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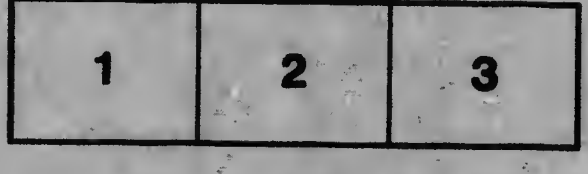

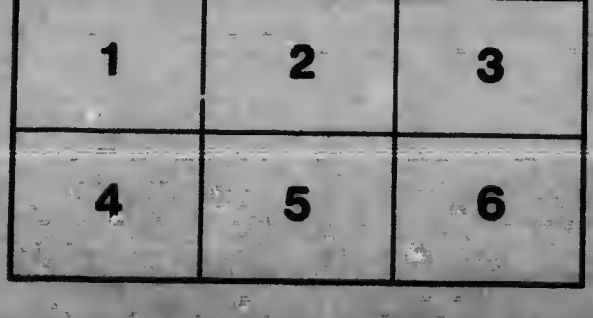

ANNUAL ADDRESS

TO

NEBRASKA STATE BAR ASSOCIATION

JANUARY 9TH. 1908

BY

R. C. SMITH. K.C.,

PRESIDENT MONTREAL BAR ASSOCIATION.

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SOME MODERN TENDENCIES.

Annual Address to Nebraska State Bar Association, January 9th, 1908, by R. C. Smith, K.C., President Montreal Bar Association.

I cannot find words to express the pleasure I feel in being present with you to-day, and the pleasure I have felt in attending the meetings of the Bar Association of Nebraska. It is not always possible to analyze one's moods and feelings so as to assign a definite cause to each of the elements in a cumulative sentiment, whether it be of satisfaction or of sorrow. If I am wrong in my history—and it will not be the first time—I am sure you, sir, will correct me, but I understand that when an illustrious general named George Washington was making great history upon a portion of this continent in a war with my national ancestors—if I may so call them—the State of Nebraska, as a State, maintained a strict neutrality, even according to the revised standards of the Hague Convention. But that is certainly not the reason of my pleasure in being here. Nor does the rapid development and present greatness of your State altogether account for my feelings. My delight is undoubtedly due in part to the fact that I am among lawyers. In Portland, a few months ago, some one said: "For once I have heard lawyers, as a class, well spoken of." "And where was this?" he was asked. "At the meetings of the Bar Association," he replied. As a class, I fear we have not suffered the woe that is decreed "when all men speak well of you." Though I am among lawyers, and enjoy the spirit of confraternity that always exists among them, I am not without some embarrassment. We read that wise men came from the East. We are not told that they came to criticize and rectify everything in the West. Still it is one of a lawyer's functions to give advice. Samson shorn of his locks could not have felt more absolutely helpless than I feel, finding myself in a jurisdiction where I am not

even qualified to give advice or to dispense opinions—and this without any dalliance with Delilah. If it were left to some of my learned friends, I have no doubt they would dismiss the reference to the wise men by the observation that conclusive evidence of their wisdom is found in the fact that they left the East.

Disqualified—or, perhaps more correctly, unqualified—as I am in this baliwick, I still feel a certain community of spirit and community of interest with you all. Law is the distinguishing factor of civilization, and though its methods may vary in different systems, its aims are substantially the same in all. I was brought up as a civilian, and very naturally exult in the superiority of the civil law, as a philosophical system, over the common law as administered in such countries as the United States and England. Do not be alarmed. In a discursive address such as this, I shall not attempt any comparison of the systems. In a very general way I may say that the civil law begins by fixing principles in the abstract, and when the custom of citing cases crept in it was rather by way of illustrating the application of the principles, than as authority. Perhaps the original and fundamental postulate of the common law is the same, for it assumes that somewhere there exist principles appropriate to the decision of every case if the judges and lawyers only knew them, and they are sought for in the mass of previous judgments which we call jurisprudence. Those of you who were fortunate enough to attend the last meeting of the American Bar Association no doubt enjoyed the learned address of the British Ambassador upon "The Influence of Historical Environment upon the Development of the Common Law." This development of the common law has always appeared to me to be one of the most remarkable things in human history. It is, and always has been, common ground that the judge's duties are purely judicial, and that the very foundations of society would be in danger if the Bench ventured to encroach upon the functions of the Legislative Branch. And yet the common law grows. How? By the changes in the law which case after case makes—changes

