

CONCERNING THE NECESSITY OF LAW.<sup>1</sup>

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*Ladies and Gentlemen:—*

The able and brilliant address from Lord Birkenhead to which we have just listened recalls the occasion of his admission to membership in the Canadian Bar Association, I will not say how long ago. During the interval he has remained in seclusion and we are reminded of the beautiful lines in Gray's *Elegy*:—

“Full many a gem of purest ray serene  
The dark unfathom'd caves of ocean bear:  
Full many a flower is born to blush unseen,  
And waste its sweetness on the desert air.”

With to-night, however, the metaphor ends, for I venture the view that his brilliancy is not that of a meteor, but that of a dazzling fixed star in the judicial firmament (applause).

*Ladies and Gentlemen:—*

A short time ago your President paid me the compliment of asking me to address this learned and distinguished meeting, and as it is impossible for any member of the Canadian Bar Association to be deaf to the wishes of the worthy father of this Association I answered his letter, in my innocence and confidence in him, agreeing unconditionally to comply with his request, and incidentally asking him to name the subject upon which I was to speak.

The unconditional nature of my acceptance proved my undoing for, would you believe it, gentlemen, that he replied to the effect that he would hold me to my unqualified acceptance, and would not name the subject.

<sup>1</sup>Address delivered before the Canadian Bar Association at its Eighth Annual Meeting.

True he endeavoured to obtain from me a reasent to the contract by giving his reasons for his refusal, and I leave to you gentlemen as a reasonably intelligent jury, or at all events, as the only available one, whether his assigned reasons for such refusal entitle me to any relief.

Having fortunately lost his reply, and Mr. President having, as I learn, omitted to preserve a copy, I am in position to speak with some confidence and freedom as to its tenor. According to my recollection and imagination his explanation was as follows:—

There has been given to these Bar dinners a public reputation of being conducted upon strictly temperance principles for the purpose of enabling members of the Association and distinguished visitors to more easily obtain leave of absence from their watchful, and not over trustful, wives, but in order that these dinners may prove successful it was necessary that some reasonable regard be had to the selection of suitable meeting places.

In support of this policy the President's letter pointed out that the last meeting, held at Winnipeg, was saved from utter failure by reason of the fact that Winnipeg though dry was not bigotedly dry, that the meeting at Ottawa was fairly successful because of the proximity of that city to a neighbouring Province, whilst last year's meeting held in the ultra moist climate of Vancouver proved a howling success (laughter). Then the letter proceeded to state that with such evidence in support of the policy of the Association the Committee of Management had decided to pass over the arid regions lying east of British Columbia, and hold this year's banquet in this City, where there would be no doubt as to its success, and that when the time for my speaking arrived no one would either know or care what I might be speaking about, and that, therefore, a text would serve no useful purpose (laughter). Such was the President's explanation for not naming a subject to which I might address myself, and he has set me at large in your midst unguided and uncontrolled, and on

the authority of *Rylands v. Fletcher*, he must be held responsible for any damage I may cause to the pleasures of the evening. Under the circumstances I do not intend to deliver what in your programme is called an address, but merely to utter a few remarks on the subject of the Judiciary and the Bar. As to the Judiciary:—

The existence and the institution of judges implies also the existence of law, for without law there would be no need of judges other than Judge Lynch. There are but two kinds of government; government by law and government by force.

Under the former system everybody enjoys liberty under the law, which has been defined to be the right to do what one pleases provided that in so doing he does not interfere with any other person's equal rights. Under the system of Government by force no one has any rights except such as a majority in its arbitrary decision may permit him to enjoy. For example in Canada everyone has the right by law to work for whom he pleases, and on such terms as he pleases, and no one has the right by physical or undue moral force to prevent his exercising his right. Occasionally a majority yielding to unwise influences endeavours by unlawful means to deprive a minority of its rights under the law, but invariably the better judgment of a majority in time re-asserts itself and such unlawful efforts are abandoned. If it were otherwise and they were to succeed, it would only be a matter of time when all government by law would end, and on its ruins would be set up the tyranny of government by force, a handful of ambitious, lawless men seizing power and oppressing the minority. Then when too late those who had aided in bringing about that result would discover and deplore their mistake in having exchanged King Log for King Stork (applause).

