

convinced of the truth of this doctrine than myself—there remains the further question if a man's natural rights do not cease with his death and thus render inoperative any disposition he may make to take effect after his decease unless sanctioned by positive law. Without pretending to maintain that this contention is true—and, if my memory serves me rightly, my old professor of philosophy in Ottawa strenuously maintained that it was not, the fact remains that this is the view taken of the matter by English law. In the early ages, by the common law there could be no disposition of land by will, in England. Testamentary disposition is therefore from a legal standpoint, the creation of positive law *i.e.* various English statutes now consolidated in what is known as the Wills Act. But now there is an equal positive law of England which says that if a man dies intestate, his property goes to those persons whom the law constitutes his heirs. Both rights, therefore, in English jurisprudence being based upon positive law, is there anything reprehensible in a lawyer attempting to show that the latter law should override the former because in a legal sense the owner had died intestate? I conceive not.

Another reason why civil cases are of every day occurrence, despite the fact that every true lawyer is actuated by the principles I have outlined above, is that a lawyer very seldom, I might almost say never, knows the true nature of his client's case till he hears it in court. The ordinary client, be he ever so honest, is so biassed by his own view of matters that he cannot give his lawyer a true insight into the case. Of course, when there has been palpable fraud, the lawyer's own powers of observation will enable him to detect it, for the lawyer is nothing, if not a student of human nature. When this is so, as I have already said, the lawyer, if he is not a disgrace to his profession, promptly washes his hands of the whole matter. But in the ordinary civil case there has been no intentional fraud on either side. The difficulties generally spring up from the occurrence of wholly unforeseen incidents, and the question to be decided is what is to be the result of these incidents on the original contract. Evidently there will always be

two constructions to be placed upon such a state of facts; the client naturally views them in the light most favorable to himself, and so presents them to his lawyer. Even when the facts are confessedly the same on both sides, it is often a matter of very great difficulty to apply the principles of law to them, and deduce an unquestionable verdict. All this will go to show that lawsuits are not necessarily, or even ordinarily the creation of the lawyers, though such is the popular belief.

To consider now this charge as affecting criminal cases. Here I freely admit a lawyer will undertake a case when he knows, or at least has good reasons to believe that his client has been guilty of a breach of the criminal law. Is this morally wrong? The rights violated by such a breach are here taken to be those of the community only, not those of individuals, for, of course, there can be no question of the moral turpitude of defending a case which, if won, will infringe the natural rights of an individual. And, as has been stated, no upright lawyer will engage in such litigation. But, to cite an instance: is it morally wrong to defend a murderer, even if the advocate has good reason to believe, or if you wish, knows his client to be guilty? Apart from abstract reasonings, few men will be found to deny to the guilty man the right of a fighting chance. But, philosophically is it against natural law or positive divine law to conduct such a defence? If it is not then, to do so is not morally wrong. And I conceive it is not. There is nothing in natural law that I am aware of, that demands a life for a life, and the old Mosaic mandate of a tooth for a tooth has been abrogated by the Christian rule of charity, and brotherly love. I am not contending that the murderer should go unpunished. He will be most justly punished by the Supreme Judge in his own good time. Neither do I uphold that positive human law should not inflict condign punishment for such a heinous crime. There is no person more strongly convinced of the wisdom of the doctrine of capital punishment than the writer. But what is here contended for is simply this: that capital punishment being based not upon natural, or positive divine law, but upon positive human law, enacted to preserve rights of