



AMERICAN COURTS AS A CANADIAN
SEES THEM

RESPONSE TO A TOAST

BY

THE HONORABLE WILLIAM RENWICK RIDDELL

L. H. D., ETC.

OF TORONTO (JUSTICE OF THE KING'S BENCH
DIV'N, H. C. J., ONT.)

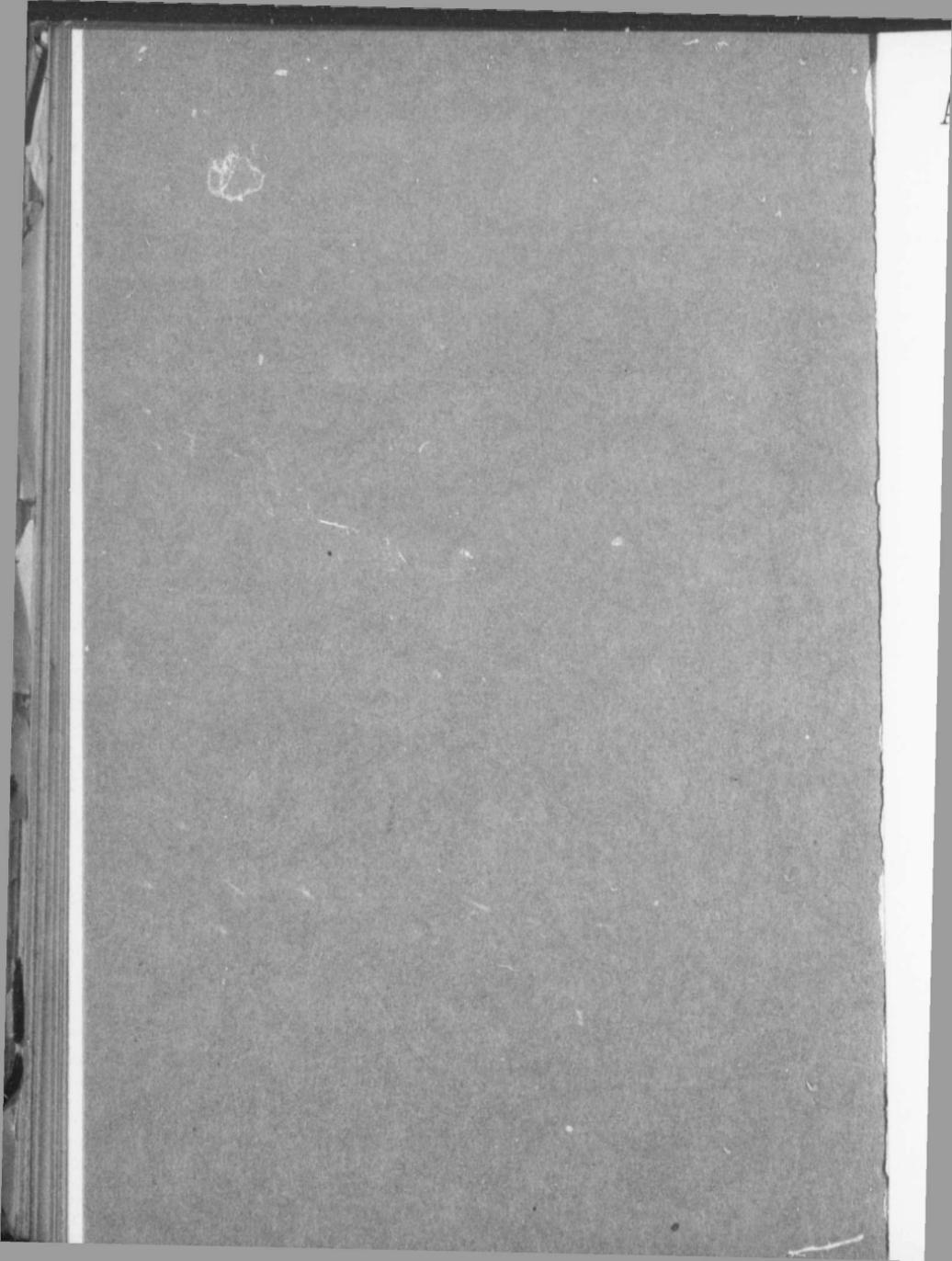
AT THE

ANNUAL BANQUET

OF THE

IOWA STATE BAR ASSOCIATION

CEDAR RAPIDS, IOWA, JUNE 27, 1912



AMERICAN COURTS AS A CANADIAN SEES THEM

RESPONSE TO A TOAST

BY

THE HONORABLE WILLIAM RENWICK RIDDELL

L. H. D., ETC.

OF TORONTO (JUSTICE OF THE KING'S BENCH
Div'n, H. C. J., Ont.)

AT THE

ANNUAL BANQUET

OF THE

IOWA STATE BAR ASSOCIATION

CEDAR RAPIDS, IOWA, JUNE 27, 1912

r
I
S
y
I
d

e
a
f
:
:
i



AMERICAN COURTS AS A CANADIAN SEES THEM

MR. JUSTICE RIDDELL: *Mr. Chairman, Your Excellency, Your Honors and Gentlemen:* I desire to begin by saying how glad I am to be with you, and by congratulating you upon the success of this gathering, both in numbers and enthusiasm. I do not say "spirits"—that word might give rise to misapprehensions. I desire particularly to congratulate you upon the eloquence and ability of the speakers who have preceded me.

I am not wholly a stranger in your magnificent State. One very near and dear to me passed many useful years upon an Iowa farm, and your Iowa sod covers all that earth can claim of him. Even without that, I should not consider myself a stranger here, for are we not of the same stock? Do we not speak the same language? Have we not centuries of glorious history in common? In comparison with those centuries, is not that unhappy misunderstanding which separated you and me nationally, but a thing of yesterday? Nay, is not that separation itself but skin deep in comparison with our essential and fundamental unity of race and genius and ideal?

I do not know how an Iowan feels when he puts his foot in Ontario or Canada in general. But I do know how a Canadian, at least an English speaking Canadian, feels when he puts his foot in this Republic and in this State; he feels that he is among very brethren.

I do not propose to speak to you about government—about your forms, notions, and rules of government. If I did that, I fear I should be conspicuous—as conspicuous as my friend, the Governor of Missouri, felt he would be if he spoke to you as a delegate instructed for Roosevelt. I am reminded of the little girl who said to her mother: "Mother, dear, do you think I will go to Heaven?" The mother replied: "Yes, dear, I think you will, if you are a good girl." The girl said: "And mother, do

