The Courts and The People

BY

HON. MR. JUSTICE RIDDELL

AN ADDRESS DELIVERED TO THE EASTERN ONTARIO LIVE STOCK AND POULTRY SHOW, AT OTTAWA, JAN. 18th, 1910.

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Some of my friends of the Toronto press are in the habit occasionally of good-naturedly jibing at me, as the "farmer Judge." I shall not deny the charge —rather, indeed, I would say that I am glad that I was a farmer boy, and I am heartily sorry for those who are brought up in the city, whose playground is the public street—not the virgin wood—who cannot tell the difference between a tamarack and a hemlock; who have never fished in the "crick," and who would not know what it meant if they saw a "mushrat" scuttling for the "swale."

Born and brought up on a Canadian farm, and associating all my life with Canadian farmers, I believe that I know these countrymen of mine. I know that I believe in them, and am proud of them; and the more I meet those of other peoples and occupations, the more that pride is increased. They are the mainstay of the nation; and while the heart and brain of the farmer remain sound, there is no great fear for the future of our land. They hold the power in their own hands, at least as yet, of controlling the destiny of Canada. How that power is to be exercised depends on their honesty and intelligence. Of the honesty, there can be no doubt. Sometimes, indeed, political or social or racial sympathy or prejudice will have a disturbing influence; but, on the whole, right will prevail with them. Of the intelligence, the best evidence is their desire for information upon matters of public moment from those who should know. It is, no doubt, the honest desire for such information which accounts for the fact that I have been asked to speak to you on the subject of "The Courts and the People." I am consequently glad, more than glad, to accede to that request.

In what I have to say, I shall make no attempt at originality. All of it has been said again and again in substance, both by others and by myself. I hope that what will be said will be without any ambiguity, but in perfectly plain language—by which I do not mean offensive language, but plain, simple English, which will express precisely what I mean. Let me, however, premise a word or two.

I am not here to amuse you or to jest with you. The substance of my remarks is of too great importance to be treated lightly, and I have no thought that you are here for entertainment. Again—and this I more particularly urge upon the attention of reporters or newspapers who may honor me by a reference to any of my remarks—it would not be seemly or proper for me, a judge, to act the apologist, or to appear to justify laws, proceedings or rules; and that I shall not do. What I am to do is to state and explain facts, in some cases perhaps the reasons for such facts, but not to argue that they should or should not be; and I shall not be drawn into a controversy. I, as far as possible, speak to you but as a Canadian to Canadians; my official position, of course, throws round me restraints and limitations which I may not transgress; but these will not, I think, prevent my saying all I desire.

I remember very well on the farm at home how we looked upon and spoke of a court as a mysterious something, we knew not what, speaking an extraordinary, strange language, and laying down rules which nobody could understand. No more injurious idea can get abroad; and I shall try to show what courts really are and do.

So soon as man became a social animal, it was necessary that his conduct and actions should be governed by law—that is, rule of some kind. Obedience to

that law was right, and disobedience was wrong. If one violates the rights of another there are but two courses open—the wronged may assert his rights and enforce them if he can by his own strong hand. Then prevails what the poet calls

> "The good old rule * * * *
> * * * * the simple plan,
> That they should take who have the power,
> And they should keep who can."

This is a very old rule indeed, but it is far from being good; and it ought rather to be characterized as "The bad old rule." This is the state of anarchy—the pitiable state of which the Book of Books speaks: "In those days there was no king in Israel, but every man did that which was right in his own eyes." Civilized society could not exist if this were the guiding principle.

The other alternative is that rights in dispute be submitted to the decision of some tribunal. Such a tribunal, under whatever name it may be known, is substantially a court; and the extent to which there is submission of rights to the arbitrament of courts is a test of the civilization of a people. The civilization of the people depends largely upon the existence of strong and independent courts; and when for any reason the courts become weak or are held in disrespect, anarchy is not far distant.

It is the boast and pride of English-speaking people that they are governed by law and not by whim or caprice, and that this law is administered by courts, strong, independent and impartial.

There are two forms in which wrongs may be committed—the one a wrong against individuals which the State does not trouble about, and which the individual may forgive if he sees fit; and the other a wrong against an individual indeed, but of such a character as that it affects the well-being of the people, and the State consequently considers the wrong also one against itself. An instance of the former is trespass upon a man's land, of the latter killing or maiming of a fellow-being; the former class of cases occupies the civil, the latter the criminal, law. There is here no occasion to distinguish these.

