THE COURTS OF ONTARIO

At the time of the Conquest of Canada in 1759-60, the law was French, the *Coutume de Paris* with slight modifications. After a short period of military rule, the Royal Proclamation of 1763 introduced the law of England both civil and criminal. No objection was ever made in Canada to the criminal law of England but the French Canadians were much dissatisfied with the change in the civil law.

Accordingly the Quebec Act was passed by the Imperial Parliament[1] which left the criminal law unchanged but reintroduced the French law for civil cases. Considerable agitation followed this reinstatement of the previous law; some immigrants were from the Mother Country and the American Colonies further south, who desired the law to which they were accustomed. So far the western part of Canada had no great interest in the matter, there were no settlements of any consequence in what was to become Upper Canada and finally Ontario. But with the peace of 1783 and the recognition of the inpendence of the United States, it became manifest to the loyalists of America that they must seek another home if they desired to retain their allegiance. Many of these made their way across the rivers into Canada, settling chiefly on the left bank of the St. Lawrence, the Niagara and the Detroit; they also desired English law.

The French Canadian was still wedded to his own law. The new Canadian further west desired his familiar law, the common law of England which he claimed, and with reason, as his birthright.

It was thought wise to give to each the right to select his own law, and in 1791 was passed the Canada Act.[2] This divided Canada into two parts, Upper Canada and Lower Canada, with practically the same territory as the present Province of Ontario and Quebec; Upper Canada, however, still (and till 1796) in-

[1] (1774) 14 George III. C. 83.
[2] 31 George III C. 31.

cluded Detroit and Michilimackinac. Each Province was given a Legislature so that it might make its own laws.

Before the passing of this Act, what was to become Upper Canada was by Lord Dorchester divided into four districts, and a Court of Common Pleas with unlimited jurisdiction was instituted in each district. The Court of King's Bench already in existence had criminal and appellate civil jurisdiction over all Canada, and criminal trials were held before judges appointed as Commissioners of Oyer and Terminer and General Gaol Delivery. Courts of Quarter Sessions existed also for each District, composed of Magistrates, Justices of the Peace of the District. The jurisdiction of these courts may be learned from a perusal of Blackstone's Commentaries.

Such was the state of affairs when the first Parliament of Upper Canada met at Newark, now Niagara, September 17th, 1792.

The first Act of this Legislature was to introduce the English law in civil matters. The second was to introduce trial by jury which had no place in the French system. This change dislocated the practice in the Courts of Common Pleas and necessitated a change in the system. In 1794,[3] a Court of King's Bench was erected for the Province and the Courts of Common Pleas were abolished. The Court of King's Bench was given the powers of the Courts of King's Bench, Common Pleas and Exchequer in England, and had as judges the Chief Justice of the Province and two *Puisné* Justices. This Court has never been abolished, but has been continued into the Supreme Court of Judicature for Ontario.

In 1837,[4] the number of *Puisné* Justices was increased to four, but the business was found to be too heavy to be satisfactorily disposed of by one superior court. Upper Canadians have always been and continue to be intolerant of legal delays; and it was determined to erect another common law court, which was done in 1849.[5] A new court, the Court of Common Pleas, was called into existence, presided over by a Chief Justice

[3] 34 George III. C. 2 (U. C.).
[4] Act of 7 William IV. C. 1 (U. C.).
[5] 12 Vic. C. 64 (Can.).

and two *Puisné* Justices and with the same powers and jurisdiction as the Court of King's, then become Queen's, Bench, while the number of *Puisné* Justices in the Queen's Bench was reduced to two as at first. By the same Act a change was made in the Court of Chancery. In 1837,[6] was established a Court of Chancery for the first time in the Province, the Governor to be Chancellor and a judge to be appointed "The Vice Chancellor of Upper Canada." This was not found wholly satisfactory and accordingly the Act of 1849 reconstructed the Court with a Chancellor and two Vice-Chancellors.

