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The Practice Court

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THE law department of the University of Michigan has always proceeded upon the theory that the chief function of a law school is to fit men for the practice of the law. An aim to make professional instruction as thoroughly practical as possible is by no means a narrow one, nor is it out of accord with the liberalizing tendencies of university culture. The age is insisting with more and more emphasis that nothing is valuable which is not useful, a doctrine which does not put culture upon a money

basis but does insist that all knowledge is but a means to an end. What the end is makes, perhaps, little difference, so long as it is legitimate. But clearly, in order to determine the value of any institution one must first ascertain what use it is designed to serve and how fully it lends itself to that use.

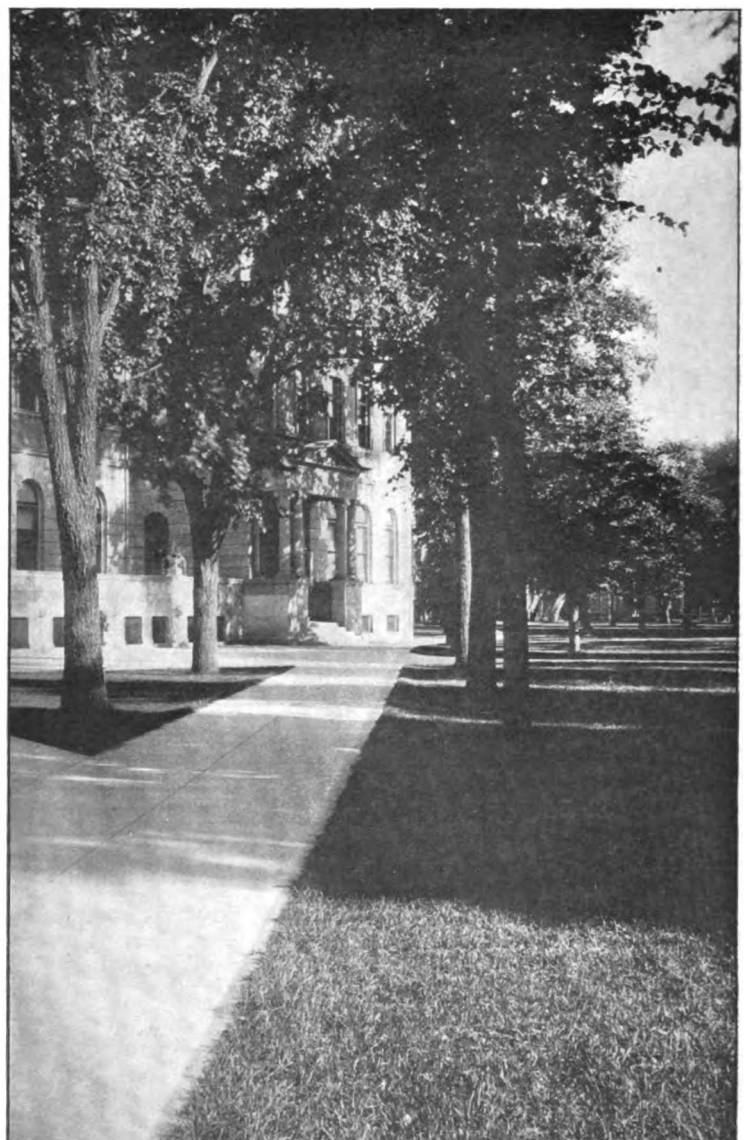
The men who attend a law school are mostly men who intend to practice law; and the value of the course, therefore, depends upon the adequacy of the preparation it gives them for practice. Lawyers are usually employed by clients to recover or prevent the recovery of judgments. The client cares nothing about the knowledge of the attorney if it cannot be utilized in prosecuting or defending the suit. It is not uncommon for a man to be very well informed about the law, and at the same time be a complete failure as a lawyer. Mere theory without the means of putting it to use is a poor equipment for any one, and especially for a lawyer, who has to deal with men of affairs who have little patience with mere book learning. Business men measure qualifications by results.

