

[The Lord Justice General was good enough to send me a paper on "The Ethics of Advocacy," by H. P. Macmillan, Esq., K.C., read before the Royal Philosophical Society of Glasgow, which sets out clearly and powerfully the conception of the duty of the advocate or barrister which has always prevailed at our Bar.—W. R. R.]

Note 4.

This is not wholly original—I owe it in essence to Dr. Scott of Edmonton, who did me the honour to call upon me with Mr. MacMurchy.

Note 5.

I have conversed with many American lawyers of eminence on the subject of a written constitution, and with (I think) one exception, they have all agreed that the written Constitution (necessary as it was) has had the effect of dulling to a certain extent the perception of legislatures between right and wrong; legislators are apt to refer as a test of right and wrong to the provisions of the constitution. Whatever is not forbidden by the constitution is allowable for the legislature and executive.

Note 6.

We have only to look at the way in which many corporations are conducted to find an instance—a company will, as a rule, consider itself justified in acting in any way not forbidden by the "Companies Act."

Note 7.

I remember very early in my own practice, the late Vice-Chancellor Proudfoot, when Mr. William Kerr, Q.C. (afterwards Senator for the Dominion), advanced in argument what seemed to be an untenable proposition, saying to him, "But, Mr. Kerr, is it your own opinion that that is the law?" Mr. Kerr did not answer; he stopped in his argument, and remained silent for a moment, when the Vice-Chancellor said: "I beg your pardon, Mr. Kerr; I should not have asked that question." Mr. Kerr said, "I thank your Lordship; I was placed in an unfortunate position by the question. If I answered it in the negative, I might prejudice my client's case, if the affirmative, I would add nothing to my argument." I have never forgotten that episode, and to this day it is always an unpleasant thing for me to hear a counsel say, "I think the law is so-and-so." However earnest counsel may be, however firmly convinced of the soundness of his argument, he should remember that it is his argument the Court wishes, not his opinion.

Note 8.

This is not an imaginary case, but an actual occurrence; the solicitor resides and practices in Toronto. When speaking of possible justification, I do not suggest anything as to the facts of the particular case.

Note 9.

That the Statutes of Champerty are in affirmance of the Common Law may be doubted—whatever the ostensible reason for the rule, it seems to me that it is but another illustration of the apothegm, *beati possidentes*.

Note 10.

Of course in these cases I am considering the case of the solicitor particularly; there are reasons of prudence which may prevent the barrister from having anything to do with the subject matter of litigation or with contingent fees—but I insist the reasons are reasons of prudence and not of morals.

Note 11.

If we are to have a code of ethics, I shall be glad to do all in my power (if it be desired) to assist in formulating such a code as will be most useful to my brothers-in-the-law.