you think you will go to Heaven?" The mother replied: "I hope so." "Oh, mother," said the girl, "I *do* hope so; I would feel so conspicuous going along the streets of Heaven and everybody saying, there goes the little girl whose mother is in Hell." It feels uncomfortable to be conspicuous, even though you are in Heaven.

I am not going to speak to you about the courts of any particular State. I shall not speak of the courts of Iowa. With your judges and other lawyers I am making acquaintance for the first time. (Mark—I never say judges and lawyers; I say, judges and *other* lawyers—the distinction is substantial.) Your decisions, indeed, are brought before me from time to time for their persuasive effect. I am not going to speak of the judges of Missouri, where I have the pleasure of knowing a number of them; nor of the State of New York, nor any State which is sure Teddy or sure Taft, or Democratic. I shall speak of that State which everybody knows the name of, although it tries hard to remain unknown; and respecting its retiring modesty, I shall speak of it as the State of "Weiss-nicht-wo", as our German friends say.

I have had occasion more than once to visit the courts of that State and have noted their procedure—or failure to proceed—and have been alternately filled with admiration and astonishment, given alternately material for instruction and amazement. The courts of this country are not wholly unlike my own. It is true that the judges of this particular State of which I am speaking are not dressed in suit of solemn black; they have no gown of formal cut; they have no bands of lawn or snowy linen. If they wear a gown, nine chances out of ten, they spoil the effect by tying it with two strings across the chest or by putting a black tie above it. They are not addressed by the bar as "Your Lordship" or "My Lord". It is: "May it please the Court", or "Your Honor"; or sometimes, indeed, "Now, say." It reminds one of the American Bishop who had spent some years in England, and being a Bishop, he was greeted there as "My Lord" and "Your Lordship", till I fear he began to think he was of better clay than ordinary humanity. He came, however, to a sense of his true position when he got home and was met at the station by the hackman's "Hello Bish; got home, have you?"