Of course a thorough knowledge of the substantive law is indispensable. But such a knowledge becomes practically useful only when coupled with a knowledge of the means whereby the principles of the law are applied to particular controversies. This result the "practice court" aims to accomplish. It serves to reduce the necessarily general elementary principles which the student gets in the various substantive branches of the law to definite rules applicable to specific sets of facts. It emphasizes the maxim which should stand out before the student as a cardinal consideration, never to be forgotten,—*ex facto lex oritur*. It is often easy to learn the broad principles, but it is a very different thing to apply them accurately.

The practice court is now in its tenth year. It was organized in 1893 by Professor Floyd R. Mechem, and conducted by him during that year. In 1894 Professor Thomas A. Bogle took charge of it, and it has been under his direction since that time. In 1901 the work of the court had become so heavy that it was found necessary to add another instructor, and the present writer was then appointed and has since devoted his entire time to the court.

The work of the court is compulsory upon all candidates for a degree, and is limited to the senior students, who have in due course previously completed the subjects of pleading under the common law, code and equity systems. It consists of two courses, course I, given in the first semester, course II, in the second.

In course I, the men are required to arrange themselves in groups of four, two to act as attorneys for the plaintiff, two as attorneys for the defendant, and to select the forum in which they wish to practice. To each group statements of facts are given out, upon which process is issued, served, and returned; pleadings are filed, issue is joined, and an argument had upon the final issue raised. These statements of facts are drawn up with a view to developing fundamental questions of pleading and unsettled questions of law. The students are required to go through every step in the proceeding exactly as in an actual controversy. They must themselves draw the process, serve it, and endorse a valid return. They must file all the necessary pleadings. Errors in process or pleadings are to be taken advantage of by the opposing attorneys in any manner authorized by the practice of the state of venue. The court sits every week to pass upon motions, demurrers, and other interlocutory matters, and many hours are often required to dispose of pending questions. The students are encouraged to file briefs upon difficult points which arise in these interlocutory proceedings, and many excellent briefs are filed. Journal entries are prepared by the attor-



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neys whose contention has been sustained by the court.

When a final issue has been reached the attorneys on each side are required to fill a "practice brief," consisting of a full citation of authorities on all points relating to the papers filed by them. The pleadings are then carefully examined and the attorneys cited to appear in the court room for a criticism and discussion of the pleadings. No pleadings are accepted unless they are satisfactory both in substance and form. Criticisms made are noted by the attorneys and new pleadings are drawn in accordance therewith. These amended pleadings are in turn examined and criticised, and it sometimes happens that several revisions are necessary before the papers are brought up to the required standard. When they are finally accepted the attorneys are notified, and a time is set for a final hearing on the issue raised, which takes place before some member of the faculty. The oral argument is usually an hour in length, but sometimes extends to two or three hours, and a carefully prepared brief upon the law of the case is required from each side. Judgment is then rendered.

An appellate court, consisting of any three members of the faculty, is convened whenever required, it being the privilege of either party to appeal a case. When appeals are taken, all the proceedings are carefully supervised and criticised.

In all these cases the facts are stated and no questions can ordinarily arise upon them. There is accordingly no place or necessity for a jury trial. But in course II, the aim is to give experience in the preparation and conduct of an actual case to be presented before a jury on the testimony of witnesses. Here the primary difficulty is to raise an issue of fact. No such issue can be raised on a written statement given out to the attorneys. Nor can it be reached by allowing the attorneys to arrange testimony with their witnesses, for the conflict then reduces itself to a mere contest of wits in the devising of imaginary facts. A jury trial cannot be conducted with success unless facts are developed in such a way that witnesses may actually see and hear them, and may thus be in a position to testify honestly respecting them and withstand the tests of cross-examination. To satisfy these requirements, cases are arranged which simulate real cases as perfectly as the nature of the task makes possible. The students are divided into groups of four as in course I, and the attorneys in each group file a list of twelve witnesses procured from among their classmates. A date is set for the arrangement of the case, and at that time the attorneys and witnesses, sixteen men in all, appear.