which we are half reluctant to admit but which are none the less real. Very rarely is the fact as frankly stated as it was recently by one of our Canadian Judges. He handed down a judgment upon section 23 of a certain statute, and upon appeal his judgment was reversed. Another case of the same kind came before him and he had to follow authority. In his written judgment, however, he said:—"I base this upon section 23 as amended by the Court of Appeals." And the common law grows not merely by following and enlarging the scope of previous decisions, but by boldly overruling them at times. Well do I remember rising to argue one of my first cases. I had the confidence—that sublime confidence that one feels when he is able to cite a case exactly in point. The supreme moment at last arrived, and with much ostentation the case was cited. To my horror the judge received it very coldly, merely observing, "That case has been overruled." "No, my Lord," I continued, "I have gone very carefully through the reports and it has never been overruled." "Well," said the judge, "if it hasn't been, it will be, for I'll overrule it." Now for my last hope. "But, my Lord, it happens to be one of your Lordship's own judgments." "Ah!" said he, "I am glad of that. I'll have the less hesitation in overruling it;" which he promptly did. And so the common law grows by interpretation, by extension of principles, by overruling, and by the much more refined art of distinguishing. And while in theory the pretence is that the judges do not make law, the principal argument we hear against codification is that the law thereby becomes crystallized and loses its elasticity and its adaptability to the growing needs of a progressing community.

If I venture to refer this afternoon to a few modern tendencies, or which I believe to be tendencies, you will understand that it is rather in a spirit of enquiry than of criticism. Some of them you may never have felt at all in this enlightened state.

The great body of jurisprudence of which I was speaking has grown until it has become an unwieldy mass, and I have asked myself whether the too copious citation of cases is not

a growing weakness of modern advocacy. In briefs and in oral arguments the multitudes of cases referred to is becoming appalling. It is a poor proposition indeed that you cannot support by some cases. That there should be conflicting authority is inevitable, considering the number of tribunals whose decisions are quoted. We are happy, indeed, when we have authority clearly in point, and I must not be understood as objecting to the proper use of authorities. Perhaps at your bar you have not had occasion to complain of it, but the multiplication of citations, in many of which the analogy to the case in hand is very faint, if not quite illusory, imposes unnecessary labor on the Bench and tends to obfuscate rather than to elucidate. I am a believer in codification, but if this be not obtainable, forgive me if I indulge my civil law prejudices and say a word in favor of the deeper study of abstract principles. A young barrister visited the Supreme Court of the United States, and he told me he left it with some things to think over. Counsel for appellant cited and discussed a score or more of cases. Mr. Evarts, for respondent, spoke but half-an-hour and did not quote a single case, prefixing his argument by the statement that the case was one that could be dealt with upon principle. It is of course true, as we often hear, that law is not an exact science. Indeed, I read in a recent paper by a learned judge that it had been laid down that if there be two propositions, A and B so connected logically that if A be true B will also be true; it by no means follows that if A be true in law B will also in law be true. The law, like everything human, is imperfect; but with due respect to this authority, I venture to think the discrepancy will not be found in the logic of the law, but somewhere in the looseness and imperfection of definition. With reference to statutory law the counsel's course is clear. The law, be it right or wrong, must be given its natural effect, and it is not in this class of case that we are likely to be troubled with over citation. It is rather in the intricate and complex commercial cases arising from the incessant movement and modifications in the methods of doing business, and I suggest the enquiry whether in these we might

not gain something by relying more upon fundamental principle and less upon the plethora of reported cases. The great body of general principles which have become so firmly fixed in the common law as to be no longer open to challenge, will not be found to differ materially from the principles of the civil law, and are in general in harmony with reason and justice, and the study of them will give clearness to the vision and vigour to the mind.

Happy is the man who can grow old retaining his sympathy with human nature in general and following the inevitable transition in everything around him with a not unfriendly appreciation. To such a one the passing years may mean a little more conservatism, but they will not mean incrustation. We must not mourn over change, for it will come, and no doubt will mean more convenience somewhere. Not in a spirit of senile opposition to everything new, but still in a reasonably critical spirit we should scrutinize changes as they occur, to see whether anything ought to or could be done about them. There is said to be a great gulf fixed between the final abodes of felicity and despair, but long before we approach it, we see another yawning gulf that extends back through the ages, narrowing, it is true, as science becomes more perfect, baffling the student, swallowing up for the time being, principles sound and true in themselves—the great gulf between theory and practice. The bent of some minds is theoretical—of others practical, and, as might be expected, both are well represented in our profession. Is there a tendency for the practical lawyer to increase and for the theoretical lawyer to disappear? I was dining in New York with one of the greatest of corporation lawyers, and in a very good-humoured way he said: "If I should "criticize the British lawyer I should say that he approaches "every question too much from the point of view of theory— "of scientific exactitude, and if he can block a transaction "upon objections absolutely sound in theory, he is just as "happy as if he put it through. We, on this side, on the con- "trary, begin with the realization that it is our duty to "facilitate business rather than to obstruct it." I was

