

## ADDRESS OF THE CHIEF JUSTICE OF ONTARIO.\*

Mr. Chairman, Ladies and Gentlemen:

On entering my room at Osgoode Hall a few mornings ago, I found your chairman, Mr. McCarthy, awaiting me and, saluting him, said, Well, Lally, what is your trouble this morning? whereupon he answered "it is not my trouble, it's yours. I am here to inform you that the Ontario Branch of the Canadian Bar Association wishes to give you a dinner on your coming birthday and I hope to take back a favourable answer."

Reserving judgment for a moment as to what my answer should be, I pictured to myself a companionable meeting with my brethren of the Bar, and asked myself what trouble can come to me at such a meeting.

Is it that the Bar, aroused by erroneous judgments of an erring court desires the opportunity, without incurring the penalties incident to contempt of court, of giving to the court a piece of its mind touching a decadent Ontario Bench? Was that what was in Mr. McCarthy's mind when he warned me that this meeting meant trouble for me.

Confident that my brethren of the Bar meant me no harm, I discarded such a base interpretation of Mr. McCarthy's words, accepted the invitation, and here I am.

But now I realize that this assemblage does mean trouble for me.

The honour done me by the presence of so many valued friends, members of the Bench and Bar, and others, some from long distances; the expressions of goodwill of the gentlemen who have introduced the toast to my health; the cheers, still ringing in my ears, with which you have received the toast; the warmth of your welcome upon my rising, have unmanned me. My lips cannot express my feelings, but if you could read my grateful heart, there would you learn how deeply I am touched by those evidences of good will with which you have overwhelmed me.

Edmund Spenser in his "Faerie Queene" tells of Cupid establishing a court to try a maiden for murder; the charge being that of breaking her lover's heart.

Love also may kill; and had we a court to try such an offence, or attempted offence, the Ontario Branch of the Canadian Bar Association would be indictable for an attempt to kill me by kindness, and the charge would be true.

\* Delivered at a Dinner tendered to the Rt. Hon. Sir William Mulock, K.C.M.G., by the Ontario members of the Canadian Bar Association on the occasion of his ninetieth birthday.

How priceless are the respect, the affection and love of friends!

A writer has observed that friendships, like flowers, suggest human sympathies, kindness, love and all the tender feelings upon which rests human happiness. Without them what a desolate place would be the world! A face without a smile. No one, whatever be his lot in life, needs be without friends. As we sow we reap. Every fruit tree yields fruit after its kind.

Kindly reference has been made to my age.

The great Pitt who at the age of 23 years became Prime Minister of England, in answer to the charge of being a young man, said: "The atrocious crime of being a young man I shall attempt neither to palliate nor to deny." If I were charged with the offence of being an old man I also would admit its truth, but, would submit some extenuating circumstances. For example, I might suggest to the court that I was not responsible for being alive; that old age is not an offence known to the law; that public opinion favours length of years to early demise; that old age is a relative term, and that years are not the standard wherewith to determine one's capacity for efficiently performing his duties.

For example, a young man whose occupation is that of a letter-carrier and who may be unfortunate enough to lose a leg, would be old, *qua* his occupation, however young he be. But the loss of a leg does not necessarily indicate that a man is old *qua* some other occupation. For example, I recall the cases of three judges in this Province each of whom had a wooden leg, but each of whom discharged his judicial duties with unquestioned and unquestionable efficiency.

The sound understanding required of judges differs from that required of letter-carriers.

But there are exceptions to almost every good rule.

Canadian tradition tells us of a Cabinet Minister and a Superior Court Judge each of whom is said to have performed his duties with the utmost satisfaction, but was credited with having a wooden head.

Some men, like the beech tree, begin dying at the top; then they are old no matter how many or few their years be. To them the line in Samuel Johnson's "Vanity of Human Wishes" applies: "Superfluous lags the vet'ran on the stage."

And now I wish to express not only my own personal thanks but also those of my colleagues of the Court of Appeal to the Ontario Bar for the effective assistance rendered by them to the Court whereby it has been enabled to wipe out arrears and to keep abreast of all current appeals.

In 1931, the Legislature amended the Judicature Act, merging the two divisions of the Court of Appeal into one court, and giving that court power so to organize its judicial strength as to make it possible to avoid undue delays in the administration of justice.

