, innocent though he may be, must be greatly reduced by the disadvantages under which he labours.

The State, which expends enormous sums for the conviction of criminals, ought, undoubtedly, as is the case in many other countries, to provide legal assistance for the accused in order to secure a fair trial. So far as we are aware, there is only one case in which this is done in England, namely, when an offence, while in the execution of duty, is charged against a member of the police force, a body of men who are in a much better position to secure for themselves legal assistance than the majority of ordinary prisoners.

MR. INDERWICK. SIR EDWARD CLARKE.

Perhaps the deplorable dearth of highly talented men at the Criminal Bar is in some degree accounted for by the curious circumstance that when a man once becomes a criminal lawyer he can be nothing else. The dismal atmosphere of the Old Bailey seems to permeate all his future prospects, and he is rarely able to emerge from it into the higher ranks of his profession. The Lord Chancellor, Mr. Justice Hawkins, and Sir Edward Clarke are, perhaps, the only living instances to the contrary; but even they belong to a somewhat bygone time, and were never exclusively criminal lawyers.

The leading common-law work of the High Court is practically divided among a dozen or so eminent Queen's counsel. It is a matter of common complaint that the leaders accept briefs, knowing well at the time they receive them that they will not be able to attend to them. There is a good deal of truth in this, although the supposed delinquents are able to put forward a very plausible plea of justification. It is certain that they cannot always know what briefs they will be able to give full attention to, seeing that there are a number of Courts engaged in trying cases some of which may last days, and some only minutes. Indeed, a counsel with a very small practice may find that, owing to the unexpected manner in which the cases on the list are sometimes disposed of, the two or three briefs that have been entrusted to him may all require his attention in different Courts on the same day, although when he accepted them he might reasonably have anticipated that the cases would be called on different days. It must, however, be admitted that there are some eminent counsel who accept briefs, although it is morally certain that they will be unable to give them any personal attention.

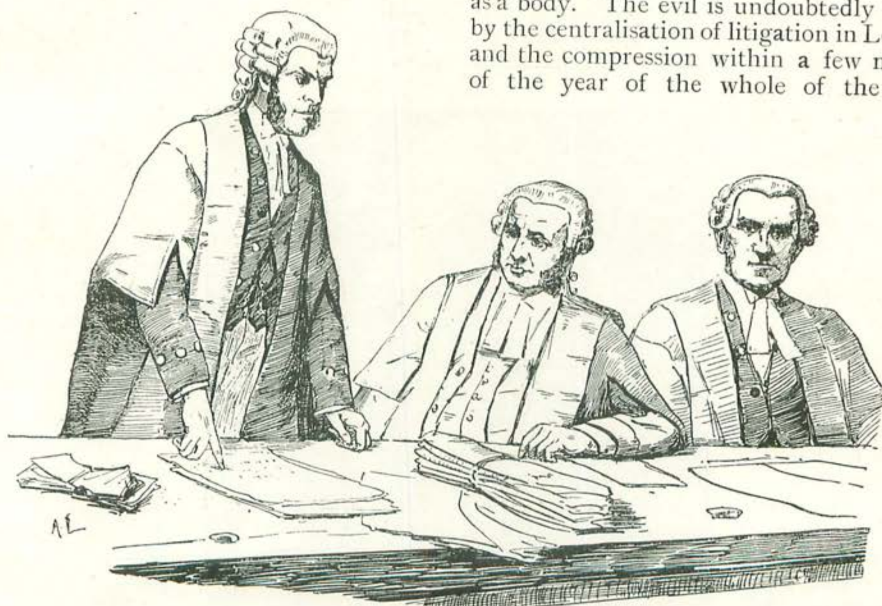
No other professional man expects to be paid for work that he does not perform, and there can be no doubt that the proper course for counsel overwhelmed with briefs to pursue is to return those that he cannot attend to, thereby enabling his client to obtain legal assistance elsewhere, and at the same time distributing a little work among his less fortunate brethren of the Bar. The public are, however, at fault in insisting on retaining an eminent advocate at a fancy price, when their cases could be just as well conducted at much smaller cost by men whose names figure less frequently in the reports of important trials. In any sensational *cause célèbre* it is almost certain that the names of Sir Charles Russell, Sir Edward Clarke, and Mr. Lockwood, will appear on one side or the other. These eminent men have, in fact, the pick of the work, and the same may be said, in regard to

great commercial cases, of Sir R. Webster and Mr. Finlay, and, before his recent elevation to the Bench, of Mr. Henn-Collins.

The work of a somewhat less distinguished character is in the hands of half a dozen Queen's counsel, among whom may be mentioned Mr. Kemp, Mr. Willis, Mr. Jelf, and Mr. Winch, while there is a "tail" of "silks" who, not being fortunate enough to rank as popular favourites, have to content themselves with a very much smaller practice as well as smaller fees. Under the present conditions there is nothing like a fair distribution of work among the leaders of the Bar. This is perhaps in a great measure due to the action of solicitors, who, if they have a rich client in a big action, are sure to run after one of the half-dozen most popular advocates, and with a less wealthy client they will retain one of the next half-dozen. It is indeed curious to observe how slavishly solicitors run after the most eminent counsel on the chance of securing their services, rather than entrust their briefs to less noted men, who, even if their ability be less, would at least make up for it by greater assiduity and closer attention. The result is that these favoured gentlemen may be seen popping in and out of the ten or twelve Queen's Bench Courts that are sitting at the same time, examining a witness in one place, and addressing the jury in another; while their imperfect knowledge of their cases must inevitably tell to the disadvantage of their clients, who perhaps have paid them fees of one or even two hundred guineas, with corresponding refreshers.