The Courts of Queen's Bench, Common Pleas and Chancery continued in existence as separate courts, the two former as courts of common law, the last as a court of equity, till 1881.

The original Act of 1794 established a Court of Appeals to hear appeals from the King's Bench, to be composed of the Lieutenant Governor of the Province (or the Chief Justice) with two or more of the Executive Council. The Act of 1837 made this court a court of appeal also from the Court of Chancery.

The proceedings of this court were not so unsatisfactory as might have been expected. The Governor did not in fact sit; and there was generally, if not always, a sufficient number of judges, members of the Executive Council to draw from, to make this court truly judicial. Indeed, it may fairly be compared to the House of Lords where in theory every Peer might sit on appeals, but in fact, from a somewhat remote period, no Peer other than a lawyer ever did sit.

It was thought best, however, to change the system to one more logical. The Act of 1849 abolished the Court of Appeals and established a Court of Error and Appeal to hear appeals from both the two common law courts and the court of chancery. This new court was composed of the judges of the three courts, very like the Court of Exchequer Chamber in England, except that this last did not hear appeals from Chancery. In 1874[7] this court was reconstituted and thereafter consisted of five judges who had no other duties than to sit as judges of the Court of Appeal.

[6] 7 Wm. IV. C. 2 (U. C.).
[7] 37 Vic. C. 7 (Ont.).

Then came the revolutionary Judicature Act of 1881,[8] which was modelled after the English Act. This Act abolished the distinction between law and equity, giving preference to the rules of equity, united and continued the three courts of original jurisdiction and the Court of Appeals into the Supreme Court of Judicature for Ontario with two divisions: 1. The Court of Appeal with five judges; 2, the High Court of Justice with twelve judges. The High Court of Justice was composed of three divisions, corresponding to the three Courts which were by the Statute combined: the Queen's Bench Division, the Common Pleas Division and the Chancery Division, each with a Chief Justice (or in the Chancery Division, a Chancellor), and two *Puisné* Justices. Later a fourth division was added to the High Court, the Exchequer Division, with a Chief Justice and two *Puisné* Justices.

By the Law Reform Act of 1909,[9] which came into force January 1, 1913, the Supreme Court of Judicature for Ontario has become the "Supreme Court of Ontario" with two branches; 1, The Appellate Division of the Supreme Court of Ontario; 2, The High Court Division of the Supreme Court of Ontario. The former is only appellate while the latter is a court of original jurisdiction; but any judge of the Supreme Court of Ontario may sit in any division or branch. The divisions of the High Court of Justice are abolished. The Appellate Division consists of two divisional courts which have the same jurisdiction, unless the state of business requires more frequent sessions they sit alternate weeks and transact all the business of the Appellate Division. Each divisional court has five judges, four of whom constitute a quorum. The first divisional court is composed of the five judges who constituted the Court of Appeal, the second divisional court of five who have been selected out of and by the High Court judges to serve in Appeal for the year. Another divisional court or more than one to be selected in the same way may be formed if occasion requires.

The Supreme Court of Ontario is the only superior court,

[8] 44 Vic. C. 5 (Ont.).
[9] 9 Edw. VII. C. 28 (Ont.).

but there is in each county or union of counties, a County Court, and in the unorganized districts, a District Court. These have jurisdiction up to $800 in contract; $500 in trespass, replevin, foreclosure, sale or redemption in mortgage cases and equitable relief generally; $2000 in partnership actions. Any action may be brought in a County Court and if the defendant does not in writing dispute the jurisdiction of the court, it may continue and be tried in such court. If the defendant disputes the jurisdiction, the action is removed into the High Court on *praecipe.*

Below these come the Division Courts. The whole Province is divided into small divisions, each of which has its own Division Court. The jurisdiction of these courts is up to $60 in personal actions or to $100 if the parties consent; in contract where the balance claimed is not more than $100 and where the amount is ascertained by the signature of the defendant, $200.