constrained to admit that the criticism was not altogether unjust. On the other hand, is it not possible that the pendulum may be swinging too far in the other direction. Is not the lawyer becoming too much the business manager of his client's affairs? Are not aggressiveness, adroitness, and commercial acumen, coming to be regarded as the major qualifications, and legal scholarship as one of the minor qualifications for success at the Bar? I must not try to establish a presumption in favor of mediocrity, but do we not usually find truth somewhere in the middle way? The merely practical lawyer, who does not concern himself about the reason of things, can never be called a jurist; he is generally inaccurate, and when confronted by novel conditions he can only deal with them as an empiric. The merely theoretical lawyer becomes visionary. With him, "enterprises of great pith and moment their currents turn awry and lose the name of action." He is like one, who, while the battle is even at the gates, remains burnishing shields and whetting swords that are never to leave the armory. By all means, let us have men of action; let us know how to apply our principles, but, in a utilitarian age, let us not forget that as in some other sciences so in law, we may gain light and strength and inspiration from the study of truth in the abstract—truth under the pure light of heaven, untinged by the changeful hues of conflicting human interests and undimmed by the shadows of human fault and frailty.

From the foundation of the world a portion of the race has been afraid of development. Good old John Evelyn bewailed the fact that London had a population of 300,000, "far beyond what any City should ever have." Don't have railways, they'll kill the cattle. The departmental store will ruin the small trader. Combination in capital will oppress the consumer. Combination in labor will paralyze manufactures. We may pass our laws and here and there, to some extent, control the course of events, but the world progresses very much in its own way. There are a thousand moral and social tinkers for one real reformer. What an age we live in! The marvels of yesterday are the

commonplace of to-day. What will the ocean liner look like —even the new four and a half day boats—when the air-ships fly through space. The telegraph and the telephone are already an old story, and perchance wireless telegraphy will seem very crude indeed, when with some intellectual heliograph thought is flashed over seas and continents. Where can we set marks or bounds? Is so stable and dignified a thing as the administration of justice affected by the weird transcendentalism of the times? At Portland, a few months ago, I began to say something about sensationalism in the administration of justice, but when I realized that the hour hand was on its way around to three o'clock in the morning and that weary nature was sinking into a soporiferous if not a judicial calm, in which it would be difficult to realize that such a thing as sensationalism existed in the world at all, I abandoned the theme. If I return to it now for a moment it is only to draw your attention to a difficulty without suggesting any way out of it. If we abolished the up-to-date sensational trial, what would the world do for entertainment? A sensational crime, a formal arrest, arraignments and postponements, first juror sworn in the springtime, last juror toward autumn, all the arts of pleading, the refinement of cleverness in examination and cross-examination, the sworn testimony of a multitude of witnesses presenting the only example in the universe of truth contradicting truth, auroral displays of reason and sentiment, of logic and rhetoric, a disagreement of the jury, or if a conviction, appeal after appeal—behold the majesty of the law of which Crabbe wrote:

> "As long as ammunition can be found,
> Its lightning flashes and its thunders sound."

In speaking of sensationalism I have certainly no particular trials in mind. I am not suggesting that the Dreyfus trial was too long or too often, or that any particular trials in England or in this country should have been abbreviated, but—applying the simple but stern twentieth century test—are these great sensational trials worth what they cost? It

will be said that the administration of justice is too sacred a thing to suffer the mention of cost in connection with it, and that no expenditure is too great in order that right may be done. Very true, but the admixture of sensationalism with the administration of justice does not raise the tone or quality of justice; it does not elevate the standards of advocacy, nor does it enhance the general respect for law. Does it not also leave us with the uneasy reflection that the chances of the rich and the poor before the law are after all not quite so equal as we have complacently believed?