From what we have said it will be obvious that it is only the very few who can hope to become wealthy at the Bar, and such a lottery is "taking silk" that many "juniors" refuse to have the distinction conferred upon them, preferring the modest income that they are able to earn to the uncertainty and disappointment that falls to the lot of most of those who become leaders. Even a prosperous junior who gives up his practice to become a Q.C. runs the risk of being left out in the cold altogether.

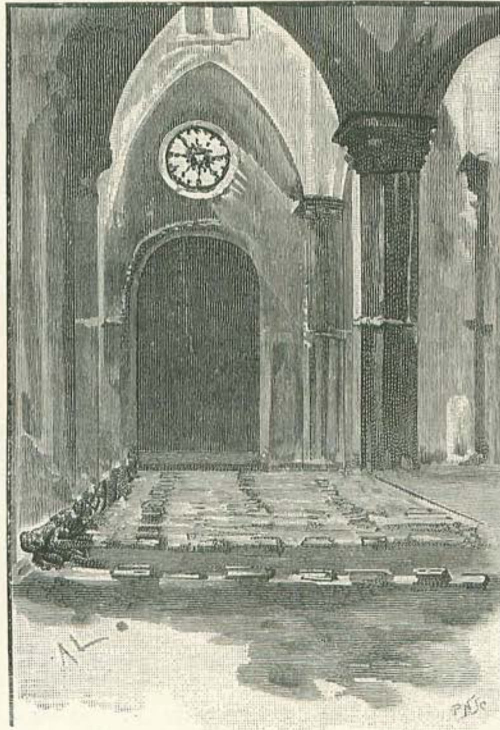
A state of things that practically places the monopoly of the legal work in a few hands tends neither to the advantage of the public nor to the prosperity of the Bar as a body. The evil is undoubtedly caused by the centralisation of litigation in London, and the compression within a few months of the year of the whole of the High Court business. There is no valid reason why the Courts should not sit the whole year through, and barristers and judges take their holidays as they personally like to arrange. The amalgamation of the two branches of the legal profession has been much discussed in recent years, and it has



SIR HENRY JAMES. SIR RICHARD WEBSTER. SIR CHARLES RUSSELL.

many warm advocates both among barristers and solicitors, one of the strongest being the Solicitor-General. But no doubt the majority are opposed to the suggested change. Its supporters, in fact, are for the most part to be found among ambitious young solicitors who have acquired a taste for advocacy in the Police and County Courts. They urge that it would cheapen litigation, inasmuch as there would be only one person to pay instead of two, and they point to the United States and to the Colonies as indicating that amalgamation would work well. In great cities, however, the division of labour between the advocate and the solicitor, although theoretically non-existent, is in reality very similar to what it is in this country. The advocate must always be the advocate, and nothing more, and the drudgery of preparing the material for him to work upon must be reserved for other persons, whether they occupy the position of solicitors, partners, or clerks.

Under the present system, a solicitor can exercise his judgment in retaining the counsel most suited to his client's case, an advantage which would disappear if solicitors had barristers for partners. The solicitor, it should be remembered, has multifarious duties in connection with litigation, whilst the barrister is only the adviser on points of law and the advocate. It is further to be observed that the barrister, not being associated with the pecuniary interests of his client, but arguing his case solely on legal grounds, and on the weight of evidence, possesses a degree of independence and a reputation for trustworthiness which, if he were a solicitor as well, he would be unable to enjoy. It is not from an amalgamation, such as that suggested, that an amelioration of the present system is to be looked for. Notwithstanding its high reputation, the Bar, by tamely submitting to a system that works out to its own detriment, is itself responsible not only for its own unsatisfactory condition, whereby the bulk of the profits of the profession go into a few hands, but also in a considerable degree for the gross defects of our judicial system. Recently the members of the Bar have formed among themselves a Bar Committee to protect their interests, but it appears to have done little practical work, and to be little more than a mutual admiration society.


IN THE TEMPLE CHURCH.

It is obviously to the interest of the leading and wealthy members of the profession, several of whom are legislators, that the present state of things should continue. They make splendid incomes within the short legal year ; while the Long Vacation, which completely closes the Courts, prevents the intrusion of competitors during their holidays. The present system practically secures to them a monopoly of work, and gives them an extravagant time for rest and enjoyment. The Long Vacation, then, which is also the chief cause of the law's delay, is at the root of the evil. The younger barristers as well as the less lucky Queen's counsel, who are anxious for work that they are fully capable of performing, would regard with pleasure the abolition or curtailment of the Vacation, as a means of enabling them to share in that work which cannot properly be done within the brief period now occupied.