Suppose it is to be a case involving an agent's commission. One of the witnesses is assumed to be the owner of a tract of timber land, another a real estate agent, a third a dealer in lumber. The owner calls upon the agent and talks with him about finding a purchaser for the tract. The agent finds the lumber dealer and tries to sell him the land. There are numerous conversations among the various parties, and at length the owner of the tract sell it directly to the lumber dealer. The agent demands his commission; it is refused and he begins suit. Issues: What was the agreement between the vendor and the agent as to commission? Was the agent the procuring cause of the sale? Did the agent at the same time act as agent for the other party? If so, did he do it with the vendor's consent? Upon all these points the conversations are made somewhat ambiguous. Evidence is developed which looks in both directions. The witnesses enter heartily into the transactions and naturally see the matter most clearly from their own side, exactly as interested parties would do in an actual case. When the trial comes on, a month or two later, the witnesses testify as to what they actually saw

and heard, undergo the test of rigid cross-examination, and are treated in all respects like the witnesses one has to work with in actual practice. The evidence is usually in more or less conflict and the attorneys on each side are presented with the problem of convincing the jury that their version is correct.

The regulations as to process and pleadings are the same in this course as in course I. Before the case is called for trial each party must file such requests to charge as he thinks himself entitled to. The juries are drawn from panels of twenty-four previously posted, and made up of the members of the senior class. All the proceedings in connection with the trial are made to conform strictly to the practice in the state of venue. The jurors are empaneled and the case stated to them; witnesses are called, examined and cross-examined, the rules of evidence being strictly adhered to; the arguments are made to the jury; the jury is instructed by the court and put in charge of the sheriff until a verdict is agreed upon; and the verdict when ready is taken in the usual form and judgment entered thereon by the attorneys. The cases arranged and tried cover a wide range, —questions of bailment or sale, validity of deeds, liability of sureties under various conditions, execution of notes, fraud and deceit, malicious prosecution, false pretenses, bankruptcy, criminal and civil assault, negligence, validity of levy under execution, usury, estoppel in many forms, right to agents' commissions, authority of agents, larcency, burglary, slander, liability of innkeeper, embezzlement, relation of master and servant, etc., etc. The court sits every day and frequently at night. The trials sometimes last many hours. In some of the cases it has required an entire half-day to introduce the evidence and almost as much time for the arguments to the jury. Each member of the class, in addition to his work as attorney, serves as a witness, on an average, in three cases and sits on the jury in about four cases. He is thus in court during a large number of trials, in one capacity or another, and is enabled to get the point of view of the juror and witness as well as of the attorney.

It is believed that this practice court work helps materially in definitizing the theoretical knowlege of the law which the student gets elsewhere in his course. It gives him experience in the application of principles to specific facts. It familiarizes him with the best methods of conducting trials and challenges his attention to the many pitfalls which beset the path of the practitioner. When he graduates he is in a position to assume with confidence, and usually to carry through with credit, any case which he may be fortunate enough to secure, thus relieving him from the necessity of obtaining his knowledge of practice at the expense of clients who dislike to pay the costs of professional incompetence.

In his first cases the young attorney is confronted and somewhat terrified by a host of puzzling questions: Upon the facts, is there a cause of action? What is it? What is its nature? How should the action be commenced? Who should be made parties? When, where, and how shall process be served and returned? How shall the cause of action be stated, both in its formal and essential parts? What relief shall be prayed for? Or, upon the facts, is there any defense? What is it? How should it most effectively be pleaded? How is the case brought on for trial? How is the jury empaneled? What are the methods of selecting, examining, challenging, and swearing jurors? How should the opening statement be made? How should witnesses be examined and cross-examined? How introduce the various kinds of evidence? How should the argument to the jury be made, and what should it cover? How are proper instructions prepared?

What is the form of the verdict, and how is judgment entered? In the face of these and a hundred other practical problems, the young attorney is confused and nonplused. It is to help him through these difficulties that the practice court is maintained. By its means he is instructed and tested respecting his ability readily and accurately to apply his store of abstract knowledge to the exigencies of any case in hand. In short, the practice court aims to supplement the textbooks and the lectures by a comprehensive and thorough application of the laboratory method.

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