I like to tell stories about Bishops. There are so few of them that there is very little fear of retaliation, and then it gives a theological and ecclesiastical flavor to one's discourse. It is for that reason—and not at all that it is apropos of anything I have to say this evening—that I should like to tell you the story of the Bishop of Ottawa who once went to a fishing camp. All went well till Sunday morning; when he got up he found nobody around but one man—and he had a sprained ankle. He asked for the rest of the men. He was told they had probably gone fishing. He said, "Why didn't they wait for me?" "Oh," the man replied, "Maybe they kind o' sort o' thought perhaps you wouldn't likely care to go fishing on Sunday." The Bishop said that reminded him of a circumstance, when he was an humble curate. A couple had come in from off the street for him to marry them. When he got so far in the service as to say: "Wilt thou, John, take this woman, Mary, to be thy wedded wife", the fellow broke in by saying, "What in h— are we here for?"

Then there are the barristers—I should of course say attorneys—my excuse is that attorneys do not appear in court in my country. The attorneys are not dressed in this state of "Weissnicht-wo" as at home. They may have pink or yellow boots; trousers and waistcoat of various colors, and a coat, "go as you please". There is no silk gown or stuff gown, no precedence except that given by superior ability or superior assurance.

The witness, instead of being obliged to stand, is seated; in a British court he is never allowed to sit down, unless on account of illness or physical weakness. It is wonderful what an advantage it is for a witness who is trying to evade awkward questions to be allowed to sit down, particularly if he has a chew of tobacco at the same time. But what amazed me most was the selecting of the jury. In thirty years' experience in Ontario I never heard a jurymen asked a question but once, and that was by a very young barrister. Once in an American court I heard counsel ask a jury if any were Canadians, there being an Englishman a party to the action. Counsel, I suppose, imagined that a Canadian would likely favor an Englishman, not knowing that a Canadian is no more an Englishman than an Iowan is a Yankee.

I have heard jurymen asked their religion, or whether they had any religion, their occupation, about their reading news-

papers, opinions which they might have formed or not formed, with the minutest and most searching detail; and then perhaps at the very end the juryman is put on the waiting list to see if by possibility he won't ultimately fill the bill.

The first time I had the pleasure of meeting your President—I mean the President of the United States—while I never talk politics, either at home or abroad, I may be here permitted to say, that President Taft is the ideal, to my mind, of the man, the gentleman, and the lawyer. Whether he has the astuteness which seems to be necessary in this favored land to manage a party is, of course, not for me to say; that, perhaps, will be determined later on. On the first occasion I met your President, I gave him an illustration of the difference between our courts and some other courts. I had gone up to London, Ontario, on the same day upon which, a little further along on the same line of rail, but across the border, they began to get a jury to try a murder case. I had tried four criminals and they were comfortably on the way to the penitentiary; and I had got through with seven civil cases and was home, before in that American city they had secured half the requisite number of jurymen. Indeed, it is not at all uncommon, I am given to understand, that it takes not thirty minutes, but sometimes two weeks (indeed, I have heard it takes sometimes two months) to find a jury. In thirty years' experience at the bar and on the bench which I have had, I never yet have seen it take thirty minutes to find a jury, even in a murder case.