Are the members of the Bar, notwithstanding all their boasted independence, afraid to speak out even in their own

interests? They alone are capable of properly exposing the scandals of our judicial system, and of bringing about improvements that would be as much to the advantage of the public as of themselves; and yet their voice is uniformly silent. It is certain that had the leaders of the Bar opened their lips in the House of Commons, those scandals to which we adverted in former articles would either have been non-existent or would have been promptly remedied. It is not, however, from the leaders of the Bar that reform is to be expected; the first step must be taken by the rank and file, who, by a united movement showing that they do indeed possess independence and grit, will increase their own prosperity and at the same time commend themselves to the public.

# *The State of the Law Courts.*

## IV.—THE CRIMINAL COURTS.

IN many respects the Criminal Courts form the most interesting branch of the Judicature. Not only in their legal aspect, but also from their social bearing do they afford matter for reflection. Certain it is that so long as a large section of the community is permitted to exist under conditions of filth and depravity repugnant to civilisation, there will be plenty of work for the Criminal Courts to do. Many of the children of the slums are bred to a life of crime from their earliest days ; they are taught to regard the law as their enemy, and law-abiding citizens as their legitimate prey. They have no conception of right and wrong, and in their eyes it is as praiseworthy an act to relieve an old gentleman of a watch as Elizabeth's mariners thought it to plunder a Spanish galleon. Members of every profession, whether it be the law, the drama, art, music, or medicine, are often distinguishable by their characteristic appearance, and there is a peculiar look about the London pickpocket which can hardly be mistaken. Mr. Montagu Williams gives the following description of a typical young criminal :—"He is small in stature—his growth being stunted by drink and other causes ; his hair is closely cropped (that being a matter of necessity), and there is a sharp, terrier-like look about his face." The truth of this picture will be recognised by all whose business has taken them frequently into the police and other Criminal Courts.

MR. MONTAGU WILLIAMS.

Mr. Montagu Williams was once retained to defend a young ruffian of this class, who was charged with stealing a watch. The case was so clearly against the prisoner that the learned counsel advised him to plead "Guilty." At this he was most indignant, and exclaimed, "Go on, I want you to do my case. You'll win, I know you will. You've done so twice for me before." In the end he was acquitted. On hearing the verdict he began to dance in the dock, and after shouting "I told you so," to his counsel, and bowing to the judge, he retired, highly pleased with the result.

So far as its procedure is concerned, our criminal law has hardly changed since the time of the Conquest, and in the opinion of many lawyers as well as laymen who have studied the matter, it is high time that some improvements were introduced. It is not our intention here to review the whole field of criminal administration. The work is too vast for the limits of this article. We may, however, briefly direct attention to those matters wherein we think that improvement might be effected.

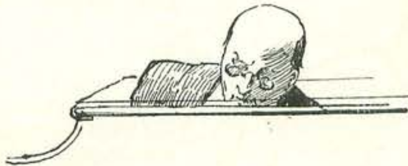
The Criminal Courts in this country consist of the petty sessions, or, as they are generally termed in boroughs, the police courts, the Courts of Quarter Sessions, and the Assize Courts.

In the large cities, such as Manchester, Newcastle, &c., there are stipendiary magistrates who are appointed by the Home Secretary at the instance of the local town council, which provides their salaries.

The metropolis is divided for the purpose of police administration into various districts, every police-court having two magistrates, each of whom sits three days a week, the busiest days being Mondays and Tuesdays.

The work of the London police magistrates is of an exceedingly diversified character, consisting principally of charges

of drunkenness, petty larceny, assaults on the police or on private individuals, and indictable offences in which they take the preliminary hearing, and, if satisfied that there is a *primâ facie* case, commit the accused for trial. In addition to this, they have a vast number of duties recently imposed upon them by the Legislature, such as School Board prosecutions and cases under the Sanitary, Tramway and Public Carriage, Building, and Employers and Workmen's Acts, as well as various other matters which it is unnecessary to detail. Altogether the work is of a singularly repulsive character, and it is for this reason, perhaps, that many of the magistrates pride themselves on getting through the greatest possible number of cases in the shortest time. But this system of administering justice at high pressure is not entirely satisfactory. Most of the magistrates are



CHIEF USHER.

remiss in the matter of taking depositions and notes of evidence. Indeed, this is very seldom done at all except in cases of indictable offence. The rapidity with which some of the cases are disposed of is almost absurd. For instance, in some courts when a prisoner is charged with being drunk and disorderly, the magistrate does not even give him time for defence, the trial occupying about two minutes and consisting of something like the following:—Officer (kissing the book): I found the prisoner outside the "Green Lion" publichouse last night at twelve o'clock. He was drunk and disorderly, and I took him into custody. Magistrate (interrupting): Five shillings, or seven days.

There is no appeal, and no note is taken by means of which a possible injustice might be investigated.

Undoubtedly the magistrates ought to take notes in every case, so that, in the event of a miscarriage of justice, they might be submitted to the Home Secretary.

STEALING A HAM. FIRST OFFENCE.

AN INCORRIGIBLE ROGUE.