The sensational aspect of many modern trials is due in a measure to the publicity which the smallest detail obtains. But who would think of suggesting secrecy instead of publicity — progress is toward light, not darkness. Some undesirable features might disappear if trials were by judges instead of juro s, but the innate conservatism of mankind, to which we owe so much both good and evil, brands as an iconoclast the person who dares to say a word against trial by jury, that ancient bulwark of liberty. I shall hazard a word about the jury in a moment. Some one has suggested that in order to stifle sensationalism some sort of closure should be applied. The judge sometimes applies that now, but it is a hard and a doubtful remedy, and I believe the wisest judges require to be thoroughly convinced that reasonable latitude has been exceeded before they will venture to interfere with the responsibility of counsel. If it be true that sensationalism is intruding in our courts, I imagine the only remedy will be found in the sense of personal responsibility of everyone connected with the administration of justice, and perhaps to some extent of the public press, to which civilization owes so much for the removal of abuses and the purifying of all our institutions.

And now, at the risk of my head, allow me to say a word about trial by jury. You all know what a safeguard it was against oppression by the Crown and the privileged classes, by whom the Bench was appointed and with whom it was in sympathy. Is it within the bounds of possibility that this grand old institution may become itself the medium of

oppression? Co-operation is a modern tendency, and in the commercial and industrial world it usually takes the form of incorporation. I do not know how it is in the State of Nebraska, but in some other States and in some other countries it is becoming more and more difficult for a corporation to obtain fairness and justice from a jury. I should not venture to make so serious a statement, and so bluntly, were I not confident that it accords with the weight of opinion in the profession. Kipling says that the very worst thing you can do with a fact is to deny it. If this be a fact, and I frankly believe it, no good purpose is to be served by closing our eyes to it, or dismissing it with a half humorous euphemism. Are the intellect and conscience actuated by novel and occult considerations whenever individual and corporate interests compete? It is perhaps not exactly a modern tendency for sympathy to supplant reason, or for arguments not founded on pure ethics to be addressed to jurymen. Old Aristophanes in "The Wasps" makes Philocleon, the Athenian dicast, or elected juryman, tell of the arguments he was accustomed to hear. "I listen," he says, "to them uttering all their eloquence for an acquittal. Come let me see; for what piece of flattery is it not possible for a dicast to hear there? Some lament their poverty, and add ills to their real ones, until by grieving he makes his equal to mine; others tell us mythical stories: others some laughable joke of Æsop; others cut jokes, that I may laugh and lay aside my wrath. And if we should not be won over by these means, forthwith he drags in his little children by the hand, his daughters and his sons, while I listen. And they bend down their heads together and bleat at the same time. And then their father, trembling, supplicates me, as a god, on their behalf to acquit him from his account." And later, when the dog Labes is being tried for stealing a Sicilian cheese and every argument has failed, his advocate exclaims: "Where are his puppies?" "Mount up O miserables and, whining, beg and entreat and weep."

I hold some opinions upon trial by jury, but I shall not attempt to develop them now further than to notice one re-

grettable tendency, and it is for jurymen to be influenced by considerations other than the evidence adduced—in most cases in which corporations or employers defend. It may be said that this tendency really arises from a meritorious motive, to help the weak against the strong. The ragged logic of the thing would be amusing had it not become so serious a matter. Justice must be sacrificed that kindness may be shown, and that kindness shown only in liberality with other people's funds. An institution which in certain classes of cases habitually results in injustice surely cannot long be tolerated without change. Is it conservatism or legthargy that makes it possible for abuses to last so long? When we can wrap up any question, put it in a pigeon hole, and mark it "finally settled," there is such a comfortable feeling of relief that the dust of centuries may accumulate upon it; the times may completely change, and an institution now irrational and obsolete may remain as a revered relic of a once living reform.

When some one strong enough and courageous enough arises—shall I say to *improve* a system which exacts unwilling and often burdensome service, from those having no special qualifications to perform it, some progress will be made in the administration of justice.

In speaking of notable tendencies, I could not ignore specialization, though I have little to say further than to mention it. I think we all have a sub-conscious prejudice in favour of the all-round man as he is familiarly called. He may never be particularly brilliant, but his opinions are generally reasonable and sound, and we would all be sorry to see him disappear or relegated to the background. But of all things which we should be ready to admit, none are more obvious than the limitation of human capacity, and the ever increasing volume of possible knowledge. My own young hopeful after his first week at school said: "Father, do I know now, as much as I don't know?" And he seemed much discouraged when I was unable to assure him that he had already mastered the fair half of human knowledge. In the realm of our own profession we may well stand aghast in the

