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Legal Profession in England from the End of the Middle Ages to the Nineteenth Century

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THE LEGAL PROFESSION IN ENGLAND FROM THE END OF THE MIDDLE AGES TO THE NINETEENTH CENTURY

SHARP lines grew up in the legal profession in the sixteenth and seventeenth centuries which have since obtained in England with little modification. The organization as we know it in the eighteenth and nineteenth centuries arose by changes at each end of the medieval profession. At the top, the law officers of the crown, the Attorney General and Solicitor General, came to be the leaders, and the King's Counsel arose to contest the leadership of the serjeants. At the bottom, as has been said, the attorney's calling comes to be distinct, there comes to be an increasingly sharp line between the attorneys and the barristers, and three new types arise, namely, special pleaders, conveyancers, and solicitors; the first two akin to the barristers, the third, growing up with the rise of the Court of Chancery, the equivalent in chancery of the attorneys in the courts of law. The attorney, rather than the barrister, was the model for the organization of the profession in America. Hence it is well to look more in detail at the development of the attorney in sixteenth and seventeenth-century England and the thoroughgoing separation between attorney and barrister.
As the idea that representation by an attorney was an exceptional privilege gave way in the fourteenth century, legislation began to separate the agent for litigation from other agents. Attorney originally means agent. The agent for litigation came to be subject to control by the courts and was beginning to be regarded as an officer of the courts. As has been said, for a time he might have the advantage of training in an Inn of Court or Inn of Chancery, and might be an apprentice at law and so plead for his client. Even in the seventeenth century, attorneys might be heard from the side bar in the King's Bench and Common Pleas. The older seventeenth-century barristers (e.g. Serjeant Maynard, called to the bar in 1626, made serjeant in 1654, Serjeant of the Commonwealth, 1658, King's Serjeant at the Restoration, and still a leader of the bar at the English Revolution, 1688) still dealt with clients directly instead of through the medium of attorneys. For a time, it looked as if the two branches of the profession might fuse in England as they did in the United States and in Canada. The seventeenth century is the century of colonization of America and so the time of beginning of our reception of English law and English legal institutions. It is important, therefore, to trace the process of separation and its causes and effects.

While the line of differentiation is an old one, new reasons arose to emphasize it and give it permanence. The old difference turned on primitive ideas that one could not be represented in litigation but that he could be assisted in the proceedings before the tribunal. The new reason grew partly out of the nature of the work of the two types of lawyers, but also out of the differences in the mode of entrance upon the profession, the discipline, the personnel, and the education of the two branches. I have spoken of the beginnings of this differentiation in the Middle Ages. In the seventeenth century, it was still further developed so that the judges, the Inns of Court, and Parliament began to make distinct regulations for attorneys and barristers.

As to barristers, the judges had long before delegated to
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the Inns of Court their power of admitting to practice in the courts. Those whom the Benchers had called to the bar of the Inn were received by the courts as qualified practitioners. On the other hand, attorneys were admitted directly by the court in which they sought to practise. With respect to discipline, the barrister was directly under the control of the Inn which had called him to the bar. He could be disbarred either by the Benchers of his Inn or by the judges. But the judges seldom acted, and Parliament made no attempt to supersede or supplement the control by the Inns of Court.

In contrast, the attorneys were strictly regulated both by Parliament and by the judges. Medieval statutes gave the courts power both to control and to admit them. All through the sixteenth and seventeenth centuries, this control grew in strictness. Orders of court were made as to admission of attorneys (requiring examination) and as to conduct and discipline. The courts were very severe in enforcing these orders. In 1605, a statute regulated rendering of accounts to clients, provided penalties for fraud and negligence, laid down requirements for admission, and sought to eliminate unqualified practitioners.

As to personnel, the expense of education at the Inns of Court led to a marked difference. The barristers were younger sons of the nobility or gentry, or were men of independent means. The attorneys were recruited from clerks. Indeed, the nature of their work was largely clerical and in their mode of appointment as well as the requirements of their business, their contacts were with the clerical staff of the courts as the contacts of the barrister were with the judges.