There is no inferior limit to the jurisdiction of any Ontario court, but if an action which could and therefore should have been brought in an inferior court is brought in a higher court, the party so offending may be and generally is punished by having to pay the extra costs occasioned to his opponent.

The Judges.

Every judge of the Supreme Court or any County Court must be a member for ten years of the Bar of Ontario. The Division Courts and Courts of General Sessions are presided over by a County Court judge. All these judges are appointed by His Majesty, *i. e.,* the Dominion Government. A Supreme Court judge cannot be removed without an address from both Houses of Parliament. He is entitled after fifteen years' service or on being permanently disabled to a pension of two-thirds of his salary; after twenty-five years of service, if seventy years of age; twenty years of service, if seventy-five years of age; or after thirty years of service, to his full salary. Only two Superior Court judges have been removed in the history of Upper Canada, the last over seventy-five years ago and both for perfectly justifiable cause.

A County Court judge may be removed by the administration, the Government, for misbehavior, incapacity or inability to perform his duties. This misbehavior is investigated by a Commission of Superior Court judges appointed for the purpose. A very small number have been thus removed.

The Bar.

There are two classes of practitioners, barristers and solicitors. A lawyer must belong to one; most belong to both. The barrister alone can conduct a case at trial; the solicitor alone files pleadings.

Those in the practice of the law in Upper Canada in 1797 formed a corporation, The Law Society of Upper Canada, which body was reincorporated in 1822 and still exists. In 1794 the Governor was empowered by the Legislature to grant licenses to practice law as attorneys; this was owing to the great dearth in the Province at that time of persons acquainted with the law of England. The power was not abused, only a half dozen or so were thus appointed; and the Law Society has been responsible for practically all the practitioners of law since Upper Canada began her legal career, and in all for more than a century.

Every five years all the barristers in the Province vote by ballot for thirty Benchers, who with certain *ex-officio* members form the governing body, or Bench. Collectively, the Benchers form Convocation; they fix the standard of education, conduct examinations and call to the Bar. It is necessary for the candidate for call to have been an admitted student of law for five years, or for three years if he has a degree of B.A. or LL.B. in some recognized university. After being called by Convocation the young barrister is presented by a Bencher to the court; he is then sworn, and thereafter he has the right of audience. The court does not call to the Bar, and has nothing to do with the curriculum or examinations. Nor can the Court hear anyone not "called" by the Law Society of Upper Canada except a party in his own case. Non-professional agents are allowed in the Division Courts but not in the higher courts.

Convocation has established and maintains the Law School

at Osgoode Hall at which every student must attend; it appoints the principal, the lecturers and the examiners. Convocation also fixes the education of solicitors; and upon examining them grants a certificate of fitness. The same requirements as to time of service as an articled clerk are imposed as in a case of a barrister. Upon the certificate of fitness being presented to a judge of the High Court, he grants a *fiat* for admission of the candidate as solicitor, and the oath is administered before the judge. Thereafter the new solicitor may practice in all the courts as solicitor.

Every barrister and solicitor pays an annual fee to the Law Society and is subject to discipline of the society at all times. Any member may be removed or disbarred for cause.

There does not seem to be any advantage in retaining the distinction between barrister and solicitor, but as it does no harm, and as we Canadians are an essentially practical people making no pretense of and caring nothing for logical consistency, we do not change simply for the sake of change. If any practical disadvantage were felt from the distinction it would not last six months.

In the profession of barrister there is also a division into King's Counsel and members of the Outer Bar. King's Counsel are appointed by the administration for the time being of the Province. They have the privilege of wearing a silk gown and a peculiar form of coat and waistcoat. All other barristers are "Stuff-gownsmen" and wear a stuff gown. King's Counsel sit in the front row in appellate and weekly courts and have occasionally the right of pre-audience. This is of small value and the distinction of being a King's Counsel is not much of an advantage. It is a relic of English practice and of no practical use but it does no harm and is therefore not abolished.

