

Some Things a Lawyer Has Learned*

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Saint John

You have been very kind in your words of welcome, Mr. Chairman, and I thank you. You have been even kinder in asking me to address you, for I share with most of my contemporaries a preference for talking to younger men. They are keener to hear, or at least more careful to conceal their indifference, and then many of them do not know the anecdotes and would-be humorous sallies with which we strive to relieve the tedium and dullness of our discourses. You cannot yet appreciate how encouraging that is.

I have chosen as my theme "Some Things A Lawyer Has Learned".

You may have heard of the bishop who arrived unexpectedly at a church to hear the rector preach. As they walked away after the service, a friend remarked: "That was an excellent text, wasn't it?" And the bishop answered: "Oh yes, there was nothing wrong with the text". I hope you will agree that at least there is nothing wrong with my text.

I must observe, of course, Oscar Wilde's wise warning: "To give advice is dangerous: to give good advice is fatal". And yet it would be strange, and I must be unintelligent, or you unnaturally precocious, if, after almost thirty years of experience in our common profession, I could not make some observations to benefit and encourage, or at least to warn you, in the early stages of your careers as lawyers. For let me add that it is to the Junior members of the Junior Bar and not to the more Senior members that these remarks are primarily addressed.

A word then on learning the Law — not the practice of the law, but the Law itself. I yield to no one in my sense of the value of the training given at a good law school. There the student will

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stock his mind with some information; more important, he will learn the technique of grappling with and solving legal problems, and under expert guidance will, say in three years, view the whole body of the law in perspective. Of course, he will still be very ignorant, but he will have acquired a zeal for the law and a confidence in his ability to master it.

Do not suppose, however, that I regard the training at a good law school as indispensable to the making of a capable lawyer. Far from it. Some of the ablest and best grounded lawyers I have known have had no such training; one, in fact, for whose broad legal knowledge and acute mind I had the deepest respect, never attended high school. I refer to the late John Baxter, Chief Justice of New Brunswick. But men like Baxter are rare in any country and in any generation: they are the exceptions who prove the rule, and had they had the advantage of law school training they would have attained the same high proficiency more quickly and with less effort.

But when a man first comes to the Bar, whether he comes with or without law school training, he must have a limited and inadequate knowledge of the Law. That he must correct by reading statutes and reports and text books several hours a day each day for years, say ten years. The reports he must continue to read throughout the whole of his professional life. He must read his provincial series and that of the Supreme Court of Canada, and he should read the English Reports as well. For it has been my observation that not only are the English judgments unequalled in form, but they embody the slow, sound development of both Common Law and Equity. I do not stop to inquire the reasons, nor am I to be understood as suggesting that many original ideas do not emerge from the courts of North America, but until they have been sifted and adopted by the English courts they want the hall-mark of permanence and soundness. "The forms of action are dead", said Maitland, "but they rule us from their graves": "The English Law is thriving", I say, "and it moulds our thinking".

Then this newcomer should always have a text-book under perusal: at first it should relate to Evidence or Practice and he should read, mark and digest it by reading it at increasingly long intervals, until it becomes a part of the lasting furniture of his mind. Especially is this true of his favourite text-book on Evidence, for its contents he must command absolutely and be able to apply instantly and with confidence. Rarely, except on appeal, has one time to look up a rule of evidence. It must be available

in the practising lawyer's mind without inquiry. And it can be fixed there only by the process I have suggested.

And what I have said of Evidence is true, but to a lesser degree, of Pleading and of Practice. Only when his text-book on these subjects is ready to dissolve from repeated perusals and he can reproduce its gist page by page should he discard its daily reading. What I have recommended is not toil to the earnest student, but a delightful and absorbing intellectual pastime, even though unlike Chief Baron Palles he is not ready to read *Fearne on Contingent Remainders* on his honeymoon. The reward is a sense of power and confidence and of rapid work which is wholly satisfying.

