

ADVICE TO YOUNG LAWYERS.¹

LADIES AND GENTLEMEN,—

I gladly welcome you. It is always a pleasure to a Judge to admit to the Bar a new class of graduates and to bid them God-speed upon their career. It has become customary upon such occasions for the Judge to speak a few words to those admitted. Usually these remarks are largely an endeavour to impress upon the new barristers some adequate conception of the high calling of their profession and the nobility of character which should be exemplified by all its members. To-day I would rather give you a few words of practical advice as to the conduct of cases in Court, the result of many years' experience in Court as an advocate and as a Judge.

In the first place I would remind you that as an advocate your aim and desire is to convince the Court that your client is right, that his case is a just one and that it is the duty and privilege of the Court to afford him redress for the wrong he has suffered. This sounds very elementary, but if it is borne in mind it will at once indicate that the advocate must not assume a truculent and aggressive air. He may be *fortiter in re* but he must not forget to be *suaviter in modo*. The aggressive and bullying counsel obtains no favours and speedily finds that the Court has little sympathy for either him or his client. Courtesy to the Judge, courtesy to the witnesses, courtesy even to his opponents ought to be the rule. The man who is looking for trouble seldom fails to find it.

Speak plainly and audibly but not in a loud and aggressive style,—persuade but do not bully.

Know your facts so that you can state them without fumbling over your papers. If necessary have in your hand a memorandum of dates, names, etc., so that you can refresh your memory without interrupting your statement.

Do not jump into the middle of things. Tell the Court in the first place what the case is about and give a short outline of the questions which you intend to discuss. Remember that until you opened the case the Court knows little or nothing about it.

Be accurate in your statements so that you will not have to take anything back. Do not state as though it were admitted or beyond controversy a matter as to which there is dispute. When you come

¹ Address by the Honourable Mr. Justice Middleton to ladies and gentlemen called to the Bar of Ontario on 20th January, 1927.

in your narrative to matters in issue, inform the Court that this is an issue to be tried.

Formulate clearly in your own mind and state clearly to the Court the propositions of law and fact for which you contend. It would be well to reduce these propositions to writing so that they may be well considered and clearly presented.

Do not state as propositions which you intend to argue elementary principles which the Court may be presumed to already well know.

Be sure that you can bring the case upon the facts within the principles of law which you enunciate. If the question to be argued is whether the facts can be brought within the principle, make it plain that this is a matter which is to be argued.

When referring to a case cite it fully when you first mention it, give its name, its date, the report, the volume and the page. This enables a full note to be made by the Judge. It is not necessary to spell ordinary names. Pronounce all names very distinctly as, while they are familiar to you they are possibly not familiar to the Court. Do not refer to reports by initials. This indicates inexperience.

Refrain from text book citations as far as possible. A digest or text book is generally a mere index to the cases.

Always read a case before you cite it to be sure that it applies. A perusal of the case may show that when read it points out the weakness of your position.

Do not cite a multitude of cases. One decision of an Appellate Court if in point, counts for more than the decisions of many single judges. A series of cases by single judges simply following a judgment of the House of Lords adds nothing to its weight and may obscure. Read and study all reported decisions but only cite those that really help.

Never cite a text book without having read the cases cited. If you do this you will probably cite a case and not the text book.

Always cite all the cases bearing upon the problem in hand known to you, even if they appear to be adverse. This is your duty. It is also good policy because it gives you a chance of attempting to distinguish the adverse cases.

Finally, remember that you are officers of the Court—a part of the great machine designed to secure the administration of justice; and, while you seek to win, remember that victory must be obtained by the Sword of the Knight and not by the Dagger of the Assassin.