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Volume 1

BOSTON, MASS., 1916

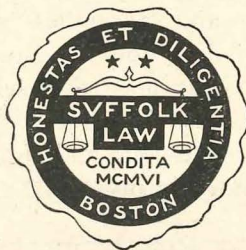
Number 5

Winter Reberie

One tiny flake of fluffy snow,
Sailed gently down to earth alone,
One tiny flake called from below,
And nestling close, each knew its own.
One tiny flake, one crystal star
One snow-drop pure, in a wind-swept night,
Each joining each from out afar,
Spread o'er the earth in a mantle white.
One noble thought, - One heart to feel
Another's grief, - another's woe,
Each joining each in equal zeal,
Would deck the earth, - like flakes of snow.

FEBRUARY

SUFFOLK LAW SCHOOL REGISTER



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STUDENTS OF THE SUFFOLK LAW SCHOOL
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The Pessimist

By M. E. Rosenzweig.

(Mr. Rosenzweig is a student of poetry as well as a writer of verse of merit. He was class poet of the Malden High School Class of 1913, and has prepared odes and lyrics on various civic and public occasions. His work is clean cut, and he always has an idea of the worthy sort to promulgate.—Editors.)

'Ere dawn I woke, how could I sleep
With pensive morbidness so deep;
Like one in bitter exile hurled,
I thought of man,—his life,—his world;
Beyond the candle's flickering light,
The world was wrapped in darkest night,
Deep thoughts and sad of every kind,
Weighed heavily upon my mind,
And still they came, an endless store,
Yet when I cried, "Enough,—No more!"
They joined and grouped themselves in herds,
Before my eyes in living words,
And then in accents loud and clear,
A voice resounded in my ear:

"Oh aerial, vast delusion, Life,
What hast thou here but care and strife,
Continuous battle day by day
To keep the hungry wolf away;
False friends who cling with selfish greed,
But fall away in time of need!
Hypocrisy, from hades flung,
Lurks everywhere with poisoned tongue;
Deceit, with narrow, treacherous eyes
Now lurking for his victim lies;
Degrading passions, vice and crime,
Fair Justice trodden in the slime;
Mere infant child with panting breath
Compelled to labor unto death;
Pray tell, are these the gifts you give,

That one should strive so hard to live?
 Yet it is so, that is confessed,
 Oh tell me, am I cursed or blessed
 That I should thus speak forth my mind,
 Betraying traits of human-kind
 What is there in this empty earth,
 That one should place so great a worth
 On life, that tho' in pain of death,
 "To live!"—he cries with dying breath;
 What passion moves this doleful cry,
 Answer!—Answer!—why, oh why?"

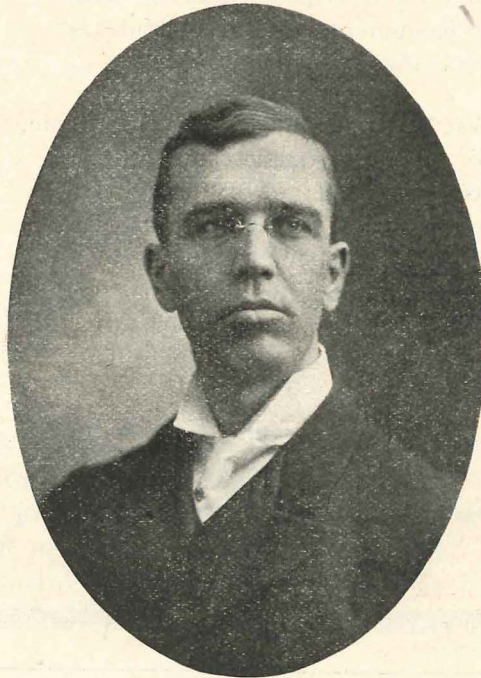
It ceased ; and now no flickering flame,
 Out of the dying candle came;
 For the voice inspired by the light,
 Passed onward with the dying night.
 Then as night's shadows stole away,
 And dawn announced the coming day,
 Sweet slumber tempting dreams unfurled,
 I slept,—unconscious of the world.



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Professor Webster A. Chandler, J. M.



Prof. Webster A. Chandler, J. M.

Mr. Chandler was born at Gorham, N. H. His early education was received in the public schools of Oregon. After graduation from the Academy at Pendleton, Oregon, he entered the college at Boston University from which he graduated in 1902. Entering the law school of the same institution he was graduated in the class of 1905.

Mr. Chandler was appointed to the faculty of the Suffolk School of Law in August, 1907, being one of its first regular teachers. His subjects are Evidence, Pleading and Practice and Constitutional Law, in the evening department.

From Millworker to State Official

Joseph A. Parks, '17.

(Editor's Note.—The rise of "Joe" Parks proves the maxim that "merit, steadfastness of purpose, and absolute lack of egotism spell success." Mr. Parks' extreme modesty made the obtaining of this interview difficult. This is the first and only story of his life ever published.)

You have requested me to contribute to the columns of our school paper first, a little story of my life and experiences and, second, a statement of the benefits which I have derived from my attendance at the Suffolk Law School, with especial reference to my duties as a member of the Industrial Accident Board. I take up with reluctance the story of my life, in so far as it may prove of interest and help to others who have set out to reach a definite goal and who have been compelled by force of circumstances to fight every inch of the way. Success is a wonderful thing; to be successful is the aim of even the youngest schoolboy, and to actually attain success is within the power of every person, no matter how humble he may be, nor how early in life he has been compelled to earn his own living.

Child Workers.

In my early days, it was no unusual thing to be compelled to earn your living at the age of eleven; and afterwards educational advantages were practically at a standstill. In these days, especially in progressive Massachusetts and particularly in cultured Boston, no matter when your working life begins, there is always an opportunity to advance and to gain ultimate success through the many avenues of education which are open on every side.

It was my good fortune, and not my misfortune, to be born the youngest of seven children and compelled through the untimely death of my father to earn my livelihood at the immature age of eleven. Looking backwards now, I think I should have considered it a great misfortune if I had been one of the members of a family of affluence, with my future already provided for, and thereby be deprived of the op-

portunity and ambition to battle for the crown of success. As it was, I began work in a cotton mill in Lancashire, England, at the age above referred to, and received during the first two years of my toil there the munificent sum (to me) of 62 cents a week. After two years, my wages were increased to \$1.25 weekly, and then indeed was I looked upon as one of the real bread-winners of my large family. I have pleasant memories of that dear old English town, but they are memories that have been exchanged long since for the pleasanter ones which have come to me in the course of a busy life in the land of my adoption, my country, America.

I came to this country a little more than 20 years ago, landing on Monday and beginning work in a cotton mill in Fall River on Wednesday, two days after my arrival. I remained in the mills as a weaver for seven years, leaving it to enter the insurance busi-

ness. Later, becoming interested in politics, I entered the political arena and the good people of my adopted city elected me to membership in the Board of Aldermen. Later, and for nine consecutive terms, I was elected as a representative from the 10th Bristol district in Fall River to the Great and General Court. During my membership in the Legislature, Governor Draper appointed me, with four others, on the commission to study the question of workmen's compensation for the loss of earning power due to industrial injuries and to draft a law for the Commonwealth of Massachusetts. As a result of our study of the problem, the Saunders-Parks act, prepared and submitted by Mr. Amos Saunders of Clinton, and myself, was enacted by the Legislature of 1911 and became effective on July 1, 1912. I was immediately appointed by Governor Foss as a member of the board created for the purpose of administering the act, being tendered the one-year term and was later re-appointed for the full five-year term by the same governor. I am now serving as a member of that commission.

Always Friend of Labor.