At first, the King's Bench and the Common Pleas had each its own roll of attorneys. The Exchequer had a staff of clerks who acted as attorneys. But more and more the same person came to act as attorney in all of the common-law courts. An order of 1564 sought to prevent this. It was not effective, however, and the attorneys came to be competent to practise in each common-law court. Also, because of their being regarded more or less as part of the clerical staff of the court, they were required to be in constant attendance on it and were exempt from suit except in their own court, on the roll of which they were carried. The orders of court at that time
required that one who sought admission as an attorney must have served five years as a "common solicitor"—i.e. an agent not admitted as an attorney—or as clerk to a judge, serjeant, barrister or attorney. The practice came to be to prepare by serving as an attorney's clerk.

In the seventeenth century the term "barrister" comes into general use in place of the older "apprentice at law." It is first heard of in connection with utter (or outer) barristers. Plowden in the sixteenth century insisted on being called a "learned apprentice of the law" even after he became a serjeant (1558).

Change from the late medieval tendency to fuse the two branches of the profession was accelerated by the system of written pleadings which grew up late in the Middle Ages and wholly superseded the old oral pleadings carried on in court by the pleaders. In the eighteenth-century practice, from which our American practice is derived, the several pleadings were in writing, were exchanged by the attorneys for the respective parties, and were entered on the record by the clerk. In the Middle Ages, the pleadings were settled orally before the justices by the pleaders and put in formal shape by the prothonotaries or their clerks. Also if one was not represented by counsel, he explained his claim or defense to the court, and the prothonotaries put his pleadings in proper shape. In the sixteenth century, the practice grew up of putting in paper pleadings, settled in the prothonotaries' offices without any oral discussion. In that century, it came to be allowable that the pleadings might be either written or oral, except that in the real actions, which soon became obsolete, they remained oral in the seventeenth century.

As the art of pleading grew in complexity and technicality, it came to be best learned in the offices of the prothonotaries instead of in the oral exercises in the Inns of Court. Indeed, the clerks of the prothonotaries were for a time employed by the attorneys to draw their pleadings, and these clerks often acted as attorneys. Thus the art of special pleading tended to drop out of the repertoire of the advocate. The attorney collected the facts and the proof, and he, or a special pleader whom he employed, put them in due form. The barrister carried the case raised by the pleadings through the courts, argu-
ing the validity of the pleadings, attempting to prove the issues raised by the pleadings, and arguing the questions of law arising upon them.

These changes tended to differentiate the education of the attorney from that of the barrister. Both required training in the law—in the body of authoritative materials of judicial decision and administrative determination. But the attorney needed to learn the use of the common forms of procedure and the practical processes of obtaining legal results. These things were best learned by apprenticeship to a practitioner. The barrister, on the other hand, required to know how to argue points of law effectively and to obtain results in the forum. Barristers came to learn draftmanship so as to be able to advise on the pleadings. But their education tended toward moots and discussions and noting decisions in court, as the education of the attorney tended toward practical preparation of the materials with which the barrister was to work. In the second half of the seventeenth century this division had become pretty complete. It had two consequences. One was that the barrister ceased to be directly in touch with the client. If difficulties arose as to the law, a barrister might have to be consulted. But the attorney had to discover the difficulty and state it to the barrister for his opinion. So it was the attorney who retained the barrister, not the client. This loss of contact between the barrister and the client was increased by the practice of written pleadings. The attorney prepared them from the client's instructions, with the help originally of the officials of the court, later with the assistance of counsel in cases of difficulty. The barrister argued or tried the case on the basis of pleadings so prepared—perhaps pleadings advised by an entirely different barrister. The change was beginning in the reign of Elizabeth. It was almost complete after the Restoration.

Second, a difference arose as to fees. In the Middle Ages, there was no difference. Both attorney and barrister could sue for his fees. But in 1629 it was laid down that while an attorney could sue for his fees, a barrister could not. The fee of the latter was held to be not a sum due on contract, but a gift or honorarium. This doctrine came in from the Roman law books in the Court of Chancery where Roman influence was strong. But it seems to have accorded with the views of
the barristers who had come to think of themselves as on a higher professional plane.