Let us understand now what a court is in our land. It is a matter, perhaps, of regret that there is no place in the curriculum of studies for obtaining information as to the theory and practice of courts. Considering the very great part that law plays in our society, it may be a matter for astonishment that the elementary principles of the administration of justice are not made an important part of the curriculum, at least of our advanced schools.

A court is an institution organized for the purpose of declaring rights and of enforcing the remedies which one whose rights have been infringed upon possesses under the law, as well as for punishing wrongs against the State. Our courts are not an end in themselves, they do not exist for themselves, but for the people; and the people pay for them and support them. The moment they are found to be not worth, directly or indirectly, what they cost, they may and should be abolished. Our Courts did not create themselves, they have not come down from immemorial antiquity—their origin is perfectly well known. They are the creation of the Legislature; they are subordinate to the Legislature (not in the sense of being subservient); and the Legislature may change or abolish them at will. The first Legislature which sat in Upper Canada, more than 100 years ago, instituted the King's Bench, and this has continued with a few changes ever since. The courts have no power in themselves; all they have is derived from the Legislature. Judges are public servants performing duties prescribed for them by the Legislature, and

according to rules laid down for them—which rules they must not disobey. These rules are found in the law.

Our law consists in great part of rules which are the same as those which governed our ancestors many centuries ago; this is called the "English Common Law," and this English Common Law is the basis and sub-structure of our jurisprudence. The "English Common Law" is simply such of the customs of the ancient people of England as they enforced as rules of conduct; and this English Common Law is the common heritage of most of the English-speaking peoples, as in Canada, the United States, Australia, Africa and the Isles of the Western Sea. One or two States have adopted as their fundamental law the law of ancient Rome, on which is based also the law of Scotland, of France and of Germany; but with these exceptions (and they are few) it may be said that the whole English-speaking world has, as the basis of its law, rules which are practically the old customs of the race.

As society progresses and becomes more complicated, as different sets of circumstances arise and life becomes more complex, there will necessarily arise other rights than those known to the ancestor, and new rules must be made.

Again, it has been found that, by the advance of civilization, the old rules which had been followed have been found not efficiently to meet the exigencies of more modern life: some of the rules have become burdensome, some positively harmful. Then the people have the rules changed; and this change is effected by legislation.

If we take these two sources of the law, viz., the common law and legislation, we have practically the whole body of law which our courts are called upon to administer; although some rules also derived from the Roman law are to be found, which were introduced through the Court of Chancery.

A court is presided over by a judge who has devoted his life to the study of law. It is the duty of the judge to find out what the law is; this he does by the examination of the statutes passed by the various legislative bodies, by the perusal of books of the older law, and by an examination of what other judges have declared to be the law. This is not always easy, and sometimes it involves much labor. Many books may need to be consulted. My own library, and it is not complete, cost me a great deal more than the price of a fair farm—over $8,000, indeed—and I have not, by any means, all the books that a judge may have to look at.

No doubt it will strike some as rather strange that a judge should be compelled to examine all these authorities in order to determine what the law is; and it has been suggested that there might be drawn up a short, concise code of law which anyone could consult, and in that way at once determine the law upon any particular subject. This course has been adopted in what is called codification of the law upon certain branches—for example, the law upon bills of exchange and promissory notes, criminal law and some others. But it has not been found practicable as yet to codify the whole of the law. And in countries in which codification has proceeded to such lengths as that the whole of the law has been thought to be reduced to a series of propositions, it has not been found by actual experience that the labor of determining precisely what is the law applicable to a particular set of circumstances is much, if at all, lessened.

It has been supposed at times that possibly the presence of lawyers in the Legislature may have something to do with the complexity of the laws. You will remember that Jack Cade was for killing all the lawyers. The experiment of excluding all lawyers from Parliament was tried once many years ago in England. The result was the *parliamentum indoctum*, or "lack-learning parliament." The old lawyers use a much harsher name—"the Parliament of Fools"—but they may

have been prejudiced. The experiment was a failure. "There never was a good law made thereat," and all their legislation had to be repealed. The experiment has not been repeated.

