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THE ART OF ADVOCACY *

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London, England

I must begin my observations to you tonight, as I have began every speech I have made in Canada, by trying to express to you the sense of pride and honour I experience in being allowed to come amongst you once more. And, of course, that sense of pride and that sense of honour is deepened and intensified a thousandfold by the too kind observations which have just fallen from the lips of my dear friend Lally McCarthy. I confess, Mr. President, when he began I detected what I thought to be a most ominous note in his voice when he said he proposed to present me, not as my kind friends have done at other meetings, but as I am. And inside me I trembled at the revelations that were to come. But I must say that for the leader of a trade union he has displayed that tact and reserve which has probably prevented a strike in this gathering here tonight; and I can only say to you that every meeting with my friend Lally McCarthy has deepened and ripened in me a clearer and still clearer discernment of all his very great qualities as a lawyer, and as a man, and as a very great friend. It is impossible for me to do more than to acknowledge with a full and thankful heart the very kind observations he has been pleased to make.

For ten years Lally McCarthy has been my guide, and my counsellor, and my friend. When people do me the honour of saying, "Well, I don't think you have put a foot wrong in Canada yet", it is no virtue of mine. I owe it wholly and unreservedly to the wise and kind and patient counsellor he has always been. And although we are not being broadcast, and although she can't hear it, Lally McCarthy wouldn't be the man he is if it were not for that sweet little cherub that sits up aloft in the person of Mary McCarthy; and I dare say he would be the first,

* A speech delivered by the Rt. Hon. Sir Norman Birkett, P.C., to the Lawyers Club of Toronto on September 10th, 1947. The speaker was introduced by Mr. D. L. McCarthy, K.C., a Past President of the Canadian Bar Association, and the Chairman was Mr. D. J. Ongley.

and certainly I would be the second, to acknowledge all that he owes to her. And so, gentlemen, you will permit me to express the gratification which I feel.

It is now ten years since I first came to Toronto as a member of the English Bar, and upon that occasion I brought the cordial greetings of my colleagues working at the English Bar. Now, by an accident arising out of and in the course of my employment, I come as one of His Majesty's Judges, but I feel no essential difference. And whilst I bring the cordial greetings tonight of the Bench and Bar of England I bring them with no less fervour than I brought them ten years ago.

And that, sir, illustrates the most important factor in any community of lawyers, the fact that whether you come from the Bar or whether you come from the Bench you share the same cordial feelings. It may serve as an illustration of the greatness of the work which was done, first of all, in our own country in the twelfth century, when, for the very first time the lawyers became a self conscious community; when, for the first time men who were not in Holy Orders were permitted to practise at the English Bar. And from that early date in the twelfth century the promotion has always been from Bar to Bench. And by that simple thing, dependent upon the reforms of Henry II, the great community of lawyers within the community was formed; those traditions which we value so much were formulated and through all the centuries they have been in operation.

It is quite true that if you have been at the Bar you know what the Bar thinks about the Bench. As Mr. McCarthy illustrated tonight, when you are at the Bar you don't always present the members of the Bench as they are, but it is a kindly criticism. We in England treasure very much the freedom of the Bar in the various messes on circuit and elsewhere to speak their minds about the Bench, and so the tradition grows from day to day. Mr. Justice Field, one of our old justices of days past, was so deaf that when he sat in the court he once mistook a clap of thunder for an interruption by the witness. And in Mr. Justice Field's day one barrister would say to another, "How are things in Field's Court?" And the answer invariably was, "Part heard".

And, speaking of the tradition that the Bar should have the licence to speak freely among themselves about the judges, I was interested, when searching in the Greek anthology the other night for a particular quotation, unconnected with the law, to find there the story which still circulates in England about the deaf judge, the deaf plaintiff, and the deaf defendant. They

were all deaf. The judge took his seat upon the Bench, the plaintiff and the defendant came before him and the judge said, "You will begin".

And the plaintiff, who had never heard a word, neither had the defendant, seeing that the judge's lips had stopped moving, said, "My Lord, my claim is a claim for rent".

Of course, the defendant never heard a word about this and neither did the judge, but the plaintiff's lips had stopped moving, and the judge turned to the defendant and said: "What do you say to that?"