Exclusion of the attorneys from the Inns of Court, of which I spoke in another connection, was obviously a part of this change. This, too, became complete in the seventeenth century. This exclusion of practising attorneys from the Inns of Court was not beneficial either to the attorneys or to their clients. It deprived the attorneys of the benefit of a professional organization. It deprived the clients of the safeguards given by the responsibility and power of discipline belonging to a professional organization. Discipline by the courts proved difficult and ineffective. Hence, throughout the seventeenth century and down to 1704, the judges made orders that attorneys, to be admitted, must be admitted members of an Inn of Court or of Chancery. But the Inns of Court refused to call them to the bar and the Inns of Chancery were decaying. Hence, as the attorneys had only the status of students in the Inns, and the government of those societies was in the Benchers, the attorneys for practical purposes had no professional organization. Accordingly, in the eighteenth century some of them formed the "Society of Gentlemen Practicers in the Courts of Law and Equity," a voluntary society much like a bar association in the United States. But there was no effective organization till the establishment of the Incorporated Law Society in the nineteenth century.

As late as 1846, the Court of Common Pleas held there was no binding rule of law against a barrister accepting a brief (i. e. instruction to act as counsel in a case, the brief containing a statement of the issues, the documents, if any, and the names of the witnesses and what it was expected they would testify) directly from a client instead of from an attorney for a client. But this rule that the barrister must take his instructions only from an attorney had been insisted on by the Society of Gentlemen Practicers and had become settled usage in the eighteenth century. A barrister knew that if he did not conform he would get no briefs from attorneys.

Now as to the solicitors, that is, the agents for litigation in the Court of Chancery. In the Middle Ages they were not members of the legal profession at all. What is now the everyday jurisdiction of a court of equity was then the "extraord-
inary jurisdiction” of the Chancellor. It was exercised on “English bill,” i.e. an informal petition in English to the Chancellor, whereas the writs and pleadings and records in the courts of law were in Latin till the reign of George II. “Bill” (in Latin *libellus*) means originally a petition. The bill in equity began: “Humbly complaining showeth unto your Lordship” and the complainant referred to himself as “your orator” and prayed for relief which could not be had in a court of law. Any one could represent this petitioner. “Solicitor” meant one who conducted business on behalf of someone else, and so came to mean one who conducted legal business for another without being an attorney or a barrister. The solicitors began to appear as a professional class in the middle of the fifteenth century, and it should be noted that the rise of the Court of Chancery is in this period from the fifteenth to the seventeenth century. But they had no recognized status till the sixteenth century, and it was not till the beginning of the seventeenth century, when the Court of Chancery was at length well established in its jurisdiction, that no distinction came to be made between attorneys and solicitors.

Apart from the rise of the Court of Chancery, a reason for the growth of a group of agents for litigation who were not attorneys at law may be seen in the centralization of justice at Westminster. A litigant living in the country, represented by a local attorney, might need an agent at Westminster to keep him informed of what went on there, and of the progress of the case before it came on to be tried at circuit in the locality. A solicitor could do this sufficiently. It did not call for an admitted attorney. Attorneys also employed solicitors for such purposes, and today county attorneys still have “London agents.” But chiefly the rise of the solicitor is due to the rise of the administrative tribunals under the Tudors and Stuarts —Chancery, the Star-Chamber, the Court of Requests, and the like—just as accountants and lay representatives have been gaining in importance as representatives in litigation with the rise of administrative tribunals today. However, the solicitor came to be associated in the main with the Court of Chancery and thus came to have a definite place in the legal system alongside of the attorney. At first, the Court of Chancery had its own staff of six clerks and the litigant was required to retain a clerk in Chancery. But a practice grew up
instead to retain a solicitor, who then retained one of the six clerks. This became a form only and a source of delay and expense in equity.

A statute of 1605 treated solicitors as belonging to the same class as attorneys and subjected them to like rules. In 1750, it was provided that solicitors could be admitted at attorneys. By this time the two types of agents for litigation became substantially fused.