And this process does not go on forever. In time his work will be too heavy; and he will have mastered these and other portions of the Law: but the fruits will be with him as a permanent part of his intellectual capital. Some lawyers may not need such prolonged and thorough preparation: they are the rare species known as geniuses. I speak of the men of sound but not brilliant parts, such as most successful lawyers are. Speaking generally, the men who do well in law are industrious, painstaking, thorough, blessed with good health and steady nerves, who can stand the hard and continuous demands of an exacting calling.

To the beginner it seems incredible that one can ever master the law and the innumerable allied subjects, which confront him in practice. And, truth to tell, I suppose no one can ever really master them, but it seems impossible to the beginner that he can ever really obtain the confident working knowledge essential to practice. This is where those of us who are in the later stages of our professional life can help and encourage him. At first every problem is new. The young lawyer in giving advice and drafting opinions must make constant references to the reports — to the statutes, if he is wise, he will always refer, however experienced he may become. Rarely does the same point arise for decision the second time in his early years, and it is all very slow and rather bewildering, for he finds that his opinion does not coincide as often as he would wish with that of the court — even the experienced man may meet with like surprises and grievous disappointments; he has become reconciled, however, for he has observed that even judges do not always agree among themselves. But, as time goes on, the same points do begin to recur; certain branches of the law are mastered, certain statutes become thoroughly familiar, and then he begins to accelerate and to increase his output, and to give his opinions, and to do his work in court, with con-

fidence and a quiet competence unknown to him at first. Finally, it will be rarely, only and when dealing with a strange field of the law, that he will have to spend many hours on his opinions. Frequently, too, when a question is referred to him he will say — for he has always read, noted and assimilated the reports as the years went by — “that was decided by the Supreme Court of Canada in 1947” or “by the Court of Appeal in 1948” or “by the House of Lords in 1949”—and lo, it will be so! What has happened? William James gave the answer over half a century ago in these words:

Let no youth have any anxiety about the upshot of his education, whatever the line of it may be. If he keep faithfully busy each hour of the working day, he may safely leave the final result to itself. He can with perfect certainty count on waking up some fine morning, to find himself one of the competent ones of his generation, in whatever pursuit he may have singled out. Silently, between all the details of his business, the *power of judging* in all that class of matter will have built itself up within him as a possession that will never pass away. Young people should know this truth in advance. The ignorance of it has probably engendered more discouragement and faint heartedness in youths embarking on arduous careers than all other causes put together.

These words of William James have been a sheet anchor for me to hold by for many years, and I pass them on to you, not as an interesting speculation of a distinguished philosopher but as a fundamental truth tested by experience. May they give you good heart and sturdy resolution, however bleak and unpromising you, like so many of your most eminent predecessors, have found the early stages of the practice of the Law. But, Gentlemen, remember always James' condition for entry into the places of the competent ones of your generation. You must “keep faithfully busy each hour of the working day”—I should add “and a bit of the night too”. I have often thought of the remarks of Lord Russell of Killowen, one of the greatest of all advocates, to some junior members of the Bar standing about the fire in the robing room: “Why are you loafing about here? Why don't you do something?” “We have nothing to do.” “Why don't you go to the races? Do something, don't be moping.” Go to the races, but keep alive when you are there, watch your fellow human beings, talk to the trainers and the grooms and the bookies. Everything is grist to your mill; and you will find that the more you know of men and women of every sort, and the more you know of what they do and how and why they do it, the better lawyer you will be. Nay, such knowledge is as necessary as that of the law itself for the successful practice of your profession, and in the later stages of your

practice you may well be consulted for your general knowledge of affairs, for your power of judgment, in short for your wisdom — more than for your knowledge of technical law.