It has never been my desire to accumulate wealth, or to take a place in the financial councils of the nation. I have always desired to be in a position where I might be of the greatest possible benefit to my fellowmen. Within a few years after my arrival in Fall River, I was elected president of the Weavers' Union, with a membership of over 4,000, and I have continued to be a member and to be interested in labor problems ever since. It gives me the greatest of satisfaction to realize that I am in a position on this Board where I can be of such real, practical benefit to the working people of the Commonwealth

to whom the Workmen's Compensation Act is like a blessing from the Creator in the time of need—need made possible through injuries which arise out of and in the course of their employment as units in the great industrial commonwealth which has made the state of Massachusetts such a strong factor in the building of the nation. The Workmen's Compensation Act has proved the wisdom of its adoption by the benefits which have been given to nearly 300,000 workers during the three years of its operation and many a bereft family has given testimony in writing of its gratefulness to the Commonwealth for this, the greatest piece of social labor legislation ever enacted in the history of our Legislature.

Law an Asset.

Taking up the second part of my story—that of the value of my studies at the Suffolk Law School. I shall begin by stating that I have always been ambitious to attain the right to practice law as a member of the Massachusetts bar and I have found that my studies have helped in no small measure to round out a lifetime of almost invaluable experience and training. Looking back over the nights that I have given to the study of law, I find myself proud of the sacrifices made and alive to the advantages of a training under the direction of the professors of our school. I believe that all men and women who desire to enter upon a successful business career should take up the study of law, whether they aim to practice law or not. It is a great aid to all business men to have a knowledge of the great fabric of the law and its practical application to the problems which constantly arise in business life. As a boy, I began

(Continued on page 23.)

The True Specialist

A Great Biblical Commandment Applied to Present Day Conditions In An Interesting Manner

Stephen A. McAleer, '18.

We hear a great deal of talk these days about this age being devoted to specialization and of the opportunities that await the specialist in every field of endeavor. It is far from the writer's purpose to detract one iota from the laurels and merits due the specialist for the wonderful advantages that have accrued to the human race from his researches and exertions, but still there is a side to specialization that is slowly but none the less surely bringing about very unhappy results.

When we go back over the pages of history and read the illustrious names inscribed therein, we set apart the names of those who stood pre-eminent above their fellowmen as leaders in their chosen line, when we analyze their careers, and follow them, rung by rung, up the ladder of success, when at last we stand with them on the topmost rung, we ask ourselves, have they indeed gained this pinnacle to keep it as a testimonial and reward for their efforts in behalf of humanity or have they forgotten that though they may rest among the clouds of victory, the ladder still rests upon the broad bosom of humanity? Let us pause awhile and see.

Cause of Failure.

We can find in every case of these specialists in their line, for such they were, this salient fact; as long as their endeavors were devoted to the betterment of the human race and to the furtherance of true human progress, they stood high above their fellowmen, they gained the respect

of the people, of the nations, of the different ages and of the whole world, down to the present era. When some of these specialists forgot that they were in this world that the world might be better for their having been here, when they ceased to feel the tie that binds all humanity, when they no longer made their efforts collateral with the best interests of the race, but kept retreating further and further within the circumference of their own selfish, sordid circle, then they failed in their line and did more to retard human progress than the slow-going, sure-building mass of the people who are the strength, the courage, the foundation and the inspiration of a true, compact, devoted and united nation.

True Specialization.

This is the lesson I would point out from a certain misguided specialization which seems prevalent today, not only in this country, but throughout the world. There is a specialization which works unceasingly for the betterment of mankind, which labors all day and oftentimes all night, in factories and foundries, in workshops and offices, in the halls of learning and the fields of agriculture, in the hospital wards and behind prison walls, in the forum of politics, in the world-wide school of economics and in the courts of justice, working and striving without surcease, that the great heart of the human race may forever and ever send its red blood through the arteries of its remotest members. For such a specialization, one is kin with

his fellow man, to him who seeks, not his own personal aggrandizement, but the happiness and prosperity, the peace and comfort of a whole and not a unit.

The Fake Specialization.

Then there is that other specialization, which starts on a plane with humanity, and as it climbs towards success, ceases to look below but destroys all beneath it until it stands on the topmost rung, and then, unwilling to believe it has reached its highest efforts, shatters its only support and falls to destruction beneath the firm planted feet of humanity, without one single strand of friendship or respect held out to retard its headlong flight to oblivion. As long as time shall exist, such specialization, sailing through the channels of self-conceit, will finally be wrecked upon the limited shore of its own ego, and when the fast rising tide of humanity flows on, instead of being borne aloft on the crest of the wave of success, will be sucked down into the trough of failure's sea.

If we feel called upon to spe-

cialize, let us first of all put on the armor of mankind, let us take the field of fellow men, raise the standard of justice and use the weapons of righteousness that we may gain the goal we seek, than which no greater prize can be sought—the knowledge that we have helped humanity. As the poet so aptly says, "To thine own self be true, then it must follow as the night the day, thou canst not then be false to any man." Let us always bear in mind, that as no son or daughter can be greater than that father or mother who gave them birth, so no specialist, no matter what heights he may attain, can ever be greater than that human race from which he sprung.

When at last we have crossed the Great Divide, to go before that Great Specialist who set the example for all men to follow, may posterity, with the greatest truth and conviction, pay the highest tribute and finest epitaph in its power to give by erecting over our earthly remains that ever enduring monument, "This was indeed a man."

Holy Week Services of The Philippines

By Maurice Abrahamson.

With a dig in my ribs I was aroused very early one morning during a brief sojourn in Manila, P. I. At first I thought my muchacho had rebelled and was going to try and get his satisfaction out of me. However, this was not the case. A friend wanted me to accompany him on a little escapade. He said there was "something doing," and whenever there is a prospect of excitement you will find me one of the first on deck.

I quickly dressed myself in my suit of white drill, "a la military," and off we went. I was quite puzzled as we rode through the beautiful and up-to-date city of Manila and then out into the quaint and pretty suburbs of that city. Finally my friend broke the silence and explained the object of our early morning trip..

It seems that each year, during Holy Week, Manila residents who have sufficient curiosity are permitted to see a religious ob-

servance which savors of the middle ages. The principals on these occasions are known as "Flagellantes," or "Penitentes," and their operations are generally confined to isolated sections of outlying barrios. These fanatics endeavor to imitate the sufferings of Christ, and it is unbelievable to realize the excesses to which faith, unrestrained by reason, may bring one.

Methods Are Barbarous

So far as it is within the province of the layman to investigate, there is a noticeable lack of literature or local tradition relative to the origin of these observances of the "Penitentes." The archives of the religious fathers of the old "Walled City" may contain that which would tend to enlighten the uninformed, but it may be that in this day of educated Americanism it were better to forget the methods employed four hundred years ago to work upon the Filipino and win him to Christianity. Superstitious by nature, the native accepted without doubting all the fantastic tales which the early missionaries brought them. In those times miraculous crosses healed the sick, cured the plague, and scared away grass-hoppers.

Few "Penitentes" Left

During the Spanish regime there were great numbers of "Penitentes" in all of the Christian settlements of the Philippines. The infliction of self-punishment was permitted on the streets and in the churches. With the advent of American Catholics and the Protestant religion the number of so called Christians practicing this barbarous custom has decreased to such an extent that at the present time the ceremony is observed only in comparatively few places. Many local governments have prohibited it entirely and the church disclaims any connection with the sect known as "Penitentes."

Weird Ceremonies

Our best opportunity to see the ceremony was at Navotas, in the Province of Rizal, about ten miles from Manila. This town is picturesquely situated at the confluence of the Navotas River and Manila Bay, and it is along the shores of the latter that the early morning visitor may witness the strange performance. Two days, Holy Thursday and Good Friday, are devoted to its observance. On Holy Thursday the Penitente dresses, or rather undresses, for the occasion. Each man strips himself to the waist and with the aid of friends binds himself securely with ropes, chains or vines. The thongs are left loose enough about the legs to permit slow walking. A crown of thorns is then placed on the head and a long veil over the face. The veil seems to be used for the purpose of concealing the facial evidences of suffering as the ceremony proceeds. After the Penitente is thus equipped and has selected a companion to accompany him, he is ready to suffer. Aside from the fact that he possesses a strong arm and is doubtless a friend in whom the penitente has considerable confidence, I am unable to give any information relative to the qualifications governing the selection of the penitente's companion.