One of the gravest defects in the administration of justice by police magistrates results from the almost implicit reliance that they place upon the uncorroborated testimony of a single police-constable. We shall probably not be accused of exaggeration when we assert that the police are, as a rule, hard swearers. The very *esprit de corps*, which is in itself a commendable feature of the force, leads the constables often recklessly to support each other's evidence. Besides this, whenever the police make a charge against any individual they at once jump to the conclusion that he is guilty, and there is nothing that they desire so much as a conviction.

To such an outrageous degree has the acceptance of police evidence extended that the public have come to look upon it as next to useless to defend themselves against a police charge. No better illustration of this is to be found than in the complaints against omnibus and tramway drivers for loitering. One well-known magistrate was in the habit of doubling the fine where a defence was offered, and, conviction being inevitable, the public drivers now invariably plead "Guilty" by the instruction of their employers. They pay the fine without demur, rather than incur the expense and delay of what would certainly be a futile defence, be the real merits of the case what they may.

Not very long ago a well-known Metropolitan magistrate entertained the strongest possible aversion to bicycles and

"FOR ROBBING THE TILL TO BUY A BICYCLE."

tricycles, and whenever he had before him a dispute between a cyclist and a constable, or, indeed, any other person, it was almost a certainty that he would decide in favour of the latter.

The fact that charges against police-constables are rare is largely due to the hope-

lessness of success. The Treasury, in our judgment very unfairly, places at the disposal of the policeman the best legal advice, and he is represented by a clever criminal

"FOR STEALING TOYS."

lawyer, while a poor man bringing a charge has to rely upon his own unaided resources, or, perhaps, on one of those fifth-rate solicitors who haunt the purlieus of the police-courts, and whose advocacy is too often detrimental to the interests of their client. It is a serious fault in the system that the magistrates should always have the same division of police before them. Frequently seeing the same officers, they become predisposed in their favour, the more so as they find that a great acceleration of business is thereby attained. Many of the magistrates, indeed, through being too mindful of their own convenience in this respect, have gradually become mere slaves of the police. The magistrate is practically the only protector of the public against the indiscretions of the police, and if he invariably sides with that body against the public, whose servant he is, he undoubtedly fails in his duty.

In order that the magistrates should be as far as possible independent of the police, they should themselves be moved constantly from Court to Court—a course that would be more convenient than changing the police from one division to another.

MR. LUSHINGTON, BOW-STREET.

The *personnel* of the Metropolitan magistrates, apart from recent appointments, is not all that could be desired. Most of them are old, and many are of feeble temper; and, as a rule, they pose as great autocrats. Unfortunately, after frequent contact with misery and crime, they are apt to become callous and indifferent; but, notwithstanding this, be it said to their credit, one does sometimes hear of acts of kindness and humanity on the part of the magistrates.

There is not sufficient facility for appeal to protect the poor man against the arbitrary conduct or incapacity of the magistrate. It is true that in cases of imprisonment without the option of a fine an appeal may be made to the Quarter Sessions. But this is an expensive operation, and it is only open to those who have means; and

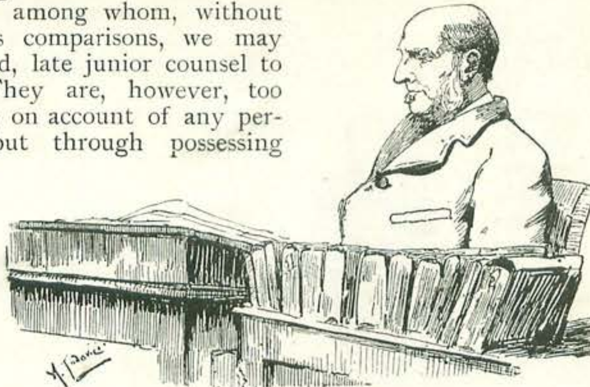
THE MAGISTRATE, MARYLEBONE POLICE COURT.

it is a further deterrent that if the appellant cannot find bail he must remain in prison until the hearing, thus adding considerably to his punishment.

But although there is practically no appeal against the decisions of the magistrates, they are liable to be discharged in case of misconduct. Sir James Grahame, when he was Home Secretary, removed one of the magistrates, and Mr. Newton ran serious risk of being dismissed in consequence of giving too much weight to the charges that had been fabricated by the police against Miss

Cass. As it was, he was severely reprimanded by the Lord Chancellor.

It is only just to say that many of the Metropolitan magistrates are able and painstaking men, among whom, without drawing invidious comparisons, we may mention Mr. Mead, late junior counsel to the Treasury. They are, however, too often selected, not on account of any personal capacity, but through possessing family influence in high quarters. It is most essential that only men who have had experience in criminal work should be appointed; but as it is, in order to qualify, they have only to be barristers of seven years' standing. The choice lies with the Home Secretary, and the salaries are £1,500 a year, except in the case of the chief magistrate, at Bow-street, who receives £1,800.



