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et al: The Justinian

CHRISTMAS RECESS
TO BEGIN
DECEMBER 23

The Justinian

Brooklyn Law School — St. Lawrence University

CHRISTMAS RECESS
TO BEGIN
DECEMBER 23

VOLUME III, No. 3 — MONDAY, DECEMBER 18, 1933 — BY SUBSCRIPTION

Current Legal Decisions

Wills — Landlord and Tenant —Attorney and Client— Negligence

Real Property—Mortgagor in Possession—Receivers
Holmes v. Gravenhorst, N. Y., Dec. 5, 1933, N.Y.L.J., vol. 90, no. 138.

The mortgagee is suing to foreclose a mortgage, one clause of which gives him the right to appoint a receiver of rents and profits. The receiver was appointed and applied to Special Term for an order fixing a reasonable rent to be paid by the mortgagor who was in possession, and to evict her if she refused to pay the rent. The order was denied but on appeal to the Appellate Division it was allowed.

The Court of Appeals, by a divided vote, reversed, holding that the right of possession is an incident of title which, in the absence of any contract provision, may be divested only under the methods prescribed by law, i.e, tax sale, foreclosure sale, ejectment, etc. There is no statute authorizing an eviction *before* such proceedings. Where the mortgagor is not in possession, however, the rent may be applied to the reduction of the debt and to the carrying charges. This is not inconsistent for the receiver is appointed to collect the rent and profits; where the mortgagor is in possession, there are no rents or profits. Should there be any rents or income not connected with the mortgagor's possession, as by letting advertising space, the receiver would be entitled to those. Compelling the mortgagor to pay rent is depriving her of the vested right of possession which she has not contracted away.

In the dissenting opinion, Crouch, J., reasons that the extent of the receiver's authority rests in the court's discretion. If the premises are vacant, the court will allow him to let them. Though the mortgagor is entitled to possession until the sale, still, equity may take possession where such taking is equitable. Here it is, for the mortgagor, having pledged the rent may not defeat that grant by merely occupying the premises. In effect, he pledged the *rental value*. The mortgagor loses nothing, since this amount is credited to him (citing 3 *Brooklyn Law Review* 104).

Wills—Construction
Matter of Hoffman, N.Y.L.J. vol. 90, no. 123, Nov. 25, 1933 (case decided June 16, 1933).

On a proceeding under Surr. Ct. Act, § 205, to examine the decedent's husband to discover whether two automobiles belonged to him or to the estate, it appeared that the will gave to certain legatees all "furnishings and effects in my dwelling house at the time of my decease." The automobiles in question were in a garage physically detached from the dwelling, but immediately in the rear of the house.

The Surrogate held that the cars passed to the legatee under the wording of the will. The dominant purpose of the testatrix was to provide a home for the legatee and to give him all the furnishings ordinarily used in connection therewith. This included the garage, which, though not physically a part of the dwelling, was so used. There is no distinction between a garage attached to the house and one on the same lot though not attached.

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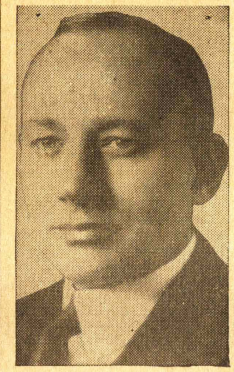
CORPORATION COUNSEL



PAUL WINDELS

Title Closing Is Discussed in Talk By Grouf

Attorneys Will Impress Clients by Listening Much and Talking Little, He Advises

AVOID ARGUMENTATION

"Practical Problems in Real Estate Title Closing" was the subject of an address by Meyer Grouf at a recent meeting of the Robert D. Petty Law Society held in the Y.M.C.A. building, 215 W. 23rd street. The society was organized in memory of the late Robert D. Petty, former Dean of the New York Law School, and close friend of Dean William Payson Richardson.

The average lawyer will impress his client more during a closing, and work more effectively, by talking little and by raising only reasonable objections, according to Mr. Grouf. "The more innumerable your objections, the more confusing the title closing, and an unnecessary waste of everyone's time is the inevitable result of this protracted argumentation," he said. "There are two functions that the lawyer serves at the time the contract is being negotiated. First, he acts as business advisor. In that capacity

(*Continued on page 5*)

Name Windels As Aide To Mayor-Elect

Brooklyn Law Alumnus is Appointed Corporation Counsel for City

WAS TUNNEL COUNSEL

Prepared Legislation and Interstate Treaty for Holland Tunnel Construction

Paul Windels, class of '09, was appointed Corporation Counsel of The City of New York by Major Fiorello H. LaGuardia, Mayor-elect, on Dec. 13.

Mr. Windels has been active in politics and public service. In 1917 and 1918, he was official referee of the County Court in Brooklyn. He was appointed counsel to the New York State Bridge and Tunnel Commission in 1917 and served through the entire period of the construction of the Holland Tunnel. In 1920, as counsel for this commission, he prepared the legislation and the interstate treaty between New York and New Jersey for the tunnel and handled all construction contracts. With the merger of the Tunnel Commission and the Port Authority in 1930, he was appointed associate counsel, which position he has held ever since.

La Guardia's Campaign Manager

Mr. Windels, a close friend of Mr. LaGuardia, served as his campaign manager in 1919 when he was elected President of the Board of Aldermen. A Republican leader of the Fourth Assembly District in Brooklyn, Mr. Windels was a delegate to the Republican National Conventions in 1920,

(*Continued on page 5*)

Two New Men Named To Justinian Board

Abraham L. Levy has been appointed Current Legal Decisions Editor of THE JUSTINIAN to take the place formerly held by Harold M. Geller. Levy is a third-year student and is a member of the Brooklyn Law Review.

Manuel Moldofsky, who has been on the News Board of THE JUSTINIAN since 1932, has been appointed news Editor. Moldofsky is the President of the second-year 6-8 class.

Use Of Alternate Jurors In State Court Proclaimed A Great Success

Highly enthusiastic about the alternate juror system which was used for the first time in a State Court in the recent trial of Isidor J. Kresel, James J. Wallace, Assistant District Attorney who prosecuted the case, told a JUSTINIAN reporter last week that, "It is amazing that such a statute was not enacted long ago."

"The value of the alternate juror system," he declared, "is of course, self-evident. If a juror is disqualified for any reason, such as sickness, death or misconduct, one of the alternates can be sworn in without the necessity for rereading the testimony.

"Public expense and, worse still, delay of justice and consequent impairment of the exemplary effects of prompt justice have resulted from mistrials due to such mishaps in jury trials," he said.

In response to the question whether alternate jurors were as attentive as the others during the course of the long trial, Mr. Wallace stated, "We were quite fortunate in our choice of the two alternates. They were intelligent men, and at all times during the sometimes tedious testimony, were most attentive. As a matter of fact," he said, "on a few occasions they asked questions of Judge Taylor and Mr. Kresel concerning some points of law which perplexed them." Mr. Wallace stated he felt quite sure that either one of the alternates could have stepped into the regular jury with a full command of all the facts.

The alternate juror system has been

(*Continued on page 7*)

Geoghan Urges Novel Plan For Curb On Crime

Compulsory Registration Asked to Aid Identification of Criminals by Police

ACT TO AMEND CODE

Proposal to Be Submitted to State Legislature at January Session

District Attorney William F. X. Geoghan, of Brooklyn, in a special interview, enlarged upon his proposed intended "criminal registration" law, whereby "first class" cities will be able to keep tab on itinerant, "imported," and resident criminals by requiring them to record their presence with the police. (The State Constitution defines "first class" cities as cities having a population of 175,000 or more. Art. XII. sec. 2.)

The bill, which will be submitted to the State Legislature in January, is entitled "An Act to Amend the Code of Criminal Procedure in Relation to the Identification of Criminals." Its main points are:

All felons, and certain misdemeanants, not residing within "first class" cities, and convicted within ten years *prior to effective date of law*, must register within forty-eight hours after entering a "first class" city.

Felons Must Register

All felons and certain misdemeanants, not residing within "first class" cities at time law becomes effective, must register with the police within forty-eight hours. (Misdemeanors embraced by the law are: conspiracy; coercion; malicious injury to property; extortion of money or property by threat; unlawful entry, and others).

(*Continued on page 3*)

Measure To Aid Kin Of Victims

Because of the inability of relatives of innocent bystanders killed in exchanges of shots between police and hold-up men, to receive any award of damages from the City, James Clark Baldwin, minority leader of the Board of Aldermen, recently introduced a measure remedying the situation.

Mr. Baldwin told a JUSTINIAN reporter last week that, "Under the present local laws, although a wounded, innocent by-stander is eligible to receive an award of damages from the City, yet if as a result of the wounds he dies, his immediate dependents are unable to receive anything. A number of cases," he said, "have been drawn to my attention of families made destitute by reason of the deaths of the wage earners through no fault of their own."

The measure provides that the amounts of such awards made to the surviving husband or wife, father or mother, be established by the Board of Estimate and Apportionment. It is further provided that the law be retroactive to 1927.

William V. Hagendorn Named New Vice Dean

NEW VICE DEAN

WILLIAM V. HAGENDORN

Has Been Member of Law School Faculty for Last Seventeen Years

TAUGHT MANY COURSES

Appointee Is Author of Several Case Books and Legal Articles

William V. Hagendorn, professor of law at the Brooklyn Law School for the past 17 years, has been appointed vice dean to fill the vacancy caused by the recent death of the late John Howard Easterday.

Vice Dean Hagendorn, who began his teaching career in 1910, was admitted to the New York Bar in 1917, a year after his graduation from Brooklyn Law School and has been in active practice since. He taught in the City elementary schools from 1910-1916, and during his association with the law school has given courses in the law of contracts, corporations, partnerships, sales, and guaranty and suretyship.

Schooled in Brooklyn

Vice Dean Hagendorn attended the Brooklyn and Queens Elementary School, was graduated from New [illegible] High School in 1908, and Brooklyn Training School for Teachers in 1910. Upon his graduation from Brooklyn Law School in 1916 he served as a quiz master for one year. He was appointed an instructor in 1918 and a professor in 1919.

He is the author of case books on many legal subjects and co-author with Dean Richardson on a text book dealing with the law of guaranty and suretyship. He has been a frequent contributor to legal publications and is at present chairman of the Faculty Publications Committee at the law school; he has played an active part in student activities and is a popular speaker and teacher.

Served in War

During the war he served with the field artillery. He is a member of the Queens County, New York State and Kings County Bar associations, and a member of the Lawyers' Club of Brooklyn. He is also a member of the Masons, Queens Borough Elks, Crescent Athletic-Hamilton Club, and Phi Delta Phi legal fraternity. Vice Dean Hagendorn lives at 83-93 115th Street, Kew Gardens. He married the former Miss Florence E. Hull and has one son, William.

Kleinman Talks To Legal Forum

Deplores Loss of Glamor in Criminal Trial Work

FORUM'S FIRST MEETING

The morning session legal forum opened its first meeting on Thursday, November 22, in room 200 at the Law School. Prof. James Lawrence Murphy introduced the guest speaker, Assistant District Attorney of Kings County, William Kleinman, '24.

Mr. Kleinman spoke reminiscently of the days when he entered the practice of criminal law. "Criminal law has lost the glamor it once held in early legal history, when the highest ambition of the attorney was to defend a man charged with murder," said the speaker. "The corporation lawyer has become the cynosure of all eyes. The style in law has changed." He characterized those who frowned upon the practice of criminal law as

(*Continued on page 3*)

Medina Urges Unfettered Bar

"Moral courage and an independent mind should be the aim of all law students," declared Harold R. Medina, Professor of Law at Columbia Law School, to the Brooklyn Junior Federation at its Legal Forum held in the Auditorium of Brooklyn Law School on November 15. If the foundations of these characteristics are not inherent, they should be developed, he said, if the Bar is to be independent of detrimental influences.

He illustrated the application of this independent spirit by telling of a law clerk who refused to sign an affidavit of service because he did not remember actually making the service.

It is not contrary to the maintain-

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A COMMENT ON A REPLY

The Justinian is extremely interested in the problem presented by the amazingly high percentage of failures in the Bar examinations throughout the United States. In an editorial in the last issue, we considered the problem at some length and concluded that "The hypothesis is indeed reasonable that the abnormally large percentage of failures is due to the use of Bar examinations, not alone as a means of eliminating the unfit which is its legitimate function, but also to regulate the number of those yearly admitted to the Bar."

Printed elsewhere on this page is the stimulating reply of Professor George A. Spiegelberg to that editorial. He rejects the hypothesis offered by The Justinian and declares that, at least in this state, "The fault . . . lies ultimately with the deficient mental equipment of the student, but the criticism must be directed at the schools who are willing to accept as students those doomed to failure because of inadequate mentality and training."

We do not desire to debate the relative merits of the two theories. Our position is that the Bar examination results indicate that something is wrong. We believe that the fault lies either with the law schools or with the Bar examination itself. Whatever the cause, the remedy should be speedily and effectively applied.

In fairness to ourselves, however, we feel compelled to comment briefly upon some of the points raised by Professor Spiegelberg.

It is asserted that since the Bar examinations, in New York at least, ultimately exclude only about 2% of the candidates who consistently apply, it is misleading to state, as we did, that "more than 50% of allegedly well-trained young men are unable to pass the Bar examinations." We thought that our statement was sufficiently clear. We emphatically did not attempt to say, nor do we believe that our editorial read in its entirety implies, that the Bar examinations "*ultimately*" exclude more than 50% of those who consistently seek admission. We observed merely that on an average in this state and throughout the United States, more than 50% of those who take a particular Bar examination are unable to pass that particular Bar examination.

Professor Spiegelberg also asserts that we have failed to analyze the results of Bar examinations on the basis of training. He presents certain statistics from which one may fairly conclude that, on the whole, the candidates who are best qualified pass the Bar examination and those who are least qualified do not. To this we agree. Does this statistical evidence, however, conflict with the hypothesis that the Bar examinations are being used to regulate the number of those yearly admitted to the Bar? It seems clear that it does not. The superiority of the best qualified over the least qualified candidates will reflect itself in the Bar examination results, regardless of whether or not there is a limitation imposed. Even if the most drastic limitation were imposed upon any examination, even if only 10% were permitted to pass, we should expect to find the successful 10% composed, on the whole, of the 10% best qualified. The point is that a limitation does not disturb the natural superiority of the best trained over the least trained, and the failure to find such a disturbance is no evidence that a limitation does not exist.

We have, indeed, neither overlooked nor failed to analyze available data. The major difficulty is that the essential data is not available. To put any theory of Bar examination failures to the acid test, we must know how the passing grade is fixed; whether the passing grade varies with different examinations, and if so, why; and how the content of the examination is determined. This data is far more pertinent than any which is presently available.

VICE DEAN HAGENDORN

It is our privilege to extend our best wishes to William V. Hagendorn. His appointment as vice dean of the Brooklyn Law School is a fitting reward for his 17 years of loyal association with the school.

His many fine qualities, his ability as a speaker, his wide popularity as a teacher, his familiarity with administrative tasks, his interest on behalf of the welfare of the students and their varied activities, have eminently qualified Professor Hagendorn for his new position.

Since his graduation from the Law School in 1916, Professor Hagendorn has taught continuously. He has engaged in active practice since his admission to the Bar. The patience and scholarship which mark him as an educator and which won the confidence of his students should distinguish him as an able administrator.

A NEEDED REFORM

All men are presumed to know the law. Notwithstanding this fact, should a layman seek enlightenment by recourse to certain of our statutes, he would find himself hopelessly immeshed in a maze of words from which, for him, there can be no extrication.