Most of the punishment of Holy Thursday is inflicted by the companion. The ceremony on that day is confined to walking along the beach, alternately praying, turning flip-flops, and receiving rough treatment at the hands (and feet) of the man who accompanies him. This treatment consists of frequent applications of a strap, rope or stick to a tender part of the anatomy while the penitente lies prostrate face downward in prayer. These applications are accompanied by swift kicks in the same locality,

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The Progressive History of the Suffolk Law School*

The First Year's Annals—In Which the Seeds of Future Greatness Were Sown

By GLEASON L. ARCHER, LL. B.
Dean and Founder of the School.

The bargain was struck with the landlord. The glass signs were made and installed and I began to accumulate household furniture. I equipped the school room with light, wooden assembly chairs of a folding variety, a flat-topped mission office desk for myself, and during my leisure moments constructed about two dozen desks of my own invention for the convenience of the students.

The increasing items of expense now gave me genuine concern, for my salary was small, and the money that I paid out for school equipment and school advertising, with what must be set aside for rent left very little for the furnishing of the domestic portion of my apartments.

I resolutely refrained from calling upon Mr. Frost for a loan, for it was a matter of pride with me to demonstrate that now that I was a lawyer there was no necessity of assistance from anybody.

But the results of the summer advertising were much the more a matter of concern, for very few inquiries had come in. A necessity of radical measures seemed apparent, and aside from the changes that I made in the advertisements then running in the newspapers, the measures that I adopted were not only radical, but, as I look at them now, quite useless as well.

I sent out a large number of advertising folders to men in

clerical employment, taking their names at random from the Boston Directory. The only result of this labor was the fact that it bolstered up my hopes and kept me busy when I might otherwise have been worrying—result not altogether to be despised.

But in the midst of my labors when time was so valuable if I was to launch the school successfully, I caught a severe cold and the inevitable occurred. For ten days I was confined to my bed with bronchitis. My brother Hiram was staying with me and with what attention he could give me night and morning and what hospital experience had taught me to do for myself, I passed through the ordeal, a doctor visiting me occasionally.

The fact that I was unable to carry on my work at Carver and Blodgett's was, of course, my chiefest concern, but the enforced neglect of the advertising season, for it was now the early part of September and the school was to open in two weeks, filled me with alarm. For a time I was, of course, too ill to worry much about work or advertising, but during the latter part of my illness some of the prospective students began to call at the house to ask questions.

Mr. George A. Douglas, who later entered the school and is now a member of the faculty, was one of those who called at the time, and although I was too

* Copyright 1916 by Gleason L. Archer.

ill to see him, my brother met him and from where I lay some of the conversation could be overheard. He did not register, however. All students who have taken Criminal Law and Agency under Mr. Douglas will readily understand why, without having seen him, I gained the impression from his voice that he was a very large man.

When I was able to return to my office duties and resume the advertising campaign, the outlook for the opening of the school was very unpromising.

Three out of the five men who had registered during the summer announced that they had given up the idea of studying law. One of the regular men of the previous year called at the house a few evenings before the opening night and announced that he had been attending the Y. M. C. A. Law School for over a week and should not return.

Several other men whom I had interested to the point of studying law had also been secured by the Y. M. C. A. Law School, but to have one of my "old guard" desert me at this juncture filled me with disappointment and alarm. Knowing as I did the strong drawing powers of the Y. M. C. A. organization, and not having heard from some of the other men, I feared that my little venture had met a complete shipwreck during my illness, and that other men of my original four had joined the big evening law school.

But after that first sleepless night, I plunged into a last campaign, realizing that only a desperate campaign indeed could save the school from utter failure at the very beginning. New advertisements were devised, and every effort was put forth to reach new men.

CHAPTER XI.

Opening Night.

The momentous opening evening, September 19th, 1906, at length arrived. The men came straggling into the little lecture room at 6 Alpine Street, Roxbury, until there were exactly nine of them—just one more than had gathered in the Old South Building, when I opened my experimental class in law the previous October.

But the situation was not near so favorable as on that occasion, for then only one of the eight was a visitor, whereas on this occasion five of the nine were visitors. Messrs. Collar, Dahl and Smith of the previous class were present, and only one new man who had registered.

Keenly aware of the expense that I had incurred during the summer, this barren result was very disheartening, but I had put my hand to the plow and the furrow must be driven straight onward. So I swallowed my disappointment and vowed that my first lecture should be so interesting that I would capture every one of the five visitors.

If I remember correctly we took up Agency that evening, and it was not long before I could see that the men were keenly interested in the subject, and just as I was feeling most confident of the success of my lecture, an event occurred that, however amusing it may seem now, filled me with consternation and alarm.

The chairs had never before been occupied, and were so new that the varnish had evidently failed to properly harden. At any rate the unseasonable warmth of the evening had caused the varnish to develop sticky qualities, and to my infinite dismay I noted that one of the students was stuck to his chair, and covertly endeavoring to free himself.

(Continued on page 20.)

Senior Notes



The Senior class is gifted! Behold, it has amongst its components a man, who, although he is not a lineal descendant of the great colonial jurist Chief Justice Marshall, can be considered as an inheritive descender. He is none other than Mr. William Marshall Jr., of Beverly. Mr. Marshall was successful in winning the Callaghan prize last year.

Talk about bargain sales and rummage inducements! The seniors are in a class by themselves. They even outdo the spinsters at their own game. Here is the bargain: You can get January's issue of the "Register" and the remaining four all for 50 cents. One half of a dollar. Senior: "Methinks this is a profitable investment. $5 \times 15 = .75$. Five issues for fifty cents. Put down my name, please."

Did you ever notice it, whenever Karl Baker wants to memorize or study, he goes to sleep. —Well, how are we to know that you try to concentrate, you close your eyes, and you give us the impression that you are peacefully within the arms of Morpheus.

A certain Freshman editor one night challenged Karl Baker to bowl a few strings, declaring that he would show the worthy senior that the Freshman class was far superior to the Seniors in more ways than one. After Baker had taken four strings the young man from the "second floor back" ad-

mitted that if the whole Senior class was like Baker they must be "some class."

It is rumored that a certain classmate, former Representative and at present a secretary to a certain aggressive Mayor, is to be a candidate for Congress next fall. Three guesses, who is he? Correct the first time, go to the foot of the class.

William Murphy denies that he has been subjected to a Bertillion examination as being a suspicious character. You would almost think so, Bill, your fingertips are all over ink. Explanation: William modestly asserts that he is in the ink manufacturing business.

The jurist of the senior class can be introduced as Mr. Charles McEvilla. Whenever the boys want to settle an argument or get a ruling they look around for Charlie and ask him what he thinks of it. Charlie gives his opinion, and when asked for a reference, he unbuttons his jacket and digs in his pocket and brings out the "mysterious book." No, nothing dangerous about it, there are only citations in it.

"Pete" Borre is developing into a second Brisbane. Also into an orator for he frequently "orates" at Mothers' meetings.

Grant Stoneburg, the transient student, is travelling again. Lucky for you, Grant old boy. No snow shovelling for you.

The Real Party In Interest

The Right of a Third Person, for Whose Benefit a Contract is Made, to Maintain an Action

By Geo. W. Ayer, '15.

Can A maintain an action against B on a promise made to C for the benefit of A? This is a question that has been before the courts of this country and of England since the days of the Year Books, and in view of a fairly recent decision on this point by the Supreme Judicial Court of this Commonwealth a discussion of this question may not be out of place here.