So the defendant, who had never heard a word, said, "My Lord, how can that be when I grind my corn at night?"

Of course, the plaintiff never heard a word about this and neither did the judge but he saw his lips had stopped moving, and the judge pulled himself together and said, "Well, I think this is a most difficult case but I see no useful purpose in reserving my judgment. As I have formed a clear opinion I propose to give expression to it. I have come to the conclusion that she is your mother and you will both maintain her." So the licence to speak freely of judges is pretty ancient.

Then we had a perfectly delightful case of a very pleasant judge indeed who was trying a very complicated financial case. And he came finally to deliver his judgment and he said, "And so I come to the conclusion that I must find for the plaintiff, and I find for the plaintiff in the sum of 25,452 pounds, 16 shillings and 11 pence, but of course, if my figures aren't quite right, no doubt the counsel for the plaintiff and the counsel for the defendant will check me and correct me". Whereupon, the counsel for the plaintiff said to the counsel for the defendant in a loud whisper, "Why the damn old fool has added the date in". And the kindly judge, overhearing, said "So I have".

Those are the kind of things which are only permissible and permitted when the community of interest between Bench and Bar is founded not upon the ephemeral things but upon something much more deep and much more lasting. And between the Bench and Bar in England, and I am sure between the Bench and Bar in Canada, there is that community of interest which is based upon one thing, namely, that our profession is devoted to the administration of the greatest thing in any civilized community, the administration of justice. And we in England pay great attention to tradition and to ceremonial. When the judge is going upon circuit, let us say to York to attend service in the Minster, he goes arrayed in full scarlet and ermine, and the stately

procession through the ancient city of York brings all the populace to the street sides, and they see the visible embodiment before them of the King's Justice being brought to every part of the community. And though it is not for me to make suggestions with regard to procedure in Canada or anywhere else, I can only say that the habiliments, the trappings, the ceremonial which is attendant upon the procession of the judges through the cities of our land, the pomp with which justice is administered, does certainly give not merely dignity to the Bench, but gives to the populace throughout our land a deep seated admiration, which almost on occasion approaches reverence, for the value that the King's Justice represents.

And, Mr. President, in these days of change when the cherished institutions are in some danger from revolutionary hands, it is vital that that upon which everything else depends, the respect for law, for its administration, should be preserved: and the ceremonial and the tradition extending down through the ages, in my judgment, tend greatly to that end.

Well now, Mr. President, the links between Canada and Great Britain, and the links between the lawyers, are deep and lasting. I said that we were members of a great profession, and indeed we are, with a great history and with a great responsibility. Every civilized community must — it is imperative — have within its borders a body of men trained in the law, whose purpose is not merely to make money, not merely to seek and to win honour — though these things are not to be despised — but their purpose, the purpose of the community of lawyers within the community, is that the ordinary citizens shall always have at their disposal the man who can protect them, who can defend them, who can stand up before arbitrary power from whatever quarter it may come and assert the inalienable rights of the individual to the eternal freedoms. That is the centre of all the lawyer's work and the lawyer's ambition. And indeed, if you reflect upon it, the lawyer himself is never likely to be a greatly beloved figure, and the real reason is because of one of the greatest virtues of our system.

We in England have an unwritten law — the unwritten law is frequently much more powerful than the written — that no counsel, whoever he may be, has a right to decline any brief that may be offered to him except for good and sufficient reason. In my own practice at the English Bar I have frequently had to undertake murder cases of the greatest complexity and difficulty, not because I wanted to but because of the unwritten law that

I could not refuse them. It was Lord Erskine, perhaps the greatest advocate who ever trod Westminster Hall, the great Erskine, who when he undertook the defence of Tom Paine — and you may read it in the State Trials — was the subject of the fiercest criticism by political parties in England. And on that memorable occasion in Westminster Hall, Erskine laid down the first rule with regard to the English advocate. "When the day comes", said Erskine in the course of that magnificent defence, "when the day comes that the advocate in England is permitted to choose whom he will and whom he will not defend, and becomes not the advocate but the judge in the cause, at that moment the liberties of the citizens of England are at an end".