height and breadth and length and depth of the sphere which confronts the law student. By the mastery of principles, he may be able to do something in most branches of the law, but there remains a great mass of learning upon each question, and of this he must not be ignorant, if he wish to rise above mediocrity. To be expert in every branch of the law has ceased to be a possibility, and specialization is the result of necessity wherever the centres of litigation are sufficiently large to permit of it. Medicine and surgery have already become almost distinct professions, with specialization in their respective branches, and it would be idle to deny that in law specialization has produced more exhaustive, if not always, more profound learning. The elder Disraeli asks: "Are the original powers of genius, then, limited to a single art, and even to departments in that art? May not men of genius plume themselves with the vain glory of universality . . . . Cicero failed in poetry, Addison in oratory, Voltaire in comedy, and Johnson in tragedy . . . . . Such instances abound and demonstrate an important truth in the history of genius that we cannot, however we may incline, enlarge the natural extent of our genius any more than we can add a cubit to our stature. We may force it into variations, but in multiplying mediocrity or in doing what others can do we add nothing to genius." If there be a singleness in genius, as Disraeli calls it, how much more shall the average lawyer find his powers unequal to the task of attaining excellence in the many and diverse fields of his profession. As I said, a moment ago, it is only in the large centres of litigation that this inevitable tendency will be felt, for some time at least. Before passing from the question of specialization, may I be forgiven if I refer to a very important personage in many modern trials—the expert witness. He must be a very important person, or he would never have attracted so much attention, even provoking observation upon the positive, the comparative, and the superlative of veracity. The mother-in-law would never have headed the list of jokes—in quantity, I mean—were she not the most important factor in the household. It is characteristic of the age we live in that the dis-

coveries in the arts and sciences instead of being locked up in the universities and learned societies are immediately pressed into utilitarian service, become the subjects of every-day contracts and the causes of every day accidents. If it be unreasonable to expect counsel to attain to excellence in every branch of our profession, much more would it be unreasonable to expect them to master the principles and practice of all the arts, sciences and handicrafts. The expert witness is becoming more and more a necessity in a large and continually growing class of cases. But is not his present position somewhat anomalous? His scientific and technical knowledge must be utilized in some manner. He naturally testifies to the facts, or alleged facts, of the particular science in question, but his value as an expert lies in his ability to convince the tribunal that his opinion is right, and his argument is under oath. This fact does not usually " cramp his style," if I may use an up-to-date expression. I suggest for you, in your greater wisdom to ponder how we can best separate argument from testimony. Shall the judges call in experts to sit as assessors, as they do in the Admirality Courts,or shall counsel be authorized to employ experts to argue the technical questions in a case, or shall we have to appoint special courts, composed of scientific men, to 'whom our judges might refer difficult question of science or technique for decision? The present system is not quite satisfactory, and sonsideration may appropriately be given to the question of its improvement, in order to deal more efficiently with this increasing class of litigation.

I must not weary you by referring to too many modern tendencies, but as we are here assembled in the secrecy of our own chamber, I may summon enough courage to ask in a whisper a delicate question—Is our profession becoming too mercenary? Here at least we may discard the smug hypocrisy that represents the lawyer as the great exponent of altruism. Speaking for myself alone, while fully endorsing the maxim that " there are nobler things than pennies," I have no great sympathy with the doctrine that the emoluments of the profession ought to be to the worthy lawyer a matter of the

greatest possible indifference. Nor have I yet discovered any reason why any portion of the community should look askance at the lawyer who realizes from his profession a half respectable competence. But there are still some who view the matter as the author of "The Borough" did:—

"One man of law in George the Second's reign
Was all our frugal fathers would maintain;
He, too, was kept for forms, a man of peace
To frame a contract, or to draw a lease;
He had a clerk with whom he used to write
All the day long, with whom he drank at night.
Spare was his visage, moderate his bill,
And he so kind, men doubted of his skill.
Who thinks of this, with some amazement sees
For one so poor, three flourishing at ease;
Nay, one in splendour! See that mansion tall;
That lofty door, the far-resounding hall;
Well furnished rooms, plate shining on the board,
Gay liveried lads, and cellar proudly stored;
Then say how comes it that such fortunes crown
These sons of strife, these terrors of the town."