Let us assume for the purposes of this article that a father enters into an agreement with some third person for the benefit of his child. Can the child take advantage of this contract made for his benefit? It is on this proposition that there is a great conflict of authority, and even in this Commonwealth there seems to be some difference of opinion. No particular reference to the New York rule, as laid down in the leading case of *Lawrence v. Fox*, 20 N. Y. 268, seems to be necessary, since the sole purpose of this article is to discuss the Massachusetts rule, which seems to be that if the child has furnished some consideration for the contract he may maintain an action thereon.

Trend of Modern Decisions.

The trend of modern decisions is that "a third person for whose benefit a contract is made does not in all cases have a right of action; to entitle him thereto there must be some privity between him and the promisee, some obligation or duty owing from the latter to him, giving him a legal or equitable claim to the

benefit of the promise, or an equivalent to him personally." *Ferris v. Water Co.*, 16 Nev. 44.

This question of privity did not seem to enter into the earlier cases, which baldly stated that such a right of action existed.

An early case is that of *Dutton v. Poole*, 1 Ventris 318 (K. B. 1677). In this case it appeared that the defendant promised Mrs. Dutton's father, who was about to fell timber for the purpose of raising a marriage portion for his daughter, that if he would forbear, he, the defendant, would pay the daughter 1000 pounds. A divided court held that the action could be maintained, although one of the judges based his decision on a case which he "never liked," but hesitated to overrule.

The first case in Massachusetts was *Felton v. Dickinson*, 10 Mass. 287, decided in 1813. In this case the father of the plaintiff, when the latter was about 14 years of age, placed him in the service of the defendant upon an agreement that the plaintiff was to remain in that service until he should arrive at the age of 21, during which time the defendant promised to support him, and to pay him (the plaintiff) \$200 when he became of age. The court held that the plaintiff could maintain an action on this promise, as the agreement of the father acted as an emancipation of the son and entitled him to receive the wages of his labor. Though the father contracted for the son, yet he had a view to his son's advantage and not his own.

Felton v. Dickinson was followed to some extent in the later

cases of *Carnegie v. Morrison*, 2 Met. 381, and *Brewer v. Dyer*, 7 Cush. 337, in both of which the court recognized the existence of the rule that a third person for whose benefit a contract was made might maintain an action upon it.

Before many years, however, the courts began to perceive that the "rule" must be limited, and in *Mellen v. Whipple*, 1 Gray 317, Metcalf, J., said that "there must be privity of contract between plaintiff and defendant in order to render defendant liable to an action by plaintiff on the contract."

From this time on (1854) the necessity for a consideration moving from the plaintiff was recognized to some extent. This was at last "settled" in the leading case of *Exchange Bank of St. Louis v. Rice*, 107 Mass. 37, in which case Mr. Justice Gray reviewed the cases in his customary masterly manner and decided that consideration moving from the plaintiff was absolutely essential. *Felton v. Dickinson* was one of the cases reviewed and received from Judge Gray's pen what seems to be an undeserved slap, inasmuch as the case before the court was not at all parallel.

Important English Decision.

In the meantime, in 1861, the English Court of King's Bench, in the case of *Tweddle v. Atkinson*, 1 B. & S. 393, had overruled *Dutton v. Poole* and similar cases and laid down the rule that no stranger to the consideration can take advantage of a contract, even though made for his benefit. The facts in *Tweddle v. Atkinson* were similar to those of *Dutton v. Poole*, which are given above.

The effect of *Exchange Bank v. Rice* was such that the question we are discussing did not come before the courts again until 1889. The case then before the court

was *Marston v. Bigelow*, 150 Mass. 45, an action on a promissory note. The defendant offered to show in defence that his father had conveyed certain land to the plaintiff's intestate in consideration of an agreement never to molest or trouble the defendant for the balance due on the note. The court held, and quite properly, that this was no defence, as the promise was not made to the son, and that the father, not the son, furnished whatever consideration there was. The court discussed *Felton v. Dickinson* and said that the case was undoubtedly decided correctly, but should be construed cautiously.

In 1914, 25 years later, the Supreme Court once more considered the question. It arose in the case of *Gardner v. Dennison*, 217 Mass. 492. This case was an action by a son through his father (p. p. a) on an agreement made by the defendant's testator with the plaintiff's father. It seems that some two months prior to the birth of the plaintiff his father told a friend, Edward Gerrish, the testator, of his hopes and expectations. Whereupon Mr. Gerrish made a promise in writing that if the child should be a boy and were named for him (Edward Gerrish Gardner), he would place \$10,000 in trust for him. This was in 1901. Mr. Gerrish died in 1906 without carrying out his promise, and made no provision for the child in his will, although he was rather well to do. In the Supreme Judicial Court, Rugg, C. J., held that a verdict ordered for the defendant in the Superior Court was wrong and that the plaintiff was "at least entitled to go to the jury." The gist of the decision was that the son had furnished the consideration by bearing the name given to him. "The consideration moves in part from the child, although he is not

(Continued on page 22.)

Junior Notes



Admiral Ransom (retired) studies law for recreation,—but with an earnestness and sincerity that would do credit to many a younger man. He attributes his fine health, (and anyone who has ever observed the glowing color in his cheeks, the brightness of his eyes, and the spring to his step, will admit that he is in fine health) to long walks in the open air, which, to use his own language, “keep him young and youthful looking.”

A discovery was made at the class banquet. After the festivity was over, we noticed several Juniors placing their “favors” in their pockets. This is indicative of one thing, namely, we have more fathers in the class than we had ever thought or dreamed of having.

Klivansky it is said, is slated to blossom forth into a cabaret singer at Paragon Park Palm Garden next summer. I see where

the garden is visited by quite a bunch of Suffolk boys.

It would not be a bad idea to start a Junior Quiz club. This has been suggested many times by various members. All that is necessary now is a little concerted action and a few leaders to start it.

Mr. Baker is to be complimented for the clearness of his flashlight picture taken at the banquet, and which is reproduced on another page of this month's “Register.”

Among the orators at the banquet were Parks, Fielding, Gleason and McGowan. And “believe us” boys they were “some” after-dinner speakers.

And speaking of banquets, there is a faint rumbling which sounds like a Sophomore and Freshman banquet in the near future.

INTER-CLASS BANQUET TO BE HELD.

Members of the Sophomore and Freshman class have decided to hold a little supper the second week in March. This is merely a preliminary to the regular school banquet, and students are not urged to go unless they are also to be present at the school affair. The four class presidents, Leo J. Halloran and Thos. F. Pattan of the Sophomores, and Maurice M. Walsh and Chris. Halligan of the Freshmen, together with their fellow officers, have practically completed arrangements. It is expected that the gathering will be one of the most novel class banquets ever held, as numerous specialties and “favors” will be on the program. While students are not urged to be present to the detriment of the regular school banquet, all those desiring to be present, should give their names to the class presidents. The price of tickets will be one dollar, and the banquet will probably be held at the Elk's Club, where the Juniors held a highly successful banquet a short time ago.

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Art vs. Decency

By Leo J. Halloran.

The future of our Commonwealth, the future of our great nation rests in the family. The home is the very foundation of all society, of which government is the dominant factor. To destroy the family, to break up the home, is to destroy society, and when society disappears government can no longer exist.

The children of today are the men and women upon whom our nation will depend tomorrow.

It is in the home that the children are taught their first lessons in government; it is in the home that they are taught respect for authority; it is in the home that a love and faith in God and in his commandments is implanted indelibly in their hearts and minds. Since, therefore, we look to the home and its dearest and ablest of teachers,—the mothers,—to send forth men and women who have the moral strength to cope with life's battles and be strong and able to carry on the work of government,—to be the nation's champions in the hour of need—it is compatible and imperative that we safeguard and protect that home in order that the individual members of it will not be morally weakened and thus become dangerous members of society.

It is the duty of the authorities and legislators to protect that most sacred of all institutions by passing laws, and by enforcing those laws so that the spiritual life of the child shall not be endangered in any way. And it is our duty as citizens of the community to see that such legislation is enacted and enforced. If those men fail to fulfill their duties as representatives of a moral and good people, it is for us to censor them and since by their passiveness they allow the sanctuary of the home to be endangered by spiritual poison, we should condemn them.