If you will consider the difficulty of expressing in our highly metaphorical language any but the simplest of ideas without ambiguity, you will, perhaps, understand the difficulty of so-called simple legislation; and ambiguity is the greatest curse in any law.

No one more than the judges would welcome a simplification of the laws; and if you can find gentlemen who can effect this result, *do* elect them as members of Parliament and of the Ontario Legislature. Perhaps as good a test as any would be to invite a candidate to simplify the Municipal Act. That Act has continued to grow; from year to year, it has been found necessary or deemed expedient to provide for cases which had not been foreseen; and it does not seem as though it were yet perfect, notwithstanding its 750 (odd) sections and numerous forms.

But too much should not be made of the intricacy of our laws. Ninety per cent. of the law which is administered in our Courts from day to day is nothing but plain common sense; and it is the rare case which requires much investigation in order to determine what the law precisely is. I do not mean that in ninety per cent. of the cases tried no complicated question of law can arise, but that, taking all the questions upon which a judge has to pass, ninety per cent. of these can be determined upon common sense principles alone. Still it must be said that there are some rare instances necessitating a very great deal of labor on the part of the judge upon whom is cast the duty of determining the governing law.

It is a very common error, and one which, perhaps, has occasioned more criticism on the part of the uninformed than anything else, that judges *make the law*. I cannot too strongly impress upon you the fact that judges do not make the law. The whole duty—the whole power—of a judge is to find out what the law is. He may, indeed, like any other Canadian citizen, express an opinion that the law should be changed; but he has no right to change it. A clergyman would have just as much right to change any of the commandments by leaving out the word "Not," and lay the amended commandment before his flock for their guidance, as a judge has to change the law as he finds it laid down for him.

Some few years ago an organization, formed for most admirable purposes, passed a resolution rebuking one of our judges for obeying the laws of man rather than the laws of God. This is a striking illustration of the mistake to which I have been referring. These good people imagined that the judge had the power to make a law differing from the laws of man, and conforming more to the laws of God as they interpreted them. No judge has any such power; he must apply the law as he finds it; and his only course, if he does not desire to administer the laws as they are, is to resign his office.

Then comes the jury, a body of twelve men in the higher Courts, or of five men in the Division Courts. These are a part of the Court—as much a part of the Court as the judge. It is the judge's life work; but the jurors when they are sworn have, for their temporary and immediate work, their part in administering the law, and quite as important a part as that of the judge himself.

The jurors do not determine the law—the judge is there for the purpose of telling them what the law is, and it is their duty to accept the law as laid down by him. If the judge make a mistake in the law, that mistake will be corrected by a higher Court if necessary. But with that the jurors have nothing to do; their duty is to take the law as the presiding judge lays it down, whether they think that law wise and just or not.

If they are not satisfied with the law, they have the right to call upon their representative in Ottawa or in Toronto in an endeavor to have the law changed. They may communicate with the Minister of Justice or the Attorney-General and may use all the influence which a Canadian citizen has, to have the law made to accord with their views of what it should be. But they have no right in a trial to follow their own views upon what the law is or ought to be—they must accept the law as it is laid down for them by the presiding judge.

I am in the habit of saying to jurors that of the two highest rights possessed by a British subject—the one, the right to select those who will make laws for him, and the other to assist in the administration of the law—the latter is to my mind the more important and the more honourable. To enforce the verdict of the jury, every able-bodied man in the country may, if necessary, be called upon—nay the whole force, military and civil, of the Dominion of Canada and of the British Empire itself may be impressed to make effective the judgment of the twelve in the jury box.

The country has a right to expect that every juror shall bring to his task the highest degree of intelligence of which he is capable; that the juryman shall cast aside all feelings of prejudice and sympathy; that he will with absolute honesty apply his mind to the questions to be determined, and that he will allow nothing—race, religion, politics—to prevent his giving an honest verdict according to the evidence. As it is the duty of jurors to find the facts according to the evidence, they should carefully observe everything which is said by the witnesses and the manner in which it is said, so as to enable them to determine in their own minds not only what he says, but also how far he is to be believed. It is the right and often the duty of the judge to express his own opinion as to the facts; but it is not his opinion which is to govern. The remarks which he makes concerning the evidence, the views which he expresses in respect of the facts, are intended only to assist the jury in arriving at a correct conclusion. But his view of the facts is not that which is to prevail; it is the jury who in the long run must make up their own minds as to what the facts are; their view must prevail.