It goes without saying that it ought to be the ambition of a lawyer as well as of a cotton spinner to pay his debts honestly, and to give to his family the enjoyment of a fair share of life's comforts and pleasures. My message, therefore, would not be to avoid money-making as you would the plague; it would rather be to exercise the same intelligence and caution in looking after your own investments as you devote to your clients' affairs. With character, industry and average ability, there is no reason why a lawyer should not realize some degree of success in his calling, and according to every righteous principle, this ought to mean that he makes some money. He does not usually keep it. Why? Of course, I am bound to say I do not know. Is the lawyer more speculative than the merchant? Is there anything in the practice of law calculated to make him so? Love is sometimes called a lottery, but surely no one ever dreamed of speaking so disrespectfully of law. I had a few words

with a company promoter not long ago and I asked him whether he found lawyers, as a class, more speculative than other people. His reply was given in the venacular with evident sincerity:—"The man does not live who could do one of them for a five-dollar bill, but they are the easiest mark in the country for a couple of thousand each." We must enquire into this, and instead of preaching to the junior bar to be sure to make less money, let us tell them to take better care of what they do make. Having said this much, let us enquire whether there is anything in the suggestion that we are becoming too mercenary. I heard Governor Hughes, of New York, tell a story which may or may not have reached you. A young man left home for one of the law schools of Hungary, filled with high hopes of returning ere long bearing the coveted dog skin—the diplomas being all written on dogskins. He diligently kept all the terms and followed the course until he graduated with distinction. But he returned home without the coveted diploma. His family and friends gathered around him and said: "It is all very well for you to say that you passed with honours. If you did, where is the diploma?" The only excuse the young man had to offer was that there were more lawyers than there were dogs in Hungary.

Our ranks are not thinning out anywhere as far as I can discover. Every year brings its new influx of aspiring barristers, each requiring a new constituency. Is there not, at least, some temptation to sink into the arts of competition; and do we not hear discussions of the question how far a lawyer may advertise? I repeat what I said a moment ago that I believe it right that a lawyer should make money, and I think the lawyer receives less monetary reward for his labor than any class save the clergy, but when young men come to the profession of the law with the primary and dominating purpose of making money, the knell will be sounded of those honorable traditions which to this day give us a right to the respect and confidence of our fellow men. If money be your object in life, do not commit the supreme folly of coming to the Bar. You'll find far more of it in rail-

ways and banks, and warehouses and factories. Law is not a money-making business. The ambition for wealth is omitted from the lawyer's oath of office. He consecrates himself to other and higher purposes. I am quite well aware that anything that might be said of the distinction between trades and professions would be regarded by many as irritating twaddle. As a basis of class distinctions there has been very much that is irritating. The strong men of commerce upon whose sagacity, enterprise and capital so much depends for the material development of a country, command our respect and admiration, and, perhaps--too often,—our envy. We must not assert a vaunting claim to superiority, but we ought to remember that there is something distinctive of the professions. Your clergymen ministers to your spiritual nature, and your respect for him is not guaged by the amount of his modest stipend. Your physician's skill is engaged for the lives and health of your loved ones. The world's criteria of values yield before the great experiences of life. Sit by the bedside of your only child when the gray dawn begins to reveal again the pallor of the sunken cheeks, and you will think less of the rise and fall of stocks; nor will you compare your devoted doctor with your excellent broker. You will simply say the two are quite different, and the one is not measured by any standards that are known on the exchange. So must we pause to remember in the hurry-scurry of routine, that as lawyers we are not dealing with pig iron and molasses, but with eternal principles of morals and justice, upon the application of which depends not only the security of life, property and reputation, but even of liberty itself. Our constitutions and our laws may decree liberty, but it is only in the working out of these laws that we shall enjoy liberty, and that wrong and oppression shall cease. Let us remove not the ancient landmark. Let us not lower the standards that concern the honor of the profession. Change must needs come in the methods and the etiquette of the profession; but let us not suffer these changes to obscure that, which for the true lawyer must always be above money-making, and above fame, the fact that his sacred obligation

and his highest privilege is to assist in the administration of pure justice. Changes will come in the administration of justice, too, and the duty of the Bar will always be to see to it, by all that we hold worthy of respect and preservation, that whatever these changes may be, they shall never be suffered to corrupt its cardinal motive or to pervert its essential truth.