These changes had profound effects upon the system of education in the Inns of Court. Four points are noteworthy. First, more and more students began to live outside of their Inn and residence came to mean only dining there. Second, it became difficult to maintain order by the self-discipline of the Inn. The students had at times to be taken before the Star Chamber, an extraordinary tribunal of what might in some features be called criminal equity. Those were days when every gentleman carried a rapier and street brawls and sword fights were common. The Inns were called on to admit fewer students, but the pressure to enter for social reasons was great. Third, large numbers joined for social purposes who did not intend to study law. The Inns engaged in many social activities, masques and revels—elaborate entertainments—and ceased to do the real work of professional education. Unhappily, our American era of colonization was in this time of decadence of education in the Inns and before the revival which came after our independence. Thus we did not inherit the great medieval institutions of an organized legal profession and organized professional education.

Fourth, printing also had a profound effect upon the old system of education in the Inns of Court. It led to the growth of a much larger legal literature and made this literature more accessible. The student could buy books which would tell him what he wished to learn. Thus reading law books became a part of legal education along with moots, listening to lectures, and taking notes in court. The moots and lectures decayed because the printed books seemed to be short cuts to legal learning and students felt they could neglect “readings,” moots, and attendance on the courts and confine themselves to reading law books. They began to get substitutes to argue for them in the moots. The Benchers and readers soon gave up trying
to coerce the students into bona fide study by the old plan, and the old exercises turned into mere forms. Law business in the courts had increased greatly and the leaders no longer had time to devote to the students and so came to acquiesce in their plan of reading law books in the chambers of a barrister.

During the Commonwealth the whole teaching system of the Inns of Court collapsed and, in spite of vigorous efforts after the Restoration to set it on its feet again, it could not be restored. The fines imposed by the old orders for non-residence, for non-attendance at readings, and for not taking part in moots, turned into a system of compounding for not doing these things by paying a sum of money to the Inn. By the end of the seventeenth century, one could compound in this way for all the obligations of a student and be called to the bar after eating the stated number of dinners (taken to show residence) and such study as one had chosen to do by reading the printed books. The readers were deep in heavy practice. They ceased to prepare careful lectures or to give attention to the moots. Only the feasts were kept up. All public teaching of English law stopped for nearly a century and a half.

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THE RISE OF THE LAW OFFICERS OF THE CROWN

Those who now stand as the leaders of the legal profession in England, the Attorney General and Solicitor General, are not medieval officials. In the Middle Ages, the King had his serjeants and his attorney or attorneys, and after Edward IV his solicitor. They did much of what is done today by the Attorney General and Solicitor General. The latter officers began in the sixteenth century and became in the seventeenth century what they are now. The Attorney General and Solicitor General are the legal advisers of the crown. At least one of them has been usually in the cabinet. Also they usually sit in the House of Commons, where they attend to the details of answering legal questions for the government. By themselves or their deputies they appear in the courts on behalf of the crown. As legal advisers of the crown, they give legal advice to all the departments of government and appear for them in the courts.

From the beginning, the King had attorneys and pleaders
(narratores pro rege) and serjeants. The first appointment of a King's solicitor was under Edward IV. He had the same relation to the King's attorney that a private solicitor had to a private attorney. He was an agent for the attorney's business; not unlike the "investigators" employed by attorneys today. In the Middle Ages, the road to the bench was by the way of Reader, Bencher, Serjeant, King's Serjeant. But from the middle of the sixteenth century, as to the Chancellorship and Chief Justiceship, it became solicitor general, attorney general, although those were still regarded as inferior offices which could not be held by a serjeant. The serjeants had been attached to the House of Lords to give legal advice to that house. With the rise of the House of Commons to chief importance, there was a resulting chief importance in the Attorney General and Solicitor General, who sat in that house.

It might seem curious that the King appeared in the courts and was advised on the law by an attorney and a solicitor at a time when the profession of attorney was becoming sharply divided from that of barrister and when a solicitor was coming near to the position of an attorney but was still inferior to one. The explanation lies in the exceptional position of the King with respect to appearing by attorney, and the doctrine that in the theory of the law the King was always present in his courts, the judges being only his deputies to administer justice. The King was said to "be prerogative." He could not only appear by attorney, but likewise plead by attorney. For him, it was the same thing as pleading for himself. At first, the King appointed an attorney for a particular court or for a particular occasion or time or place. But this attorney was more than an ordinary attorney. He was the representative of the King, looking after the interests of the King in the King's own court, where he was present in the eyes of the law. Thus the King's attorney had superior standing, especially when later the King came to appoint an attorney to represent him generally in all courts.