Of course, so long as human nature is what it is, men may, and sometimes will, find it hard to rid themselves of feeling and passion and sympathy and prejudice; but it is the duty of jurymen to do their very best to clear their hearts and minds of all these, and honestly to find the facts according to that part of the evidence which they believe.

No matter what care is exercised in the selection of jurors, it will occasionally happen that some are not of sufficient strength of mind to perform satisfactorily what our law demands of them. And sometimes—it must be admitted—sorrowfully admitted—jurors do not act under a full sense of their responsibility, and so there are miscarriages of justice. Nothing human is perfect, and the administration of justice does not claim perfection—we can only do our best.

Many years ago it was the law that jurors who found a verdict not in accordance with the evidence might be themselves tried by another jury, or might be fined or imprisoned by the trial judge. This practice has long been obsolete; and the juryman who now in violation of his oath degrades himself by giving a verdict differing from his honest belief, is free from any punishment except that inflicted upon him by his own conscience and the contempt of his fellow men. A juror who dishonestly gives a wrong verdict is as bad as a thief; he might just as well put his hand into the pocket of the man he wrongs and steal his money. A juror who dishonestly or weakly acquits one fairly proved guilty of a crime is as bad as an accessory—and worse.

Jurors do not, as they did many centuries ago, determine according to knowledge which they themselves may have of the facts. They are sworn to find a

verdict according to the evidence, *i.e.,* they are to find out what the facts of the case are from the evidence of witnesses.

Of course, then, the witnesses play a very important part in Court proceedings. Now, there are various things to be taken into consideration in determining how far a witness is to be believed. The opportunity he has had of observing what the facts are; the accuracy of memory whereby he can call up to his mind what were the facts as he saw or heard them; his honesty and his ability to express in clear language what he means—all these are matters for consideration on the part of the jury. And it is obvious that it would not do to allow a witness simply to get up and say what he has to say, and sit down, having told his story in his own way. He might forget important parts, he might load his story with irrelevant detail, he might speak loosely where exactness was needed, he might express opinions when he was called upon to state facts, he might guess or imagine where he should know, or say he knew where he only fancied, and state as facts what he had only heard; all these dangers and more are ever present. It has been found by long experience that the best method of determining the reliability of the witness and eliciting the truth is cross-examination. Cross-examination does not mean, as so many, even lawyers, seem to think, "examining crossly." Cross-examination is the art of searching by questions into the mind, memory, capacity, and honesty of the witness in order that the trial tribunal, jury or judge, may see, first, what the witness really means, and, second, how far his testimony is to be relied upon.

I know there have been many complaints about cross-examination; I know, too, that the privileges of cross-examining counsel have sometimes been abused, as every other right may be abused; but it seems quite certain that the value of evidence given by a witness can, so far as the experience of mankind has yet gone, only be tested fully by cross-examination.

Of course, mistakes will happen, but in the vast majority of cases the evidence of the honest witness is not weakened, but it is often strengthened by the most minute and rigorous cross-examination. At the same time, in numberless cases, the dishonest or incompetent witness has been, by that means, shown to be dishonest or incompetent: and the value of his evidence destroyed. And it is to be remembered, too, that witnesses may be perfectly honest and yet may be mistaken. The grounds of their belief should therefore be sifted with care. I rather think that the very persons who most complain about cross-examination would complain very much more if their counsel, in an action in which they were themselves concerned, were not permitted to cross-examine most rigidly the witnesses called against them. For an instance of its value take the well-known case of the charge made against Parnell by the *London Times.* It is common knowledge that that was swept away and destroyed by the cross-examination, by Sir Charles Russell, of Pigott, the forger. And cross-examinations equally effective and useful, if not with such startling results, are seen in our Courts almost daily.

It is not the person who is charged with crime who profits most by this practice; it is a matter of every day experience that criminals bring forward friends to prove an *alibi* or to prove circumstances which would make it impossible that the prisoner could have committed the offence with which he is charged; in hundreds of cases, such evidence has been demolished by careful cross-examination.