The situation is particularly troublesome in the case of new statutes which are not declaratory of the common law or do not embody a previous judicially interpreted statute. In such cases, of necessity, there is no case in point, no precedent to look to for guidance. Unless the statute is free from ambiguity, conduct is rendered uncertain. It is difficult to act pursuant to that which is indefinite. It is socially unwise to invite a period of several years before the court decides so-and-such to be the intent of the Legislature.

This is not as it should be. Understanding and not confusion should be the result of a careful reading of a statute. But today even an experienced attorney finds difficulty in ascertaining that which was calculated to be self-explaining.

Simplicity, clarity, precision and terseness should be the beacon of the Legislature in regard to statutes in a state codified to the extent ours is; it should be the objective of their efforts —the justification of their function.

BAR EXAMINATION FAILURES

A REPLY TO AN EDITORIAL

By PROF. GEORGE A. SPIEGELBERG

THE JUSTINIAN reprints below the reply of Professor George A. Spiegelberg, Chairman of the Committee on Legal Education and Admission to the Bar of the New York County Lawyers' Association, to an editorial entitled "Bar Examination Failures," which appeared in the November issue of THE JUSTINIAN.

The issue of the Justinian published November 16, 1933 contains a leading editorial entitled "Bar Examination Failures." The opening paragraph states that

"Less than 47% of those taking the bar examinations in the United States in the year 1930, 1931 and 1932, were successful. In the same period of time approximately 41% of the applicants passed the New York State Bar Examination."

The editorial then proceeds to the conclusion that the bar examinations are being used as a method of arriving at a quota system for admission to the bar, for which purpose the writer of this article believes the bar examination to be unsuitable, that the bar examination results are not the fault of the law schools and that the cause of the high mortality among those taking the bar examination must be ascertained and the problem solved. The article inferentially at least places the fault with the examination.

It is undesirable to attribute bad faith to the writer of this editorial and the conclusions reached by him must therefore be attributed to a failure sufficiently to consider available data on the subject.

"Look at the Record"

As former Governor Alfred E. Smith has frequently aptly said "Let us look at the record." And by the record is meant the record in this state, which is of course of paramount importance to the citizens of this state. While it is true that a large percentage of first degree applicants fail to pass the bar examinations, it is equally true and infinitely more important, that in this state at least, the bar examination ultimately excludes from practice about 2% of those who consistently seek admission.

A member of the New York Board of Law Examiners has made the following public statement:

"During 1922-3-4, 3700 new applicants applied in New York. It may seem to you that in so large a group some portion must be natively unfit to practice law—perhaps 10% or 20%. This may be so but it does not follow that they are incapable of passing an examination which after all is not the same thing as practicing law. As for the 3700 applicants, all but 165 of them succeeded in passing sometime ago, and of the 165 more than half desisted after the second attempt for reasons one must suppose not wholly connected with the examination. The examination alone, therefore, has thus far proved an unsurmountable obstacle for only 74 men, which is exactly 2% of the whole number."

Explains Selection

It may be questioned why a period ending almost ten years ago has been selected as the basis for this statement. This, however, is necessary because of the fact that those who do not gain admission to the bar on the first attempt make repeated efforts extending over a number of years which requires the passage of considerable time in order to compile reliable figures as to ultimate success.

It seems to the writer that with such a record it is manifestly misleading to state that

"more than 50% of allegedly well-trained young men are unable to pass the bar examinations,"

unless it also be stated, which was not done, that this 50% of failures represents failure only in the first attempt. The foregoing figures, however, answer only half the question posed in the leading editorial referred to above. The other and more important half of the question is to enquire into the cause in order to ascertain the remedy. The writer believes that we need not search far to find the cause and that the remedy is at hand though a willingness or a desire to apply it may not be so imminent.

Agrees There is Fault

The writer agrees with the observation that a bar examination which fails "more than 50% of allegedly *well-trained* young men" presupposes a situation where "something is wrong." If the bar examinations do fail 50% of well-trained young men even on the first attempt, there must be error and the error must lie with the examination. Again, however, the writer of the editorial has completely failed to analyze the results of bar examinations on the basis of training. Roughly speaking, candidates' educational qualifications can be divided into four categories: Those applicants who have college degrees and law school degrees from graduate law schools; those applicants who have college degrees but who graduated from undergraduate law schools; those applicants who had under-graduate law school degrees but no college degree and, lastly those applicants who had no law school degrees.

If we divide the 2500 men who attempted the June 1929 examination for the first time into these four classes we will find the following result according to a member of the New York State Board of Law Examiners:

Law Examiner's Report

"Two hundred fifty of these men had college degrees, and law school degrees from graduate law schools. Making due allowance for those who passed half the examination as well as for those who passed both parts, this group attained an average of success of 87%. Next there were 600 men who had college degrees but who had graduated from undergraduate law schools. They were 58% successful. Now we come to the bulk of the class—1600 men who had under-graduate law school degrees but no college degree. They were 52% successful. Lastly there were 50 men a few of whom had college degrees and a few of whom had never been either to college or to law school. Many of them had been to law school for a short time but not one of them had a law school degree. They were the most poorly equipped men in the class, and they were 18% successful * * * . These results sprang from a single passmark *after* it had been uniformly applied, without knowledge of the identity or classification of any of the papers examined."

Draws Conclusions

The conclusions to be drawn from this test applied after the events are inescapable. An examination which passes 87% of those who have best qualified themselves for the practice of the law and 18% of those who are least qualified educationally is difficult to criticize. If criticism there must be it must be directed, at least in this state, at something other than the bar examination. Admitting that there should be criticism, at whom shall the finger of criticism be pointed? Preparation for the bar examination is largely left to the law school. Is it the law school that is to blame for the condition referred to in the Justinian editorial of November 16, 1933? The writer believes that the answer to this question is Yes and No.

It can be confidently stated that so far as a knowledge of the basic rules of law and their application to given situations is concerned, the law school of today instructs the legal student more thoroughly and competently than at any time in the past though there is undoubtedly still much room for improvement.

Law School Admissions

It cannot be asserted with equal confidence that the law schools refuse admission to those inherently unqualified to become members of the bar capable of adequately protecting the rights of their clients and acting as officers of the court. The criticism should be directed at the methods of admitting the law student to the law school rather than at the methods of instructing him once he has been admitted.

With the ever increasing complexity involved in the practice of the law, the fierce competition in metropolitan districts and the temptations ever present but peculiarly present to the lawyer, the knowledge of the rules of law without adequate preliminary training which will instruct the lawyer when and how those rules should be applied, is insufficient. If the bar is to be a profession and not a business we must realize that more than a working knowledge of the rules of law is necessary. The strain of a bar examination is the first real test to which an applicant is subjected at the outset of his legal career. It is nothing compared to the tests he will have to pass successfully later in his career and though the test of the bar examination appears on the surface to be entirely based on legal knowledge, it demands, if properly constructed, a sound education in other fields than the law. This must be so or we would not find the gradations in success which is evident when a bar examination is analyzed on the basis of adequate pre-legal and legal educational preparation.

Student at Fault

The fault then lies ultimately with the deficient mental equipment of the student but the criticism must be directed at the schools who are willing to accept as students those doomed to failure because of inadequate mentality and training. It does not suffice to point to the present pre-legal requirements of the State as a justification for admitting all who have had two years of college training, or its equivalent. To do so is to shirk a responsibility which rests squarely on the law schools. It was the unanimous consensus of opinion of a Committee composed of representatives from every law school in the State of New York, that—

"some selective process in addition to the quantum of college work completed should be adopted by all of the schools."

Until this selective process is adopted the burden of improper training will fall upon the bar examinations. Their lack of ability to correct the error in our educational system has been demonstrated. To attempt to blame the faults of others on the results of the bar examination is misleading as has already been shown and, in addition, is unfair and unwise.

PRESS BOX

New York, N. Y.—Cut rate fines for street peddlers were established by Magistrate Jonah Goldstein in Night Court when he taxed forty-eight unlicensed salesmen 25 cents each. The usual fine is $1. "This way, the city gets at least some revenue," the magistrate said.

* * * *

Brooklyn, N. Y.—The shortest jury trial on record in Kings County came to an end in 17 minutes with a conviction.

Three minutes were required to pick the jury in a charge of petty larceny before Justice Taylor. Three minutes more were required for the only witness, who charged that the defendant stole his car on Oct. 29. Judge Taylor denied the motion to dismiss and charged the jury in six minutes. The verdict of guilty was returned in five minutes.

* * * *

White Plains, N. Y.—The artist is not an ordinary mortal, and whatever his failings, they are largely atoned for by the pleasure he gives a tired world, Supreme Court Justice Frederick P. Close decided here today when confronted with the case of John W. Steel, tenor, and former star of the "Follies" and "Music Box" revues, who sought relief from a contempt order brought against him because of arrears in alimony payments to his former wife, Mrs. Sidonie B. Steel.

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LEGAL PERIODICALS

By MORRIS DIAMOND

An eminent expert recently, in a suit for damages for nervous shock filed in an American Court, gave evidence for the plaintiff, a woman. The evidence is described in the Bombay Law Journal (10 Bombay L. Jour. 393). The expert testified that as a result of the accident, the nerves of the plaintiff were so badly shattered that she could not sleep and might even become a helpless invalid. In a cross-examination of the witness the defense counsel asked:

"Doctor, how long have you been a nerve specialist?"

"Thirty-two years," replied the witness.

"Well, now that is interesting," drawled the defendant's attorney. "When I was in Cuba during the Spanish American War, one of my men could not face the shot and shell. He said he was sick and I sent him back to the base hospital. The medico sent me word that he was suffering from a nervous disorder called 'mentir sin motivo.' Do you know what that means?"

The expert replied that "mentir sin motivo" was a mental disease which affected the motive powers of the patient causing the victim to lose control of his limbs. "You see, gentlemen," concluded the witness, "'mentir sin motivo' are the scientific words for mental power without motive power. In other words, gentlemen, the brain functions but the person has temporarily lost control over the muscles."

The defense counsel after dismissing the witness produced a Spanish-English dictionary and read as follows: "'Mentir sin motivo' is a Spanish phrase, the English translation of which is—'to lie without cause'."

* * * * * * * *

In the Canadian Bar Review (10 Canadian Bar Rev. 597) appears the story that at a certain dinner in London an eminent physician and a distinguished lawyer engaged in a discussion concerning the virtues of their respective professions. After enumerating some of the obvious pitfalls that beset the legal practitioner in treading the path of duty to society the doctor summed up his criticism with the very polite remark: "All said and done sir, you will not claim that your profession makes angels of men." "Oh! no," rejoined the lawyer, "society has long since discovered that facilitating the emigration of man from this planet to the Elysian fields is the peculiar prerogative of the medical profession."

* * * * * * * *

Defendant, in the case of *Hasselbring v. Koepke* (263 Mich. 466) reviewed in the Michigan Law Review (263 Mich. L. Rev. 466), owned a piece of land in a city block, and plaintiff owned an adjoining piece of land together with an easement of light and air on a contiguous strip of the defendant's land four feet wide and 90 feet long. The plaintiff's land adjacent to the strip was vacant, and he had no immediate intention of building thereon. In erecting an office building on his land, the defendant, constructed an outside stairway on the 4 x 90 foot strip. Plaintiff asked for a mandatory injunction compelling defendant to remove the stairway, stating that though he had no present use for his easement, he wanted to protect his property and preserve the right to have the strip kept clear. The court held that the injunctive relief should be denied, for the reason that when a mandatory injunction is asked, "the court will balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction or award damages as seems most consistent with justice and equity under all the circumstances of the case." Since there was, in the case at bar, no present threat of injury and no damages had been suffered, neither remedy was available. After reaching this conclusion, the court, on its own motion, proceeded to discuss the applicability of the Michigan Declaratory Judgment Act, and found therein an adequate remedy to meet the situation. Thus a declaratory judgment was rendered establishing and declaring the plaintiff's right in the easement.

* * * * * * * *

The case of *Curtiss-Wright Flying Service v. Glose* (66 F. (2d) 710) is commented upon in the George Washington Law Review (2 George Wash. L. Rev. 78). The plaintiffs' husband purchased from an air transport company what was designated as a trip ticket to Tampa and return. He boarded the company's airplane at Miami, and was the sole occupant, with the exception of the pilot, on the trip. Before reaching Tampa, the pilot, because of a very heavy fog, attempted to make an emergency landing, and both were killed when the plane crashed.

The question to be decided by the court was whether the plaintiff's husband was a passenger or a charterer at the time the accident occurred. In holding the defendant liable the court stated that the lone ticket-holder was a passenger, not a charterer, and the plane was a common carrier.

* * * * * * * *

The Yale Law Journal (43 Yale. L. Jour. 146) cites the case of *In re Hayes' Estate* (146 Misc. 660) wherein the testatrix, a former member of the faculty of Wellesley College and an ardent supporter of movements for the benefit of the lower classes, undertook to dispose of her estate in a will drawn up without legal advice. In the will she requested that the "Internationale" be sung at her funeral. The nature of her sympathies was further evidenced by her provision of a fund for the establishment of a school for women industrial workers and by her substantial gifts to organizations for the promotion of free thought. By a residuary gift testatrix gave a large part of her estate to Arthur Garfield Hays, with whom she had been long associated, for him "to use at his discretion in promoting the ends of justice." In a controversy between the executor of the estate and Mr. Hays as to the proper interpretation of this residuary gift, the New York Surrogate's Court held that the bequest was an absolute gift to Mr. Hays with only a moral obligation on him to carry out the wishes of the testatrix.

* * * * * * * *

The University of Pennsylvania Law Review (82 U. of P. L. Rev. 70) discusses the case of *Bowman v. Williams* (165 Atl. 182) wherein the plaintiff, standing at a window of his home, saw defendant's truck, negligently operated, crash into the basement directly below him. The plaintiff sustained no physical impact; but fright and alarm for the safety of his two children, whom he knew to be playing in the basement, occasioned a severe nervous shock resulting in serious prolonged illness. The court held that it was immaterial whether the plaintiff's injuries proceeded from fear for his own safety or that of his children; and hence, judgment was rendered in favor of the plaintiff.

Kleinman Talks To Legal Forum

(Continued from Page 1)

revealing a lack of courage and a supercilious attitude.

Obstacles to Prosecutor

Speaking from the viewpoint of a prosecutor, Mr. Kleinman took issue with several well-established canons of procedure, which hindered the prosecution of a case. He referred to the constitutional guarantee against self-incrimination which so often silences the defendants and witnesses under advice of counsel. "The tendency to disbelieve the police is by far the greatest obstacle in establishing the prosecutor's case," he said, commenting on another difficulty.

"Not the technicality of law," he continued, "but the psychology of the jury and the testimony of witnesses are paramount in prosecuting or defending in a criminal case. An understanding of practical psychology, of stimulus and reaction, are by far the best weapons in the armory of the criminal lawyer." In conclusion, he urged the young attorney who enters the practice of criminal law to master his facts, to visit the place of the crime, and to prepare himself for all possible emergencies that arise in the court-room.

Professor Godley Gives Radio Talk

Transit Commissioner Leon G. Godley, professor of Equity Jurisprudence at the Brooklyn Law School, was one of the speakers in a discussion broadcast over Station WOR Sunday, November 19, on "The Way Out of the Real Estate Depression." Professor Godley, who has specialized in the legal phases of real estate reorganizations, spoke on "Reorganization of Mortgages Under the Supervision of the Courts."