In view of all this it is amazing, even astounding to find certain people who seek to violate these laws and when the God-fearing men in office refuse to countenance the violation, to attack them in the bitterest and most scurrilous language.

The City of Boston has laws and regulations for the protection of the people from the poisonous influence of indecent theatres and productions. Any play considered as against or dangerous to the public welfare is, and rightly so, barred from presentation in this city.

A short time ago a musical and dancing show from New York arrived in Boston, to be presented at one of our "high class" theatres. Many of the features of the production were absolutely sug-

gestive and vicious, and nauseating in their indecency. Mayor Curley instantly ordered the objectionable features removed. At once a wild clamor went up from several so-called "critics" and "lovers of art" at what they were pleased to term "a wholesale desecration of an artistic production." The Mayor was attacked for his narrowness, and assailed as the "murderer of art in this city," etc., etc.

About the same time as the above-mentioned occurrence, a play was to be produced at another Boston theatre which was vicious, both in its theme and in its presentation. Once again the Mayor refused to allow such a production, and it was barred. The producer bemoaned the fact that the work of his life should be thus interrupted by an inartistic Mayor. The certain publisher declared that he "had no intention in the world of producing a play offensive to the sensibilities of the public," etc. But whatever his intention, but for the carefulness of Mayor Curley, such a play would have been produced.

It is a strange and dangerous condition of affairs when decency and a proper observance of God's commandments must give way to a questionable, indecent, animal form of art; when the Mayor of a city representing nearly a million people must be dictated to by a group of petty, fanatical lovers of sensuality, and money-mad producers who, under the guise of "art" seek to make capital out of the passions and weakness of the people.

The Mayor is to be commended for his righteous stand. No censorship can be too strict when the moral welfare of the community is at issue; and in this instance, Mayor Curley has done a great service to the people of Boston, of Massachusetts, and of the United States by prohibiting productions which are a source of insidious evil to the family and to the home.

IN THIS ISSUE.

We have so many good things in this issue that we cannot refrain from mentioning a few of them. First, we have the story of the remarkable rise of Joseph A. Parks, a Junior in our school, from mill hand to chairman of the great and powerful Industrial Accident Board. Next is Maurice Abrahamson's interesting account of the weird ceremonies of the religious fanatics of Manila. "Ed." Rosenzweig has a very clever poem entitled "The Pessimist." Steve A. McAleer who has already gained considerable praise and recognition as a writer, has contributed an article, "The Specialist," in which he describes the true specialist,—the specialist of mankind—the man who is always ready to aid some poor unfortunate who has failed to gain a share of this world's goods.

COMING SCHOOL BANQUET.

The annual school banquet, the biggest event of the school year, will take place about the middle of April, Dean Archer announces. This is the great get-together meeting of all Suffolk Boys, past and present, for the alumnae is a welcome part of the gathering. Those who were present at last year's banquet, at the Quincy House, will recall its great success, and the many novelties which formed a part of the evening's entertainment. Among the speakers last year were Ex-Congressman Jos. F. O'Connell, toastmaster; Governor Walsh, Mayor Curley, Ex-Attorney General Boynton, Dean Archer, and John J. Murphy. This year's gathering promises to eclipse even that of last year, and all students are urged to be present.



Photo by K. G. Baker—Boston Record Pictorial

JUNIOR CLASS BANQUET 1916, AT ELKS' HOME, SOMERSET STREET

Sophomore Notes



One reason why Newton is not bothered very much by "crooks" and other law-breakers is because it has a police inspector by the name of O'Halloran. "Ed" has had many startling adventures and narrow escapes during his career, but his closest call came about a year ago when he captured an armed murderer single-handed and without using a gun. The latter shot at "Ed" but missed him by a few inches.

"Stevie" Bresnahan of Cambridge certainly deserves credit for his kindness to one of our unfortunate students. Although "Steve" is very busy he finds time every school night to call for a blind student of the freshman class, who is also a resident of Cambridge, and bring him to and from school. Until they were introduced to each other by the Dean at the beginning of the school year, these men were entire strangers. Such unselfishness and devotion as this only serves to show the splendid spirit which exists among the students of the school.

"Dan" McGillicuddy is in both the "sophomore" and "versatile" classes. He is a detective, constable, debater, student and comedian. "Dan," has solved quite a few perplexing criminal cases but is still trying to fathom out why manure is land under certain circumstances.

John Hurley negligently dropped some coins on the floor.—Several voices cried out in unison "lock the doors." Why should these young men cast reflections

on their future fellow legal lights by such statements. A-hem, I don't know.

"Dave" Richmond has taken papers to be a justice of the peace. He doesn't say whether he has applied for power to perform marriage ceremonies, but this being "leap" year, some of the students are of the opinion that "Joe" is anticipating considerable business in the matrimonial line.

"Dan" Kiley of Natick, the town made famous by "Eddie" Mahan of Harvard, is quite an expert at predicting the result of "elections." If you don't believe it ask him sometime about the difference between an "election" and an "option given or retained." "Dan" has been smiling ever since.

Although each student is permitted to ask two questions per evening, "Tom" Friary hasn't asked one yet. "Tom" says that he is going to let his questions accumulate and ask them all in one night. The instructors had better be on their guard.

Talking about seasons (seis-ins) "Leo" Halloran says there are four, namely, spring, summer, autumn and winter.

One of the editors, while walking along Amory St., Roxbury, saw the following sign hanging outside the door of a saloon: "Free, a good stew." However, being a teetotaller, he did not accept the invitation.

Progressive History of the Suffolk Law School

(Continued from page 11.)

He succeeded, but the ominous stripping sound with which the fibre of the cloth of his trousers parted company from the varnish, set every man in the room on the move, and there was a perfect chorus of similar sounds from eight other chairs.

If anything could have been more shattering to the composure of a lecturer under my circumstances than this happening it would be indeed hard to find it. The majority of these men were visitors who might or might not register, according to the impression made by that first lecture. To be seated in sticky chairs that might for aught they knew, ruin their clothes, was enough to make a failure of any lecture.

Thoughts of damage suits and certainly of damaged suits, flitted through my mind, but I forged desperately ahead with my lecture, hoping against hope that the thing would not happen again. But at the second uprising that occurred within ten minutes, I abruptly suspended my lecture in scarlet confusion.

The men assured me however that no damage had been done. Somebody produced a newspaper and distributed a sheet to every chair, and the men settled down upon these rustling protectors with sighs of relief, but the humor of the situation burst upon all of us. When the general laughter had subsided I resumed my lecture, and continued to the end of the period without further interruption.

I was cheered not a little by the manifest enthusiasm of the men—three of the visitors, George A. Douglas, M. V. Connor and John J. Murphy, immediately registered, while one other asked to be allowed to attend the lecture of the following evening.

After the first week the follow-

ing lecture schedule was passed: Monday evening, Bills and Notes; Tuesday evening, Contracts; Wednesday evening, Agency, and Friday evening, Criminal Law, all of which I taught, the sessions lasting from 7.30 to about 9.15 P. M.

During the second week five new men were registered. B. E. Hamilton, one of the visitors, on opening evening, George L. Bush, Israel Mostowitz, Charles N. Chase and James F. O'Brien.

The third week added two others to the roll, B. H. Zuccuello and James F. Quigley, making a total of fourteen students, but only for a brief time, for Messrs. Connor, Quigley and Hamilton dropped out within the first month of the beginning, leaving eleven men to finish the fall term.

The story of this first term of school would not be complete were I to omit the most important event of all—my marriage to Miss Elizabeth G. Snyder, whose loyal sympathy and unswerving faith in the future of the institution were to do so much to strengthen me in the trying days that were to follow.