I told you in the beginning that I am not here to justify anything. If the people think that cross-examination should not be allowed, they have but to say so, to instruct their representatives to pass the required legislation, and the Courts will act accordingly, the time occupied by trials will be diminished by 50 per cent. or

more, and the work of the judges lightened accordingly. But before the people come to such a conclusion, let each consider how he would like to have his case decided upon the statements of witnesses perhaps hostile to him for some reason, these statements not being sifted by cross-examination.

The question of appeals comes up now and then for discussion; and it may not be out of place if I say a word or two in respect of Appellate Courts.

But first it is to be noticed that in a large percentage of cases tried there is no appeal. From the official report for 1908 I take the following figures: Of the cases tried in the High Court there were appealed about 15 per cent., or, say, 1 in 7 to the Divisional Court, and to the Court of Appeal less than 6 per cent., or 1 in 17. By far the greater number of these appeals were dismissed. Of all the cases in the Divisional Court about 8 per cent., or 1 in 12, were appealed to the Court of Appeal and more than half dismissed. From the Court of Appeal only 9 cases went to the Supreme Court (so far as I can find) and of these 7 were dismissed; while 6 went to the Privy Council.

The theory of appeal is that the trial judge may have made a mistake in the law or facts, or the jury may have made a mistake in the facts, or some evidence has been since discovered which should change the result, or something of that kind. A very large part of the time and labor of a High Court judge is occupied with considerations arising upon appeals, sometimes scores of books must be examined, requiring much time and thought. If appeals could be abolished, all this would be saved; but would people be satisfied with the opinion of one judge upon an important matter? And if there is to be an appeal, is there to be one and no more? All that I cannot discuss; it is for the people themselves, through their representatives, to decide.

It is not always the rich man or the corporation which benefits by an appeal. The last case I had at the bar for a Railway Company, the plaintiff was non-suited at the trial, and she needed to go to appeal in order to get her rightful damages. In the last case I had against a Railway Company, the plaintiff succeeded at the trial, but an appellate court ordered a new trial. The second appellate court, the Privy Council, however, ordered the plaintiff to be paid the verdict which the jury had given her. I remember a case in which my client was sued for a large amount by an American firm; at the trial we succeeded; the Divisional Court reversed the trial judge, and I went to the Court of Appeal; that Court was also against me, but I went to the Supreme Court, and that Court reinstated the verdict which I had got at the trial. Had we stopped at the two lower Courts of Appeal my client would have had to pay a very large sum which he had no right to pay.

The whole question of appeals, and the number of them to be allowed, is a most difficult one, and is not to be decided off-hand by anybody. The experience of other countries may, perhaps, not be without advantage to us. In England they have a Divisional Court, a Court of Appeal, just as we have; and the House of Lords, as we have the Supreme Court at Ottawa. They have no Court beyond, as we have in the Privy Council; but not one-half of one per cent. of our cases go to the Privy Council.

We have almost exactly the same practice, too, as they have in England—but it is impossible for me to pursue that matter in the time at my disposal, or to consider the relation of the legal profession to the administration of Justice.

I shall just say one word about the lawyers. I have been actively engaged in the law for 27 years, and during all that time I have never known or heard of any person so poor, that, having any fair semblance of a claim, he could not have his case submitted to the Courts by a lawyer with all due skill and vigor—in many instances, too, without any real hope of reward. If anyone gets into trouble does he

not, as of course, go to a lawyer? And does he not give him his full confidence? And in how few cases is that confidence betrayed?

At some other time and place I may have more to say about your fellow-Canadians of the legal profession; but for this time, I cannot pursue the subject.

I have already said that where the law is found to be imperfect, the Legislature is called in to correct it. Now there are two theories of the powers of Legislatures which have been adopted by the two branches of the English-speaking peoples. One theory is that the people are not to be trusted; and therefore their power should be restricted. A written document is prepared as the constitution of the country; and the people and their Legislatures are forbidden to go beyond the provisions of that written document. The effect is that what the one generation of men who have framed the constitution think right or expedient is to govern all future generations, no matter how effete the doctrines of the former generation may have become by reason of the changed condition of the nation, or how positively harmful they may have been proved to be by experience. That system has been adopted by the United States of America, who in the Constitution of the United States and in that of the several States have been exceedingly careful to lay down principles and restrictions which are binding upon the people and Legislatures. Any change in the Constitution can be brought about only with great difficulty. Legislation which is found to be opposed to the Constitution is promptly declared invalid by the Courts there. A comparatively large part of the litigation in the United States is upon the constitutionality or otherwise of provisions which the Legislatures have thought it wise to make, from time to time.