Other speakers included Joseph P. Day, realtor; Vincent Bailey, representing the Home Owners' Loan Committee, and Nathan D. Shapiro, general counsel of the Greater Brooklyn Property Owners' Association.

On a dark night in a country road a pedestrian must walk in the middle of the road, otherwise he will be guilty of contributory negligence." Siegler v. Mellinger, 203 Pa. St. 256, 52 Atl. Rep. 175.

"A school is not a nuisance." Harrison v. Good, L. R. 11 Eq. Cas. 338.

Police Reform To Curb Crime

(Continued from Page 1)

Failure to report or furnish information as required is a misdemeanor.

Persons fully pardoned, paroled, or on probation are not required to register.

Information obtained by police registry shall not be used as an admission of a person's conviction of any crime set forth therein in any subsequent criminal action or proceeding.

Mr. Geoghan observed that notorious racketeers have recognized that the native criminal element is too well known by local police to be useful in carrying out their criminal designs. They have resorted to importing "workers" from other territories. The new law would enable the police to locate "imported" criminals at a moment's notice.

Law Benefits Majority

"We have no intention of hounding the men who have broken the law and have paid the penalty," Mr. Geoghan said. "But this law is for the benefit of the law-abiding majority." He referred to European cities where even visitors have their every move recorded and checked.

"Los Angeles has a local ordinance to the same effect as the one contemplated," Mr. Geoghan stated. "It has been in effect for some months now, and they wire me that the system is a good one. It keeps criminals out."

Strange Case Makes Court Appearance

On rare occasions do cases without legal precedent arise, but one which is based on no previous legal theory apparently has appeared on the court records in White Plains.

It is the contention of the plaintiff, an infant, according to the complaint, that he was entitled to "the right to the enjoyment of the natural love, affection, esteem and regard of both his parents together." This right, it is claimed, had been abrogated when the defendant, a wealthy Mount Vernon undertaker, caused the plaintiff's mother to leave her husband, four years ago, leaving the plaintiff deprived of "mother love" that was rightfully his. As a result, the plaintiff claims that he had been unable to have the proper education and home life.

Supreme Court Justice Frederick P. Close, admitting that he had never met with such a unique set of facts, reserved his decision, on a motion of the defendant to dismiss the case because of lack of grounds, until he had further searched legal history.

The Almanac Case: A Lincoln Anecdote Founded on Fact

Probably one of the most popular stories told about Abraham Lincoln is the "almanac case." Unlike the anecdotes along the line of Parson Weems' Washington cherry tree myth, it is absolutely founded on fact. On some points, however, there is not complete agreement.

Defendant Used Weapon

"Duff" Armstrong was being tried in 1857 for the murder of a certain Metzker. The facts of the case, briefly put, follow. On the night of August 29, Armstrong and a man named Norris had successive drunken fights with Metzker. It was Armstrong's contention that he beat Metzker with his fists only; Norris did not deny using a piece of wood in his assault. Lincoln's main difficulty in defending Armstrong came from one Allen, who testified that during the fight he saw Armstrong strike Metzker with a sling shot. If the defendant had used his fists only he could not be held for murder.

The witness stated that he saw so clearly what happened 150 feet away from him because the moon was shining brightly. There is conflicting evidence as to whether he asserted the moon was where the sun would be at ten o'clock or one o'clock, and Allen was uncertain whether the conflict ensued at ten o'clock in the evening or at eleven. Lincoln immediately pointed out that if the witness was so befogged on these important facts, his entire testimony might be inaccurate.

Almanac Produced in Evidence

But to completely refute the testimony, Lincoln produced an almanac. The popular story maintains that the almanac showed there was no moon shining that night, but this is inaccurate. The Illinois lawyer demonstrated by the almanac that moonlight at eleven o'clock, when the fight occurred, would not sufficiently illumine the scene of the fracas to enable Allen to see any blow struck.

There are various beliefs about the almanac. It has been contended that the pamphlet was one for 1853, in which the figure 7 had been put over the 3; that when Lincoln called for an almanac he was given an 1856 edition and innocently used that; that the almanac was not examined. The best evidence holds that an actual calendar for 1857 was shown to judge and jury.

The almanac alone did not win the case, although the average person has been led to believe so. It was Lincoln's personal plea to the jurors, on the heels of the demonstration, which freed Armstrong.

Aviation and Aviation Law

By HAROLD J. BAILY, Esq.

(Mr. Baily, who received his B.A. degree from Amherst College in 1908 and took a course in Civil Engineering at Purdue University from 1908-1909, was graduated from Harvard Law School with an LL.B. degree in 1912. He was a special attorney for war work in the Department of Justice, Washington, D. C., during 1918-1919 and was admitted to practice in the Supreme Court of the United States in 1918.—Editor's Note).

On November 5, 1933[1] an observation plane of the New Jersey National Guard crashed into a dwelling in Shrewsbury, N. J., and the six people who were trapped in the house were all burned to death. The pilot and his observer were also killed. Investigating officials were inclined to believe that the accident was unavoidable and was an "act of God."

On Sunday morning, November 12, 1933[2] four youths, one of whom had a limited commercial pilot's rating, went on a joy ride in an airplane in Brooklyn to complete an all-night Armistice celebration and dance. The plane was rented from a corporation which considered the pilot skillful and which had rented him planes frequently. Before its final crash the plane struck a tree, a church spire, an elevated station and cut a hole in the roof of an apartment house tearing away fifteen feet of cornice. The pilot was badly injured; the other three were killed.

On November 24, 1933[3] a ten passenger transport plane, which was carrying no passengers or express, crashed into a field seven miles north of Ottawa, Illinois, killing the two pilots and the stewardess. Nine minutes before the crash all was reported by radio as going well on the plane and the news dispatch stated that the cause of the accident was unknown.

Still Room for Progress in Aviation

These three instances suffice to show that there is still room for progress in making flying safe for pilots in the air and for persons and property on the ground. With the expected increasing use of privately owned and operated planes[4] to be purchased at about $700, accidents, in which such private planes may figure, may for a while increase in number. The record for safety achieved by the American passenger transport lines is very good and may be expected to grow steadily better. It is the so-called "miscellaneous flying" which is more dangerous to the man on the ground. Every person engaged in flying, whether public or private, should resolve to exercise Lindbergh-like care[5] lest something he does or fails to do should result in injury or loss to anyone. Airplane accidents are still too frequent, yet the Lindberghs fly around the globe in apparent comfort and safety. It will probably be long before Mr. and Mrs. John Doe soar from continent to continent as the Colonel and his wife do, but already transoceanic flights are commonplaces to them.

Few Fatalities on Passenger Lines

During the first six months of 1933 there were 765 accidents in miscellaneous flying of civil aircraft. Of the 1310 persons concerned 128 lost their lives and 90 were severely injured. 409,356 miles were flown per fatal accident.[6] During the first half of 1933 American-operated air passenger lines had but two passenger fatalities. 38,321,196 passenger-miles were flown per passenger fatality.[7] From January to August inclusive in 1933 108,408,620 passenger-miles were flown on domestic air lines which was an increase of 27.3% over the corresponding period in 1932. During the first eight months of 1933 4, 764, 150 pounds of mail were carried. *Aviation*[8] says that "Air transport enters 1934 with a prospect of still better business, as faster schedules,—more comfortable planes,—better service to passengers,—and growing public confidence and slowly developing public habit show their effects." Aviation is already of great value in peace and war; it may sometime become a means of transportation as safe and more important than any other known today, and rules of law governing liability should be thought out carefully with the future as well as with the immediate present in mind.

Plane Crashes Into Transmission Towers

On September 6, 1933 the County Court of Monroe County, New York,[9] decided an appeal from a judgment of the City Court of Rochester. On July 14, 1931 at about ten o'clock at night defendant flew his airplane into one of plaintiff's fifty foot transmission towers and bent it over. Plaintiff's complaint contained a count alleging negligence and another alleging trespass. The undisputed evidence showed that defendant's engine stopped from some cause unknown while the plane was flying at about 2,000 feet and as he did not see the tower he crashed into it while attempting to land. The trial court dismissed the cause of action based on negligence (the plaintiff relied on the theory *res ispa loquitur*) and this dismissal was affirmed on appeal. The trial court denied plaintiff's motion for a directed verdict on the second count and submitted to the jury the question as to whether there had been a trespass. The jury found for the defendant. The appellate court decided that as a matter of law there had been a trespass and that the only work for a jury was to assess the amount of damages sustained by the plaintiff. The judgment appealed from was reversed and a new trial ordered. Relying on *Swetland v. Curtiss Airport Corporation*, 55 Fed. (2d) 201 (1931) and *Smith v. New England Aircraft Co.*, 270 Mass. 511 (1930) the court stated that an owner of land does not own the space above it to an indefinite height, the old maxim to the contrary notwithstanding. It was said, however, that the owner did have the exclusive right to build a structure on his land into the space above it and the court decided that the rights and responsibilities of the two parties were exactly the same as they would have been had the plane struck the ground instead of the tower. Neither the court nor counsel were able to find any decision exactly defining what those rights and responsibilities were. Judge Lynn agreed with counsel for the defense that time and again for unknown reasons airplane engines do stop while in the air thus compelling forced landings which often result in a crash, and said on page 851:

* * * When, therefore, a man takes over another man's land a machine

1 *New York Times*, November 6th and 7th, 1933.
2 *New York Times*, November 13, 1933.
3 *New York Times*, November 25, 1933.
4 32 *Aviation* 382, 379 (December 1933).
5 That leaders in the industry recognize this is evidenced by the following quotation from an editorial in 32 *Aviation* 380 (December, 1933): "In air line operation one mistake is one too many. To deserve the continued increase of public confidence and public patronage we must constantly meet two extraordinarily difficult specifications. First, every individual must do his job PERFECTLY. Second, every individual must NEVER fail to keep his eyes open and his wits sharpened even beyond the strict bounds of his own responsibility. Anything short of that is a clear invitation to mishap."
6 5 *Air Commerce Bulletin* 95 (October 15, 1933).
7 5 *Air Commerce Bulletin* 63 (September 15, 1933).
8 32 *Aviation* 1 and 381 (December, 1933).
9 *Rochester Gas & Electric Corporation v. Dunlop*, 148 N. Y. Misc. 849 (Sept. 6 1933), Adv. Sheets, Oct. 21st, 1933.

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Bingay Scores "Yellow Press"

Justice Subordinated to Circulation, Charges Detroit Free Press Director

CRIME IS GLORIFIED

Newspapers Powerless to Attack Unethical Brethren Is Claim of Editor

(Believing the problem to be one that has aroused the public at large, as well as the bar and judiciary, THE JUSTINIAN *herewith presents a third article in a series dealing with Crime and News. In the interview below, Malcolm W. Bingay, editorial director of the Detroit Free Press, reiterates the views he expressed in August when he addressed a convention of the police chiefs of the United States in Chicago — Editor's Note)*

"Justice is subordinated to make a circulation holiday!" So believes Malcolm W. Bingay, a reporter and editor for over 30 years, and at present, editorial director of the Detroit Free Press. His views, he maintains, are not unique except that he is the first editor to voice them. Like the good doctor, Mr. Bingay says, the good journalist is loath to attack the quack in his profession.

This is so, he contends, because the yellow press has no scruples about vilifying those who attempt to expose it. Vituperation is their bludgeon, according to the editor, which keeps critics, police officials, prosecutors, and even judges in line. The entire political entanglement, according to Mr. Bingay, results from the lack of social consciousness on the part of the yellow press; to gain more readers they flaunt crime, to flaunt crime they must influence officials.

"Crime is made as attractive as words and trick photography can make it," he charges. The criminal becomes a hero in the eyes of older boys and young men, a glorified Dick Turpin or Jesse James, he contends. The yellow press almost shouts an invitation to the younger generation to become criminals.

Yellow Press a Tipster

The ramifications of the problem, declares the editor, is amazing as well as horrifying to any American citizen who is interested in social welfare. For example, if a citizen so much as hints to a fugitive that the police are on his trail, or divulges details of a crime which show what man is wanted by the police, he is censured for aiding and abetting. But with perfect freedom, the yellow journals "tip off" criminals, so that "he who runs may read." The yellow press, Mr. Bingay asserts, actually acts as a tipster. "Anything to get a scoop, or a headline. It matters not that justice has been thwarted; that a wronged community loses an opportunity for redress."

Referring to "trial by newspaper," he charges the yellow press with going far beyond the domain of the journalist's duty which is to *report*. The insidious evil of the yellow press is that it is attempting to *govern*. It is impossible to keep the jurors from glimpsing the daily paper, "Malcolm Bingay says, and thus they are influenced in reaching their verdict.

Press v. Crime

Newspapers themselves are powerless to attack their unethical brethren, Mr. Bingay explained, because the same process is used on them. The public shrugs its shoulders and says, "'Another newspaper war," he declared.

Mr. Bingay's indictment of the yellow press as the main ally of crime is one of the most sweeping made in a year which has seen concentrated efforts to oust racketeering, kidnapping and gangsterism. He does not believe in censorship, but favors a strictly adhered to code of ethics, and education of the public as means to combat the influence of the yellow press.

Purging of Bar Asked by Evans

Urges Elimination of Sharp Practice and Unethical Lawyers

EARNINGS NOT PRIMARY

Members of Legal Profession Should Co-operate for Mutual Benefit

"Clean house in the legal profession" demanded Earle W. Evans, President of the American Bar Association in a recent Chicago address at a banquet given by the Illinois State Bar Association and the Chicago Bar Association for justices of the Supreme Court of Illinois. In figurative language he urged the profession to purge the bar of unethical practitioners in the same way that the Temples were swept clean of money changers.

"It is never the primary object of the legal profession to make money," he declared. "It is the public interest that we seek first and sincerely." Although we have parasites in the profession who regard it merely as a means to making money, we never heed them. Such people seem to consider their license to practice a permit to defraud the public and commit misdemeanors upon it. This cannot be helped, he averred, "but their activities can be curtailed, or they can be driven out of the profession."

Lawyer's Duty Is Co-operation

Mr. Evans insisted that it is not enough for the ethical lawyer to be merely ethical himself, it is also his duty to see that other members of the profession practice in an equally ethical fashion. The lawyer's greatest duty, he contends, is to the public, and not to the individual or to the profession, and that the primary purpose of cooperation among bar associations should be the effort to place the legal profession above reproach. He said that members of the profession have been challenged on this point—and should meet the challenge squarely.

"We know better than anyone else the men who are traducing the profession," he concluded. "Let us rise to the demands of the public and the newspapers and reform or suppress them."

Junior Group Holds Smoker

The Smoker of the second-year 6-8 class, held Friday, November 24, in the Men's Lounge, was acclaimed both by members of the class and guests as one of the most entertaining affairs of its kind held in the School.

The case, prepared by Manuel Moldofsky, president of the class, with the assistance of Harold G. Robbins, Chairman of the Smoker, Maurice Goldberg and Frank Gross, and presented by them, concerned itself with the efforts of a returned World War veteran to gain possession of a child, on the doctrine of accession, which had been born to his wife, said wife having been the subject of a bailment during the absence overseas of the plaintiff.

Edward A. Hancock, president of the class last year, ably and profoundly acted the part of the Judge; Manuel Moldofsky took the part of the plaintiff, Jacob Dorf; Maurice Goldberg was the attorney for the plaintiff; Frank Gross was the defendant, Strachey O'Toole; Harold G. Robbins was the defendant's attorney and Kermit D. Ballin enacted the role of Court Clerk.

COURTS OF NEW YORK

By MILTON G. GERSHENSON

(This is the first installment of a series presenting a chronological history of the courts of New York state from 1664 to the present day.)