We realized the responsibility cast upon us by that Act, and reached the conclusion that it would be possible in the course of time with the co-operation of the Bar to hear every appeal in the month in which it was set down for hearing; and that became our aim.

The amendment in question went into effect on the 1st day of September, 1931. At that time we were confronted with a long list of unheard appeals—a legacy growing out of the practice of some three-quarters of a century of putting off until to-morrow the work of to-day.

We announced to the Bar our desire to overtake these arrears and thereafter to keep abreast of the work, and to that end we asked for their co-operation, and it was given. And with what result? On the 30th of June, 1932, we had overtaken all arrears and heard every appeal but one not due for hearing until July, and in July it was heard and disposed of.

Throughout the judicial year 1932-3, every appeal was heard in the month in which it was entered for hearing, and on the 30th of June of that year the Court had heard and delivered judgment in every case—an unique circumstance in the history of the Court of Appeal in this Province and, perhaps, of any other appellate court within the Empire.

It must be with some satisfaction that suitors of to-day learn that *Jarndyce v. Jarndyce* has ceased to be a precedent in our court.

Members of the Bar, I repeat it: the court is most appreciative of the assistance rendered by the Bar in the attainment of such results.

Admitting that the Bench and the Bar share some responsibility for the Law's delays, there is one kind of delay for which the court can hardly be held responsible. I refer to the cross-examination of witnesses at too great length. Let me give you a case in point: Counsel in cross-examining a female witness began by asking her how many children she had, and then, after a most protracted examination, repeated the question. Before she answered, the weary judge interposed, saying, "when you began she had three."

My brethren of the High Court share the views of the Judges in Appeal that there should be no undue delay in the administration of justice; and it is their fixed resolve that as far as is in their power there shall be none in their court.

And now my friends I desire to bring to your attention a subject of the greatest importance, one which concerns the liberties, the rights, the happiness of every citizen in Canada, and the welfare of Canada itself.

I refer to the ever-increasing practice of the Parliament of Canada and of our Provincial Legislatures of depriving our people of the protection of the law and of the Courts, by vesting in autocratic bodies the power to arbitrarily deal with matters affecting our liberties and other rights without the intervention of any court.

I wish it clearly understood that the views to which I am giving expression have no reference to the actions of any one political party, but are intended solely as an abstract criticism of the practice of legislatures in shutting the doors of the duly constituted courts of justice against any citizen, rich or poor, high or low, whatever be his position in the community, and leaving the decision of his legal rights at the mercy of any non-judicial body, often ignorant of the law, bound by no law, free to disregard the evidence and the law, and practically at its own will, to dispose finally of his rights.

Most people in Canada are of opinion that everywhere throughout the land the rule of law prevails and is sovereign guardian of their rights. It is not so.

For long years legislatures have encroached upon many of the people's most sacred rights, deprived them of the protection of the courts of justice, and conferred upon commissions, public officers and other irresponsible bodies the power of arbitrarily determining the people's rights.

To this situation all political parties have contributed; and the fact that the people generally have acquiesced in such legislation indicates an alarming indifference of the people themselves to the public safety.

I think I am safe in saying that there are literally many hundreds of boards and officers in Canada to-day authorized to exercise arbitrary power in dealing with the liberty and property of our citizens, and that free from any right of our courts to review such decisions.

Many of these boards are not bound by their previous decisions; are free to put their own construction on the common law and the statute law; to revive the Star Chamber method of conducting their proceedings behind closed doors, and to give no reasons for their decisions; the wronged suitor being left without redress.

This legislative invasion of the people's rights is continuing with ever-increasing momentum, and will undoubtedly continue until an aroused public opinion teaches the people's representatives that the

spirit of John Hampden still lives and demands the restoration of the people's rights, and regards every representative who fails to resist arbitrary legislation as an enemy and a traitor to Canada.

Courts of Justice are the handmaids of the law.

We may have benevolent laws, but Courts of Justice are the only channels whereby any benefit from them can reach the people.