The other theory is the theory of the Motherland and of Canada. There is no written Constitution (in this sense) for Great Britain and Ireland. There is no binding declaration of principles such that Parliament cannot annul. The Parliament of Great Britain can legislate upon any subject, and in any manner, without violating the Constitution, in the sense in which I have been using the word—in other words the Courts cannot declare that legislation to be invalid. In Canada, the legislative power is divided between the Dominion and the several Provinces, each of which has its own class of subjects upon which to legislate. The Dominion cannot legislate upon that class of subjects allotted to the Provinces nor can the Provinces legislate on that class of subjects allotted to the Dominion. But within that class of subjects allotted to the Provinces the Legislature may legislate as fully and as effectively as the Parliament of Great Britain and Ireland could do. The Legislature of the Provinces has, amongst other things, the power to avoid or validate contracts made by the Province or by any individual; has the power to avoid legislation or by-laws of inferior bodies, such as County Councils, Township Councils, etc.; of declaring to be valid what would, otherwise, have been invalid by-laws; of declaring property which would otherwise have belonged to A, to be the property of B. The Legislative Assembly has power generally to legislate effectively within the whole region of property and civil rights.

I am not concerned to argue whether it would not have been better had our Province started off with a written constitution such as that of the United States, whereby its Legislature would not have the power of taking away any man's property or of interfering with the validity of contracts—I have said more than once that I am not an apologist for anything, I am only stating facts.

These powers, like the rest of its powers, we and you cannot take away from the Legislature; the Legislature cannot take them away from itself. If the Legislature were to pass a law that no man's property should be taken away from him, the same Legislature could repeal such a law the next day; and if the same Legislature let the law stand, its successor could repeal it. The only way in which any power

which the Legislature has can be effectively taken away, is by the Act of the Parliament of Great Britain and Ireland. It may be—I express no opinion—that if the people of Ontario or the Legislature of the Province were to petition for such a diminution of their powers, the petition would be granted.

But it would be well for all parties to consider what this means. From the time the first Legislature sat in Upper Canada in 1793, 116 years ago, these powers have been vested in the Legislature—if these powers were now taken away, we should have less power over our own affairs than not only our brethren in the old land but also our brethren in Australia, New Zealand and South Africa; rights that we have had for over 100 years would be lost to us. Let it not be forgotten that no *Government* has such powers; it is the Legislature elected by yourselves. If you are not satisfied with any legislation, all you have to do is to elect representatives who will repeal it. The Government can stand only if it is backed by a sufficient number of representatives; and a majority of representatives can pass or repeal any legislation they please.

Now, it would be grossly improper for me to express any opinion as to the propriety of any legislation. I may, however, mention some which has caused discussion.

In some instances property has been left for the benefit of persons named; by change of circumstances, it has become impossible to carry out the will, and those who were clearly intended to be benefited can receive no benefit; the Legislature is asked to direct such a change as will carry out what the testator would probably have done, had he been able to foresee what would happen. The Congress of the United States could not do that, nor the legislature of any State. Our Legislature can.

A township passes a by-law for some public purpose. There has been some technical error so that the by-law is, in law, invalid. Perhaps money has been expended on the strength of it; and the by-law is attacked. The Legislature may step in and validate the by-law; and no one is injured, or only someone who desires to embarrass the townships.

A much needed railway is to be built. It has been granted a bonus by the municipalities through which it passes. The financiers will not buy the bonds, as there is doubt as to the powers of the municipalities, and the railway company cannot get money for its undertaking—the Legislature may make the bonds absolutely valid.

A number of persons combine together to monopolize some line of business to the disadvantage of the public; the contracts made between these persons are perfectly valid in law at the time they are made, but the result is considered harmful to the people at large. In the United States the people would be helpless. A month or so ago I was told by an ex-Chief Justice of a very important State that the great problem in the United States was to prevent the accumulation of vast wealth and power in one hand or a few hands; and he said the difficulty in the way of preventing what he thought was a public calamity was the Constitution. When I told him we had no such constitutional limitations in Canada, he could scarcely believe it. I pointed out to him that we had the same constitution as England, and had no such difficulties. We could legislate away anything of the kind and set aside any combine.