When the English took over the colony of New Amsterdam in 1664, they found an organized system of courts operating under the Roman-Dutch theory of jurisprudence. Anxious to eradicate all institutions of the former sovereigns, the Duke of York, to whom the colony of New Amsterdam had been given, instructed his first colonial governor, Col. Richard Nicholls, to revise the judiciary to approximate the English system. At the "Hempstead (L. I.) Convention," called by Nicholls in February, 1665, the "Nicholls Code" was promulgated. By its terms, the general town affairs were administered by a Constable's, or Town, Court, one to each town, consisting of two overseers and the town constable; if he so desired, the Justice of Peace had authority to preside over them. The Town Court possessed jurisdiction over simple civil causes such as debt, trespass and the like, including some equitable powers, up to five pounds sterling.

Court of Sessions Assigned to Circuits

Three circuits, or "ridings" were established, and a Court of Sessions assigned to each. The ridings were: North riding, comprising Queens County (except Newtown) and Westchester; West riding, comprising Newtown, Kings, and Staten Island; East riding, comprising Suffolk county. The Court of Sessions was presided over by a Justice of the Peace, appointed by the Governor of the colony and his council. The Sessions court sat three times per year (later two) in its "riding". It possessed unlimited equity jurisdiction, and had civil jurisdiction of all cases involving five pounds or more, with a right to appeal to the Court of Assize if the controversy involved more than twenty pounds, or, irrespective of amount, if the Court of Sessions committed an error of law. Sessions also possessed criminal jurisdiction in non-capital cases. While probate and surrogate's functions were possessed by the Governor, they were exercised by him only in special cases, the Court of Sessions usually acting as an Orphans' and Probate Court. In New York City and, later, in Albany, the so-called Mayor's Court, composed of the Mayor, the Aldermen, and the Sheriff acted as the Court of Sessions. We find the Mayor's Court, in its various forms, continued uninterruptedly for 156 years until its abolition in 1821.

Governor and Council Composed Supreme Court

The supreme judicial council was the General Court of Assize, composed of the Governor and his council and the justices of each riding, which met once a year in New York City. The Mayor and Aldermen, on occasion, might also join its bench. It was a court of equity and common law, of unlimited criminal jurisdiction, and hearing civil cases involving over twenty pounds. It acted as a court of first instance in capital cases. (Some of the crimes of the period for which the punishment was death were: murder, heresy, perjury with malice resulting in the death of another, burning a building, beating a parent, kidnapping, third offense burglary). However, if more than two months would elapse before the next session of the Assize, a special commission of Oyer and Terminer might issue, and a special tribunal assemble to immediately hear the capital case. It also possessed supreme power to make, alter and abolish any laws. An appeal lay from its decision only to the King and Privy Council. In concert with the Governor and Council, it acted as a legislative body, a common feature of this period.

Brief Summary of Procedure

The procedure of this period may briefly be summarized as follows: Right of trial by jury was carefully adhered to, the only modification on English procedure in this regard being that the jury consisted of six or seven members; later on, due to strenuous protests from the Colonial Assembly, a jury of twelve was used. However, even at this period, a jury of twelve was empanelled in capital cases. The verdict of the majority controlled; the verdict might be either general or special. In capital cases, the unanimous verdict was required. All writs and processes were issued by the justices or the high sheriff, except special warrants issued by the Governor. Before the Sessions met, the clerk of the Sessions notified the Sheriff how many cases were to be tried, and the Sheriff issued warrants to the town constables for jurymen, who were selected from the overseers. Talesmen might also be selected as the occasion demanded from among the persons attending court, or the inhabitants of the town in which the Session was sitting. Trial by jury was available not only on the original trial, but upon an appeal where new evidence was to be given. On the appeal, the court was required to judge the case according to the former evidence and none other, unless some material witness was not in the country at the former trial, or was prevented from attending. No Justice of the Peace who had presided in the inferior court could vote on the same case when appealed to the Assize. Security for the prosecution of the appeal had to be put up by the appellant, including a penal sum to be forfeited to the respondent if the judgment were sustained. All appeals were by petition, appellant filing with the clerk of the lower court six days before the beginning of the Assize a brief statement of the grounds for his appeal. This was transmitted to the appellate court, and a copy furnished to respondent. An appeal lay to the Assize from the Sessions where less than twenty pounds was involved, as above noted, if there was "a dubiousness in the expression of the law."

Operation of Court System Continued

The operation of this system of courts continued during the succeeding governorship of Lovelace, but was terminated by the temporary recapture of New York by the Dutch and the appointment of Colvé as the Dutch governor. There were reinstated all the former Dutch institutions and the colony took on its original appearance, until 1674, when, by a peace treaty settled in Europe, New York was restored to the English. Sir Edmund Andros was appointed governor for the newly reacquired province, and, upon his arrival, he reinstated the courts of the Nicholl's code. Under the regime of Andros, the Court of Assizes became the principal legislative body for the colony, as well as the highest court of the province, assuming the proportions of a General Assembly; in October, 1680, its bench was made up of thirty-one members composed of the leading figures of the colony. However, the general harsh treatment administered to the colony by Andros led to his recall in 1681. Succeeding him was Col. Thomas Dongan, who arrived in 1683. Due to the arbitrary taxation and oppressive treatment of the Andros regime, considerable pressure was exerted for a colonial General Assembly.

In September of 1683, Dongan acceded to the demands, and a General Assembly was set up, convening for the first time in October of that year. While several of its acts met with Crown disfavor, as, for example, the attempted promulgation of a colonial charter, the chief legislation which is within the scope of this discussion was "An Act to Settle Courts of Justice" (1684) which created the following hierarchy of courts: Every town received a Petty, or Town Court, presided over by three commissioners appointed by the governor. This court met monthly or fortnightly for the trial of small causes, such as debt and trespass, having jurisdiction up to 40 shillings. A

(Continued on page 7)

Accident Claim Arbitration Seen

Moses H. Grossman Describes Proposed Procedure for Initiating Reform

PLAN EXTENDING LAW

Suggests Inclusion of Tort Actions in New York Law for Arbitration

Speaking favorably of a plan for the compulsory arbitration of all automobile accident claims, Moses H. Grossman, former Justice of the Supreme Court, in an interview, described the proposed procedure for initiating the reform. Judge Grossman is chairman of the Committee on Arbitration and Conciliation of the New York County Lawyers' Association which, in its report to that body on April 23, 1933, submitted the proposal.

Legislative Action Needed

The report shows that the committee had conferred with Judge Frederick E. Crane, of the New York Court of Appeals, regarding the possibility of developing the suggestion made by him in an address before the Association of the Bar of the City of New York on Januray 28, 1932, to extend the Compulsory Arbitration Law to include a certain number of tort actions. It was agreed that certain legislative amendments to existing statutes relating to the issuance of automobile licenses were necessary if Judge Crane's suggestions were to be made legally effective.

The committee made the following suggestion:

"The New York Arbitration Law should be amended to provide for obligatory arbitration of automobile accident claims at the option of the injured party, and that in obtaining an automobile license, the licensee shall agree to submit to arbitration any controvery arising out of an accident between two licensed automobile owners."

Declares Plan Constitutional

In discussing the constitutionality of the plan, Judge Grossman declared, "If the right to drive an automobile is a privilege granted by the state, then the state may say as a condition precedent to the issuance of a license to the applicant that he must agree to arbitration at the option of the injured party in the event of an accident."

He said further that experiments in this field were made in 1922 by

(Continued on page 8)

Library Given To Association

Robert C. Morris, Vice-President of the New York County Lawyers' Association, made a presentation of a library on American citizenship on behalf of the Aline Brothier Morris Fund, at a meeting of the Association, October 19, which was accepted by Nathaniel Phillips, chairman of the Association's committee on American citizenship.

The library contains a specialized collection of books that treat of the development of the country and its system of government. In his acceptance speech, Mr. Phillips stressed the importance of such a library to civic-minded lawyers who are interested in the gospel of good citizenship, and urged the leaders of other Bar Associations throughout the country to bring about the establishment of similar libraries.

The gift was made possible through the founding of the Aline Brothier Morris Fund, which was named to commemorate the efforts of a French immigrant, naturalized in this country, who sought to instill in her fellow Americans faith in American principles and an earnest devotion to its ideals.

C.C.N.Y. Group Charts Plans

Active College Club Intends to Hold Inter-Club Debates Soon

BECKER HEADS SOCIETY

Professors Maloney and Murphy Among Speakers at Recent Meetings

With its membership increased, and the officers for the new term having been elected, the City College Club, which has already held three meetings since the beginning of the semester, can lay claim to being one of the most active organizations in the Law School.

The opening session of the club featured as its guest speakers Professors Richard J. Maloney and James Lawrence Murphy. Professor Maloney spoke on "Some Legal Aspects of the N.R.A." and enlivened his talk by illustrating from the experiences in drawing up codes for various industries.

Election of Officers

The election of officers was held at the second meeting of the club and the following were elected for the 1933-34 school year; Theodore Becker, President; Frank Sacks, Vice-President; Bernard Harkavy, Secretary, and Elliot Krouse, Treasurer.

At the last meeting, the club was addressed by Irving Levy, Special Assistant Corporation Counsel, who spoke on "Generalization and Specialization in the Law."

Under the guidance of Professor Robert Reuben Sugarman as faculty advisor and as the result of its membership campaign, the club has doubled its membership. The plans which have been formulated for the future include the participation in an inter-club debate on a topic of interest to lawyers and law students and in this connection, a team already has been selected. Also included in the plans is the organization of a moot court competition between the various college groups.

In addition to these activities the club has laid out a program of legal forums in which prominent members of the bench and bar will be invited to participate.

The members of the club consist of students and alumni of the Law School who have attended the College of the City of New York. Bi-monthly meetings are held in the College Club room on the Mezzanine floor of the Law School building.

Freshman Class Plans Dinner-Dance

The extensive preparations which have been made by Charles Barasch, President of the first-year 7-9 class, for an informal Dinner-Dance to be held Christmas Eve at the Village Barn, augur well for its successful culmination.

Barasch, in the confident expectation that at least 150 members of the class and their guests will attend, has arranged with the management to secure for his class the greater portion of the cabaret and, further, he has been assured that two complete floor shows will be staged for the entertainment of the guests.

The subscription is $3.00 per couple.

Courage Needed

(Continued from page 1)

ing of high standards for lawyers to accept negligence and matrimonial cases, Professor Medina said. He asserted that the lawyers' duty is to aid those who need him, and if the prospective client is on the "right side of the case" the attorney should not refuse it merely "because it is dirty," he declared. Professor Medina contended that the aloof attitude that many lawyers display toward this type of litigation is merely a blind to hide their fear of a bitter legal battle.

Aviation and Aviation Law

(Continued from page 3)

which he knows is liable to crash upon and do injury to that land and the structures upon it, can it be said that he is an accidental trespasser within the meaning of those decisions which have exempted the trespasser from liability? It seems to me that the plaintiff proved one or the other of its causes of action. If it can be said from human experience that an aeroplane will not fall except through negligence, then the plaintiff proved a *prima facie* case under its first cause of action. If, on the other hand, common experience requires the opposite conclusion, namely, that no matter how perfectly constructed or how carefully managed an aeroplane may be, it may still fall, then the man who takes it over another's land and kills his cow or knocks off his chimney, has committed an inexcusable trespass. It must be kept in mind that when damage occurs in such a case, one or the other party has to stand it, and no reason readily suggests itself why it should not be the one who has brought about the chance occurrence * * *. To hold that the defendant here is absolved from liability, because he was himself free from negligence, is to hazard all the chimneys in the land, as well as live stock on the farms and even the people in their homes. The other alternative seems by far the more reasonable, namely: Such chance as there may be that a properly equipped and well-handled aeroplane may still crash upon and injure private property, shall be borne by him who takes the machine aloft. * * *

Trespass Matter of Law

Thus it was held that on the undisputed evidence the court below should have decided that there was a trespass as a matter of law and should only have submitted to the jury the question of damages. Nevertheless in a similar action unless it is absolutely clear at the time of pleading that there was no negligence and that the remedy under a count in trespass will be adequate it would seem judicious to plead negligence as well as trespass,[10] for it has been well observed that the duty to exercise due care in flying is almost as burdensome as absolute liability.[11]

The actual decision of the Rochester Gas & Electric case seems sound.[11] The Smith[12] and the Swetland[13] cases cited by the court are two leading cases on the extent to which ownership of the surface of the land carries with it ownership of the air space above the land. In the Smith case Chief Justice Rugg speaking for the Massachusetts court assumed that private ownership of air space extends to all reasonable heights above the land. Chief Justice Moorman wrote the prevailing opinion in the Swetland case in the United States Circuit Court of Appeals, Sixth Circuit, and said "As to the upper stratum which he (the owner of the land) may not reasonably expect to occupy, he has no right, it seems to us, except to prevent the use of it by others to the extent of an unreasonable interference." The rule of the Smith case is to be preferred because as Professor Bohlen[14] points out only such flights are made lawful as will advance air transportation, and the aviator has the burden of proving that his flight is privileged.

Proposed Section

The following proposed section will come before the American Law Institute at its 1934 meeting:

§ 1038.[15] Travel Through Air Space. An entry above the surface of the earth, on the air space in the possession of another, by a person who is travelling in an aircraft, is privileged if the flight is conducted

(a) for a legitimate purpose, and
(b) in a reasonable manner, and
(c) at such a height as not to interfere unreasonably with the possessor's enjoyment of the surface of the earth and the air space above it.

Subdivision "c" of the section just quoted supports the decision in the Rochester Gas & Electric corporation case. Under the circumstances no doubt the defendant was flying for a legitimate purpose in a reasonable manner but he flew so low as to damage plaintiff's tower and thus unreasonably interfered with the plaintiff's enjoyment of the surface of the earth and the air space above it. The Committee on Aeronautics[16] of the American Bar Association does not agree with this proposed restatement because it thinks the rule would tend to promote vexatious litigation and is of the opinion that no landowner should have a right of action for the flight of an aircraft over his land unless it amounts to a nuisance. We prefer the proposed restatement of the American Law Institute to any other that has thus far come to our attention. The Institute points out that a constitutional law or ordinance fixing the height of flight would of course destroy the conditional privilege unless there was express consent, given in a proper case, by the landowner that flight might be below the height fixed by law or ordinance.

Provision of Act

The Uniform Aeronautics Act[17] which up to June 1st, 1932 was adopted in twenty-one states and one territory provides:

§ 3. The ownership of space above the lands and waters of this State is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in section four.

This section states a legal untruth[18] according to the American Bar Association Committee on Aeronautical Law in 1931 and the committee offered a proposed *Uniform Aeronautical Code* in place of the act. At the 1933 meeting of the American Bar Association[19] the committee was authorized to continue the study of the proposed *Code* and to confer with the committee of the Commissioners on Uniform State Laws which prepared the *Uniform Aeronautics Act*. The committee was requested to submit to the Association specific recommendations on the controversial sections of the proposed *Code* so that the Association's views thereon may be ascertained; the American Law Institute was requested to delay its final draft of the restatement of torts relating to travel through air space until after the 1934 meeting of the American Bar Association.