But one must be prepared to pay the price: work, hard work, continuous work but stimulating and satisfying work. This is sometimes summed up by the phrase, "The Law is a hard and jealous mistress", or as the great Lord Eldon expressed it, "Live like a hermit and work like a horse" or again, as it has been put in lighter vein, "The law is not a bed of roses, for you will either have all bed and no roses, or all roses and no bed". Those, like most epigrams, are the smart expressions of half truths.

On the requisites for success at the Bar there is no agreement. One eminent judge has emphasized tact, but Mr. Justice Maule said there were three: "In the first place, high spirits; in the second place, high spirits; in the third place, high spirits; and if young men will also learn a little law, it will not perhaps impede them in their careers". But the learned judge had a reputation for humour, and that he had to maintain at any price.

It is perhaps unnecessary, even in these lush days, to tell you that the law is a calling with deferred returns. I am sure you will disagree with me when I say that it is well that it is so. In my view, the young man who makes a large income out of law at first is in great danger: he isn't worth it and he won't appreciate it. Much better for him, if at the outset he has hard work and a small income, for he will in this way prepare a solid foundation for the heavy and responsible work later on, and he will really value it when it comes.

But no man whose main ambition is wealth should practise law: he should buy and sell securities or merchandise. A few lawyers have the Midas touch, but they are notable and rare exceptions. "Lawyers" it has been said "work hard, live well and die poor." If you refer to a Harvard class report which appeared in 1921, the first year I began to practise, you will find an analysis of the average earnings of graduates of the Harvard Law School as revealed by a survey. They were discouragingly low: \$600 in the first year, and increasing by annual increments of \$500 until at the end of the tenth year they reached \$5000 and there they stopped. And the earnings of the graduates of Harvard Law School ranked with the best of legal incomes in the wealthiest country in the world. The official taxation statistics showed that Canadian lawyers in 1947 had average earnings of \$6,528. These must surely have been unprecedented. When you take into account the depreciated value of money and the vastly increased

income tax, the average earnings of Canadian lawyers in 1947, although they did not surpass those of the Harvard graduate of ten years standing in 1921, did at least approximate them. We should not, however, count on this happy condition as permanent. Few lawyers, then, amass wealth, and if a man's ambition is mainly material he should pass by the law.

But for the right man the Law provides a career of unequalled attractiveness: if he enjoys using his brain in grappling with perplexing problems, if he enjoys helping men and women in their difficulties, if he wishes to win the confidence and to gain the respect of his fellows in matters closest to their hearts, if he would understand, too, the true inner working of business and of institutions and why men and women, alone and in the mass, act and react as they do, the Law gives him all these opportunities in full measure and they are worth more than many dollars.

Another opportunity which the Law will bring a man is to render public service in abundance. This opportunity comes to many but to none in the community more than to the lawyer. For his fellow citizens will recognize that by his training he is able to penetrate to the heart of problems, and to express for them their incoherent thoughts,—and those, believe me, are attainments above price. A great deal of public service is unremunerated, but it should not be avoided on that account. The rewards are there in personal satisfaction in the work, in public regard, and above all else in learning how human beings behave and how to control their behaviour. Those are great and abiding rewards, though they cannot be expressed in terms of money.

It has been my experience, too, that public service as such does not attract business to a lawyer. Others may disagree with me: I give you my opinion — not that I would utter a word to dissuade you from rendering the greatest measure of public service of which you are capable, but I do not wish to excite any unsound expectations.

What then, you may ask, does attract business? I would answer in four words "friendship and good work". Here again other men equally well informed may tell you differently. I have found that the men one plays games with, whether it be golf or cards, are those who bring work, especially in the early days of one's practice. Later, when a man is established as a sound lawyer of good repute, the World will come seeking his services. That is for the future. Only relatives and friends are interested in him at the outset of his career.