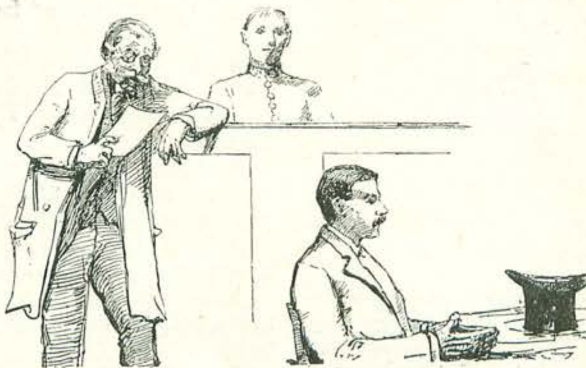
MR. NEWTON.

The Bow-street Court is the chief police-court in London, and has exclusive jurisdiction in extradition and in all political offences against the Crown. One of the ablest and most respected magistrates who ever sat at Bow-street was Sir James Ingham, who died a few years ago at a very advanced age.

A story is told of Sir James having once had before him a case of a man charging another with stealing his watch. It, however, transpired that the prosecutor had not worn his watch on the day in question, but had, in fact, left it at home, where it was safely found. He was overwhelmed with regret at having made a false charge, and Sir James, in order to smooth matters, said: "We are all liable to make mistakes. I was under the impression that I had put my watch in my pocket this morning; but on arriving at this Court I found that I had left it at home by mistake." When the magistrate arrived home in the evening, his daughter said: "I hope you got your watch all right, papa. I gave it to the man from Bow-street who called for it."

Too late, Sir James recognised his indiscretion in having stated in open court that he had left his watch at home. The "gentleman from Bow-street" who had taken advantage of the information was never discovered.

In the country, and also in many of the boroughs, justice is administered by unpaid magistrates. There are borough justices, composed of the Mayor of the town *ex officio*, and such merchants and well-to-do tradesmen as the Lord Chancellor, in the exercise of his political discretion, may think fit to appoint. The country justices in agricultural districts are almost exclusively drawn from the ranks of the landed gentry. In industrial districts, such as Durham and Lancashire, from which country gentlemen have been driven away by the increase of factories, the country justice usually belongs to a lower social class, big brewers and manufacturers being the only persons available. The country justice has by this time obtained a well-established reputation as a laughing-stock. Shakespeare, Fielding, and Dickens have successively held him up to ridicule, and the modern Press has frequent opportunities of making merry over his absurdities. But all to no purpose, for the simple reason that though many reformers would gladly see the great unpaid abolished, no one has yet been able to suggest a means of replacing them. It is obvious that a paid



MR. ALBERT, THE INTERPRETER, TRANSLATING EVIDENCE.

magistracy could not be established throughout the country without a complete reorganisation of our judicial system, involving great additional expense.

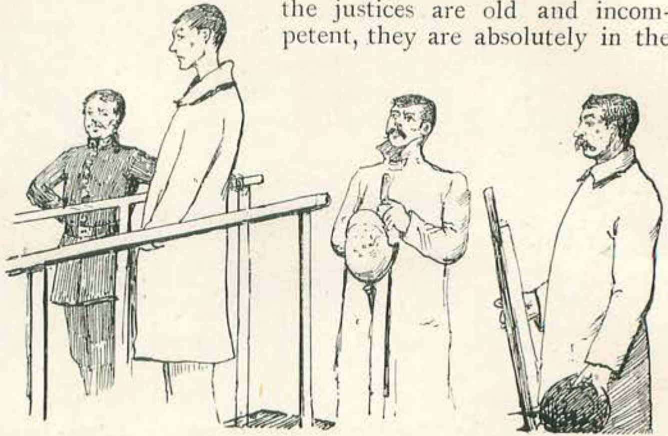
"Justices' justice" has long been a byword, and it is curious to note that it is usually administered in its most drastic and eccentric form by reverend gentlemen, whose religion one would think should guide them to more merciful decisions, even if they ignore the legal hand-books.

The practice of allowing clergymen to sit upon the bench is very objectionable for many reasons. They are often very narrow-minded, being for the most part unable to differentiate between sin and crime, and, knowing everyone in their parish, they are apt, when opportunity offers, to severely punish those who do not belong to their own denomination; and, further than this, they are too often the pliant tool of local aristocrats. There is undoubtedly a strong and apparently uncontrollable tendency on

PRISONER: "YOUR WUSHIP, I AM SUBJECT TO EPILEPTIC FITS."
MAGISTRATE: TO EPILEPTIC *drinks*, YOU MEAN."

the part of country justices generally to accept the word of the constable rather than that of a poor man charged with an offence. The constable who assists in protecting game and in guarding the landlords and their farmers against trespassers, undoubtedly acquires a great deal of influence over the bench in many districts. The country justices, as a rule, know nothing of the law, and are obliged to rely on the advice of the clerk of the court, who is often a solicitor of some position, and probably acts as private solicitor to one or more of the magistrates. His knowledge of the law is usually not very extensive, and is generally derived for the purposes of each case as it arises from "Stone's Justices' Manual."

In many country districts, where the justices are old and incompetent, they are absolutely in the



A DESERTER.

hands of their clerk, who for all practical purposes becomes not only a magistrate, but the sole magistrate present.