Liability Difficult Problem

It is thus recognized that one of the most difficult problems in the law affecting aviation is to fix the liability of the owner, pilot and other persons operating airplanes for the damages which may be caused thereby to persons and property on the ground.[20]

When courts and experts differ on matters of great public importance legislatures must decide between them. Legislation does not escape scrutiny for as has been shown in the *Uniform Aeronautics Law* adopted in 21 states and 1 territory has been sharply criticised[21] by the committee on aeronautical law of the American Bar Association although the law itself had previously[21] met with the association's approval. The interests of the public as well as the legitimate interests of aviation and the persons it serves require that wise rules and laws be adopted promptly. Of course it is of utmost importance that laws and rules should be just, clear, uniform throughout the country and in keeping with the best ideals of enlightened public interest. Among the things which should be very carefully considered is the advisability of compulsory insurance.[22] Judgments are frequently uncollectible; one accident might result in such extensive damage as to wipe out even a large corporation.

An international agreement dated May 29, 1933 known as the *Rome Convention*[23] provides that "The damage caused by an aircraft in flight to persons or property on the surface should give a right to compensation by the mere fact that it is established that the damage exists and was caused by the aircraft." The limits of liability are fixed, except in cases of gross negligence or wilful misconduct; insurance, cash deposits and bank guarantees are provided for and if the person liable dies an action[24] for damages lies in accordance with the terms of the *Convention* against his legal representatives. The *Convention* is applicable when any damage has been caused on the surface in the territory of one High Contracting Party by an aircraft registered in the territory of another. Do not obvious considerations similar to those which led to the adoption of this convention point to the desirability of adoption by each one of the United States of a uniform code of air law with as little further delay as possible?

[10] See *Torts. Trespass and Negligence.* Holmes *The Common Law* 77.

[11] *Trespass by Airplane*, 32 H.L.R. 569 (1919). See also: *Tort and Absolute Liability —Suggested Changes in Classification*, Jeremiah Smith, 30 H.L.R. 241, 319, 409 (1917) (*Rylands v Fletcher*, L.R. 3 H.L. 330 [1868] discussed at 409 *et seq.*)

[12] *Swetland v. Curtiss Airport Corporation*, 55 Fed. (2d) 201 (1931).

[13] *Smith v. New England Aircraft Co.*, 270 Mass. 511 (1930).

[14] *Surface Owners and the Right of Flight*, Francis H. Bohlen, 18 A. B. A. Journal 533 (August 1922).

[15] Tentative Draft No. 11 *Restatement of Torts* (Mar. 15, 1933), and discussion of Section 1038 on pages 18-22.

[16] Advance program *Report of Standing Committee on Aeronautical Law American Bar Association*, August 1933; 1933 U.S. Av. R. 259.

[17] *Uniform Laws Annotated* 15 (1932).

[18] 1931 *A. B. A. Report* 319; 1931 U.S. Av. R. 258.

[19] *Journal A. B. A.* Oct. 1933, p. 687.

[20] See: Notes 14, 15 supra, and *The Liability of an Aviator for Damage to Persons and Property on the Ground*, Julian G. Hearne, 37 W. Va. L. Quar. 269. *The Vertical Extent of Ownership in Land*, Stuart S. Ball, 76 U. Pa. L. R. 651 (April 1928). *Property in the Air as Affected by the Airplane and the Radio*, Hiram L. Jome, 62 Am. L. R. 887 (Nov.-Dec. 1928). *The Liability of the Aviator to Third Persons*, Rudolf Hirschberg, 2 U. So. Cal. L. R. 455 (1928-9). *Damage Liability in Aircraft Cases*, Arthur L. Newman, II 39 Col. L. R. 1039 (1929). *Air Navigation*, 69 A. L. R. 316-339 (See 320-322) (1930). *Liability of a Flying School for Damage Done by a Student-Pilot*, Franklin F. Russell, 4 Air Law Review 255 (1933). *Liability to Persons and Property on the Ground*, Robert Kingsley and Sam E. Gates, 4 Journal Air Law 515 (1933). *Aeroplanes and Aeronautics*, 83 A. L. R. 333-412 (See 335, 336) (1933). *The Reference Column*, 4 Journal of Air Law, *Negligence* 135; *Trespass: Nuisance* 136.

[21] 1931 A. B. A. Report 317, 319.

[22] *Compulsory Airplane Insurance*, George W. Ball, 4 Journal of Air Law 52 (January 1933). *Compulsory Aviation Insurance*, Robert Homburg, 4 Air Law Review 274 (July 1933).

[23] 1933 U. S. Av. 284. Dated May 29, '33 open for signature until January 1, 1934.

[24] Does not this suggest that the time has come to change by legislation whatever common law, formerly there is expressed in the maxim *actio personalis moritur cum persona*, which still survives?

Grouf Talks on Title Closings

(Continued from page 1)

he owes a duty to the client alone. The other capacity is as attorney to prepare papers. In that capacity he owes a duty to both parties as an attorney. He should be fair. He should not look to insert clauses which are tricky and give his client an unfair advantage. His function is merely to express fairly the agreement of the parties in legal terms."

Importance of Contract

Discussing the practical problems that confront the young lawyer when a client comes to him either as a prospective purchaser or buyer the speaker urged that the contract of purchase is of utmost consideration in the closing because, from a legal point of view, the contract as such fixes the method of closing.

"When your client desires to sell the property," he continued, "before you draw up any papers, know the exact state of the title. Find out whether he has a title policy or whether he has a title policy report in his possession. It is of utmost importance to set forth in the contract the incumbrances such as mortgages, liens, easements, chattel mortgages, conditional bills of sale and any and all leases specifically referring to them, stating the present rental that the seller is actually receiving. More lawsuits originate with misstatements or overstatements as to title and the rentals than other considerations of the closing. The defense of fraud is the immediate cry of the purchaser who refuses to take title. So you can see the absolute need of knowing the exact state of the title and the value of incorporating written representations as to the existing incumbrances and rentals.

Representing a Purchaser

"If you are representing your client as a purchaser," he added, "there are many questions that you should ask him. Learn how much he has paid down and whether he actually knows the seller. If he is unacquainted with the seller insist that the deposit be put in escrow. Like the seller, find out the status of the title. The buyer, of course, is desirous of including in the purchase 'all appurtenances.' Suppose for example the property is unimproved, ask your client whether there are any sewers in front of the property. How many buyers of unimproved property are wholly unmindful of such a simple detail. Look out, also, for the restrictive nature of the neighborhood. You avoid such difficulty by inquiring who the seller is. If a corporation, they are probably selling according to a neighborhood scheme. Such an inquiry will save your client much time and money."

Windels Chosen As Mayor's Aide

(Continued from page 1)

1924 and 1928, and a member of the Republican Executive Committee from 1917 to 1918. He was one of the delegates who supported Calvin Coolidge's nomination in 1920, through every ballot.

A life-long resident of Brooklyn, Mr. Windels, his wife and their four children, reside at 10 Pineapple Street, in the Brooklyn Heights vicinity. He was born in the Williamsburgh section on Dec. 7, 1885, was educated in the public schools of this borough and received his A.B. degree from Columbia University. Brooklyn Law School awarded him an LL.B. degree in 1909, and the following year his degree of Doctor of Jurisprudence.

He was admitted to the bar in 1910, and, for the next three years, was employed in the law firm of Emmet & Parish. Since 1913, Mr. Windels has been associated with his brother, Arthur Windels, in the firm of Windels Brothers, at 149 Broadway, Manhattan.

Recipient of Honor

He was a member of the First New York Cavalry from 1910 to 1913. In addition, Mr. Windels is a trustee and counsel for the Brooklyn Daily Eagle, trustee of the Museum of French Art, of the French Institute in the United States, a member of the Association of the Bar of New York City, the National Republican Club, the Downtown Association, and Anglo-Saxon Lodge 137, F. & A.M. The Government of France conferred upon him the Chevalier of the Legion of Honor in January of this year. He is a member of Phi Delta Phi legal fraternity.

During the recent campaign, Mr. Windels was one of the Mayor-elect's closest advisers, serving as assistant to William H. Chadbourne, the Fusion Party campaign manager.

N. Y. U. Club Active

The New York University Law Club, in accordance with one of the purposes for which it was organized, is taking in hand freshmen members of the club and explaining to them the basic principles of the law.

A departure from the usual routine activities of the club was observed during the Thanksgiving Holidays by a trip which was made to the 54th Street Night Court, at which Magistrate Samuel Katz presided.

On December 10, the club held a Supper-Dance at a Broadway restaurant, preceding which those present made a trip to a radio broadcasting studio.

The Quizzer's Corner

By MILTON G. GERSHENSON

This is the second in the series of quizzers offered to give students an opportunity to familiarize themselves with "Yes-No" questions similar to those propounded in bar examinations, and other tests of the same type.

In answering the questions, it is intended that a simple "yes" or "no" answer be given. No remote rule of law or exception is to be sought for. No hidden meanings are intended. Do not add any facts to those presented in the question. Where a ruling is requested on offered proof, it may be assumed that the document has been properly offered in evidence. However, there is no basis for assuming that questions preliminary to the one propounded in the problem have already been asked, except as otherwise set out in the statement of facts. In all questions of evidence, it may be assumed that improper questions have been objected to, and an exception been taken.

The series is purely experimental, and student comment is invited. If favorably received, it will be permanently continued.

There is on file in the office of THE JUSTINIAN full citations for the answers given below to the first set of quiz questions propounded in the last issue.

1. A, maliciously and without probable cause, circulated a story that B had stolen his automobile. A so informed a magistrate, who issued a warrant for B's arrest. Upon the arraignment, the magistrate for no good reason made the following statement: "You are a typical example of a liar and a thief, and I consider you a menace to this community." Upon the trial of the action, B denied that he had stolen the car. In summation, the district attorney referred to B as a liar and perjurer of testimony.

(a) The judge is liable to B for slander.....

(b) The district attorney is liable to B for slander.....

(Karelas v. Baldwin, 237 App. Div. 265; discussed in 2 Brooklyn Law Review 299)

2. The president of a New York corporation is liable in damages to the secretary of the corporation for the secretary's imprisonment under a validly issued order of contempt granted for the failure of the secretary to produce the books of the corporation upon proper demand, where he had previously turned over the corporate books to the president.....

(Schichowski v. Hoffman, 261 N. Y. 389)

3. W asked the father and sister of her prospective husband whether he was well and if he had any bad habits. Although they knew at the time that he had tuberculosis and was a drug addict, they answered that he was well and had no bad habits. Relying on these representations, W married H.

(a) Upon discovery of the true facts, W may have the marriage annulled.....

(b) Assuming that an annulment has been granted, W may thereafter sue the father and sister for damages for fraud in inducing the marriage. .....

(c) Assuming that the action for annulment is maintainable, W may recover as damages therein only her actual pecuniary loss.....

(d) Assuming that there is nothing wrong with H, and that H married W solely on her representations that she would furnish him with sufficient money to set him up in business, he may have the marriage annulled solely on the ground that she has refused to turn the money over to him.....

(Leventhal v. Liberman, 262 N. Y. 209; discussed in 3 Brooklyn Law Review 136)

(Shonfeld v. Schonfeld, 260 N. Y. 477 reversing 236 App. Div. 271; discussed in 2 Brooklyn Law Review 124)

4. A city may constitutionally assume liability for injury to an innocent bystander who is wounded by a policeman, while the latter is pursuing robbers.....

(Matter of Evans v. Berry, 262 N. Y. 61)

5. The X newspaper syndicate secured an exclusive right to report the story of the flight of the dirigible "New York" to the North Pole. P, a passenger on the dirigible, signed an agreement, upon taking passage, that he would not radio any messages about the flight to newspapers since the X newspaper syndicate had exclusive news rights. Nevertheless, P made a contract with the Y newspaper syndicate to send messages informing them of the progress of the flight under the guise of radiograms to friends. P did this. Upon suit for the agreed compensation by P against the Y syndicate,

(a) The Y syndicate may validly defend on the sole ground that the contract between it and P is in fraud of the X syndicate's rights, and is therefore unenforceable as against public policy.....

(b) P is liable to the X syndicate in tort.....

(c) P, in reporting the news, is committing a tort.....

(d) The contract amounted to a contract to commit a tort.....

(Reiner v. North American Newspaper Alliance, 259 N. Y. 250)

6. Where a professional gambler is sued by a casual bettor to recover money wagered on horseraces, defendant may offset amounts previously paid to plaintiff on other bets in which plaintiff was successful.....

(Watts v. Malatesta, 262 N. Y. 80)

7. W was riding in a car driven by her husband H. An accident occurred through the sole fault of H. W was injured. Assume in all questions that H was acting within the scope of his authority at the time of the accident.

Assuming that the car was owned by W:

(a) W may recover for her injuries in a suit against H.....

Assuming that the car was owned by H:

(b) W may recover for her injuries in a suit against H.....

Assuming that the car was owned by a partnership of which H was one member:

(c) W may recover for her injuries in a suit against the partnership. .....

Assuming that the car was owned by a corporation of which H was the president:

(d) W may recover for her injuries in a suit against the corporation. .....

Assuming that H was the chauffeur of X, the owner of the car:

(e) W may recover for her injuries in a suit against X.....

(f) W may recover for her injuries in a suit against H.....

Assuming that the car was driven by P, the partner of H, W's husband, the accident happening through P's sole fault, and that the car was owned by the partnership of H & P:

(g) W may recover for her injuries in a suit against the firm of H & P.....

(h) W may recover for her injuries in a suit against P.....

(i) W may recover for her injuries in a suit against H.....

(Wadsworth v. Webster, 237 App. Div. 319; discussed in 2 Brooklyn Law Review 315)

Answers to last month's questions

1.	l—Yes	x—Yes	
a—Yes	m—Yes	y—No	
b—Yes	n—No	z—No	
c—Yes	o—No	2.	
d—No	p—No	a—Yes	
e—Yes	q—No	b—Yes	
f—Yes	r—Yes	c—No	
g—No	s—No	d—Yes	
h—No	t—No	e—Yes	
i—No	u—Yes	f—Yes	
j—Yes	v—Yes	g—No	
k—No	w—Yes	h—No	

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Fraternities and Sororities

PHI DELTA PHI

The Phi Delta Phi Association was addressed by the Hon. John J. Freschi on the topic "The Trial of a Criminal Case," at the Association's Founder's Day Meeting, held at the New York Athletic Club on Wednesday, December 13.

Evarts Inn held its stated monthly meeting on Friday evening, December 8. Magister Joseph L. Delaney, presided. After the disposal of routine business, a smoker was held at which refreshments were served by the Entertainment Committee, the chairman of which is John R. Appleton.

IOTA THETA

At a ceremony held in the chapter rooms in Richardson Hall on November 22, Prof. Edwin Welling Cady conferred the pledge upon 18 undergraduates. They are:

First Year

Maurice Carr, 10-12; George Dorfman, 10-12; Max Furman, 6-8; Jerome H. Geller, 7-9; Norman L. Jeffer, 6-8; S. Stuart Kleiger, 7-9; Morris L. Naboischek, 10-12; Edward Perlstein, 7-9; George Podell, 10-12; Francis Poret, 10-12; David L. Rothman, 7-9; Jack J. Siegel, 4-6; Joseph Wahrhaftig, 7-9.

Second Year

Kermit D. Ballin, 6-8; Jason R. Berke, 6-8; Leon Sanit, 10-12; Herbert R. Silverman, 7-9.

Third Year

Herman Postel, 10-12.

The twenty-second annual national convention of Iota Theta Law Fraternity will be held on New Year's Eve at the Hotel Westover. Initiation of the pledgees will occur in January. There will be an Initiation Dance on February 24th, 1934, at the Cafe International.

The third bi-weekly Seminar Smoker was held on November 17. Prof. James Lawrence Murphy was the guest speaker. The next smoker is to be held on December 19 and the guest speaker will be Prof. Edwin Welling Cady who will address the fraternity on "Jerusalem."