In time it became the practice for the King to appoint a barrister to be his Attorney General. Under the Tudors and Stuarts, there was a great development of public law. The King's litigation became of the first public importance. Hence, men of the first ability were needed to fill the positions of Attorney General and Solicitor General. The King's Serjeant
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could only act when specially instructed by the crown. But the Attorney General had a general authority to represent the crown in all tribunals. The Tudors and Stuarts pushed their general legal representatives over the heads of the medieval leaders of the bar. Perhaps the serjeants were too learned in the medieval common law.

As the king's business in the common-law courts increased, with the expansion of trade and commerce, the colonizing projects and activities, and the development of administration under the Tudors and Stuarts, the King's Attorney and King's Solicitor could no longer do all the work involved in their offices. Hence, the rise of a body of "King's counsel learned in the law" or "King's learned counsel." These are the originals of the modern King's Counsel. A body of such counsel, under that name, was known at the beginning of the reign of Elizabeth. Also they are referred to in an order of the judges in 1564 in a way which makes it reasonably certain there were a number of counsel permanently retained by the crown and regarded as ranking next to the serjeants. They were continued by James I when he came to the throne, and seem usually to have been appointed by the crown on the nomination of the Attorney General to act as his assistants. Francis Bacon was constantly appointed by Elizabeth as counsel in special cases. On her death, Bacon was not at first reappointed by James I, but in 1604 he succeeded in getting from the King a permanent appointment as King's Counsel with a salary of forty pounds a year for life, and precedence after the law officers of the crown. From this time on, the King's Counsel, instead of being informally created by the Attorney General and Solicitor General were appointed directly by the crown by patent. Thus they became an established order in the legal profession comparable to the serjeants who were appointed by royal writ. At the end of the seventeenth century, this new order of barristers was ceasing to be in any real sense a body of counsel for the crown. It became a body of counsel to whom precedence had been given either because of their professional eminence or because of political influence. By the eighteenth century it came to be simply a class of counsel who for one reason or another had been given a rank superior to that of ordinary counsel.

But those to whom this rank was given were still subject
to certain disabilities which came down from the time when they really were the King's Counsel. For one thing, they could not appear against the King without obtaining a license from the crown. Also, as it was an appointed office, although the pay was nominal, appointment to it vacated a seat in Parliament and necessitated a new election. Hence, in the eighteenth century and earlier part of the nineteenth century, barristers frequently, instead of becoming King's Counsel, obtained a patent of precedence. This gave them the same precedence as a King's Counsel without the disabilities of that office. What had formerly been done by the King's Counsel came to be done by the Solicitor to the Treasury and to counsel retained by the Treasury.

A word here about precedence. When motions or applications were to be heard, the Chief Justice or presiding judge addressed the senior counsel present as follows: "Mr. —— do you move." He then called upon others in succession in order of precedence. Thus those having patents of precedence were first heard, which is sometimes very important to a client who requires an order as soon as may be. In America, instead of this, motions and applications are usually docketed and are heard in the order in which they appear on the docket. Moreover, in England the leader had immediate control of the hearing; the junior did what the leader left to him. At the trial the junior counsel opened the pleadings. The senior opened the case and examined the important witnesses. He sometimes left it to the junior to examine less important ones. The junior was there to assist him.

In the Middle Ages, the King's Serjeant had the first place. Then came the serjeants in order of seniority, and then the other barristers. At first, in the seventeenth century, there were no clear rules. In the Court of Common Pleas the serjeants had precedence over the Attorney General and Solicitor General unless they were appearing for the crown. By the end of the seventeenth century and in the eighteenth century, the order was settled as follows: (1) The King's Serjeant took precedence of the Attorney General and Solicitor General; (2) the Attorney General and Solicitor General took precedence of King's Counsel and holders of patents of precedence; (3) the King's Counsel and holders of patents of precedence took precedence of the serjeants; (4) the serjeants took pre-
precedence of ordinary barristers. In fact, long before, the Attorney General and Solicitor General had been the leaders of the bar, but it was not till 1814 that, by royal warrant, they were given precedence over the King's Serjeant.