Note:—In accordance with the notice of last month this is the last instalment of the Dean's history to appear in these pages. Readers of the "Register" who desire to follow the Suffolk Law School through the intensely interesting pages of Dean Archer's history of the school are referred to his new book, "The Educational Octopus," concerning which a special offer to readers of the "Register" was published in the January issue.)

"Frank" Falvey says that he has considerable to do with bills because he is in the collecting business, but "N. I. L." is something he never dealt with before. How about this, "Frank"?

Freshman Notes

Throw Out the Lifeline.

Dedicated to Freshman Class.
O where, O where, is our class spirit?
O where, O where, has it gone?
It was with us, but now has disappeared
It behooves us all, that it again be reared.

A Quotation from Authority.

Quoted Dean Archer, "Every man is presumed to know the law; ignorance is no excuse. Even in examinations." How well some of us are acquainted with the fact, Dean.

About Ourselves and Another.

Say, fellows, what do you think of our new businesslike system of handling the Register. We're right there, we are! But the credit is entirely due Mr. Ed. Pearson of the Sophomore class.

Eventually, Why Not Now?

Now that we've placed our paper on a sound, substantial business basis, we expect every student who considers himself loyal to Suffolk, and who has not already subscribed for the magazine, to do so immediately, so that he may obtain the remaining copies at the reduced prices.

Interrogating Question.

Dean! May we have some air?
Then his omnipotence perfunctorily answered, "Why yes."

Superfluity of Speech.

Time as of the essence of the contract.
What a pusillanimous utterance!

Evidently a Mistake.

One evening, not long ago, Mr. J. Russell King boarded an L train, on his way to school. With him was a student's bag containing paraphernalia used in school. The doors of the train were about to exclude and include humanity when Mr. King, realizing it to be his stop, grabbed a bag and deftly slid through the fast closing opening. On reaching school, J. Russell prepared to extricate his books, et cetera. But, O horrors, the contents of the bag summed up thusly:

1 pipe (used).

1 package Dill's Best (partly consumed).

1 Duffy's 1-2 pint (empty).

1 greasy lunch paper (evidently overworked).

But Mr. King, being an optimist, survived the gruesome extraction.

We Agree with Sid.

The following statement is attributed to Prof. Douglas: "I'll tell you why it (the point in question) is an attempt to commit a crime (dramatic pause). Because the law says so.

Mr. Sidlofsky instantly retaliated with this indifferent rejoinder, "O that's all right then, Mr. Douglas."

Another stifled groan was also overheard of, "Aw-w N-o-o-o. Mr. Douglas."

Mr. Douglas, discussing Assault and Battery—"He must retreat to the wall—"

Freshman (interrupting) Well—how about it, if he is on a desert?

The Real Party in Interest

(Continued from page 14.)

in a position personally to yield an assent to the promise at the time it is made. The circumstances of the parties respecting the naming of a child are so peculiar, and the obligation resting upon the father and mother so important, that the inference may be drawn that the father is acting in the interests of and as agent for the son in making a contract as to giving him a name."

In this case the Chief Justice recognized the "general rule that one who is not a party to a contract cannot bring an action upon it, even though it be made for his benefit," but seeks to get around the rule by assuming a relation of agency on the part of the father. It would seem that this is a dangerous argument inasmuch as it appears to be getting back to the old English rule that if the real party in interest (e. g., a son or daughter) were a near relation to the promisee, then he could maintain an action on the promise. It is submitted that the following is a more satis-

factory rule and one less likely to give trouble.

Such action does not rest upon the ground of an actual or supposed relationship between the parties, nor upon the reason that the defendant by entering into such an agreement has impliedly made himself liable on the ground of agency, but upon the broader and more satisfactory basis that the law, operating on the acts of the parties, creates the duty, establishes a privity, and implies the promise and obligation on which the action is founded. See *Brewer v. Dyer*, 7 Cush. 381, and 25 L. R. A. 272.

In conclusion, is it not a fair inference that where the plaintiff has furnished the consideration, either in whole or in part, although neither promisor nor promisee, the necessary privity of contract is established? He surely is not a stranger to the consideration, and since the rule is thus satisfied, may we not assume that the question has been "settled" for another 25 years?

THE LAST HALF.

The first half is over and as Tennyson says, all that is left of the six hundred (or more) have come back from the Valley of Death to prepare for the charge against the final examinations in May. Perhaps some of us have come back battle scarred from our recent struggle with the mid-year hosts of war, but even if we have not captured any coveted trophies or won high laurels, still if we have shown a brave front and have done our best, according to our individual ability, we need not be discouraged. Work is the secret of success, so let us all try, during this second semester, to profit by our mistakes of the first half and keep "plugging" away away in the honest way that will eventually crown our ultimate efforts with success.

Failure, when you have done your best, is bad;
I know a thing a thousand times as sad;
The sting that failure leaves within your breast—
An ache that knows no surcease, gives no rest—
When you recall you did not do your best.

From Millworker to State Official

(Continued from page 6)

to ponder at an early age upon the law and its meaning, but with very little education as a foundation and with a mind that was not developed sufficiently for its purposeful study. It was only through my acquaintance with our beloved Dean that I came to a realization of the opportunity that the law presented for me. It is easily understood how great is the temptation at the end of a very busy and grinding day to hurry home to wife and loved little ones, rather than to take up such a deep study as law, but when one has a goal in mind and all the loved ones lend their encouragement, it is not so hard to keep one's eye on the mark and work for it. This is particularly true of law study at our school. The Dean and the officers have labored to make things pleasant for us, making us forget self and remember the end for which we are all aiming; membership in the honorable fraternity of the Bar of the Commonwealth.

There is a mistaken idea among lawyers and law students in general, and especially those who have not practised before the Industrial Accident Board or participated in proceedings before our commission, that there is not much law in the administering of the Workmen's Compensation Act. They forget that the most intricate legal problems are raised before our Board and that the Supreme Judicial Court has given many hours to the consideration of the nice points involved in each of the 64 cases taken by appeal to that body. When it is remembered that only in three cases has the decision of the Board been overruled, lawyers and students will understand how effectively our statute has been

administered. Lawyers come before me daily with unprepared cases, because of their lack of familiarity with the law and its application to their particular case. Their lack of preparedness and study is well shown by the manner in which they attempt to apply certain English decisions to the cases under consideration. They have not learned to take the law seriously and yet they are serving clients who may in death cases receive the maximum of \$4,000 and in non-fatal cases may receive compensation which, under certain exceptional circumstances, attain much higher figures. Surely, with the rights of the employees and their dependents so adequately protected by the law, attorneys should carefully prepare themselves for the proper presentation of their cases.

It has been my privilege, acting in the interest of justice and fair-play, to aid attorneys to get at the truth and the application of the law and in this, as well as in the making of rulings under the law, my training with the Suffolk school has been of incalculable advantage. There is hardly an important case in which many rulings are not requested and I have been able to decide promptly, in each case, whether these should be given or denied.

In the consideration and disposition of cases under the Workmen's Compensation Act, knowledge of the law generally is of great assistance. In many of the cases, especially, the law of contracts, torts and agency, particularly with reference to the relation of master and servant, are involved and it requires the nicest consideration of the points involved and the correct application of the principles of the law in order to decide cases properly.

Our law takes away the defences previously available to an employer under the Employers' Liability Act in a suit at law brought by a workman whose employer is not insured so that about 80 per cent of the employers of the Commonwealth have taken out insurance policies. This is remarkable in a state where the law is not compulsory and indicates widespread acceptance of the principle of workmen's compensation by employers and general satisfaction with its provisions. With the exception of less than a hundred workmen, all those covered by insurance have elected to receive the benefits provided by the law. The few remaining employees who have elected to remain under the common law may bring suit against their employers, but in that event the three defences are automatically restored and they

have the same small chance to recover damages as they had prior to the enactment of workmen's compensation legislation.