And that quality, the result of the unwritten law, that the advocate trained in the law to defend the citizen shall be available to the citizen, is one reason why the lawyer in England is unpopular. Why, it is said, does the lawyer affect views in which he does not believe? He puts forward to the court submissions which he may or may not think sound, but that is the rôle of the advocate. What the public will never understand is that the man who stands there to plead is not pleading his own view. He may be putting forward a view of which he profoundly disapproves, but he is putting forward, for the client, the view of the client.

We had a famous case in England of an advocate appearing for a prisoner, who in the midst of an impassioned speech to the court stopped and said, "Now Milord I will lay aside the rôle of the advocate and I will assume the rôle of the man". And Milord upon the Bench said, "You have no right to do any such thing. The only title by which you may be heard in this court is that you speak as an advocate."

And the great Lord Brougham in his famous defence of Queen Caroline carried the doctrine to an extreme length when he asserted before the court that the duty of a counsel to his client was so deep and so strong that it in fact over-rode his duty to his country. That is a proposition, I am quite sure, to which the Bar of Canada would not agree; but it is an illustration of the length to which the doctrine of the advocate speaking for the client may go.

And when you find great prose writers like Swift saying of advocates that they are men bred in the art of proving "that white is black and black is white, according as they are paid", it is because of the great virtue of the advocate that he is there to present the view of the client. And because of that duty,

because of that responsibility, there are certain qualities of the advocate about which I hope you will allow me just to say a word or two tonight.

Now just let me say, before I do it, that I don't come here to try and pretend for one moment to give anybody advice about advocacy. I expect there are plenty of people who now hear me speak who are quite as competent to talk about the elements of advocacy as I am, but it is a subject on which we are all interested and therefore, perhaps, with humility and with deference, you will allow me to make just one or two observations about it.

I have now been at the Bar and upon the Bench for thirty-four years and I have seen almost every type of advocate in almost every type of court. And I know at once there are no standards that you can lay down and say, if you want to be a great advocate, there is the pattern. It can't be done. There are diversities of gifts but the same spirit; and I have known in my time men who could scarcely string a sentence together, who lacked all graces, and yet impressed the court so that the court strained to listen and to catch every word that was said. And I have known the impassioned orator who swept juries off their feet. I was in the chambers of Marshall Hall and I shall never forget that great man. There were times when Marshall Hall had very great failures, very great failures, and there were times when he had the most resounding triumphs. Marshall Hall coming into the court surrounded by a retinue of people carrying pencils and air cushions and all sorts of things was an art in itself. Marshall Hall would sit there and he was not above certain, shall I call them, small tricks. This air cushion which he had, if the cross-examination of his client was getting pretty severe he would put the air cushion under his arm and go, fsh! fsh! fsh!, so that the cross-examining counsel was very greatly disconcerted. But I have heard Marshall Hall on some of the big cases, the defence of Fahmy at the Old Bailey, the defence of Greenwood, when Marshall Hall quoted to the jury that wonderful thing from Othello, "Put out the light, put out the light". And to hear Marshall Hall on the full tide of his forensic oratory was a thing never to be forgotten.

Of course, these were great figures in my very early days. Edward Carson, the finest cross-examiner within my recollection at the English Bar, had a very attractive Irish brogue. You all know the famous stories of Carson; you read them, of course, in the press. "Do you drink?" And the witness says, "That is my business". And Edward Carson says, "Have you any other?"

But to hear it in the brogue, "Do you drink", "Have you any other"! The effect was indescribable. Rufus Isaacs was a great cross-examiner with an extraordinarily simple method of opening in his cross-examination. In the Seddon case, as you know, Seddon was charged with the murder of an old lady named Miss Barrow. On the opening of it in that crowded court — Seddon, the little, composed, ready, versatile prisoner; Rufus Isaacs at his very best, and he begins, "Seddon, did you like Miss Barrow?" And Seddon, surprised by the opening question, said, "Did I like her?" Said Rufus Isaacs, "That was the question". And in that simple, incisive, forcible, direct way one of the most wonderful cross-examinations in the world was begun.