Gradually, the serjeants lost more than precedence. They had a monopoly of practice in the Common Pleas. But from Tudor times, when a judge was to be appointed he was made a serjeant pro forma. Thus the bench came to be filled with judges who had never really been serjeants and cared little about the order. Also, in the seventeenth century, barristers not serjeants were allowed to make side-bar motions in the Common Pleas. In practice, the judges were chosen from the King's Counsel, and thus the latter steadily got the upper hand. In addition, the King's Counsel made good a claim to be Benchers in the Inns, so that the King could now make a barrister a Bencher by appointing him a King's Counsel. This had much to do with the decline of the system of education in the Inns of Court. By the middle of the nineteenth century, any barrister of a certain number of years' standing could apply to be made a King's Counsel as a matter of course. Thus the number of Benchers became too unwieldy for the good government of the Inn.

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THE LAWYERS IN THE ECCLESIASTICAL COURTS AND IN ADMIRALTY

You will bear in mind that until 1857 the English ecclesiastical courts had jurisdiction of probate and of divorce and matrimonial causes. The advocates in those courts were doctors of the civil law of the universities. They were also besides judges in the ecclesiastical courts, judges in admirality, masters of requests in the Courts of Requests (courts of summary jurisdiction for small debts), masters in chancery (i.e. assistants to the Chancellor to take testimony, make inquiries, make findings, conduct partitions, judicial sales, and the like), and judge advocates general in the military establishment. In 1511, the head of the Court of the Arches (the court of the Archbishop of Canterbury) formed the "Association of Doctors of Law and of Advocates of the Church of Christ at Canterbury," to do for the lawyers in the ecclesiastical and admiralty courts what the Inns of Court did for the common-
law lawyers. In 1565, this association took a long lease of the premises in Knightrider Street, in London, south of St. Paul's, which came to be known as Doctors' Commons. In 1767, the Doctors' Commons was incorporated and purchased the property. This corporation was dissolved in 1858, after the jurisdiction of the ecclesiastical courts over probate, divorce, and matrimonial causes was abolished. The advocates then became barristers and the proctors became attorneys or solicitors.

Under the old regime, to be admitted as an advocate one had to be a doctor of laws of Oxford or Cambridge, must have been admitted by the Dean of the Arches (the head of the ecclesiastical court of the Province of Canterbury), and must have attended court for a year. Control and discipline of practitioners were in the Archbishop of Canterbury. How lax this was in the first half of the nineteenth century, Dickens tells us in David Copperfield. The advocates of Doctors' Commons had a monopoly of practice in the ecclesiastical courts, in admiralty, and in the courts of the civil law. To this day there is a separate Probate, Divorce and Admiralty Division in the High Court of Justice.

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THE CIRCUITS AND CIRCUIT BARS

Trials outside of London—i.e. trials of causes depending in the courts at Westminster which were not at bar, that is, before the courts themselves—were held in the courts of assize and nisi prius at circuit. These courts were held before two or more commissioners who were sent out twice each year, by the King's special commission, all round the kingdom except London and Middlesex, where courts of nisi prius were held in and after every term before the Chief Justice or one of the justices of the three superior courts. The courts of nisi prius in London and Middlesex were called sittings. These nisi prius courts tried by jury the issues settled by the pleadings in the courts at Westminster.

As far back as the reign of Henry II, justices in eyre (itinerant justices) were appointed to go about the kingdom once in seven years to try cases. Magna Carta prescribed that they should be sent into every county once a year to receive
verdicts of jurors, instead of the jurors having to go to Westminster to give their verdicts as witness-tries. Sometimes these itinerant justices had a commission from the King to determine all manner of causes.

By the Statute of Westminster II (13 Edw. I, 1285) it was provided that these justices should be assigned from the justices of the King's courts associated with one or two "discreet knights of the county." By a later statute, trials at nisi prius might be before any justice of the court in which the action was pending associated with a knight or other approved man of the county. Finally, a statute of Edward III (fourteenth century) allowed verdicts at nisi prius to be taken before any justice of either of the courts, although the action was not pending in his court, or before the justices of assize.