In conclusion, let me give a word of advice to my fellow students and to the army of graduates of the Suffolk School of Law. Include a thorough study of the Workmen's Compensation Act in your school and office work; get the printed decisions bearing on our Board's administration of the law; give every case that is brought to your attention for trial before our Board the study it deserves; and above all, place your mark high, work earnestly and without reserve for that mark and keep in mind the thought that the profession of law is a most honorable profession. Great men made the law and men may attain greatness and greatest honor through the practice and interpretation of the law.

Holy Week Services of the Philippines

(Continued from page 9)

and the punishment may be applied at any time except when the Penitente stops before a "prayer house." The prayer houses are nipa shacks erected at intervals along the beach. My native guide explained the etiquette of the game, from which I inferred that it is not considered polite or good form for the penitente's companion to beat or kick him when he stops before a prayer house to think over all the mean things he has done since Holy Week the previous year.

The antics of the penitente on Holy Thursday remind one more of a third rate circus clown than of a man imitating the sufferings of Christ. The Penitente may be walking along slowly and suddenly jump in the air and come down to the ground doubled up

like a jack-knife. Apparently "every little movement has a meaning of its own," as they all go through the same specialties. There is, no doubt, considerable suffering experienced, as it is said they take neither food nor water during the periods of thirty-six hours preceding noon of Good Friday. In Spanish times it is said that exposure to the intense heat of the midday sun and lack of nourishment frequently resulted in serious illness or death.

Terrible Suffering

It is on Good Friday that the spectacular show and the real suffering takes place. At day-break the Penitente arises from his bed of sand and is prepared for the finish. His back, bruised and sore from the treatment received on the previous day, is

lacerated with a knife or broken glass until the blood runs down his body. The regalia worn the day before is donned and he is given a rope at the end of which are tied six or eight triangular shaped pieces of bamboo about six inches long. With this flail the fanatic begins to beat his back, first on one side and then on the other. This is continued about five hours, when the muscles of the back are a mass of bruised and bleeding flesh and clotted blood. At intervals of five or ten minutes, and always when the reading of the Passion is heard, the companion applies a leather thong, rope or stick to the legs and body of the Penitente. At times an instrument shaped like a hair brush, in which are embedded many sharp pieces of broken glass, is used. It is applied to the Penitente as he lies on the ground, face downward, arms outstretched, in the image of the cross, and at each application the blood spurts in all directions. The ceremony of Good Friday ends about 11 o'clock in the morning, when the Penitente wades out into the sea and takes a salt water plunge.

This of itself must be rather painful, considering the condition of the Penitente's flesh.

BATTY VS. GREENE.

While discussing Equity cases, the instructor outlined the action in *Batty vs Greene*, 206 Mass. 561.

In this case Batty had been living for some years with a woman whom he had supposed was his lawful wife. After her death it was brought out that she had a lawful husband living when she married Batty. The latter brought suit against her administrator Greene to recover money and property which he had given the woman and gave fraud as a ground for his action.

It was the consensus of opinion among the students that the plaintiff "Batty" was well named. Also that she was by no means "green" (Greene.)

The instructor also waxed humorous when he said that parties by the names of Batty and Greene needed good lawyers.

"Jack" Hardy is hitting his studies high. He is batting about 996 in the "knowledge league."

FAIR PLAY!

It has been often said that in free schools such as day or evening high schools, many students waste their time and cause great annoyance to others, while in institutions where students have to pay for their education there is no disturbance, no diversion or waste of time. This comparison is true in a limited sense. But even in schools, such for instance as the Suffolk Law School, where men by the sweat of their brow and the toil of their hands pay for their education, there are some who seek to hamper and impede them, by continually annoying the instructors and members of the class. Thoughtlessness—absolute thoughtlessness—and nothing else! If those students who continually whisper and snicker during lecture would only realize that not only are they impeding their own progress and wasting their money, but they are also making it difficult for earnest, sincere men who have a definite purpose, and who have come to study law, and expect a return for their money, to acquire that which they are entitled to. The remedy is plain,—no whispering or laughing in class, close application to the lecture, and courteous attention to the instructors. Also fewer questions. Then each and every student will be playing fair with his fellows, and a decided improvement in scholastic standing will result.

Answers to Mass. Bar Examinations

(Morning Paper Dec., 1910, Bar Examination Questions were in January Issue.)

ANSWER 5.

Yes. The defendant is liable under the terms of the contract, as damage by inevitable accident was not excepted.

Harvey v. Murray, 133 Mass. 377.

ANSWER 6.

The lessee is liable, as the carpenter was his servant and under his control, and not an independent contractor.

Brackett v. Lubke, 4 Allen 140.

Cited, 163 Mass. 18.

It was not a nuisance. See 148 Mass. 265.

ANSWER 7.

There was a breach by B after part performance going to the essence of the contract, and A was justified in rescinding and was not liable for so doing.

If B had offered to furnish the seed very soon after May 15, then the answer would depend upon whether or not time was of the essence of the contract and whether the offer was in season.

See Langdell on Contracts.

ANSWER 8.

In the first case there was a unilateral contract which was not complete until all the coal had been delivered.

In the second case there was a bilateral contract which was complete when Y agreed to deliver the coal.

See Langdell's cases on contracts.

ANSWER 9.

(a) Jones had only a vendor's or seller's lien.

Williston on Sales, Secs. 504, 506.

(b) Brown obtained title on August 1, subject to the seller's lien.

Williston on Sales, Secs 263, 264..

There was an acceptance within the meaning of the Statute of Frauds.

Williston on Sales, Secs. 52, 76.

ANSWER 10.

The Trust Co. is entitled if it took without notice of the breach of duty. Howes was intrusted with the receipt endorsed in blank so that it could be negotiated by delivery by Howes.

Williston on Sales, pp. 710, 746.

An antecedent debt constitutes value under the Sales Act.

Williston on Sales, p. 10353.

ANSWER 11.

X has an absolute right against the maker A.

R. L. Chap. 73, Sec. 77.

X has conditional rights against B and C.

In order to hold them he must duly demand payment at the maturity of the note and give notice of dishonor to both B and C.

B is what is sometimes termed an anomalous indorser, not being either payee or a subsequent holder. He is, however, "deemed to be an endorser," and is entitled to notice of dishonor.

.. **R. L. Chap. 73, Secs. 81, 106.**

Thorp v. White, 188 Mass. 333.

The note being payable to "bearer" did not need to be indorsed in order to pass title, but being endorsed by B and C, both are liable as endorsers.

R. L. Chap. 73, Secs. 81, 84.

Prior to passage of the N. I. L. (1898) C would have been liable as a joint maker, but would have been entitled to notice of dishonor.

ANSWER 12.

Parker must first present the bill of exchange within a reasonable time for acceptance by Adams.

R. L. Chap. 73, Secs. 160, 161.

If Parker fails to do so the drawer is discharged.

If Adams refuses to accept, Parker must have the bill protested by a notary, as it is a foreign bill.

R. L. Chap. 773, Secs. 146, 169.

If the bill is accepted then Parker at maturity must present it for payment. If payment is refused he must have it protested and if he fails to do so Derby is discharged but Adams, the acceptor, is liable.

ANSWER 13.

Stephen's Art. 90.

(1) A policy of insurance is effected on goods "in ships from Surinam to London." The goods are shipped on a particular ship, which is lost.

.. The fact that that particular ship was orally excepted from the policy cannot be proved.

(2) An estate called Cotton Farm is conveyed by a deed which describes it as consisting of particulars described in the first division of a schedule and delineated in a plan on the margin of the schedule.

Evidence cannot be given to show that a close not mentioned in the schedule or delineated in the plan was always treated as a part of Cotton Farm, and was intended to be conveyed by the deed.

(3) A. institutes a suit against B. for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted by mistake.

A. may prove that such a mistake was made as would entitle him to have the contract reformed.

(a) A. and B. enter into a written contract for the sale of an interest in a patent, and at the same time orally agree that the agreement shall not come into force unless C. approves of it. C. does not approve. The party interested may show this.