Where a person is charged with a crime, in the State of which I have been speaking, all the old technicalities, rules of the old English common law, are in full force and effect. Those rules which are not the perfection of common reason, those rules which were often the invention of tender-hearted judges, who did not want to hang some miserable wretch just because he had stolen a loaf of bread to still the hunger cry of his famishing brood, those rules which were invented as an excuse for the tender-hearted judge, are in criminal cases invoked and applied every day in this State to which I have referred. Indeed, it would seem, in that particular State, that the prisoner has so many rights that nobody else has any at all, either State or individuals. All the technicalities which an ingenious and subtle mind

can scare up are brought to bear, in order that there shall be not that quiet examination by the people into an offense which it is alleged has been committed against the majesty of the people which is the theory of a criminal trial. Woe to that prosecuting attorney who imagines that the words "against the peace of State", are the same as "against the peace of the State". That extraordinary ingenuity, that uncanny subtlety of the criminal lawyer—I do not mean the lawyer who is a criminal; I mean one who defends criminals—can only be arrived at by a life-long, microscopic study of documents, such as the Constitution of the United States, and of the States; this, as it seems to me at all events, is the only thing which can bring about this cunning, acuteness, and subtlety.

We are told that a very large per cent of the cases tried are set aside by reason of these very technicalities, which should have no more to do with the trial of a case than they would have with the relations between man and man in business. There is no more reason why a criminal trial should not proceed on common sense principles, than there is that a farmer should not cultivate his land on common sense principles. That, however, is what this State of "Weiss-nicht-wo" has not yet arrived at.

Then time is not the essence of a criminal trial in that State. It is all very well in monarchical countries, England or Canada, where we are ground down under the iron heel of the despot, to finish a murder case in two days. I have known in all my experience only one murder case to last more than two days; and in all the cases I have tried, none has lasted over a day and a half. It is all very well in countries where they do not know better; but in this land, if that were the rule, what would the voluminous newspapers do to fill their columns? A ship does not sink every day; candidates for the presidency do not change their politics *every* fortnight, and the great metropolitan newspapers would find it a very cold day if they did not have something to say about a "Thaw".

But, when all is said and done, your courts are familiar and homelike, even in this State. The language is the same, the familiar rules of law and equity are the same and set out in the same language, and applied in the same way. The Latin is the same—I mean the pronunciation. I have said more than once,

that when I hear Latin pronounced in a certain way I may be amongst scholars, but I am certainly not amongst common law lawyers. We have *habeas corpus, nisi prius, fieri facias, venire facias*—mandamus indeed is corrupted into man-damn-us, which affords the lady lawyer some excuse for still further corrupting it into woman-condemn-us.

Then we have counsel trying to catch the wily witness, laying traps here and there, with straight questions and crooked questions, double questions and leading questions; and the wily witness evading, parrying, getting around the queries. We have counsel thundering that the world will come to an end and justice fly from earth if his unfortunate client does not get what he asks, or escapes what the other fellow asks that he shall get. He coaxes and persuades, he almost swears, and does shed tears, crocodile or otherwise. He brings to bear all the weight of eloquence and ingenuity to persuade the jury that his side is the right one. Citizens who until to-day were respectable, and respected, are, if anything, two or three shades worse than Judas Iscariot; while his man, confidence man or other description of rascal, shines by comparison with the Beloved Apostle. He brings the whole weight of his learning, reputation, character, and personality to bear upon the unfortunate judge. Sometimes the judge is persuaded against his will. Sometimes counsel fares like the fellow who tried hypnotism on the butcher. He said, "I tried hypnotism on our butcher to-day." He was asked what luck he had. He answered, "Not much. I looked him straight in the eye and said, 'That-bill-is-paid'." "And what did he do?" "He looked me straight in the eye and said, 'You-are-a-darn-liar'." Sometimes the judge is persuaded, overborne, and convinced against his will, and sometimes, on the other hand, he says, "You are a blank liar."