In Blackstone's time, the judges went circuit in the vacations after Hilary and Trinity Terms. There is no need of going into the details of these circuits. There were nine (now seven). Some of the more important were: The Home Circuit (vicinity of London), the Northern, the Western, the Norfolk, the Oxford. The names explain themselves.

A digression is called for to explain "term" and "nisi prius." In the Middle Ages the church insisted that certain holy days and seasons should be "exempt from being profaned by the tumult of forensic litigations." Particularly these were the time of Advent and Christmas, which gave rise to a winter vacation of the courts; Lent and Easter, which led to a spring vacation; the time of Pentecost and the long vacation between mid-summer and Michaelmas, which allowed for hay time and harvest. Out of this by custom and acts of Parliament, grew four terms in which the courts sat, each named for some festival of the Church which immediately preceded it. Down to the nineteenth century, when the dates were changed by legislation, the terms were: Hilary Term (following the feast of St. Hilary) began on January 23 and ended on February 12, unless either day was Sunday, when it began or ended on the day following; Easter Term, beginning on Wednesday two weeks after Easter Sunday and ending on Monday three weeks later; Trinity Term, beginning the Friday after Trinity Sunday and ending on Wednesday two weeks later, and
Michaelmas Term from the sixth to the twenty-eighth of November. Trials in the vacations were provided for by a statute of Edward I, made with the consent of the Bishops.

Terms of court were abolished by the Judicature Act in 1873, and have been done away with in many common-law jurisdictions. They ought to be abolished everywhere, but still obtain in many of the states and in the federal courts, where they are fixed by statute.

As to " nisi prius" these words come from the writ by which the jury was summoned, when a cause was ready for trial in the courts at Westminster. The sheriff of the county where the venue lay was commanded to cause twelve good and lawful men of the vicinage to come to Westminster to give their verdict on the issue by a certain date unless before that time ( nisi prius) the justices of assize came into the county. As the date was so fixed that the justices would be there before it arrived, the sheriff summoned the jury to appear at the assizes.

The judges who went circuit sat by virtue of commissions from the crown. In Blackstone's day they sat by virtue of five: (1) The commission of the peace—to inquire into the keeping of the King's peace, by virtue of which they charged the grand jury at circuit, since it was the original function of the grand jury to make a general inquiry into all infringements of the King's peace; (2) a commission of oyer and terminer—to hear and determine certain criminal cases; (3) a commission of jail delivery, to deliver the jail of a county—i.e. try persons committed to jail awaiting trial; (4) a commission of assize, directed to judges and serjeants, named in the commission, to take the verdicts of juries in real actions, which, however, had become obsolete in the seventeenth century; and (5) a commission of nisi prius, to try all questions of fact issuing out of the courts at Westminster and then ripe for trial. There was also a special writ which went out with these commissions authorizing any two of those named in the commissions, if all could not be present, to proceed to execute the commission, so long as one was a judge or a serjeant.

As was said, the judges proceeded twice a year to the assize towns in the circuit to which they were assigned, in order to
try civil and criminal cases in the locality. In the seventeenth century, when a judge was appointed he chose a circuit and was sent on that one until some other which he preferred became vacant, so that the same judge always went the same circuit. Lord King, who became Chief Justice of the Common Pleas in 1714, broke over this custom and visited all the circuits in turn. The serjeants continued to be associated in the commissions, as they were in the Middle Ages, until the order became extinct in England (it hung on longer in Ireland) in the nineteenth century. In one case near the beginning of this century, a retired judge, who could not be sent circuit as a justice, which he had ceased to be, was sent as a serjeant in an emergency. But as the serjeants had been losing ground since the seventeenth century, objection was often made by laymen to being tried by serjeants instead of by judges. The story is told of a criminal, who was tried before a serjeant at circuit because the Lord Chief Justice had been taken suddenly ill, that when asked whether he had anything to say why sentence should not be passed upon him, he answered: “Yes. I have been tried before a journeyman judge.”

In the old days, the etiquette of the bar was very strict as to going circuit. Before the coming of railroads, the barristers were not allowed to use public conveyances or stay at hotels. Even now, there is much strictness as to associating with solicitors and public at the assize towns. The leaders used to travel with their clerks in their own carriages. The juniors combined in twos or threes to hire dilapidated post chaises. At a still earlier day, a junior might ride circuit on a pony given him by a relative.

