

Correspondence

The Law and the Word

TO THE EDITOR:

Your article in the December 1949 issue and the publication in the May 1950 issue of Dr. Trueman's address before the Council of the Canadian Bar Association on "The Power of Language" are timely reminders of the importance to the legal profession of the proper use of language in speech and writing.

Whether the lawyer is an office man or a court man, words are the most valuable weapons in his armoury, and they should be numerous and various and well and truly forged, and constantly polished and sharpened.

I do not suggest that a graceful command of English is necessary to prepare an offer for purchase, search a title, complete the deal, and report to the client. Nor is a study of the humanities a pre-requisite to the acquisition of the technical knowledge required to master the intricacies of real estate practice. But even this lowliest branch of the law (with apologies to my friends who are engaged in it) is not a mere scientific or mathematical problem. As is the case with all legal work, it concerns people—the client, the other party, and the other party's solicitor. The lawyer who can translate into easily understood lay language the legal problems involved, and negotiate skilfully with the other party, is a better lawyer than one who cannot.

I think that Dr. Trueman's thesis that thought and speech are inseparable is generally accepted as true, except possibly in those sciences in which the processes and conclusions can be expressed in figures or formulas. That being true, there can be no knowledge without the word. In my own experience I have observed that, with many notable exceptions, the scientific or technically trained man makes a poor lawyer, despite the fact that one would expect that the discipline of mind and the training in logical reasoning obtained from scientific studies would be an excellent background for the study of law. Educationists now recognize the importance of a good grounding in the humanities for the engineer, and are engaged in what I suspect will be an unsuccessful endeavour to interest the practical engineering student in the effete Arts.

I therefore say that if one cannot express a thought, one cannot have a thought. Ideas are not ideas until they are formulated into words, and the person who says he knows a thing but cannot explain it, simply does not know it.

It is true that the ability to express ideas varies considerably, but, generally speaking, the greater the ability to speak or write, the more complete is the understanding. Even with complete understanding, ideas may be ex-

pressed in a manner more or less pleasing and convincing and this, in my opinion, is a matter of style. It has been said that there is no such thing as style in writing — the thing is either adequately expressed or it is not. Although this is a logical proposition, it is unprofitable to argue it. For my own purposes, I will define style as the characteristic of speaking or writing which gives it distinction — an utterly inadequate definition showing considerable confusion of thought on my part, but it proves the point that without clarity of thought there can be no clarity of speech, and vice versa.

A great deal of your admirable article entitled "Of Writing by Lawyers" dealt with style — how the thought can be more pleasingly expressed. In the day-to-day work of a lawyer it is usually impossible to spend time writing and re-writing, polishing and re-polishing the words and phrases that he uses. The agreement must be ready tomorrow, the opinion was promised yesterday. Yet with a little care and thought most of us can do better.

Few clients are impressed by ponderous legal verbosity. An agreement can be written in smoothly flowing, simple language, with its clauses following in logical sequence, so that the client can follow it easily and understand it readily. This also applies to any other document coming out of a lawyer's office. A figure of speech, a colloquialism or a touch of humour is not amiss in a lawyer's letter. It creates the feeling that the letter is a human document, not the product of a business machine. Even a patent claim, to laymen and many lawyers the most mechanical form of legal writing, need not be entirely devoid of literary merit, while a patent specification, which is primarily a scientific document, affords great scope for logical presentation, clear and concise exposition, and persuasive argument.

The mere form of a document may reflect literary style. Short sentences logically arranged, and short paragraphs of nearly equal length or gradually increasing or decreasing length make a letter or agreement attractive in appearance and easier to read and understand. Logical sequence of facts, law, and conclusions in an opinion or a brief are part of good style. They reveal an orderly mind in the speaker or writer, and avoid confusion in the mind of the listener or reader — particularly important if the latter is a judge or jury and the case is sufficiently good that the objective is to enlighten rather than confuse.

In venturing to contribute to a discussion of this vital and interesting subject, Sir, I am acutely aware of my own shortcomings and my inadequate academic knowledge of a subject which has been so well handled by Dr. Trueman and yourself. I hope that my fellow practitioners who take the trouble to read these lines will realize that I am not setting myself up as an authority, but merely expressing a few rather rambling and unoriginal thoughts of an ordinary lawyer, who treads the level plains of legal practice and seldom looks up to, and practically never ascends, the Olympian heights of philosophic thought.

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