Lord Hewart, a dear friend of yours, was a very dear friend of mine. Lord Hewart had an inimitable way with him. I remember a Greek witness called Pappinockulous, a very undesirable man with a very bad character, and he was going to give evidence — at least, it was said that he was going to give evidence. And he used to come in at one door of the court, and probably leave by the other one. Upon one occasion he tried to push his way in to the front row of counsel which, as you know, in England is absolutely sacrosanct, and the usher put him out. All that went on under the observant eyes of Hewart. And at the supreme moment he came to the jury and he said, "Members of the Jury, then there was the witness, the Greek Pappinockulous, sometimes coming through that door, sometimes going out through this other door; occasionally trying to push his way into the ranks of counsel — here, there and everywhere". And then, pointing to the witness box, "but never there, never there". The effect upon the jury of course was profound beyond all words.

And I once heard one of the most moving things I have ever heard in a murder trial by the advocate for the defence, words that I knew by heart, and yet the effect upon the jury was quite startling:

> "The Moving Finger writes; and, having writ,
> Moves on: nor all thy Piety nor Wit
> Shall lure it back to cancel half a Line,
> Nor all thy Tears wash out a Word of it."

And that leads me to say that while there are no fixed standards for forensic oratory, and there are no patterns and no types to which the advocate must conform, yet I have found that it is simple speech that makes the most powerful appeal. Now when you think of it, you take the Gettysburg address, perhaps the greatest speech that ever fell from the lips of man. "Fourscore

and seven years ago our fathers brought forth upon this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal." Nothing could exceed it for simplicity. Take the Authorized Version of the Bible and pick where you will. Take the great stories of the Bible, such as the story of the Prodigal Son, and note their essential simplicity. It is the simple, direct, incisive speech that wins the great victories. And so it is in the court. My experience has always been with regard to the great advocates I have known, that it was the element of direct, forceful, lucid, vivid speech, in all its simplicity, that gave them their strength.

But now, Mr. President, the things that I want to say about the advocate must be general. You see, my own private view is that most cases are won before you go into court. It is the preliminary, the preparatory work, the mastering of the brief so that every fact and every figure is in your head, that is all-important. I always found it most useful to have the essential things on a little sheet of my own, so that they could be referred to instantly at any critical moments in the case. The conference, as we call it in England, when you have your discussion with the experts, is of the utmost importance. For example, in the great murder trials it was often necessary to understand the effects of arsenic on the human body and to discover matters which were simply of vital importance as the case proceeded. One of the cases that I had to defend, a case which came from the West Country, concerned a woman who was charged with the administering of arsenic to various people. It was necessary from the point of view of the defence that we should understand, in every detail, the effect of the administration of arsenic upon the human body. And, as you probably know, arsenic taken into the body has certain well-known pathological effects, but one thing is of the greatest importance: it comes down through the strands of the hair from the inside, from the inside. And your expert by taking the strand of hair can tell you when the arsenic was first administered and in what probable strength. In this particular case it so happened that the body of one of the victims was exhumed in the Lewannick Churchyard and they decided to conduct the post-mortem in the churchyard. And by the strangest circumstance, the soil of that Cornish churchyard at Lewannick was charged and impregnated with arsenic, and it was the easiest thing therefore for the cross-examiner to say to the pathological expert from the Home Office, and to tell the jury, that in these organs of the body there were so many grains of arsenic, which might have come from the soil. How are you to know some of

that arsenic was not deposited from the soil of the Lewannick Churchyard? That was easy, but the strands of hair, nothing would avail to say that the arsenic found there came from the outside. That came from administration from within. And so you perceive how in a case of that nature, and indeed in all cases, the preliminary work of conference, of understanding details that may perhaps never be used in the case, is of the utmost importance.

As I said before, all that side of the work of advocacy is an integral part of the mastering of the brief, the assimilation of the expert's knowledge in the conference room, then into the court and the presentation of the case. We begin, as you know, by the leading counsel for the Crown, or leading counsel for the plaintiff, making a short opening statement to the jury in a jury case. And again, it would be almost a truism to say that more cases are won by a proper presentation of that opening statement than in any other way. The jury, fresh to the court, fresh to the case, hear a presentation, and they are never, never likely to forget. Shaken they may be by cross-examination, by subsequent witnesses, but that first, clear, incisive impression made upon the jury is beyond all price.