PHI KAPPA DELTA

On Sunday, December 3, Iota Chapter of Phi Kappa Delta tendered a Fall dance which was held at the Pythian Temple at 130 W. 70th St. in New York City in honor of the pledgees. The alumni body attended together with the undergraduate members.

On Sunday, December 31, the Grand Council of Phi Kappa Delta will tender its annual Convention, this year celebrating its Twentieth Anniversary, which will be held at the Ambassador Hotel. The Convention Committee has completed arrangements, and an excellent orchestra has been selected. The Committee is composed of Harold Olian, Chairman; A. J. Alexander; Joseph Blatt; Bertram Bloch; Louis B. Chipkin; Sanford Neumann; Milton Solins; Ben S. Kaplin, Irving D. Goldwyn and Jacob M. Chizner, honorary co-chairmen; Roy Cantor; Sidney Eisenberg; Paul Hessel; Frohman Holland; Arthur Jaffee; William Kolodney; David Michlin; Abraham Olian; Chester Pearlman; Max Schwartz; Milton Siegel; and William P. Warshaw.

The formal induction of new members into Iota Chapter of Phi Kappa Delta will be held during Christmas week.

ALPHA GAMMA

Gamma Chapter held another of its series of Smokers, at the Fraternity rooms in Brooklyn Law School, Friday, November 17. A Grand Smoker will be held before the Christmas Recess.

On Christmas Eve, December 24, the Alpha Gamma Fraternity will usher in its annual formal dinner dance at the Hotel Astor. Many of the fraters from Temple University will attend.

Their roster has been enhanced by Mack Schenkin and Maximillian Klein, who are taking the fourth year course offered by the law school.

Edward Silverstein, '32, is at present awaiting the call of the Character Committee in Kings County. Bill Steinberg, '32 is doing likewise in New York County.

Edward S. Schubert and Louis Alfred Schwartz are now practising in New York City.

DELTA THETA PHI

The Senate was recently honored by a visit from National Chancellor Bergeron and District Chancellor Collester, John Jay Senate from St. John's Law School who were guests at the informal meeting which was held in honor of Chancellor Bergeron's visit.

The Senate pledged ten men during the "rushing" period. Benton Blair, David Brooks, John Crowley, Edward Curtis, Melvin Espach, Donald Engels, William Hoffman, Edward Stevens, Donald McKee and William Keafsey. They will be initiated on December 22.

IOTA ALPHA PI

The rushing season was formally closed on Sunday Dec. 3, at which time a Tea was given by Miss Gertrude Cohen at her home.

On Sunday, Oct. 29, 1933, the National Council tendered a bridge at the Waldorf-Astoria Hotel for the benefit of the Student Loan Fund.

Gamma Chapter held a Bridge Party on Sunday evening Dec. 10, at the home of Miss Edythe Morris for the benefit of the Student Scholarship Fund.

The Misses Ray Isaacson and Beatrice R. Willett, alumnae, recently have been admitted to the Bar.

The Annual Convention Dinner and Dance, which will be held on Sunday, December 24, 1933, at the Hotel Astor, will be the primary event, which will be followed by a week of rituals as part of the National Council Function, tendered for the Western and Northern Chapters.

OMEGA PHI

On Tuesday evening, November 14, Delta Chapter of Omega Phi Sorority held a meeting in Richardson Hall, and the members voted on prospective pledgees. The meeting also afforded members an opportunity to congratulate Mrs. Liroff, ex-President of Delta Chapter, known while at Brooklyn Law School as Ruth Teretsky, upon her admission to the New York Bar.

Delegates E. Sydelle Dickman and Ruth Spreiregen attended the Grand Chapter meeting in Manhattan on Friday, November 17, at which time final plans were made for the Convention Dinner Dance which was held on December 2.

TAU ALPHA PI

Zeta Chapter of Tau Alpha Pi Sorority held its second rush party of the season on November 7, at the El Bolero Restaurant, in Greenwich Village.

The new pledgees, Helen Segal, Lillian Zaretsky and Leona Morrison, all of the first-year class, received their pledge pins at a formal pledge party held Sunday, December 3.

The sorority announces that one of its members, Buddy Golden, was the only woman assistant Deputy Attorney General appointed, during the recent Municipal election, and that another active member of the chapter, Lea Ornstein, is one of the leaders of the Women's Fusion Party of Bensonhurst.

Cornell Alumni Club Organized

Professor Sugarman Explains Purpose and Function of College Groups

Graduates and former students of Cornell University gathered in the College Club Room Tuesday, November 28 and formed the Cornell Law Club of Brooklyn Law School. Prof. Robert R. Sugarman, organizer of the City College Club addressed those present on the purposes and function of the College Clubs.

Arrangements are being made to have prominent alumni of Cornell University, who are members of the bench and bar, address the club on topics of legal interest. An attempt will be made to have Samuel Leibowitz, well-known criminal lawyer and Supreme Court Justice John H. McCooey, Jr., as speakers in the near future.

Club Purposes Outlined

The club intends to initiate students entering Brooklyn Law School into the proper methods of training for a legal career, as well as fostering and furthering the friendships formed at Cornell University. Another purpose of the club will be the encouraging of scholarship by means of round table discussions of legal problems at the meetings.

An election of officers was held, and the following were elected: George J. Talianoff, President; Rose Margolin Fishkin, Vice President; Alfred B. Leventhal, Secretary; and Arthur Levy, Treasurer. The Charter members are Gladys M. Dorman, Rose M. J. Fishkin, Alfred B. Leventhal, Ira A. Halpern, Eleanor Schact, Jason R. Berke, George J. Talianoff, Samuel Frishberg, Lucien M. Tribus, Arthur Levy, Bertram Kaye, David Becker, and Mitchell Duberstein.

Class Groups Plan Cafe Dinner-Dance

The 6-8 sessions of the first- and third-year classes have combined for the purpose of meeting at a dinner dance which will be held December 23, at the Cafe International.

Invitations have been extended to Dean Richardson, Vice-Dean Hagendorn and Professors Cady, O'Neil, Wrigly and Sugarman.

The affair is under the co-chairmanship of A. Cymrot and G. Schneider, presidents, respectively, of the third-year and first-year classes.

Alumnus Addresses Second Legal Forum

Milton G. Gershenson, '33, spoke at the second meeting of the morning session legal forum, on Nov. 27 in room 200 of the Law School.

Gershenson analyzed the workings and merits of the various legal reference works and reports, and discussed the resources of the Brooklyn Law School Library.

The speaker gave a practical application of the value of a thorough acquaintance with the research methods. Several problems were suggested and the approach toward an authoritative solution of them was illustrated.

Professors Speak At Junior Smoker

Professors Robert Reuben Sugarman and Markley Frankham were the guests of honor at a Smoker tendered by the second-year 7-9 session on Friday, November 17, which was held in the Men's Lounge of the Law School.

The efforts of Isidore J. Rosen, president of the class, who was able to commandeer the services of many of the talented students of the class, were mainly responsible for the success of the affair.

200 at Student Council Dance

Tentative Arrangements Made for Informal Affair After Mid-Year Exams

The much-heralded Student Council School Dance, held in the Library of the Law School Saturday, November 25, which more than 200 people attended, gave further evidence of the increasing popularity of such school functions.

The success of the affair was due in part to the excellence of the orchestra which was engaged for the occasion and the untiring efforts of the Dance Committee, which consisted of I. Jules Rosen, Chairman, Manuel Moldofsky and Philip Smith.

Thousands of volumes stacked high on shelves around the dance floor served as a colorful and unusual background. The Men's Lounge was thrown open for the evening. Between dances the students and their guests were able to visit the Lounge for refreshments.

As a result of favorable comment concerning the dance, the Student Council has made tentative arrangements to hold another informal dance in the Library immediately after the mid-year examinations.

Fenster Addresses Union College Club

Tracing the history of a law-suit, illustrated by papers on two interesting cases, Joseph G. Fenster addressed the Union College Club of Brooklyn Law School on December 6 in the College Club room. Mr. Fenster, who has been practicing for over 25 years, was graduated from Union College in 1903.

He pointed out that the starting-point of a case is too often taken for granted. It is often wise, said Mr. Fenster to determine: first, whether your client has a case; and second, whether your client can secure action on a judgment. The former is more important, he continued, telling how he spent a period of six months before taking a certain case.

Recommending that in pleading, the cause of action be followed closely, Mr. Fenster explained that such procedure would prevent any floundering. He then traced two cases to their conclusion, showing what delays and side-issues may arise to hamper early termination.

The Club sent representatives to the dinner of the New York Alumni Association of Union College held on December 13.

Supper-Dance Opens First Year Season

The social season of the first year class opened with a supper dance given by the 10-12 session December 8 at the Paradise Restaurant. At 9:30 p.m. the first-year men and their guests began arriving, and not long after, the party was in full swing, aided by the effects of the recent repeal. The music of Paul Whiteman and the quips of N.T.G., master of ceremonies, soon had the group in the best of spirits, and after dinner an entertaining floor show was given.

Chairman Melvin Semel and President Lawrence Naboischek stole a march on class officers of other sessions to give the morning group the distinction of being the first to run a major social affair.

Alumni in Literature

(This is the second in a series dealing with Brooklyn Law School Alumni in literature. The third and final installment will appear in the January issue.)

Albert M. Cohen

Hon. Albert Martin Cohen, LL.B. '21, was re-elected last month to the New York Assembly to serve his seventh term in the Legislature. "Some Comments on the Mechanisms of Legislation in New York" appeared over his name in the recent number of the Brooklyn Law Review, and in October, 1932 THE JUSTINIAN published his "The Power of the Legislature," which was reprinted in the New York State Bar Association Bulletin.

Assemblyman Cohen, who was the first recipient of the Matheson prize award, was graduated *magna cum laude*. He is a resident of Brooklyn.

Henry H. Klein

Henry H. Klein, Five-Cent Fare Party candidate for Mayor, was graduated from Brooklyn Law School in 1922. He has spent since 1900 an interesting and colorful career in journalism, politics and law. Vitally interested in the welfare of the city, Mr. Klein has always been a crusader for efficient government and a staunch supporter of socially desirable legislation.

Some of his revelations have been published in a series of six books. They are: "Standard Oil or The People" (1914), "Bankrupting a Great City—The Story of New York" (1915), "Dynastic America and Those Who Own It" (1921), "Sacrificed—The Story of Police Lieutenant Charles Becker" (1927), "America, Use Your Head" (1932), and "Politics, Government and the Public Utilities in New York City" (1933).

Professor Cady, himself an author-alumnus, reviewed Mr. Klein's three books published in 1915, 1921 and 1927, as well as his pamphlet, "How to Prevent Economic Disaster," in the February, 1932 issue of THE JUSTINIAN. Mr. Klein has published his own books.

David S. Edgar, Jr.

Now teaching at St. John's Law School, David S. Edgar, Jr., who graduated from Brooklyn Law School in 1924 (LL.B.), is the co-author with his father of "The Law of Torts," a concise textbook first published in 1927. A second edition has appeared recently.

"Some Aspects of Unilateral Mistake" in the fourth volume of the St. John's Law Review, and "The Lawyer of the Future," just published in the same periodical, bear his name. He has lived in Brooklyn for the past 12 years.

Quentin Reynolds

Quentin Reynolds entered Brown University in 1920 after graduating from Manual Training High School. He was graduated from Brown in 1924 with the degree of Ph.B. He went to work for the Evening World doing rewrites and later sports, finally becoming a sports columnist. During the latter part of this time, Mr. Reynolds attended Brooklyn Law School, being graduated in 1931.

When the World was sold he went to the World-Telegram for a year, and from there to the International News Service. He covered all sorts of stories for INS, finally being sent to Germany. There Reynolds covered the revolution and the acts of the Hitler regime. At present he is on the staff of Collier's.

His latest article presents Germany today, and what Nazi control has accomplished with the younger generation, in schools and universities.

Isaac Pacht

One of the leading articles in the May, 1933 issue of the Brooklyn Law Review was written by Judge Isaac Pacht, who has been Judge of the Superior Court in California since 1931. Judge Pacht, a member of the California bar, discussed "Some Contributions of Social Work to the Law." He received his LL.B. from Brooklyn Law School.

Louis D. Schwartz

Automobile accidents and personal injury cases for the past several years have constituted the bulk of litigation in our lower courts. When Mr. Schwartz was graduated from Brooklyn Law School in 1924 he devoted enough time and attention to these types of action to produce two well-known books dealing with them.

"Cross-Examination in Personal Injury Actions" by Louis D. Schwartz came off the presses recently, while his "Trial of Automobile Accident Cases" has been used for the past five years.

Meyer Bernstein

The outstanding graduate of the class of 1925 at Brooklyn Law School was Meyer Bernstein, who had previously received an A.B. and M.A. with honors in mathematics at Columbia in 1916 and 1917. His facility with figures won for him an instructorship at Columbia.

Mr. Bernstein is the author of a series of articles which have appeared recently in several trade publications, dealing with the New York State Retail Tax. At present he is working on a revision of Professor Cady's third edition of "Corporations," dealing with the supplement and appendix on Corporation Taxation, which he wrote for the original book.

A graduate *summa cum laude*, he holds the Chancellorship of the Philonomic Council, law school honorary society.

Howard E. Metzger

Dr. Howard E. Metzger, who taught at Brooklyn Law School from 1927 to 1930, was drowned in the summer of 1931. He was graduated from Brooklyn Law School in 1926 and the following year was awarded the degree of Doctor of Jurisprudence. Thereafter he taught Agency, Real Property and Torts and acted as Dean Richardson's assistant. In 1930 he resigned to begin active practice.

He was born in Cincinnati in 1898 and received the A.B. degree from the University of Cincinnati in 1919. Subsequently he taught Public Speaking there and later lectured at New York University on Political Economy. His "Cases on Agency" has been used in the first year class for several years.

George I. Swetlow

Dr. Swetlow is an authority on Medico-Legal Jurisprudence, which he teaches. Two years ago his "A Syllabus of Medical Jurisprudence" appeared. He is the leading authority on malingering witnesses, writing a special department on this topic in "Trial Manual for Negligence Actions" which was recently published.

Dr. Swetlow received his degree from Brooklyn Law School four years ago.

Charles Solomon

The Candidate for Mayor on the Socialist ticket in the recent city election was Charles Solomon, who graduated from Brooklyn Law School in 1922. He is better known as a pamphleteer than as a writer of books. Political, economic, social and labor questions have received his attention.

His articles on social and labor questions are well known to social science students. Mr. Solomon is a former member of the editorial staff of The Daily Call, labor daily.

Brooklyn Law Review

The Brooklyn Law Review, founded in 1932, has fostered a new group of legal writers. Five graduates of the Law School have received the distinction of having their articles, originally written for and published in the Brooklyn Law Review, republished in the editorial column of the New York Law Journal. They include Julius Datler '32, and Jerome Prince, Herman Edelsberg, Peter F. Blasi and John E. Stone of the class of 1933.

et al.: The Justinian

COURTS OF NEW YORK

(Continued from page 4)

jury trial might be had upon special request and payment of fees. In New York City, (and Albany at a later period), there was the Mayor's Court, which had little different and broader jurisdiction — taking cognizance of causes not over twenty pounds. For each county, there was a County Court, like under the Nicholl's code, which was composed of three or more justices of the peace who met quarterly or half-yearly in each county. This court was known as the Quarter Sessions, or Sessions. In New York City, the court that corresponded to the Sessions court was made up of the Mayor and Aldermen and possessed unlimited civil and criminal jurisdiction.

