

this practice becomes impressive indeed, when it is remembered that the unfortunate litigants are in no way blamable for the errors which bring upon them such disastrous results.

Gentlemen, what is the effect upon your profession of this doctrine that where error is found, prejudice will be presumed? In the first place, it puts every lawyer on the quest for error. In so far as I have been able to observe, there are two motives that animate each lawyer in the trial of a cause in our Courts; get a victory if you can, but under no circumstances fail to get error into the record. If these little matters are of equal importance in the Court of Review with the substantial matters of justice, of course they must receive in the mind of the lawyer the same attention. It has been one of the serious faults of the legal profession throughout its entire history, not only in America, but in England and in Rome, and wherever legal systems have been built up, to exalt matters of practice above matters of substance. Those points are so interesting, they lead us into such a delightful field of research! I have in mind now quite a distinguished lawyer who spent three months preparing himself to be properly surprised by an adverse ruling on a question of pleading. Now, I know how those points look. I have been in practice, too. You get one of them, and it is so accurate, it is so well defined, it doesn't lie out in those regions of discretion like matters of fact. The lawyer with one of those nice points spends weeks and months polishing it up and looking at it so closely that really at the end of that time it looks to him bigger than Pike's Peak, and when the judge at the trial simply brushes it aside he feels that the very pillars of the temple of justice have been torn down. In fact, it often occurs that that little point is all that he has, and when it is destroyed, he is left naked before his enemies.

I think, as a rule, gentlemen, you like the judge best who keeps his hands off—I have heard some of you say that. That is not the method of the English judges to whom I have referred. If you were to step into an English Court and see a cause in the progress of trial, the one thing that would impress you above