The Civil Practice.

The Court of King's Bench in Upper Canada from the beginning followed in general the practice of the Court of King's Bench in England; the Court of Common Pleas had the same practice as the Court of King's Bench; the Court of Chancery

followed in substance the English Court of Chancery. When changes were made in the courts of England they were generally followed *non longo intervallo* in Upper Canada. The present practice is almost the same as the present English practice. From the very first there have been some differences due to the requirements of a new country; and at the present time, our practice is, we think, an improvement over that in England.

In the Division Courts the practice is of the simplest form and not unlike that of the County Courts in England; so nothing need be said of it here.

In the County Courts and District Courts the practice is the same as in the Supreme Court; accordingly only the Supreme Court will be spoken of and what is said may be considered to apply *mutatis mutandis* to the County and District Courts.

The keynote of all the practice is to be found in two of the Consolidated Rules:

> "The Court or a Judge may at any time amend any defect or error in any proceedings; and all such amendments may be made as are necessary for the advancement of justice, determining the real matter in dispute and best calculated to secure the giving of judgment according to the very right and justice of the case.
>
> "The Court or a Judge may enlarge or abridge the time appointed by these rules or any rules relating to time or fixed by any order for doing any act or taking any proceeding, upon such terms as may seem just; and an enlargement may be ordered although the application is not made until after the expiration of the time appointed or allowed."

Add to these, the provision that facts and not conclusions of law are to be alleged in pleadings and affidavits and the basic principles are all named.

All *actions* are begun by writ of summons. There are, however, many matters which should not be made the subject of an action in the proper sense; for example, the interpretation of a will and the like which involves only matters of law. The executors or some one interested may serve a notice of motion upon some other person interested and bring the question before a single judge in the Weekly Court at Osgoode Hall, Toronto, and after seeing that all persons interested or some one repre-

senting every class have had a chance of being heard, the judge may determine the question in a very cheap, expeditious and consequently a very useful proceeding.

A sheriff or a common carrier may obtain an order of interpleader. In most instances, however, the proceedings are begun by writ of summons, indorsed with a short statement of the cause of action; and this is the case whether the action be in contract or in tort, legal or equitable, for goods supplied or on a mortgage or for slander. In certain cases the cause of action is of such a character as to permit of a "special indorsement," as a debt or liquidated demand in money arising out of a contract, *e. g.*, a promissory note, bond, bill of goods sold and delivered and the like; or the claim may be made under a mortgage for redemption, foreclosure or sale; or it may be asked to wind up a partnership; to compel a trustee to render an account. The writ is served and calls for an "appearance" within ten days, unless the defendant is out of Ontario when a longer time is allowed. An appearance may be entered by solicitor or in person in any case by a mere entry on the books of the registrar's office. There is a registrar in every county town and the appearance is entered in the office from which the writ was issued.

If there is no appearance entered, judgment may at once be entered: if the amount claimed is liquidated the judgment corresponds thereto; if the claim be on a mortgage there is a reference to a Master to take accounts; if arising out of a partnership there is a similar reference to a Master. But if the claim be general an interlocutory judgment is entered and the action goes to trial.

Upon appearance entered, if the indorsement be special, the plaintiff may file an affidavit verifying the cause of action and saying, that in his belief there is no defense, and serve the defendant or his solicitor with a notice of motion for judgment. Then unless the court is satisfied that the defendant has a good defence on the merits, judgment will be given. The practice is not to grant this order if there is a real question to be tried which will, if found in the defendant's favor, entitle him to judgment. A change has been made in the new Rules coming into effect September 1, 1913. Now where a writ is specially en-

dorsed, the defendant must with his appearance file an affidavit that he has a good defence on the merits, showing the nature of his defence and the facts and circumstances which he deems entitle him to defend—he must serve forthwith a copy of this affidavit on the plaintiff, and the appearance is not received without the affidavit. The plaintiff may treat this as a statement of defence—or he may examine the defendant on it, and if it be disclosed that the facts do not constitute a defence move for judgment. In some rare cases, even before appearance, the plaintiff may obtain leave to serve notice of motion for judgment and if he shows special circumstances may obtain immediate judgment. The plaintiff in the ordinary case serves a "statement of claim" which is a statement in ordinary language of the facts as the plaintiff sees them followed by a statement of the relief which he claims. He does not set out the law or conclusions of law.