Appellate Court

There was a general court of intermediate appellate jurisdiction, chiefly concerned with criminal prosecutions, called the Court of Oyer and Terminer and General Gaol Delivery, which corresponded to the Court of Assize. It was composed of one judge of the Court of Chancery, and four or more justices of the local Sessions court; two circuit judges were also appointed. The Court of Oyer and Terminer met in each county twice a year. When it sat in New York City, the Mayor, Recorder, and four Aldermen sat with the Circuit judges. While this court had unlimited jurisdiction both criminal and civil, it acted generally as an appellate civil court and an original criminal court. Criminal procedure, at this time, was mainly instituted by information on order of the Governor and council; there was little or no indictment by Grand Jury. Since the council had power to override even a refusal to indict handed down by a Grand Jury, and since there often sat on the council judges of the criminal courts, the history of criminal prosecution during this period is not a commendable precedent.

Supreme Court

The supreme court of the colony, under the Dongan laws, was a Court of Chancery, taking over part of the functions of the old Court of Sessions, composed of the Governor (he or his appointee being called the Chancellor) and the council. As in the traditional equity court, there was no jury. This court, during its motley history, was the most unpopular court in the colony, due to the fact that it carried into execution the whimsical "Crown prerogative" tempered by the personal disposition of the Crown's representatives, and also since this was the court which enforced the collection of arrears of land rents. At the same time, the Court of Assize continued over until its abolition by ch. 31, L. 1684, Oct. 29, whereupon the Court of Oyer and Terminer took over its functions at law. To anticipate possible non-recognition of this set-up of courts by England, the life of these courts was to be two years, subject to continuance by act of the Colonial Assembly.

Early Chancery Court

To trace the later history of the stormy Court of Chancery: it was continued by act of the Assembly until 1698; thereafter its only basis for existence was by executive order of the governors, who were determined to continue it. It was suspended from 1703-4 during the regime of Cornbury but was reestablished by ordinance in 1704, opposition to it continuing to become more and more determined. Periodically, the Assembly passed resolutions condemning it, and calling attention to the intolerable condition of a court of prerogative existing without legislative sanction. Notable among these protests was the one in 1727, provoked by the Phillipse case, wherein the speaker of the Assembly, engaged in litigation with the Governor, was defeated in the Court of Chancery in which the then Governor sat as Chancellor. Later protests in 1735 and 1737 merely resulted in a reluctance of governors of that period, who had no legal training, to sit as Chancellors. The court continued on until the Revolution, but its business dwindled until its function became small and unimportant.

New York City in 1683 petitioned Governor Dongan to pattern its local government more closely on that of London, and therefore requested that a Recorder be appointed to assist the Mayor in his court functions. A Recorder was therefore appointed, who "sat at ye right hand of ye mayor." From this time on, we find the Court of Sessions of New York City sometimes termed the Recorder's Court. In 1685, the Duke of York became King James II, and, upon the recommissioning of all provincial officers, he permitted the issuance of municipal charters to New York and Albany. In 1686, therefore, New York City was placed under the rule of the so-called "Dongan charter."

Terms of Dongan Charter

The Dongan charter provided (a) that the inhabitants of each ward in New York City should annually elect one alderman, one assistant alderman, and one constable; (b) that the Mayor, Recorder and Sheriff should be appointed by the governor; (c) that the high constable was to be appointed by the Mayor; (d) that laws and ordinances were to be passed by the Common Council, composed of the Mayor, Recorder, and any three aldermen, with any three assistants; (e) that the following courts were to be set up in New York City: A Court of Common Pleas, meeting in the city once a week, composed of the Mayor, Recorder and Aldermen, or any three of them, of whom the Mayor or Recorder must be one, for the trial of personal actions, such as debts, trespasses, ejectments, "according to the acts of the General Assembly and the rule of the common law." The same persons were empowered, as Justices of Peace, to sit as a criminal tribunal, and when sitting in this capacity were known as the Court of Quarter Sessions (later Sessions) which heard "trespasses and other offenses against the city such as petty larcenies, riots, routs, oppressions and extortions." The original title of Quarter Sessions was due to the fact that this tribunal met every three months; it was later known as the Court of Sessions, and commonly termed the Recorder's Court, since that dignitary presided.

Two Jurisdictions

During the Dongan period, we find the Mayor and the governing group of city officials sitting as: (1) the Common Council; (2) the Mayor's Court, now divided into (a) the Court of Common Pleas and (b) the Court of Sessions. After three years, it became apparent that since the Circuit Court of Oyer and Terminer overlapped the functions of the Recorder's Court of Sessions, and since the Mayor's Court (Court of Common Pleas) met more frequently and with comparative ease could take over equivalent jurisdiction, the Recorder's Court of Sessions was dropped and colonial Quarter Sessions Court substituted, now having exclusive criminal jurisdiction. There still existed outside of New York City, of course, the Court of Chancery, the Court of Oyer and Terminer, the Court of Quarter Sessions, and the Town Courts. In the year of the Dongan charter (1686) an Attorney-General for the province was appointed by the Governor.

Court of Judicature

Taking over some of the more obnoxious jurisdiction of the Court of Chancery, there was established in 1687 a court of exchequer, or Court of Judicature, whose purpose was to determine all royal revenue such as taxes, titles, lands, rents and profits. Since it was an unpopular court, to secure impartial decisions, the Governor and his council sat as the tribunal, meeting once a month in New York City. Later on, the exchequer function was shifted over to the Supreme Court.

At this time, therefore, we find the governor and council sitting as: (a) the Legislative body; (b) the Court of Chancery; (c) the Court of Exchequer, or Court of Judicature; (d)

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Civil Procedure Lawyers' Guild In New Court

Hon. Irving I. Goldsmith, former Justice of the Supreme Court and former member of the New York State Probation Commission, New York City, was the principal speaker at the Sixth Session of the Twenty-Sixth Annual State Conference of Probation Officers, which was held November 14, 15 and 16, at Utica, New York.

Defines State's Duty

At this meeting Judge Goldsmith read, "Legal Evidence in Children's Courts," an article which he had written and which appeared in the Brooklyn Law Review of October, 1933. In his talk Judge Goldsmith dwelt on the duty, obligation and prerogative of the state to protect and nurture the adolescent life of the child and proclaimed the Children's Court to be an instrument through which the rights of the child might be safeguarded and fostered and where social justice might be secured for him.

"The Children's Court is not a forum for the punishment of a child," asserted Judge Goldsmith, "but is rather a court of civil inquiry where the child is placed under observation and a survey made of his conditions and surroundings with the view of determining whether or not he is in need of safeguarding and guidance for his better physical, mental and moral development."

Civil Procedure Applied

"According to People v. Pikunas, 200 N. Y. 72," continued Judge Goldsmith, "the procedure in the Children's Courts, with regard to the competency and legality of evidence is now settled. The civil jurisdiction of the court, as expressed in the statute, is confirmed and the rules of civil and not criminal procedure are applied to its administration."

Lawyers' Guild Urges Reforms

A campaign to repeal the recent law increasing city court fees, and to eliminate lay notaries public, has recently been projected by the Brooklyn Lawyers' Guild of which Daniel Gutman is president pro tem. Mr. Gutman, an alumnus of Brooklyn Law School, '22, has been active in urging these reforms for some time past.

He pointed out that the law, adopted at the last special session of the Legislature as a revenue increasing scheme "would cause an unwarranted hardship upon businessmen seeking to collect judgments in small amounts." He stated that, "The fees would be anywhere from $15 to $25 and would make the collection of small claims practically prohibitive." The Guild intends to send a delegate to the forthcoming session of the Legislature to urge the repeal of this law.

The organization also adopted a resolution purporting to show that lay notaries public, appointed under the present statutes, although limited in power, were nevertheless using their office as a cloak for the illegal practice of law.

Alternate Plan Held a Success

(Continued from page 1)

tested in Federal Courts; however, the State enactment providing for that system did not go into effect until September 1st, 1933. The law provides that the system is to be used in the State Courts at the discretion of the judges who are permitted to direct the selection of one or two jurors in addition to the usual 12 in cases in which the amount of testimony to be taken indicates a long-drawn-out trial. The alternates are chosen in the usual manner from the regular panel, the attorneys for both sides being permitted a proportionate number of additional peremptory charges. The 14 men sit together during the trial itself, and are also present at the judge's final charge before being dismissed.

A Statute of Limitations

SAN SALVADOR

"Yes, crime doesn't pay."

It was the Judge of the Criminal Court of Santa Ana, San Salvador, speaking during the latter part of August. His voice rang clear as he banged the desk in his private chambers with his clenched fist.

"Crime doesn't pay," he repeated vehemently. "The law always catches up with you. If it doesn't, you can never escape from yourself."

A resident correspondent for the American Press nodded, "That's true, but do any of them ever give themselves up? Have you ever had a dangerous criminal surrender?"

The Judge did not answer, but turned to look at the clock on the wall. "I've got to be up on the bench now. I'm late. Come on in, we've an interesting session today."

The press correspondent followed him into the court-room. It was crowded. At eleven o'clock the chief court attendant pushed forward. His face was flushed. He dragged a short, ragged old man who limped.

The court room hushed. The audience evidently sensed that something unusual was about to happen. "Your honor," said the attendant, "this man insists that he speak to you. He wants to be tried for murder."

The Judge leaned over the bench to observe the bedraggled individual before him. Two armed guards walked up to the old man, who now stood close. His lips quivered as he spoke in a weak voice that seemed to echo from some distant past.

"I wish to be tried for the murder of .....I killed him on the night of October 26th, 1896, at 7 P. M., thirty-six years ago."

The spectators were transfixed.

The Judge stared at the old man. He recalled what he had said earlier in the morning. "You can never escape from yourself."

"Search the records," he barked at the attendant.

Ten minutes later, the attendant appeared, carrying a dusty black volume. It was opened to a faded yellow page. He placed the book on a table in front of the bench. He began to read.

"....., a young shoemaker, stabbed to death .... with a stilleto on the night of October 26th, 1896, at 7 P. M. Case incomplete. ... Testimony of physician lacking. ....Murderer escaped."

"I'm the murderer," shrieked the old man, "I killed him. Let a sentence be pronounced, Your Honor."

The Judge fingered a thick pie colored book. He surveyed the court-room with a sweeping glance. Every eye was fixed upon him. He arose.

"Case dismissed," he said. His voice was hardly audible.

A tear rolled down the cheek of the prisoner. "Thank you, thank you," he mumbled, with a trace of disappointment in his voice.

That night the press correspondent sat before the Judge. Both men were silent.

"Why did you dismiss that old man?" he asked.

The Judge raised his face.

"Our Statute of Limitations for murder is thirty-five years. I couldn't even try the poor fellow. What disturbs me," he added quizzically, "is that we could have found where he had been for the past thirty-six years."

The correspondent smiled.

—S. K.

Preparation of Legal Papers

By HARRY L. RAFFEL, Esq.

It is amazing to note the degree of apparent carelessness found in legal papers drawn by lawyers and daily rejected by the Clerks of the various courts. Lawyers prepare papers in haphazard fashion and depend upon their opponents negligence, inexperience and, even, inability, to take advantage of the many loop-holes which permeate the faulty pleadings. Many overlook even the elementary rules of Civil Practice.

This is not intended as a criticism, but rather as an attempt to suggest a few pointers to lawyers and students which will make the preparation of legal papers more effective.

Submitted to Clerks

Before any pleadings are sent to the judge, they are submitted to the clerks whose duty it is to inspect for form and statutory compliance, every affidavit and paper presented. Constant practice enables these clerks to display an uncanny faculty for discovering errors. The clerk is not a malicious destroyer of legitimate pleadings, he is a friend of faulty ones. Many times in the course of the day, papers are submitted for signature which, but for the friendly assistance of a clerk, would lodge in a well-filled waste basket. It is for this reason that the young lawyer should heed the well-meant criticism and hasten to conform his paper to the instructions given.

So many lawyers will argue and seek to convince the clerk that the paper is not defective. Don't do it. When informed that a paper is faulty, correct it. Section 880 of the Penal Law states that altering a written instrument is forgery, yet many times in the course of the day, lawyers will attempt to add to, erase or in some manner alter another person's petitions or affidavits.

Show Cause Order

Lawyers are notorious procrastinators. Hence, the worn path of "order to show cause" is overcrowded. One would think that since lawyers resort to this remedy, they would familiarize themselves with its simple operation. The most abused legal pleading is the Order to Show Cause, both in its use and in the preparation thereof.

An Order to Show Cause consists of two papers—the affidavit, upon which the order is based, and the simple order. In the hands of a careless lawyer the affidavit becomes a work of art, a nameless art, a monstrous creature. Instead of reciting the essential facts and asking for the issuance of the order, many practitoners proceed to utter contradiction after contradiction in a voluminous document of irrelevant matter.

There is a definite tendency, moreover, to disregard rules. Certain sections and rules are of primary importance in drawing papers. Consideration of a few which are most often overlooked will not be amiss.

Statutes Should Be Read

If one has occasion to draw papers to sell real property of a corporation, he should read sections 50 and 52 of G.C.L. If one is about to form a membership corporation, he should read section 10 of M.C.L. If one is drawing papers in a matrimonial case, he should not ask for counsel fees if it is an annulment proceeding. He should read sections 1136 to 1146a and remember rule 53 of C.P.R.

In drawing an order for substituted service one must show that the defendant is a resident of the State, section 230. In an order for the appointment of a guardian *ad litem* for an infant, one should state who received the injuries and who was negligent, section 203. Remember, one can issue execution against the property of a defendant even though he was not personally served, provided, however, he appeared, section 237.

When one compromises an infant's action, one should not provide in the order that the money is to go to the guardian unless the sum is less than $150.00, section 980a. Don't attempt to stay the trial of a cause on the ready calendar by an order to show cause. See Rule 155.

If one wishes to stay the execution of a money judgment, he should not rush in with an order to show cause; read section 885 et seq. If one desires an answering affidavit to a notice of motion, rule 64 should be followed. To hold one in contempt, he must be personally served, section 163. If one has collection work, he should learn sections 773 to 787. They cover the entire field of Supplementary Proceedings.

A subpoena *duces tecum* must be served at least five days before the return day, section 411. Sections 410 through 414 and rule 162 cover the law of subpoenas. Rule 56 covers substitution of attorneys and rule 301 the discontinuance of actions.

These rules and sections are some of the more important ones and every lawyer and law clerk should have them at his finger-tips for instant use. Only thus will he be able to produce pleadings which will defy rejection by the best informed Court Clerk.

Novel Reception Given By School

The Brooklyn Law School held its first Mother-Daughter Tea on Sunday, December 17, in the lounges of the School. Each woman student and her mother were invited. The response indicated that interest in law was not wholly limited to men.

On the receiving line were Mrs. William Payson Richardson, Mrs. William Valentine Hagendorn and Miss Eleanor Lucile Curnow.

Alumnae Reminisce

Three alumnae of the School, Miss Minnie R. Schwartz, Miss Edwienne Schmitt and Miss Eleanor F. Hamilton, from their personal experiences, told of the opportunities for women in the legal profession and the general value of law training for women. The library, auditorium, classrooms, offices and meeting rooms were visited, at the conclusion of the tea.

Class Head Chosen

The first-year 6-8 class, at a special election, elected George Schneider to fill the Presidency of the class, which office had been left vacant by the resignation of Harry S. Friedman. Since Schneider was formerly the vice-president of the class, and since no new election has been held to select a new vice-president, Schneider has the distinction of being both president and vice-president. Legal luminaries of the first-year class are carefully studying and heatedly debating the question, "Who becomes President of the Class in case of the death or resignation of the present President-vice-president?"