It is perfectly marvelous to a Canadian, a Britisher, to see what splendid judges you get by a system so repugnant to our public sentiment. They generally are men of great learning, sterling character, and of no little personal dignity. The American judge is noted for his strong sense of justice and right. You have a right to be proud of your judges. Although his term may be near expiring, and although a decision may lose him a re-nomination, or if he succeed in being renominated, may lose him

much support, the case is extremely rare that an American judge swerves from the straight path of duty. So, too, of your bar. Of course, there are black sheep in every flock, but I am well within the mark when I say that the black sheep in the American bar are not numerous, compared with other professions. I admire the ability which you apply to your cases, your determination to think of nothing except your client's right, and determination to win by means consistent with honor. It is said you are worshippers of the golden calf, but I have on many occasions pointed out that we are told, "The laborer is worthy of his hire." Everybody works for money. The doctors work for money. The farmer does not farm for altruistic reasons. The shop-keeper would close his doors if his bills were not paid, and I am reminded of the minister's child, who was asked if her father was going to accept a call to a larger church at a larger salary. "Well," she said, "Father is in the library praying for guidance, but mother has started packing up." All this has been said hundreds of times and still we hear the parrot-cry that lawyers work for money. It is well that we treat the charge with contempt.

But to whom much is given of them much will be required. You and I every day are applying the principles of justice to the determination of the rights of private individuals or corporations, or for the avenging of the wrongs of private individuals or corporations, their rights having been infringed by other corporations or private individuals. We are doing this on the principles of right and justice upon which your forefathers, and mine, for centuries have been willing that their rights shall be determined. Now, is there any more reason why such rights as these shall be determined in this manner than that the rights of nations shall be thus determined? Is there any more reason why the rights of private individuals should be avenged through and by the courts than that the wrongs of nations shall be avenged through and by the courts? Is there any more reason why men no longer should raise the club, sword, and gun in order to get that to which they are personally entitled, than that a nation should do the very same thing? Are we not, my friends, sadly blinded to a great part of our duty? No man is to be allowed to avenge his right by his own right arm, but that is to be left to an

independent tribunal. Why does that rule not apply to a nation? Of course, a national insult makes the blood boil; but does not also personal insult make the blood boil; and have we not learned to keep the blood from boiling? And why, as Christians, should we not learn to do the same thing when our national rights are being infringed upon?

Let me tell you, if the members of the American Bar were united upon this question, marvelous effects would ensue. There is no other body in this great Union so strong as the bar; there is no other body that feels its solidarity like the bar; there is no other body which can be made to move as one man like the bar—and if the members of the bar of these magnificent States were to be as one man in determining that hereafter there shall be no war, the effect would be marvelous. England is a unit for peace. I believe the American people are at heart a unit for peace. My friends, if these two great Nations were to say, “As between us there shall be no war and all troubles between us shall be determined by some judicial body,” the end of war would be very near. Two Nations with such glorious history, two Nations with their keen sense of justice and honor, two Nations like these which fear and need fear no foe, because there is no foe who dare face them—if these two Nations should say, “Hereafter, between us there shall be peace”, then what nation is there, however strong, however proud, which would decline to follow their example?

I ask no treaty, offensive and defensive, between this mighty Nation and that of which I form so insignificant a part. There is that which is stronger than a parchment bond; there is that which is more lasting than ink written by quill or gold or steel; and it is as certain as the path of the planets around the sun that two peoples like these, sprung from the same race, worshipping the same God, in the same forms, with the same language; two peoples who have had centuries of glorious history in common and who love each other and cannot help it, because blood is thicker than water—it is, I say, as certain as the path of the planets around the sun, that these two Nations will stand side by side, if necessary will fight side by side, for truth and justice and righteousness. There is here and there a man in your Nation, as here and there a man in mine, whose ideal is different—

the fool ye have always with you. It is an awful thing to be a fool, and there is no cure for it. We have an occasional ass who likes to pull the feathers from the Eagle's tail, as you have an occasional fool who likes to twist the Lion's tail—but such, and their like, we may pass over. We have a real, living, almost visible Union of which most of us are as assured as we are proud and glad. It is that Union to which I am fond of applying the words of your American poet:

Sail on, O Union, strong and great!
Humanity with all its fears,
With all the hopes of future years,
Is hanging breathless on thy fate!
Sail on, nor fear to breast the sea!
Our hearts, our hopes are all with thee,
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o'er our fears,
Are all with thee, are all with thee.

God grant that day of peace will soon come, and through us, for "Blessed are the peacemakers for they shall be called the children of God."