Perhaps you will forgive one further suggestion and then I

must stop. Planning is the master word of this generation: we hear of Five Year Planning and Town Planning and Planning for Plenty. Some, too, have a personal plan or rather two personal plans: a long range or strategic plan and one for immediate use. Necessarily, the strategic plan must be rather vague and flexible, but the immediate one should be precise and somewhat rigid. Now, the simple truth is that if a man decides what he wants to become and directs his mind and his energies to that end, given moderate ability, good health, inflexible determination — yes, and a bit of luck — he will become just that. Dean Inge develops this theme with humour in the following passage from his *Vale*:

The typical ambitious man, I suppose, faces his prospective biographer with equanimity. He has kept him in his mind's eye from the first. Whether he is writing a letter of condolence, or his first impressions of the Lake of Lucerne, he thinks subconsciously, "How will this read in my Life and Letters?" He decides early that he will be a judge, or a bishop, or a cabinet minister, and drills himself always to behave, and if possible to look, like that kind of person. Habit soon becomes a second nature — and, for that matter, nature is only first habit. By the time he is a bishop, it is no effort for him to be dignified, fatherly, and cautious. By the time he is a judge, he looks, even in his bath, as wise as a stuffed owl. By the time he is a cabinet minister, he looks as if he had been born in a frock-coat, and has acquired the art of fulminating for an hour without saying anything at all. Such lives lack psychological interest, being entirely directed outwards; but unquestionably this kind of honourable ambition inhibits a crowd of temptations, and produces very useful citizens.

Of course, most people do not plan their lives or have set objectives, they simply live from day to day, and perhaps they get as much happiness out of life as the planners, but they rarely get the satisfaction of an achieved goal. The planner probably will attain his objective, and his reward will be what? — a sense of achievement and more work and greater responsibility. Well, Gentlemen, after all, perhaps that is enough.

It is not on this note that I would end, however, but on one more congenial, I hope, to most of you and worthier of our great profession. Let us remember by all means our duty to the public, to our clients — yes, and to ourselves; but let us never forget our no less important duty to maintain the standards and traditions of the Bar. This we can do, in part, by keeping our conduct above reproach, in part by offering our services, freely and generously, to the societies and associations which order our affairs as lawyers: to our local law societies, to our provincial associations, and to the Canadian Bar Association. It is the least we should do, and it is urgent that we do it. Francis Bacon put this thought, as

he did so many, in memorable words, and with them I conclude: "I hold every man a debtor to his profession; from the which as men of course do seek to receive countenance and profit, so ought they of duty to endeavour themselves by way of amends to be a help and ornament thereunto".

The Law

The Mountain of Law! The great men of the Law have ever shown dignity in the doing and nobility in the motive. The best men of our brotherhood have been wise guides and brave citizens. The brief of the best lawyers at their best has always been freedom. If they have taken up the arms of their calling in the forum of their vitality they have taken them up as warriors in a good cause and not as assassins in a bad cause. There have always been men of our profession who could think in terms of society itself. 'Wherever the Temple of Justice stands', said Daniel Webster, 'there is a foundation for social security, general happiness, and the improvement and progress of our race.' Man has always had a primeval yearning for peace and order and justice. Unity is God's plan and order is Heaven's best law. Whenever conscience cleanses the thoughts of man, whenever the voice of God is heard above the crash of thunder or in the secret places of a man's heart, there is the Power of the Law. And in words of ancient wisdom that I would like to see emblazoned on the walls of every courthouse: 'Of Law no less can be acknowledged than that her seat is the bosom of God, her voice the harmony of the world. All things in Heaven and Earth do her homage, the very least as feeling her care, the greatest as not exempt from her Power.' And so, in the spirit of those words, wherever Nemesis overtakes the arrogant, wherever the unjust mighty are put down from their seats, wherever mercy comes to bless him who gives and him who takes, wherever there is a presumption in favour of the hunted and the accused, protection for the innocent, there too is the Law, working in the midst of men. For Law and the obedience to it are the beginning and the end of Life and Liberty. (Leonard W. Brockington, C.M.G., K.C., LL.D., to the Canadian Bar Association at Banff, Alberta, September 2nd, 1949)