I have not yet referred to what is one of the most noteworthy and most welcome of the tendencies of our times, the awakening of Bench and Bar to a truer realization of the relative importance of substance and form. The development of the science of pleading is a very interesting subject. A science which Chancellor Kent could pronounce "equally curious, logical and masterly" is naturally well worth study. The despatch of legal business in an expeditious and rational manner absolutely required and still requires that the claims of litigants should be stated with definiteness and with logical method. Everyone knows that the primary purpose of pleading was to discover with clearness the actual questions in issue between the parties, but it is equally known to all that in the intricacy and sublety of this science, that which was merely formal or incidental came to be regarded as sacramental, and it is within the recollection of some of us who cannot be truly called very old men that many a just cause was irrevocably lost, and many an unjust cause was won upon mere technicalities, without their substantial merits being ever enquired into. That such a thing was possible was no credit to the administration of justice. When our pleading in Canada was highly technical, one of our Chief Justices implored the bar to fight with the sword of the warrior and not with the dagger of the assassin. Progress is everywhere now in the direction of simplifying pleading. The old forms are one by one being discarded. Only that is retained which serves some useful purpose of convenience and fairness. The power of amendment is so extended and is so exercised that the missing dot to the "i" and the cross to the "t" is actually supplied, rather than that justice should miscarry. There is a disposition to enquire into and decide the substantial merits

of each case. On the criminal side it is not so easy now to escape upon some miserable technicality. It is only right and just that an accused person should know precisely what he is charged with, but that is all he has a right to in the indictment. This all means that we are to get below the surface, to regard the substance rather than the form, to seek for the real thing and not for the mere name. We are to preserve so much form as is necessary for orderly and logical arrangement, but the form is only the means—the end is the right and the truth.

And the law's proverbial delay is receiving universal attention, and will receive much more, as there is so much to be done to remedy wrong here. It was once said that the people preferred the swift injustice of the Vice-Chancellor to the tardy justice of the Chancellor. Every member of the Bar present knows that very often justice delayed is justice denied. I believe I am right in saying that even in the last five years great progress has been in this regard, and, excepting a few jurisdictions where business has increased beyond the capacity of the courts to despatch it, the average delay between the institution of proceedings and trial has been considerably reduced. This has been effected by the cooperation of Bench and Bar in a sincere desire to remove the reproach that has so long been cast upon the law and its administration. The existence all over this continent of Bar associations such as this is one of the most hopeful signs of the times. Their great influence in the removal of abuses and the introduction of reforms cannot be over-estimated. In so far as I have been able to peruse their proceedings it has appeared to me that they have discussed and are discussing the questions arising, in no narrow selfish spirit, merely to advance the peculiar interests of the profession, but in a broad spirit of statesmanship, to advance the interests of the people and the nation.

In a period when industrial conditions are such that important questions must continually arise touching the relations of capital and labour, of producer and consumer; when the voice of the demagogue is proclaiming class antagonism; when interests that should meet in a spirit of conciliation and work together harmoniously for the country's progress are

too often ranged one against another in conflict and bitterness; when the law is looked to as the one and only remedy for all social and economic ills and the Legislatures are besieged with demands for the passing of this law and that, how great the importance of such associations as these of scholarly and enlightened men, who know how laws work, who are independent of popular election and of party control, who can discuss every measure freely and thoroughly, and exert upon public opinion and upon parliaments the great influence which untrammelled thought and learning and experience are entitled to exercise. I may be too sanguine, but I hope for much from this influence.. The Bar in the past has neither cringed before moneyed interests nor been overborne by popular clamor. Is it too much to hope that it may do something towards solving those questions of increasing difficulty and increasing urgency—how to conserve the national energy that is wasted in class friction and how to co-ordinate the interests of classes and masses, not upon the mere shifting assumption of convenience, but upon the more enduring principles of justice and humanity. The new year is with us,and the new era is coming. We all believe in Carlyle's stalwart optimism. The false and the base may flourish for a time, but the true and the kind are eternal. We may depend upon it, things will right themselves ere long. It may be per aspera ad astra, but the way will be smoother in proportion as disinterested wisdo m is devoted to removing the obstacles. The Bar Associations of America have already accomplished great things for law reform in many directions and even for the world's peace by their propaganda of international arbitration, and I doubt not they will be a potent factor in adjusting the law to the complexities of modern conditions and in preparing for the new era of greater possibilities and still wider freedom that the New Year bells, of which we heard so lately, are ready to chime in :

" Ring out the feud of rich and poor
Ring in redress to all mankind.

Ring out a slowly dying cause
And ancient forms of party strife,
Ring in the nobler modes of life,
With sweeter manners, purer laws.

Ring out the want, the care, the sin,
The faithless coldness of the times,
Ring out, ring out my mournful rhymes,
But ring the fuller minstrel in.

Ring out false pride in place and blood,
The civic slander and the spite,
Ring in the love of truth and right,
Ring in the common love of good.