If the defendant conceives that the facts alleged do not entitle the plaintiff to any relief, he moves the court to strike out the statement of claim and dismiss the action. In the usual case he serves a statement of defence with or without a counter-claim on any cause of action he may have. The plaintiff may in like manner move to strike out any or all of them.

As soon as the statement of defence is served, either party may take out on *praecipe* an order to produce. An affidavit on production and the production of documents can now be obtained by serving a notice requiring one without obtaining an order; but special orders for production may be made at any time. This orders the opposite party to make an affidavit of all documents and copies of documents he may have or have had relating to any matter in question and to produce them. If the defendant does not put in his defence in time, the plaintiff may take out this order when the time is up for defence, *i. e.*, eight days after delivery of statement of claim.

In the same way, at the same period, either party may take out an appointment from a Special Examiner or Master of the court for the examination under oath of his opponent, and if the opponent be a corporation, of an officer of the corporation. Except in the case of a corporation this examination may be read at the trial against, but not for, the party examined; in the

case of a corporation the examination cannot be read at all. The practice of examining before trial puts an end to at least one-third of the cases which otherwise would go to trial.

After the statement of defence there may be a reply, but no subsequent pleading is allowed; everything which is desired to be added is made by amendment. Amendment of pleading is almost a matter of course; but the party whose pleader has made an amendment necessary, is generally obliged to pay the costs of the amendment.

TRIAL.

In every county in Ontario, courts are held for the trial of cases in the Supreme Court. There are generally two jury and two non-jury sittings annually, but in the larger cities they are more frequent. In Toronto the non-jury court is practically continuous. At a jury sitting, non-jury cases may be set down as well as jury cases.

In the cases of slander, crim. con., seduction, malicious arrest, malicious prosecution and false imprisonment, a jury is as of right; in any other case if either party wants a jury he will serve a jury notice. Notwithstanding the jury notice the trial judge may in his discretion (and there is no appeal from his discretion) strike out the jury notice and try the case himself. And though there is no jury notice served, the judge may direct the case to be tried by a jury. Ten jurors may render a verdict. The number of cases tried by a jury is not large and is decreasing proportionately every day. In cases tried by a jury, except in cases of slander and a few others, it is the almost invariable practice to ask the jury to give answers to questions of fact submitted to them in writing, and in such cases the jury have no right to give a general verdict. The judge enters the proper judgment upon the answers of the jury. If he considers any of the answers has no evidence to support it, he disregards such answer; but he cannot order a new trial.

If either side is dissatisfied with the judgment, on fact or law, he may appeal to the Appellate Division which is composed of five judges. That court may in its discretion hear further evidence, but seldom orders a new trial for rejection of evidence;

as a rule if evidence has been wrongly rejected, it is heard before the court itself.

In certain cases of importance an appeal may be taken from the Appellate Division to the Supreme Court of Canada or to the King in Council, but these are rare.

Speaking generally there is no reason why any litigant, if he so desires, cannot have his case tried within six months of the issue of the writ—in many places within three months. If he desires to appeal, his appeal can be disposed of within two months of the trial. Even if the opinion of the final court of the Empire is taken, a year and a half is generally more than sufficient for all proceedings, from writ to Privy Council judgment.