A vicious system prevails in most provincial districts, by which the police have the choice of the solicitor who prosecutes. The result of this is that, in order to ingratiate himself with the police, he is always more anxious to obtain convictions than to do justice, and is therefore obliged to abet the police in all the well-known tricks of suppressing facts, and even hard swearing in which they sometimes indulge. It would be more satisfactory to appoint a public official wholly independent of the police, resembling the Procurator-Fiscal in Scotland.

But although there is a good deal to be said against the great unpaid, they are perhaps not quite so bad as their numerous enemies delight to paint them. A strong bench, with a good clerk to keep them right in law, has many advantages, owing to the variety of mind and judgment brought to bear.

AN INSPECTOR.

Some of the magistrates, no doubt, merely occupy their positions on the bench for the gratification of their own vanity; but there are others who perform their duties ably and conscientiously for the public good, and these are certainly deserving of the thanks of the community. It is the incompetent men, swayed by class prejudices, who, by their absurdly vindictive sentences in labour disputes, trespass and poaching cases, and the like, bring the whole body into disrepute. Perhaps, if it were necessary for those young gentlemen who aspire to the dignity of a magistrate to first obtain a call to the Bar, many of the present evils might be mitigated.

DRUNK, AND FURIOUS DRIVING.

The Quarter Sessions are established in all the counties, including the county of London and other county boroughs, as well as in certain Quarter Session boroughs. In the small boroughs where there are no Quarter Sessions, the appeal from petty sessions goes to the Quarter Sessions of the county in which the borough is situate. Besides its appellate jurisdiction, the Quarter Sessions constitutes a court for the trial of those criminal cases that are not within the exclusive jurisdiction of the High Court. In London the Court is presided over by a salaried officer known as the Assistant-Judge; in some boroughs the Recorder presides, and in the counties there is usually an unpaid justice called the Chairman. All the cases are heard before a jury. The Quarter Sessions in the provinces are usually attended by a numerous Bar, chiefly composed of the younger men on each circuit, together with a few more experienced barristers who have never emerged from criminal work. A prisoner unable to employ a solicitor to instruct counsel is entitled to secure the services of a barrister by handing a guinea over the dock, and many young advocates do a brisk trade in what are termed "dockers." It would be a great gain if the State were to provide for the proper defence of prisoners, who are undoubtedly at a great disadvantage when opposed by astute criminal lawyers. In Scotland a system prevails by which every prisoner can secure the services of counsel; whereas in this country they are left entirely to their own resources, and there can be little doubt that a miscarriage of justice is too often the result. It has often been advocated that the jurisdiction of Quarter Sessions should be extended so as to include some of those more serious cases that can now only be tried before a judge of assize; and this would undoubtedly relieve the pressure on the High Court judges. But, until the presiding officer is of a higher type than the ordinary Chairman of Quarter Sessions (some of whom, however, are very capable men), it would be unwise to enlarge the jurisdiction. Probably the County Court judges—who, at present, have ample leisure—might, if better men were obtained, be entrusted to preside at Quarter Sessions with extended jurisdiction; and certainly, if a Court of Criminal Appeal were established, such a scheme as this would be open to no objection.

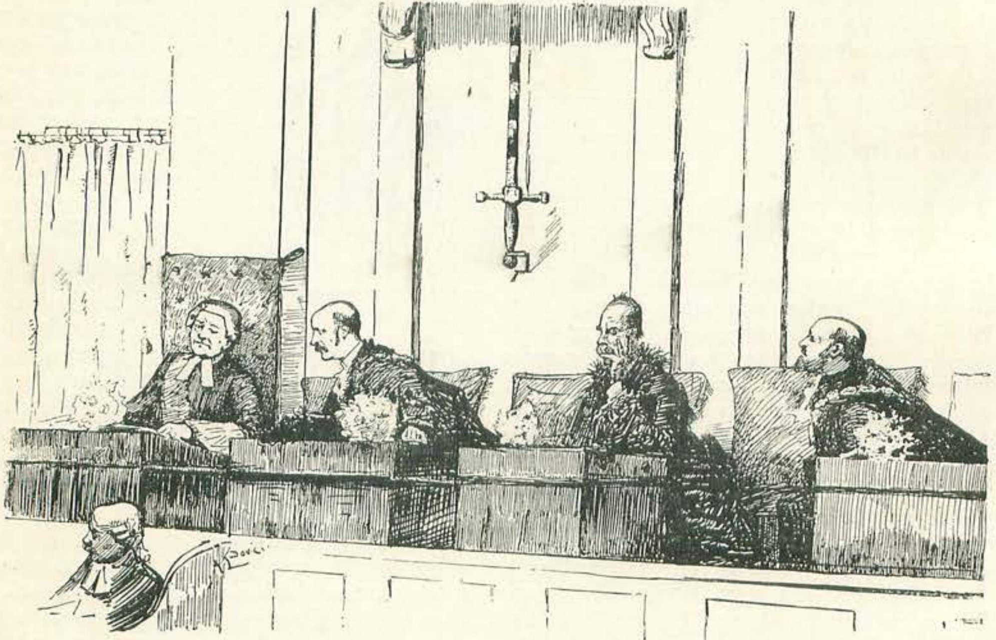
FASHIONABLE PICKPOCKET.