Nations must choose between law and tyranny. They cannot escape having either one or the other. If one is absent the other will be present.

Happily Canada is in no danger of making such a

mistake. We revere our fundamental laws, traceable, as they are, to those placed by the great Law Giver in the Ark of the Covenant, the principles of which are to be found to-day in the common law of England and the civil code of Quebec and it is the duty of courts to correctly interpret the law in order that all may enjoy their rights under the law (hear, hear).

The task of judges is not always an easy one, but may be rendered more or less difficult according to the method adopted by judges in their search for the truth. For example arguments of counsel are supposed to assist the court, and therefore it is fitting that they should be given a patient hearing, although I once read of a judge whose practice it was to hear counsel on one side only because he said whenever he heard the other side he only became confused (laughter).

Again there would seem to be a better chance of the law speaking correctly through the mouths of its judges if judgments came after instead of before arguments of counsel. This proposition has in a limited way a personal application, and I am now in the confessional. Earlier in my judicial career I at times felt too sure of what I thought was the law and controverted the arguments of counsel before its conclusion only to find later that he was right and I was wrong.

No judge holds on draught, available for immediate consumption, nothing but pure, genuine, unadulterated law. There is always the danger of there being present an admixture of what is false, and if in doubt it is his duty to carefully consult authorities in order to separate the false from the true. In thus emphasizing the wisdom of careful study and deliberation before delivery of judgments I realize that unnecessary delay amounts *pro tanto* to a denial of justice and therefore should be avoided.

One other thought before I pass from this subject.

Owing to the cruelty of the law, equity was united with law in the holy bonds of justice, and no judge should put them asunder. The words of Wolsey to

Cromwell in my opinion aptly express the supreme duty of every judge: "Be just and fear not." (Hear, hear.) And now a few words touching the legal profession.

There have ever been differences of opinion as to the merits of lawyers. For example in Shakespeare's King Henry the Sixth, the butcher says "First thing we do, let's kill all the lawyers," and again when an unsuccessful suitor was asked for a shilling towards paying the funeral expenses of a lawyer he cheerfully handed the collector a sovereign, saying "There are twenty shillings, bury twenty of them." But it is not the unsuccessful suitor only who has his grievance against the legal profession. Hennessy, a well known and somewhat popular writer in recent years in the American press, complained that too many lawyers were serving their country in public offices to which liberal salaries were attached, that they had in fact obtruded themselves into most public offices, and he reached his climax of complaint by charging that some lawyers were even getting appointed to the bench (laughter). In our country we have at times the opposite complaint of the appointment to the bench of persons who are not lawyers. Between conflicting views as to the usefulness of lawyers to society perhaps the verdict of the unthinking and ignorant is that they are a necessary evil. However, I think I am not making too large a claim on behalf of the legal profession when I give it as my opinion that it has always been found in the vanguard of movements for the establishment and maintenance of free institutions, has ever been the guardian of the rights of the people, and an invaluable aid to the courts in the administration of justice. (Applause.)

People may make their friendly after-dinner jokes at the expense of the profession as, for example, did a celebrated lawyer when he stated at a bar dinner that a prominent lawyer, one of his many friends, had given as his reason for cancelling a trip to Europe that one of his richest clients had died and he feared that if he were absent the heirs might get the estate. In all seriousness it may be said that the spirit of the legal

profession is altruistic, and that if practiced in that spirit it is one of the noblest of callings, the profession of all professions, but if practiced solely for gain it is one of the meanest trades.

An insignificant few of the latter class are to be found in the Canadian Bar. Flies will find their way into ointment, and flaws into amber, but for that reason one does not condemn ointment or amber, but more appreciates flyless ointment and flawless amber.

I will conclude my reference to the legal profession by quoting the language of the late Mr. Choate:

“In no other occupation to which men devote their lives is there a nobler intellectual purpose or a higher moral standard than that inspiring and pervading the ranks of the legal profession.

To establish justice,  
To maintain the rights of man,  
To defend the helpless and oppressed,  
To succor innocence,  
To punish guilt,

To aid in the solution of great questions legal and constitutional,

are duties that may well call for the best powers of man's intellect and the noblest qualities of the human heart.” (Applause.)

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