No evidence may be given of the terms of such contract, nor the contents be altered, contradicted, added to or varied by oral evidence.

1. Provided that any of the following matters may be proved: Fraud, intimidation, want of execution, of capacity, etc.

2. The existence of any separate oral agreement containing a condition precedent.

3. The existence of any separate oral agreement on which the document is silent, not inconsistent, etc.

(4) Subsequent oral agreements to rescind or modify not invalid under the St. of Frauds.

(5) Usage or custom.

See *Durkin v. Cobleigh*: 156 Mass. 108

ANSWER 14.

If parties who ought to join as plaintiffs, in a bill, refuse to do so, they may be made defendants, their refusal to be plaintiffs being stated in the bill.

Richardson's Equity, 21.

The plaintiffs should sue for the benefit of all having like interests as themselves. With these amendments the bill can be maintained.

Davis v. Peabody, 170 Mass. 397, 400.

Birmingham v. Gallagher, 112 Mass. 190.

Where the persons having similar interests are numerous it is within the province or discretion of the Court to entertain the bill although brought by one only, in behalf of himself and of all others who may become parties thereto.

for parties defendant in case of a bill for instructions as to the construction of a will.

George F. Libby v. John Norris et als. 143 Mass. 246.

See R. L. Chap. 159, Sec. 10

ANSWER 15.

A special appearance may be entered when the defendant desires to suggest to the Court any matter, such as defect in the process of service, which he considers ground for dismissing or abating the suit as to him, but which he would be deemed to waive by entering a general appearance.

If the defendant would object to the irregularity or want of due service in this respect, he may do so by plea in abatement, where it is necessary to plead any matter of fact on which his objection is founded, or by motion to dismiss where the objection is apparent on the face of the proceedings, or the return of the officer; and in either case before pleading generally to the merits. And to enable him to do this, he may appear specially for the purpose of stating such objections, without thereby submitting himself to the jurisdiction of the Court; and the Court then having jurisdiction of the subject and of the persons of the parties may proceed.

C. J. Shaw, in Brown v. Webber, 6 Cush. 560, 564.

(End of Morning Paper, Dec. 31, 1910.)

Interesting Article in March Issue

It is with pleasure that we announce the publication of a timely article in the March issue of the "Register" by Mr. Thure Hanson of the Sophomore Class. Mr. Hanson, who is State Sealer of Weights and Measures, is undoubtedly the best equipped and most thoroughly conversant man who has ever held that position. With his wide experience and keen insight into that particular branch of the State's service, Mr. Hanson is certain to contribute an article of rare interest to the student body.

More Bar Questions and Answers

(January Examination, 1910.)

(Hereafter the Register will print Bar questions with the answers complete in same issue.)

MORNING PAPER

Q. 1. B, while insolvent, buys goods of S, not intending to pay for them, P, in good faith, not knowing of B's fraud on S, purchases the goods of B. P, instead of paying cash for the goods, credits B with the amount of the purchase price as a part payment on a previous larger indebtedness of B to P. S, upon discovering B's fraud, replevies the goods from P. Who will prevail at the trial?

ANSWER 1.

P will prevail. B, the buyer, can give a good title to a buyer for value before the vendor has avoided the contract.

Rowley v. Bigelow, 12 Pick. 307, 312.

At common law the payment of an antecedent debt was not, in most jurisdictions, a "purchase for value."

Goodwin v. Mass. Loan & Trust Co. 152 Mass. 199.
but by the Sales Act it is,—

Chap. 237, 1908, Sect. 76 (3), Williston, pp. 1036-9.

Q. 2. S, a manufacturer in Springfield, Mass., sold goods on credit, F. O. B., Springfield, to B, a merchant in Boston. By the bill of lading the goods were deliverable at Boston to B or order. S forwarded the bill of lading to B, at Boston, who endorsed the same to P, a purchaser for value in good faith. Later, while the goods were in transit at Worcester, S learned that B was insolvent, and notified the carrier not to deliver, but to hold for him, S.

Was the carrier obliged to hold them?

ANSWER 2.

No. The title passed to B, upon delivery to the carrier.

(Sales Act, Chap. 237, 1908, Sec. 17). Will. 409-9.

Ordinarily the seller could exercise the right of "Stoppage in Transitu," upon the insolvency of B before the goods reached their destination (Sec. 57, page 893, ditto) but a negotiable bill of lading is such a document of title as cuts off the seller's rights when it has been negotiated to a purchaser for value without notice.

(Sec. 20, 59, 62, p. 921, ditto.)

Q. 3. M bought merchandise of P. M gave in payment his promissory note payable to P, or order. P endorsed it in blank, at the same time forging F's name above his own. P then transfers the note to T, T having no knowledge of the forgery. T then transfers the note by delivery, without endorsing the same, to H for value.

Has H any remedy against T?

ANSWER 3.

Yes. He is liable on an implied warranty. A person selling a note like any other chattel impliedly warrants that it is what it purports to be.

Cabot Bank v. Morton 4 Gray 157.

R. L. Chap. 73, Sec. 82.

He is not liable on the note as such, as he is not a party to it.

But he is liable on his implied warranty for any damages resulting from the forged name, and then only to his immediate transferee.

R. L. 73, Sec. 82, Cl. 4.

Q. 4. M buys merchandise of P, and gives a promissory note for ten thousand dollars, payable in six months, in payment. After one month has elapsed, P, becoming alarmed at M's financial condition, asks him for security. M tells him to let him (M) take the note and that he will get E, who is financially sound, to endorse it. M takes the note to E, requests him to endorse it and promises E that if he will do so, he (M) will endorse E's paper to a like amount whenever E requests it. E agrees, endorses the note, and M gives it back to P. The note is not paid at maturity, and after proper demand and notice, P sues both M and E.

What should the judgment be?

ANSWER 4.

M is of course liable. E, it would seem, is not liable, as there is no consideration between the parties,—no damage or loss to the plaintiff, and no benefit or advantage to the defendant.

Green v. Sheppard, 5 Allen 589.

Stone v. White, 8 Gray 589, 593.

M's agreement with E could not inure to the benefit of P.

See **R. L. 73 Sec. 81.**

Q. 5. S employs A to sell goods on commission, and intrusts him with the goods for that purpose, but instructs him to sell for cash only.

A sells to B on credit a part of such goods, telling him that he has authority to so sell, and delivers the goods.

A creditor of B attaches the goods when they are in B's possession.

S as soon as he learns that A has sold these goods on credit, demands them of the attaching officer, and, upon the refusal of the officer to give them up, sues him for conversion. Can he recover?

ANSWER 5.

Yes. B acquired no title. A's authority was limited. One dealing with an agent of another is bound to find out the agent's authority. That authority could not be enlarged by the agent's declarations. B could not assume from the fact that A had possession of the goods, that he either owned them or had authority to sell them on credit.

Caveat emptor applies.

Stollenwerck v. Thacher, 115 Mass. 224, 227.

See **Thacher v. Morse, 134 Mass. 163-4.**

See **Rev. Laws Ch. 68, Sec. 1, Mass.** "factor or other agent who is intrusted with the possession of merchandise with authority to sell the same shall be deemed the true owner of such merchandise so far as to give validity to any bona fide contract of sale made by him."

In Mass., a person dealing with a SPECIAL agent is bound to ascertain the extent of his authority.

Lovett v. Sullivan 189 Mass. 563.

In **Mich. St. Bank v. Gardner 15 Gray 374**, Shaw C. J. says the St. 1845 193, (now R. L. 68-1) so far changes the Col. that the con-

signee "may sell for credit against his orders," and may sell by "barter," but cannot pledge.

According to *Thacher v. Moors* 134 Mass. 163, that statute only applies to an agent who has a general unrestricted power to sell.

H. W. B. thinks the decisions and the statute are inconsistent.

See *Williston on Sales*, p. 483.

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