The judges of the High Court go on assize four times a year to try those more serious cases which are outside the jurisdiction of the Quarter Sessions, and also to deliver the gaols of such prisoners as, whatever their offence, have been committed for trial since the previous Quarter Sessions.

And while the judges are away on assize, the Common Law work of the Metropolis is, as we have previously pointed out, absolutely at a standstill. Even at the Assize Court it is doubtful whether adequate justice is always done; it certainly depends in a great degree on the individual temperament of the judges. The extraordinary disparity between the sentences passed by different judges for offences of the same gravity gives rise to continual comment. It seems strange, indeed, that the judges and chairmen of Quarter Sessions have not conferred together to lay down some approximate rule as a guidance in the measure of their punishments. Some

judges are in the habit of inflicting almost uniformly light sentences, while there are others who are remarkable for their extreme severity. Lord Coleridge has, in a praiseworthy manner, always discountenanced those barbarous sentences of penal servitude for trumpery larceny which have sometimes shocked the public conscience.

It is certainly most objectionable that judges who have had no previous criminal experience should be sent to try cases of serious crime. Before being entrusted with such work it is desirable that they should go through some form of apprenticeship by sitting with an experienced criminal judge.



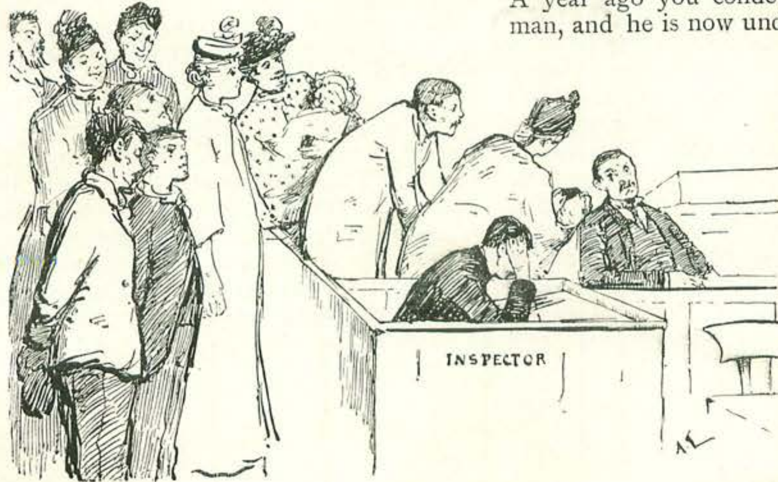
THE OLD BAILEY. OPENING OF THE SESSIONS BY THE LORD MAYOR AND SHERIFFS.

The present haphazard method was illustrated in a remarkable manner some years ago when Mr. Justice North, who had passed his professional career in the placid atmosphere of a Court of Equity, quietly arguing some nice points of realty and trusts, became a Judge of Assize. He had probably never heard a criminal case tried, and perhaps had hardly ever examined a witness, so that it was natural enough that he should feel himself incompetent for the new duties that had been thrust upon him. Fortunately, such a gross scandal cannot occur again, for Chancery judges have since been released from Assize work.

It is a curious anomaly that while in a civil cause involving a trifling sum, a suitor may appeal from one Court to another until he reaches the House of Lords, a man fighting for his life, liberty, and reputation has no appeal from the verdict of a perhaps ignorant and prejudiced jury, acting it may be under the guidance of a judge who has had no experience in criminal procedure. Such a verdict is irrevocable, and at the best its effects can only be mitigated by the occasional and reluctant intervention of the Crown through the medium of the Secretary of State, who is in a great measure swayed by the opinion of the judge. The wicked absurdity of such a state of things must be at once apparent, especially when it is remembered that judges themselves are sometimes prejudiced, and are in any case far from infallible. It is true that finality in the process of criminal law prevents the shocking mental torture that must be endured by prisoners lying in gaol for weary months awaiting the uncertain progress of appeals. But while there is life there is hope, and even the painful suspense of appeal is preferable to an unjust conviction.

Although there is no appeal in criminal cases on questions of fact, it is within he discretion of the judge to reserve points of law. Legal technicalities, however, do not often give rise to mistakes in criminal law, and where a miscarriage of justice takes

place it is nearly always in consequence of a misapprehension of facts. Too often within recent years have subsequent events shown that punishment has been inflicted upon an innocent man. It is needless to multiply instances, many of which are doubtless in the minds of our readers. We may, however, mention a case that is described at length in his interesting "Leaves of a Life," by Mr. Montagu Williams.



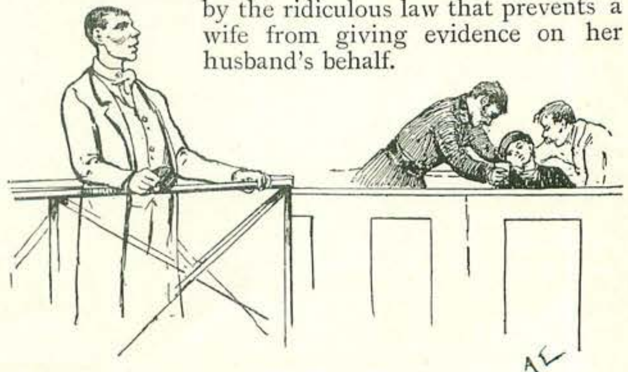

APPLICATIONS TO THE MAGISTRATE.