Then there is the calling of witnesses, what we call the examination-in-chief, a most delicate and difficult task. And I have always found for my own part that, if you can so conduct your examination-in-chief that your opponent must sit still, that is a very great triumph; but if you so conduct yourself that you give your opponent the opportunity of protesting against leading questions or other irregularities your influence begins to go, your control over the jury begins to vanish. And I can not emphasize as much as I would wish the importance of paying attention to the proper examination-in-chief. Indeed, I would lay down for myself that a very sound working rule is so to conduct your case that the interruptions of your opponent are matters that will be frowned on by the court.

And then cross-examination, the thing which everybody thinks he can do so well and the thing that is rarely so very easy to do well. Sometimes you have a moment of inspiration. At one of our big murder cases, which is now fairly well known as the "Blazing Car Murder", a man called Rouse was accused of burning the body of his victim at a little village called Hardingstone in Northamptonshire in the middle of the night. It was a most remarkable case. I wish I had time to tell you about it. The victim was never identified, although the case was discussed from one end of our land to the other. Nobody ever came forward

anywhere to say they had ever known this unknown man, and there were all sorts of features of that kind. The question before the jury, raised by the defence, was whether the burning was accidental. There had been a joint — it was a Ford car — and there had been a joint where it was said that the petrol leaked and the heat of the car had made this joint much looser. That was the line upon which the defence was run. I was the counsel for the Crown and a man came in to the box for the defence who called himself an expert witness. As you probably have it in Canada and as we have it in England, any case, of what I will call notoriety, always brings people from all parts of the land volunteering to give evidence because of the kudos that their presence in the box gives them.

This was a man exactly of that type. And there was I rising to cross-examine him, and whether it was inspiration or what it was I don't know, but my first question in the cross-examination of the man certainly wasn't in the brief. I said, "Tell me, sir, what is the coefficient of the expansion of brass?" And he didn't know. I am not sure that I did, but he couldn't ask me questions and I could ask him, and he didn't know. And from that moment, of course, it was easy.

And the cross-examination to a very large extent must depend upon the kind of man you are. You can't get it from your brief, you must use your judgment. And above all don't ask the one question too many. They tell a grand story about a bastardy case in England, where in the old days they used evidence of association as tending to show that the man accused was the father of the child. And in one of the country assize towns there was an old farmer called to give evidence. He was cross-examined, and the cross-examination proceeded upon these lines:

"Well, sir, I suppose you were young once yourself?"—"Yes sir", he says, "I was young once myself". "And I suppose you used to go walking through the lovely lanes and fields?" — "Oh yes", he says, "I walked the lanes and fields, all right". "And I suppose there were occasions when you went in those lanes and fields in the moonlight?" — "Oh yes", he said, "I went in the moonlight". "I suppose there were occasions when you had a girl with you?" — "Yes", he said, "there were occasions, I will admit, in these fields and lanes on moonlight nights when I had a nice girl with me". "Well", said the counsel, "I suppose there were occasions when you used to sit down on the hedge bottom on these moonlit nights with this nice girl" — "Oh yes", he said, "we did that".

Now there he should have stopped. Instead of that he asked one question too many and he said to the old man, "Well now,

tell me, there was nothing wrong about that, was there?" and the old man said to the judge, "*Am I bound to answer that question?*"

No doubt, there are many classical illustrations of the man who in cross-examining gets all that he can ever wish to have, and who cannot restrain himself, and asks the one question too many.

Then we have, of course, the final address to the jury when all the evidence is over, when everything is presented in its final form. All these things about which I do not presume to speak at any length are essential parts of the work of the advocate, but the matters that I did just want to speak about in a general way, before I sit down, about advocacy are these — they are quite general. The first quality beyond all others in your advocate, whatever his type, the first quality is that he must be a man of character. Without that in the long run all else fails. The court must be able to rely upon you. Your word must be your bond, and when you assert, as a matter of fact, to the court those matters which are within your personal knowledge the court must be able to know that you in your integrity, on your responsibility as a member of a great profession, are being loyal to the court.

You will forgive me saying it, but I am jealous of the very great reputation of the law. Its future is in our hands and it is a solemn responsibility and duty cast upon every member of the practising profession that in all he does, in his duty to the client, in his duty to the court and in his duty to the State, he shall be above and beyond all other things a man of complete integrity. Whatever gifts or attributes he may possess, he shall have this supreme qualification, that he is a man of integrity and a man of honour.