In all our courts there are two cardinal principles kept steadily in view: all amendments must be made in pleadings that are necessary to establish all the facts; and judgment is to go to him who is entitled to it on the facts, notwithstanding any blunders he may have made in his proceedings. It is impossible for a litigant in Ontario to lose his case for defect in form, though he may have to pay for his lawyer's ignorance or carelessness.

The rule as to amendments is not a dead letter but it is constantly and consistently applied.

The Criminal Practice.

Before the New York State Bar Association, in January, I gave a *résumé* of our Criminal Practice. I have not been able to improve much on it, defective as it is, and here subjoin it with slight modifications.

At the conquest of Canada by the British, 1759-60, the English criminal law was introduced by the conquerors, though with the exception of a few years the French Canadians were permitted to retain their own law in civil matters. The English criminal law continued to prevail except as modified by Provincial statutes and these statutes in general followed closely the legislation in the Mother Country. The same statement applies to the Provinces of Nova Scotia and New Brunswick. At the Confederation in 1867 the criminal law of all the confederating

colonies was almost identical, while the civil law of Lower Canada (Quebec) was markedly different from that of Upper Canada (Ontario), Nova Scotia and New Brunswick. The Lower Canadian civil law was based upon the custom of Paris and ultimately upon the civil law of Rome, while that of the others was based upon the common law of England. In 1867 the British-American Act which created the Dominion of Canada gave to the Parliament of the Dominion jurisdiction over the criminal law including the procedure in criminal matters. The Provinces, however, retained jurisdiction over the constitution of the court of criminal jurisdiction as well as over property and civil rights.

For some years there were statutes passed from time to time amending the criminal law. At length Sir John Thompson who had been a judge himself in Nova Scotia and was Prime Minister of Canada brought about a codification of criminal law and procedure. He received valuable assistance from lawyers on both sides of the House and the Criminal Code of 1892 became law. This with a few amendments made from time to time is still in force.

The distinction between felony and misdemeanor has been abolished. Offences which are the subject of indictment are "indictable offences," and offences not the subject of indictment are simply called "offences." Certain offences of a minor character are triable before one or two Justices of the Peace as provided by the Code in each case. In such cases there is an appeal from a Magistrate's decision adverse to the accused to the County Court judge: or the conviction may be brought up on *certiorari* to the Supreme Court on matter of law.

Cases triable before Justices of the Peace, are for example: resisting the execution of certain warrants;[10] persuading or assisting an enlisted man to desert;[11] challenging to fight a prize-fight,[12] or fighting one,[13] or being present thereat;[14] carrying

[10] §583.
[11] §584.
[12] §104.
[13] §105.
[14] §106.

pistols,[15] selling pistols or air guns to minors under sixteen,[16] pointing pistols;[17] stealing shrubs of small value;[18] injuring Indian graves;[19] buying junk from children under sixteen.[20] But offenses of a higher degree are indictable.

If a crime is charged against anyone, upon information before a Justice of the Peace a summons or warrant is issued and the accused brought before him. Some times he is arrested and brought before the Magistrate without summons or warrant, but in that case an information is then drawn up and sworn to. The Justices of the Peace are appointed by the Provincial Government and as a rule, are not lawyers.

Upon appearance, the Justice of the Peace proceeds to inquire into the matters charged against the accused, causing witnesses to be summoned and hearing in presence of the accused all that is adduced. The accused has the fullest right of having counsel and of cross-examination, as well as that of producing any witness and having such evidence heard in his behalf as he can procure. The depositions are generally taken down in shorthand, but if in long hand, they are signed by the deponent after being read to him.

After all the evidence for the prosecution is in, the Magistrate may allow argument; or he may *proprio motu* hold that no case has been made out and discharge the accused, or he may read aloud all the evidence, unless the accused expressly dispenses with such reading, and addressing the accused, warn him that he is not obliged to say anything but that anything he does say will be taken down and may be given in evidence at his trial. He then asks, "Having heard the evidence, do you wish to say anything in answer to the charge?" If the accused so desires the evidence of the defence is called.