That eminent counsel once defended a prisoner who was charged with sheepstealing. Two constables declared that they had seen the accused driving the flock in the early morning, and swore positively to his identity, one of them having given him a light for his pipe; and he was also identified by another man, who swore that he had seen him drive the sheep into the Meat Market. On the other hand, the members of the prisoner's household declared that he had been at home in bed at the time, and had not risen until long after the offence had been committed. His wife, who had been with him, was not allowed to give evidence. The Assistant-Judge who tried the case ridiculed the *alibi*. "You have only," he said, "to state a certain number of facts that are actually true, to change the date, and there you have your *alibi*."

The jury found the prisoner "Guilty," and he was sentenced to five years' penal servitude. Twelve months afterwards a man was convicted of a similar offence at the same court. On being asked if he had anything to say, he replied, "Nothing about myself, my lord, but something about you. A year ago you condemned an innocent man, and he is now undergoing penal servitude. Mr. Williams, my counsel, was counsel for him. It was I who stole the sheep that were driven from Hornsey to the Meat Market. I am he for whom the innocent man was identified."

It was at once obvious that there was a striking resemblance between the two men. The Judge, however, poohpoohed the matter, and if it had not been that the chairman of the Drovers' Association took the matter up, the innocent man might never have been liberated. As it was, he received Her Majesty's "pardon" and a sum of money by way of compensation. But it was too late. The unfortunate man's wife had died during his imprisonment, and he himself had become hopelessly insane.

In this case a failure of justice brought disaster upon a whole family, for they were all dependent upon the unfortunate prisoner, who not only suffered by the fatuity of the Judge and jury in preferring the evidence of two policemen to that of several highly respectable witnesses, but also by the ridiculous law that prevents a wife from giving evidence on her husband's behalf.

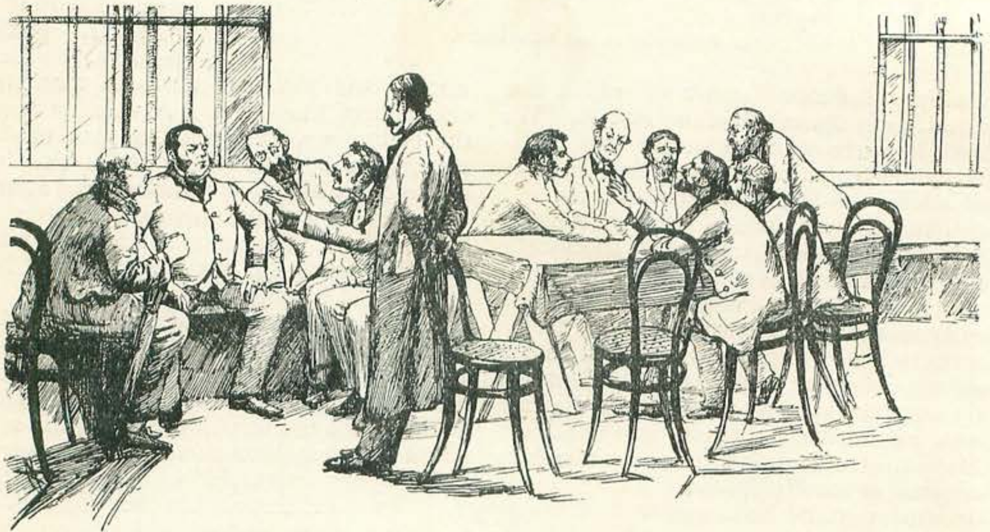


FOR ASSAULTING HIS WIFE

There is another grave defect in the administration of criminal law, but to this —as it has been of late widely discussed— we need do no more than briefly advert. We refer to the fact that England stands almost alone in not according to persons charged with offences the right to give evidence on their own behalf. Recent legislation has given this privilege in offences of a certain class; but these cases are rare, and they merely accentuate the absurdity of closing the mouth of the prisoner in the majority of criminal charges. Lawyers of experience generally concur in the view that, if a prisoner were always permitted to give evidence on his own behalf, the innocent would be materially assisted. It is a curious fact that the present practice is a survival of an older system under which a defendant in a civil cause was also ineligible as a witness. The disability has been removed in the one case, and there is a strong feeling among those who should best know, in favour of its abolition in the other.

Our review of the Law Courts is now concluded. We have necessarily been unable to go very deeply into detail, and we have not paused to lay stress on the many admirable features that are undoubtedly to be found in our judicial system. Our object has been to call attention to such imperfections as are conveniently open to reform. The Legislature has, since we began our series, given some tentative attention to the matter; but if improvement is to be effected it must be in response to the demand of the electors, who should exact from their Parliamentary representatives a promise of reform.

ANTONY GUEST.



THE JURY DISAGREE.