The second general observation I would like to make with regard to the advocate is this. I think he must be not only a man of character but a man of culture. You may remember in Sir Walter Scott's Guy Mannering, the figure of Counsellor Pleydell, who went into his room and there were all the great poets and writers on the shelf and, pointing to the books, he said, "These are my stock in trade".

There can be no doubt that whilst the knowledge of law and the training in law is essential, of itself it is insufficient. There must be the cultural background out of which springs the serene mind, the subtle understanding, the insight, that which differentiates man from man.

> "Two men look out through the same bars:
> One sees the mud, and one the stars."

That cultural background is open to everybody. It may very well be that there are some here who have not had the opportunity of a classical education and been made familiar with all the great ancient writers; it may very well be so. We are not all so fortunate as to be born in circumstances which permit it. It may be, I do not know, that many were unable, as indeed they were in England, to go to universities like Oxford and Cambridge and to spend the leisure years reading, absorbing and imbibing. These are very great advantages but they are not possible for all. But what is possible for all is that there should be a cultural background created by themselves. Take the whole field of literature and what a repository, what a treasure we have there. Take the Authorized Version itself of King James's Bible. Why, there are some men who have achieved great fame who had little more cultural background than that very great book. Some of the greatest examples of oratory in our land and in our speech were given by John Bright, and if you will examine that oratory you will find it derives from the Authorized Version. The very great speech in the House of Commons on the Crimean War owed all its power to the narrative of Herod's slaying of the First Born. Lincoln, President Lincoln, too, owed much to the same source. And to familiarize yourself with that great repository of English prose is in itself an education.

Shakespeare! Even a nodding acquaintance with Shakespeare is of the greatest possible advantage to the advocate, for there speech has reached the highest form that we have ever known or are ever likely to know. And if we can get just a touch of historical background with it, it becomes most moving and most magical.

A very few months ago I was privileged to be in Shakespeare's birthplace, Stratford-on-Avon, and I reflected that it was at Stratford-on-Avon that Shakespeare came at the end of his short and crowded life, and it was at Stratford-on-Avon that he penned those memorable words in which he took farewell of all the imaginative beauty which he had created. For it was there that he wrote The Tempest and into the mouth of Prospero he put perhaps the greatest form of speech we are ever likely to know:

> "You do look, my son, in a mov'd sort,
> As if you were dismay'd: be cheerful, Sir.
> Our revels now are ended. These our actors,
> As I foretold you, were all spirits, and
> Are melted into air, into thin air:
> And, like the baseless fabric of this vision,
> The cloud-capp'd towers, the gorgeous palaces,

> The solemn temples, the great globe itself,
> Yea, all which it inherit, shall dissolve,
> And, like this insubstantial pageant faded,
> Leave not a rack behind. We are such stuff
> As dreams are made of, and our little life
> Is rounded with a sleep."

To be familiar even for a moment with the greatest expression of that kind is, I think, not only a valuable addition to the advocate's art but an indispensable addition; and you no doubt have your own favourite passages in Shakespeare. The only other one I will quote is where the loveliness I think is still as perfect:

> "Sit Jessica: look, how the floor of heaven
> Is thick inlaid with patines of bright gold:
> There's not the smallest orb which thou behold'st,
> But in his motion like an angel sings,
> Still quiring to the young-ey'd cherubins, —
> Such harmony is in immortal souls;
> But whilst this muddy vesture of decay
> Doth grossly close it is, we cannot hear it."

Well now, Mr. President, I cite that merely to illustrate the admonition, if you will allow me to use that word: don't rely too much upon the law books. Our very dear friend George Pepper the other night made a beautiful speech at Osgoode Hall and in the course of it he said, "If I were pressed I could tell you of every form of dower, dower at common law and all the rest of it". And I said to George this morning, "My dear George, it was lovely to hear you, but let me tell you that in thirty-four years at the Bar I have never had one single case in which dower ever came into it".

And whilst these things are essential and training is invaluable, my advice is, let your advocate not merely be a man of law, let him be a man of letters. Let him love the humanities, and from that springs the insight, the understanding and the judgment.

The last thing that I would like to say to you, as a third matter for the advocate, is to cultivate the love of words. You know the greatest tribute that was ever paid to any speaker that I know was the tribute paid by John Aubrey in the "Brief Lives" to Francis Bacon, the Earl of Verulam. He said of Bacon these memorable words, "It was the fear of all that heard him that he would make an end".