Ring out old forms of foul disease,
Ring out the narrowing lust of gold,
Ring out the thousand wars of old,
Ring in the thousand years of peace.

Ring in the valiant man and free
The larger heart, the kindlier hand,
Ring out the darkness of the land,
Ring in the Christ that is to be."

Whatever is done in the interests of justice is permanent work, for the stability of society depends more upon it than upon anything else. By the reign of law and justice we maintain what is worth preserving in our civilization, and by its promise are we inspired for enterprise and progress. The masterful minds of the world have generally recognized this. Frederick the Great, in his strangely checkered but always heroic career, laid the foundation for a united Germany, but he fostered the spirit that has made that empire great, not alone by the varying fortunes of war, but by his reforms in the administration of justice and by the compilation of laws that did honour to his name. What a strange fascination there is about Frederick! Impetuous, lion-hearted, undaunted by the combination of nations, his little weaknesses contributing to the versatility of a character never quite bizarre, but to the last degree picturesque. A few months ago I wandered about Potsdam where he loved to retreat with Voltaire, and I sauntered through his palaces, but their gorgeous decoration seemed garish when compared with the simple majesty of his tomb in the little crypt of the Garrison Church.

And at "Sans Souci" I read Frederick's last will and testament, written by himself in French, in a clear hand on a

single sheet of paper. His intense face looked down from many a canvas on the walls, and one could fancy his re-incarnation, for from this sheet of paper the very soul of him seemed to speak:—

"Si je meurs durant la guerre———je veux que cet empire soit administre avec la justice, la sagesse et la force."

"If I die during the war—I will that this Empire be administered with justice, with wisdom and with force."

Last in order the force that has made his name reverberate throughout an astonished world; then wisdom, that with all his gettings he had sometimes missed; but first, justice, that was often wanting in his ambitious diplomacy, but which in his heart he worshipped, and which in the remissions from his enterprise of arms he had found time to enthrone in his civil polity.

Bonaparte said: "The grandest monument I shall ever have is the Code Napoleon." How true were his words! The booming of guns and the clash of steel at Austerlitz and Marengo, and Jena and Wagram are lost in the silence of a century, and the dazzling fame of military genius will grow fainter as the world grows wiser, but the Code Napoleon remains to-day a mighty living force not only in Europe but in parts of the New World too, for the preservation of sound principle and the progress of mankind.

It has taken the world a long time to learn the elements of justice. It seems to have progressed more easily in the direction of beauty than of righteousness, developing imagination before conscience. When classic art was at its very zenith, slave galleys ploughed the dancing waters of the blue Ægean. Venetian art with its charms of Orientalism was decorating palaces and temples with heavenly beauty while the Bridge of Sighs still echoed the groans of the victims of political persecution; and dear old Florence, with all its heritage of Etruscan art could banish a Dante to linger and die in Exile far from his native city that he loved so well. Justice and freedom have been a long time coming. If we could attain to justice in every relation of life, it would not be a

very bad world. Sometimes rather hard, rather inflexible, but there would be little room for complaint. But even when we have ascended to the plane of justice we shall not have reached perfect civilization. I need not blush to say it to lawyers, there is something higher than law—and that is love. That, that Professor Drummond called "the greatest thing in the world," that good-will that was linked by the Divine Herald with peace on earth. When we have learned justice we shall progress to love and

> "all men's good
> "Be each man's rule and universal peace
> "Lie like a shaft of light across the land,
> "And like a lane of beams athwart the sea,
> "Thro' all the circle of the Golden Year."

I shall not forget the last evening I spent at the great Paris Exposition. The ear was enchanted with music and the eye with light and color. The iridescent fountains glowed with ever changing hues—now emerald, now sapphire now crimson, now golden, while the long serpentine lines of light culminated in the sparkling brilliance of the Trocadero. When the senses are enchanted how easy to dream! And I asked myself, Is this realization or is it not rather prophecy—"that which man has done but earnest of the things that he shall do." Do we not hear the tongues of all nations in the surging multitude? Have we not here the accumulated knowledge of the world? A ray of dazzling brightness fell from the tower across the dome of the palace of arts and rested on the figure of an angel, pure and white, refulgent against the blackness of the night. Was it my dreaming or was it her message: "Whether there be prophecies they shall fail; whether there be tongues they shall cease; whether there be knowledge it shall vanish away—But now abideth faith and hope and love—these three, but the greatest of these is love."