At the close of the evidence if the Magistrate is of opinion that no case is made out the accused is discharged.

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[15] §118.
[16] §119.
[17] §122.
[18] §374.
[19] §385.
[20] §431.

If a case is made out the accused is committed for trial with or without bail, as seems just, and the witnesses are bound over to give evidence.

Police Magistrates are appointed for most cities and towns, and are generally barristers. In some cases by the consent of the accused they have a higher jurisdiction than the ordinary Justice of the Peace.

The courts which proceed by indictment are the Supreme Court of the Province and the General or Quarter Sessions. Judges of these courts are appointed for life by the Crown, *i. e.*, the Administration at Ottawa, and must be barristers of ten years' standing.

The Supreme Court can try any indictable offence. The Sessions cannot try treason and treasonable offences, taking oaths to commit crime, piracy, corruption of officers, murder, attempts and threats to murder, rape, libel, combinations in restraint of trade, bribery, personation under the Dominion Election Act.

Within twenty-four hours after the committal to gaol of a person charged with any offence which the Sessions could try, the sheriff must notify the County Court judge who acts as judge in the Sessions, and with as little delay as possible bring the accused before him. The judge reads the depositions, tells the prisoner with what he is charged and that he has the option of being tried forthwith before him without a jury or of being tried by a jury.

If the former course is chosen a simple charge is drawn up; a day fixed for the trial and the case then disposed of. If a jury trial be chosen, then at the Sessions or the High Court a bill of indictment is laid before a grand jury [21] by a barrister appointed by the Provincial Government for that purpose. The indictment may be in popular language without technical averment, or it may describe the offence either in the language of the statute or in any words sufficient to give the accused notice of the offence with which he is charged. Forms given in the Statute may be followed and the following is a sample:

[21] In Ontario it is composed of *thirteen* persons.

"The Jurors for Our Lord the King present that John Smith murdered Henry Jones at Toronto on February 13, A. D. 1912."

No bill can be laid before the grand jury by the Crown Counsel without the leave of the court for any offences except such as are disclosed in the depositions before the Magistrate. But sometimes the court will allow other indictments to be laid.

The grand jury has no power to cause any indictment to be drawn up; that body simply passes upon such bills as the Crown Counsel lays before it.

Upon a true bill being found, the accused is arraigned, and if he pleads "Not Guilty" the trial proceeds.

He has twenty peremptory challenges in capital cases; twelve, if the offence is punishable with more than five years' imprisonment; and four in all other cases, although the Crown has only four challenges, yet it may cause any number to stand aside until all the jurors have been called.

I have never, in thirty years' experience, seen it take more than half an hour to get a jury even in a murder case, and never but once heard a juryman asked a question.

In case of conviction the prisoner may ask a case upon any question of law to be reserved for the Appellate Division, or the judge may do it *proprio motu*. The Appellate Division may by leave of the trial judge, entertain an appeal for a new trial upon the ground that the verdict is against the evidence, but this is a rare proceeding.

No conviction can be set aside or new trial ordered although some evidence was improperly admitted or rejected, or something was done at the trial not according to law or some misdirection given, unless, in the opinion of the Appellate Division, a substantial wrong or miscarriage was thereby occasioned at the trial. If the Appellate Division is unanimous against the prisoner, there is no further appeal; but if the court is divided a further appeal may be taken to the Supreme Court of Canada. This is a very rare proceeding.

A wife or husband is a competent witness in all cases for an accused. He or she is compellable as a witness for the prose-

cution in offences against morality, seduction, neglect of those in one's charge and many others. The accused is also competent, but not compellable, in all cases. If an accused does not testify in his own behalf, no comment can be made upon the fact by prosecuting counsel or the judge—if this should be done even by inadvertence a new trial would result.

No more than five experts are allowed on each side.

I have never known a murder case, except one, take four days, while most do not require two even with medical experts.

William Renwick Riddell.

Toronto.