I mean it, Mr. President, in no vulgar sense, but it is important to cultivate words, to select the right words, to put them in

the right order, to know something of their meaning, of their association, of their sound. You know, it is a most fascinating, fascinating world. Again take Shakespeare — "The *uncertain* glory of an April day". Now nobody but a Shakespeare could have used the word "uncertain" to convey everything. Just think of it, "The uncertain glory of an April day". It is perfect.

And if you examine your Shakespeare you will find that is what Shakespeare was. He was a word lover. He invented, of course, a great many of the words which have gone into our common speech, simply made them up, but he also used the words of Romeo to Juliet on the balcony, "O, speak again, bright angel". Think of the use of "bright": "O, speak again, bright angel". Think how he used that word "bright" in so many other places: "So quick bright things come to confusion", and so on.

When we were at Banff the other day I was thrilled to see some mule deer, a pure Anglo-Saxon word, but when it gets onto the table it is venison, which is Norman-French. Deer, Anglo-Saxon; venison, Norman-French. Sheep, Anglo-Saxon; mutton, Norman French. Board, round our board, Anglo-Saxon; table, Norman French. And there is a history between the Anglo-Saxon, the underlings, and the Norman-French, the overlords.

And that love of words, that discrimination in the use of words, is all essential to the advocate. The presentation of your case in the appropriate language, in the inimitable language, is part of the art of persuasion, and persuasion is the whole end of it, as I understand it.

Now, Mr. President, I have kept you a very long time and I propose to come to an end, and I will end as I began, by thanking you for allowing me to come here. I think that the Bar is the source and guardian of the virtue of the Bench. It is the good Bar that makes the good Bench. There is no doubt whatever about it. And therefore it is the greatest possible pleasure to feel I have spent my life at the Bar and now when I sit upon the Bench, with occasionally a strong yearning to get back into the arena, nothing gives me greater joy than to see the young advocate presenting his case to the very best of his ability. Immature it may be, but with all the signs of promise. And if I find, as I do find, an advocate with a nice sense of words who presents the argument in an attractive form, my heart warms to the advocate and I do my best to encourage and to help him on his way.

And therefore it has been a very great pleasure to speak here, the last speech that I shall make in Canada before going back to what I understand is a most attractive winter

in England. But, I shall carry with me the recollection, from Montreal to Vancouver, not merely of a great country with its indescribable grandeur and beauty, but the recollection of a great host of people of whom perhaps Lally McCarthy stands as the great prototype. Friends, companions, colleagues, and to the Toronto Lawyers Club, I say farewell and wish you in all your activities the highest possible happiness and success.

POLITICS AND THE BENCH

I quite recognize that there may be and often is an honest conflict of philosophical viewpoint in the approach of different judges to any legal problem. It is right that there should be, but there is no place in our legal thinking for the suggestion that the philosophical view of the judge on the bench should be affected by the political policy of the executive or legislative branch of government. I entirely agree with the statement that "the rule of law is in unsafe hands when courts cease to function as courts and become organs for the control of policy". But it must never be forgotten that this statement has a twofold application. While the judge has no right to interpret the law for the purpose of limiting or controlling the policy of the government in power, neither has he the right to colour his interpretation of the law by a desire to advance its political interests.

When the judge goes on the bench he must learn to think independently and to decide independently. But independent thinking does not mean thinking in a vacuum. Judicial decisions apply to living people and may be, and often are, moulded by an honest judicial viewpoint of the public welfare. But that is a very different thing from submission to the straitjacket of political policy as expressed by a party in power or out of power. Political currents change rapidly with the passage of time. The rule of law cannot be advanced by judicial recognition of the immediate course of those currents. The science of law transcends the emotional appeal of politics. It calls for the exercise of judicial wisdom as well as the application of judicial learning. Its interests are best served by applying to new combinations of circumstances those rules of law which are derived from legal principles and judicial precedents, and in developing their application in a manner consistent with the stable advancement of civilization. There is no place in judicial decision for experiment or trifling with political theories be they new or old. (Hon. J. C. McRuer to the American Bar Association at Cleveland in September 1947)