McCarthy, '04, Dies

Charles T. McCarthy, class of '04, died of pneumonia on November 9 at the North Community Hospital, Glen Cove, L. I. His age was 50.

Mr. McCarthy served as Assistant District Attorney for Nassau County from 1912 to 1915, and as County Attorney from 1916 to 1919. At the close of his public career, he returned to private practice in Mineola and Glen Cove. He was a former president of the local Board of Elections and a member of the Knights of Columbus.

Mr. McCarthy is survived by a widow and two daughters.

"Our legislative bodies have sometimes made strange enactments." People v. Crilley, 20 Barb. (N.Y.) 246, per Strong, J.

The Justinian, Vol. 1933 [1933], Iss. 5, Art. 1

Current Legal Decisions

(Continued from Page 1)

Crimes—Double Jeopardy
People v. Spitzer, 148 Misc. 97, 266 N. Y. S. 522, May 24, 1933.

Defendants were charged by indictment with intentionally making a false canvass and a false statement of canvass in the performance of their duties as election inspectors. They move to dismiss on the ground that they had previously been convicted in the Federal courts on the charge of willfully conspiring to injure voters. The court dismissed the indictment, laying down the test that where the proof of facts charged in the second indictment would justify conviction under the first, a trial under the first bars prosecution under the second. While the United States Constitution, Fifth Amendment, provides against double jeopardy under "the same authority" (by judicial construction), the New York Constitution, art. 1, 6, forbids double jeopardy "for the same offense." Under the New York law, therefore, the first trial barred the second.

Negligence—Theatres and Shows
Rich v. Madison Square Corp., 149 Misc. 123, March 15, 1933.

In an action to recover damages for personal injuries, it appeared that plaintiff, as a spectator, while attending a hockey game conducted by the defendant, was struck by a stick forced out of a player's hands by a collision with another player in the course of the game. The player was thrown to the net or screen protecting the spectators and the stick flew over.

The complaint was dismissed. The court held that the defendant was not an insurer nor was it required to guard against the improbable. It owed merely a duty of reasonable care. There being evidence that such an accident had occurred but twice in 15 years, the defendant had not breached its duty and so was not liable.

Executors and Administrators — Exemption for Benefit of Family
Matter of Senn, 149 Misc. 215, Oct. 19, 1933.

Section 200, subdivision 3, of the Surrogate's Court Act provides that one motor vehicle or tractor, not exceeding $450 in value, shall not be deemed assets of the deceased, but shall be set off for the benefit of the family of the deceased. The deceased, at the time of his death, owned an automobile subject to a chattel mortgage. The vehicle, valued at $600, was sold at that price and $300 was paid to the mortgagee in full payment. The widow claims the balance under this section of the Surr. Ct. Act.

The court held the claim invalid under a later subdivision of the same section which states: "No allowance shall be made in money or other property under subdivisions * * * 3 if the articles mentioned therein do not exist." The car was concededly worth $600 and hence did not come within subd. 3. It is no answer that the widow seeks to recover only the equity in the car; the section deals with tangibles, not equities.

Landlord and Tenant-Assignment-Lease.

Rohdenburg v. Lazarus, Inc. 148 Misc. 583, July 14, 1933.

Plaintiff brings this action for rent against the defendant who has been occupying the premises. The defense is that the occupation was by virtue of a sublease from the original lessee. The rent has been paid by the defendant to the lessee by checks which were indorsed over to the plaintiff. Paintiff sues defendant as assignee of the lease.

Where a person other than the lessee is shown to have been in possession of the premises, the law presumes that the lease was assigned to him, and that the assignment was sufficient to transfer the term and to satisfy the Statute of Frauds.

In the absence of proof of the terms and scope of the subletting, the presumption of an assignment has not been rebutted.

B'klyn College Club To Conduct Smoker

The Brooklyn College Club will conduct its first smoker on Thursday, December 21, in the College Club room, with Professor Murphy of the Law School as its guest speaker. Similar smokers have been planned for the future, at which times prominent members of the Bar will be invited to address the group on legal topics of current interest.

At its last meeting, Murray Amster, one of the club members, delivered an address on "Abraham Lincoln, the Lawyer." A speakers committee was formed, with Nathan Tamerin as its chairman.

Negligence—Contributory Negligence a Question of Fact for Jury
Silverman v. Ulrika Realty Corp., N.Y.L.J., vol. 90, no. 124, decided Nov. 3, 1933.

The plaintiff appeals from a decision of the trial court holding him guilty of contributory negligence as a matter of law, in an action for personal injuries. The plaintiff, accompanying his wife to a physician, stumbled against a step in a "pitch dark" vestibule in the defendant's apartment house, sustaining the injuries in question. Passage through this vestibule was the only means of access to the physician's office. The lower court charged that if the plaintiff realized that the vestibule was dark, and proceeded further into it, he was, as a matter of law, guilty of contributory negligence.

The Appellate Division, in reversing, said that since the plaintiff had admitted that the vestibule was dark and that he had proceeded into it, the court's charge was tantamount to the direction of a verdict for the defendant. In effect, it relieved the defendant of his statutory duty (Multiple Dwelling Law, § 40) of providing light for the tenants and their visitors. The question of contributory negligence in such case is for the jury who should consider the actual care used and the necessity for reaching the physician without delay. Where one has a right to use a hallway or stairs, it is not contributory negligence as a matter of law to use it even where it is unlighted (Brown v. Wittner, 43 App. Div. 135).

Airplanes—Trespass—Negligence
Rochester Gas & Electric Corp. v. Dunlop, 266 N. Y. S. 469, Oct. 17, 1933.

The maxim "who owns the soil owns the space above it to infinity" is no longer the law, said the court in handing down a decision for the plaintiff, in an action for negligence. The plaintiff owned an electric tranmission line carried on steel towers 50 feet high. The defendant's airplane, while the defendant was flying it, crashed into one of these towers, damaging it. The defense was that the engine suddenly stopped for no apparent cause.

The maxim was meant to apply to only so much of the airspace as was necessary for the maintenance of a structure. It is not trespass in every case for an airplane to cross the land of another. Judgment was given for the plaintiff on the theory that, where both parties are innocent of any fault, he whose action (i.e., taking the machine aloft) causes the injury bears the burden of liability.

Attorney and Client—Motion for Substitution. Matter of Lydig, 262 N. Y. 408, October 10, 1933.

On a motion made in the Court of Appeals for the substitution of attorneys and to compel the original attorney to turn over the papers to the substituted attorney, the court granted the order for the substitution. A client has the absolute right to discharge his attorney with or without cause. The order will be granted without prejudice to the lien of the prior attorney upon the papers, other cause, and the cause and proceeds thereof.

But the motion for the return of the papers to the new attorney must be made in the court of original jurisdiction, not in the Court of Appeals.

Courts of New York

(Continued from page 7)

the final provincial court of appeals, as a result of reformatory legislation permitting such appeals where the sum in litigation exceeded one hundred pounds. (Note—where the sum involved was over three hundred pounds, an appeal lay directly to the King and Privy Council). This multiplicity of function was an outstanding characteristic of colonial judicial administration.

Confusion as to Date

Finally, during the Dongan period, a Court of Admiralty was definitely set up. There is some confusion among the authorities as to the date when it became a court, the dates of establishment ranging from 1674 to 1691. However, the provincial governors were always empowered to decide Admiralty matters; the only doubt exists as to when they delegated their powers to a duly constituted tribunal.

In 1688, New York, New Jersey and New England were consolidated as the Province of New England and placed under the governorship of Andros. During his second regime, much of moment occurred in the political history of the colony of New York as a reflection of the European religious wars, but little of judicial significance. However, in March, 1691, Col. Henry Sloughter arrived in the again-severed colony of New York with a grant of powers almost identical with those of Dongan. William and Mary now for the first time directly authorized a General Assembly of freeholders, who in October, 1693, promulgated the "Charter of Liberties and Privileges." Under this charter, the supreme legislative authority was placed in the Governor, council and General Assembly; it formulated the principle of representation as a condition of taxation. Among the important steps taken by this assembly was the organization of a distinct county government—a system of administration by supervisors, elected by the freemen of the several towns, and a county treasurer, elected by the county at large—a system which has remained in essence to the present day.

Accident Claim Arbitration Seen

(Continued from page 4)

the Arbitration Court of America. After discussing the matter with Judge Victor J. Dowling, then Presiding Justice of the Appellate Division, First Department, he communicated with the United States Casualty Co., and the Metropolitan Casualty Co. and induced them to advertise in The New York Times for a period of about one year offering arbitration in automobile accident cases without charge. Likewise, some judges of the Municipal Courts permit party litigants trial by arbitration at their option. Lastly, The American Arbitration Association has a panel of arbitrators composed of seven thousand leading men in all businesses and professions who are prepared to aid the lawyer and his client by a speedy trial of their cause of action.

Will Speed Action

In discussing the advantages of the committee's proposed plan, Judge Grossman said that it was possible for the case to be completed within six weeks after the cause of action accrues. He explained that attorneys owe the highest obligation to get the largest possible verdict for their clients, most of whom are poor. "About 50 per cent. of the actions before the courts are negligence cases. The City Court, Manhattan, is some five years behind its docket. There is no charge for a trial before a board of arbitrators. It is the lawyer's duty to his client to get a speedy, just and satisfactory trial at the lowest trial cost."

Court Allows Accused's Wife To Take Stand

Supreme Court Reverses Rule of Long Standing in Recent Case

CALLS DANGER ARCHAIC

Effect of Interest in Case Now Minimized by Progress of Jurisprudence

The Supreme Court, on Dec. 11, reversed the age-old rule that a wife may not testify at the trial of her husband, by holding that the wife of a defendant in a criminal case in a Federal court is a competent witness in behalf of the husband. A new trial was ordered for John S. Funk, a former prohibition agent, because his wife was not permitted to take the witness stand for his defense before he was convicted in a North Carolina Federal Court of conspiracy to aid a bootlegging scheme.

The Supreme Court said:

"The rules of the common law which disqualified as witnesses persons having an interest long since in the main have been abolished both in England and in this country, and what was once regarded a sufficient ground for excluding the testimony of such persons altogether has come to be uniformly and more sensibly regarded as affecting the credit of the witness only.

Effect Minimized

"Whatever was the danger that an interested witness would not speak the truth—and the danger never was as great as claimed—its effect has been minimized almost to the vanishing point by the test of cross-examination, the increased intelligence of jurors, and perhaps other circumstances.

"The fundamental basis upon which all rules of evidence must rest—if they are to rest upon reason—is their adaptation to the successful development of the truth," the decision continued. "And since experience is of all teachers the most dependable, and since experience is also a continuous process, it follows that a rule of evidence at one time thought necessary to the ascertainment of truth should yield to the experience of a succeeding generation whenever that experience has clearly demonstrated the fallacy or unwisdom of the old rule."

The common law must be flexible and construed to meet changing conditions, the court said.

Justice Sutherland delivered the opinion of the court. Justices McReynolds and Butler, while not delivering dissenting opinions, were recorded as of the opinion that the opinion of the lower court should have been affirmed.

Lippman, '11, Dies

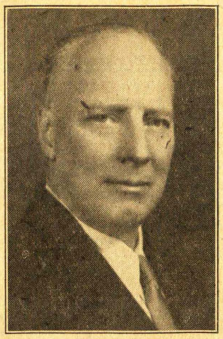
Max Lippman, 48, alumnus and prominent New York attorney, died at his home in Maimi, Fla., after a long illness. Mr. Lippman received his LL.M. from the Brooklyn Law School in 1911 and his J.D. in 1912.

He was a member of the New York firm of Lippman & Sachs, president of the Farmers Title Guaranty & Mortgage Company of New York, founder and chairman of the board of the Silver Rod Stores of New York and formerly was one of the owners of the Texon Land Oil Company. He is survived by his wife, his father and a brother and sister.

Bad Grammar

"Bad grammar will not vitiate a pleading. Composition which in school would not pass may be tolerated in the court-house." Dickson v. State, 62 Ga. 583, per Bleckley, J.

ADDED TO FACULTY



GEORGE A. VOSS

Negligence Suit Requires Care

Moses Feltenstein Urges More Thorough Preparation by Trial Lawyers

"It takes a rare combination of traits and faculties to make a good lawyer," declared Moses Feltenstein at the legal forum of the St. Johns alumni held in the gymnasium of the St. Johns College, 96 Schermerhorn Street.

Discussing the problem "How to present a negligence case" Mr. Feltenstein pointed out that it takes years of experience and practice to acquire the necessary trial technique and that it was a painful and thankless job, he did not doubt or question. In an analysis of qualification that generally made a good trial lawyer, he presented the man who could think quickly and clearly while on his feet as an indicia of that degree of difference which separates the good trial lawyer and what he considers the mechanical lawyer.

Make Examination Brief

"Too many lawyers fail to prepare their cases," he continued. "And at the expense of their clients, they eventually learn that the time to prepare the law in the case is before they enter the courtroom. If young lawyers could heed that warning they could save their clients thousands of dollars."

Mr. Feltenstein urged that the most effective examination of a witness is gained through an economy of questioning and that in the cross-examination of a witness, "if you cannot see the weakness in the story of a witness it would be better not to ask any questions at all."

In conclusion, he asserted that the reason why one lawyer obtains a larger verdict than another one in a negligence case is because one attorney has made the jurymen see and feel the injuries of the plaintiff. "The average man cannot visualize a word description but when you demonstrate by conduct and pictorial display he actually experiences the injury."

Voss to Give Criminal Law Course Here

Will Teach Next Semester; Began Career in 1896 With Elihu Root

LONG IN PUBLIC OFFICE

Was Former Assemblyman and Asst. District Attorney in Kings County

George A. Voss, who has been active in practice and public office for nearly 40 years, has been added to the faculty of Brooklyn Law School. He will teach Criminal Law next semester, beginning February, 1934.

He began his career with the famous Elihu Root, with whom he was associated from 1896-7. After his graduation from New York University Law School, Mr. Voss was admitted to the bar and began practice in 1897. At present he has his own office at 2 Rector Street, New York City.

Was in Legislature

The first Republican in 25 years to gain office in the 9th A.D., Kings, when he was elected to the New York State Assembly in 1907, he held his legislative position from 1907-09.

Mr. Voss spent the following two years working on social welfare measures for workingmen. Governor Charles Evans Hughes, now Chief Justice of the United States Supreme Court, appointed Mr. Voss to his Commission on Employer's Liability and Causes in Industrial Accidents. In 1910 he travelled in Europe for research work on the problem, observing conditions in Great Britain, France, Switzerland, Germany and Belgium. His book, written as a report, was influential in securing passage of the Workmen's Compensation Act and similar legislation.

Prosecutor for 10 Years

James C. Cropsey appointed Mr. Voss assistant District Attorney in Brooklyn in 1912, a position which he held for a ten-year period, acting in the main as principal trial assistant.

He is an active officer as a major in the U. S. Army, Ordnance Reserve, and belongs to the Artillery Corps as well as the War of 1812 Society. His fraternal affiliations include Phi Delta Phi, the Crescent Club, and the F.A.M. His leadership in Masonry has been recognized by election to office. Both the New York Bar Association and the Brooklyn Bar Association claim Mr. Voss as a member.

His son Charles, the second of four boys, graduated from Harvard Law School in 1926. He is now Acting City Judge of White Plains, where he practices.

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