It was customary for the judges to come to the assize town before the bar, and, as it was called, open the commission, that is, have it read publicly. They then went to church and were preached to by the sheriff's chaplain. While they were at church, the bar came into town in their own or in hired carriages and hired lodgings. This would be Sunday. On Monday, a flourish of trumpets announced that the judges would take their seats in half an hour. Another flourish announced that they had done so.

One judge sat in the Crown Court to try criminal cases, and one in the civil court. If there were no criminal cases to be tried, the sheriff presented the judges with white gloves.
Every barrister who practised in the common-law courts was required by the custom of the bar to choose a circuit and he then belonged to the bar of that circuit. He could not go to try a case on another circuit except on a special retainer for which he had to receive a special fee. He could only change circuits once, and it was the settled custom that a barrister who had not joined any circuit could not wait till he had made a reputation in London and then step into a circuit full fledged. Lord Loughborough, when Mr. Wederburn, tried this unsuccessfully in the eighteenth century. There was no legal way of preventing a barrister from appearing on any circuit he chose. But where one flagrantly violated the customs of the bar in such ways, he was excluded from the bar mess and no other barrister on the circuit would hold a brief with him.

It was also a rule that a barrister could only change circuits while he was a junior. Change of circuit was made occasionally. Lord Campbell, when a junior, after four years on the Home Circuit, where he made slow progress, changed to the Oxford Circuit, where he made rapid progress and rose to be a leader, Attorney General, Lord Chief Justice of the Queen's Bench, and finally Lord Chancellor.

There were many curious old customs at circuit. One was that only King's Counsel or such juniors as had bags given them by a King's Counsel could carry bags to hold their briefs. The bags were given to such juniors as had progressed so far that they could not conveniently carry their briefs in their hands. They were a visible sign of advancement. The bags of that time were purple, not green as now. Today any barrister may carry a bag if he chooses.

It remains to say something of the social activities of the bar at circuit. There is good reason for speaking of this. Although much that was done was in the way of joke and good fellowship, the traditions of the circuit have been a real force for maintaining and preserving professional spirit and standards of conduct and discipline.

As the barristers dined together at circuit they chose an Attorney General and Solicitor General of the Circuit Grand Court, as it was called, and preferred indictments for such offenses as carrying a bag with no briefs, going special to
other circuits, and the like. Indictments were in Latin till the reign of George II, and the Circuit Grand Court kept to Latin indictments afterwards. A bumptious junior who got prematurely a purple bag from a King's Counsel to whom he was related by marriage was indicted for carrying *unam purpuream baggam flaccescentem omnino inanitatis causa*—one purple bag wholly collapsing by reason of emptiness. Another made a long speech in the course of which a boy fell asleep in the gallery and fell into the well of the court and broke his neck. At common law the instrument with which a murder was committed was forfeited to the crown. Hence the indictment had to charge and the jury had to find its value. The barrister was indicted in the Circuit Grand Court for murder with a certain dull instrument, to wit, a long speech of no value. The reminiscences of English lawyers are full of such stories of fun at circuit. Indeed, such stories are characteristic of lawyers when they get together at bar association meetings, or at terms of court, or as it used to be in the last century, at circuit. There is an endless telling of stories, some traditional, some new, all based on the queer experiences of a lawyer's life. This good spirit, a part of the professional tradition, enables them to contest with their professional brethren all day in the forum, and meet outside on the friendliest of terms and with respect for those with whom they have been engaged in the strife of litigation. This spirit in the advocates who practise in a court is an important element in administration of justice. The tradition handed down from the circuit bars has been a real force for preserving the spirit of a profession under the trying conditions which had developed in America in the last century.

We are now at the point where the organization and customs of the profession in England cease to influence the bar in America. After independence American students ceased to go to the Inns of Court for study of law, and American lawyers looked to their books which told of the English institutions of the eighteenth century and to the traditions which had been inherited from the profession as it was in seventeenth-century England. Hence we leave the development of the legal profession in England as it was when Blackstone wrote, and turn next to its development in America.