There are but two ways whereby the people's rights can be determined: one is by the courts, the other by the exercise of arbitrary power. Let us put them side by side. In the former case you have a court presided over by an educated, independent judge, the proceedings conducted in public in the presence of the interested parties; the witnesses examined by trained lawyers in the presence of the litigants for the purpose of discovering the truth; a verdict—if a jury case—of twelve men sworn to decide rightly; or, if not a jury case, the judgment of a man, learned in the law and bound in honour and duty to judge rightly and to give public reasons for his judgment; all subject to appeal if either party is dissatisfied with the decision.

Compare that method with trial by some arbitrary tribunal such as a commission. The presiding officer not required to know anything of the law which he is to administer; free, of his own will to hear the case in public or private, in the presence or absence of the parties; with or without evidence; with or without the assistance of lawyers to prevent perjury; free to disregard the evidence and the law and to give the final decision without any reasons therefor, and not appealable to any court. Is that the position to which anyone with British blood in his veins should quietly submit? Which method is preferable?

Security to life and property is the foundation of love of country. It inspires gratitude for such protection.

It arouses patriotic determination to protect the country that so protects its people.

Rob a citizen of his rights and he becomes an enemy of his country; rob a people of their rights and their country is a rope of sand. Justice unites; injustice divides.

Before it is too late let us profit by the teachings of history.

No nation can enjoy enduring stability unless it is founded upon the bed-rock of Justice.

And I appeal to my brethren of the Bar and to all other patriotic citizens to watch and prevent, if possible, all legislation which threatens to overthrow the rule of law. The national safety is in danger.

Let this invasion of the people's rights continue and the ultimate result must be despotism, a Frankenstein; we will cease to be a free people, and our condition will be like that of unhappy Russia, not of England of old.

We have inherited the common law won by the people of the Mother Country by mighty struggles and the shedding of much blood; and I trust we have inherited the spirit of our forefathers so well described in Thomas Campbell's inspiring words:

Men of England! who inherit  
Rights that cost your sires their blood;  
Men, whose undegenerate spirit  
Has been proved on field and flood.  
We're the sons of sires that baffled  
Crowned and mitred tyranny,  
They defied the field and scaffold  
For their birthright, so will we.

And now my brethren of the Bar, it is my pleasing duty upon an occasion so touched with kindly feeling as pervades this gathering to indulge in a personal note to you who have so cordially and happily honoured me to-night.

It is true, my friends, that I scarce can decide in what fashion to couch my closing words; but I would say that the spirit of affectionate goodwill that enriches every moment of this happy occasion is dear and precious to my heart. You are my fellow-craftsmen; you are my friends. Together, for long years, we have, each in his own way, toiled in the sacred cause of justice; and it cannot be otherwise than a memorable hour in the life of one who is called upon, as I am to-night, to halt his plow in the long furrow of his work-a-day life and hear the kindly voices of his fellowmen assuring him that he has won and retains their confidence and affectionate regard.

Such an experience indeed may well cheer and gladden the evening of the life of any man.

Perhaps a few words of counsel to my brethren of the Bar would be the privilege of age.

Be not over-solicitous about the flight of time. Mark it, as does the sun dial, by its sunshines and its shadows. If you would be a happy beneficiary of the hours as they pass by, ever bear in mind that many, if not most, of the shadows of life are of one's own causing.

And now I close in recalling to you one of the old Olympic Torch games. Each contestant started in the race with a lighted torch in

his hand, and the winner was the youth—not the one who arrived first at the gaol—but he who first reached the goal with torch still burning brightly.

The beauty and symmetry of this restriction as touching life I leave to every man to apply and take to his own discerning heart. To-day, as in that far-off time, the real winner is not the man who first arrives, whom the world so shallowly regards as first in the race, in terms of wealth, station, garish honours or other false standards of success.

Many a man has thus arrived apparently triumphant, but with his torch extinguished in irremediable gloom; the torch of health, the torch of honour, the torch of domestic bliss or of parental joy. The true winner, the real winner, is he who pressed earnestly, even passionately, to the goal; who has safely guarded the sacred flame, and who has held high to the end the torch of health, the torch of honour, the torch of true fellowship, the torch of precious friends of his hour and day, the torch of joy in everything that enriches life, and, what an encouraging thought, that in such a race every contestant may, if he so strives, win some prize.

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