The people, through their representatives, have decided upon a certain policy—this necessitates dealing with property of many individuals—some of these may be unreasonable or some may be adverse to the policy determined upon—litigation may be threatened which will tie up the scheme for months or years. The Legislature makes up its mind as to the proper course and may refuse to allow the litiga-

tion to proceed. What the Legislature says, the Court must obey. I, as a Judge, have no right to express any opinion on any such legislation or upon any legislation at all. What I have to do, is to administer the law as it is made for me. If I do not like any legislation I cannot do anything—I have not even got a vote. If you do not like the legislation, you can, you have a remedy; a judge has none.

What I have said may perhaps help to clear up certain matters which, I have been informed, have been troubling some of you.

For example, a well-known case: One of the Judges was charged with ignorance because he declared the absolute power of the Legislature: in that he but followed the law laid down for him by the highest Court in the Empire, but he was said to be violating Magna Charta, and I do not know what all. What he did was simply to obey the law; had he done otherwise, he would have been recreant to his duty.

The other day a judge refused to go on with a case because the Legislature said he should not; he could do nothing else—he was bound to obey the law.

In another case, a very able judge refused to accept a verdict which a jury brought in, as it was not in the correct form; the law says that he must so act. But many an indignant letter appeared in the public press condemning the judge for what he could not help doing if he did his duty.

In another case, a judge charged the jury in such a way, as to the evidence of accomplices, that they found a verdict of "not guilty." He laid down the law accurately, and had he done otherwise, he would have violated his duty. A miscarriage of justice? Perhaps so, but that is the result in part of circumstances, and in part of the state of the law.

There have been verdicts, too, which shock the community. In some of these cases, the jury were not to blame. The evidence was found not to bear out the charge; and although there could be no real doubt of the guilt of the accused, the jury could not honestly say that there was no reasonable doubt upon the evidence. It is not to be forgotten that an accused is not punished simply because, and when, he has committeed an offence. We must first of all convict, and the law says he must be proved to have committed the offence, by evidence which satisfies the jury beyond reasonable doubt. The Parliament of Canada have said that he must be convicted first. If you want a man punished because people, newspaper men, or others, think or say he has committed a crime, get the law changed. If you do not like the law, get it changed; but unless and until it is changed, the jury are bound by it and must if they are honest give effect to it. Many and many a time I have seen a person accused of crime which no one doubted he had committed, and yet because there was a failure of evidence he escaped unwhipped of justice.

And it is not safe to rely upon newspaper accounts of a trial. I do not mean that the reporters wilfully misrepresent what takes place; but sometimes they fail to understand. For example, one of the Toronto papers the other day represented me as shaking hands with a convicted prisoner, when the fact was that he came up in front of my desk to give bail. Sometimes, and most frequently, the reporters take note only of the most striking features of a trial—"the ordinary and common does not furnish good copy"—and in any case it is impossible for any reporter to report the manner and tone of the witnesses, or to do more than give an outline of what they say. Juries are sometimes wrongly condemned by those who would have done the same thing as they had they been in their place.

Unfortunately there are cases in which jurors allow sympathy—particularly if the accused is a woman or a "good fellow"—to sway them in their verdict. They take refuge in the well-known "benefit of the doubt." I am in the habit of telling

jurors that the doubt an accused is entitled to the benefit of is the honest doubt of an honest man who has honestly applied his mind to the evidence; not a doubt conjured up for the occasion to furnish a pretext for giving way to sentiment or sympathy, and to afford a plausible excuse for violating duty. In my part of the country we call a man a "basswood" man who shirks his duty because it is unpleasant—who is a weakling; and I fear that sometimes jurors turn out to be "basswood" men. But that cannot be helped while human nature remains as it is; and our main consolation is that such is the exception. The same thing is noted in England, Ireland, the United States and the whole globe. How can this be helped? Only by every man who is called as a juror determining to do his duty as a man and a citizen—and doing it.

And before we think of any other method of trial, let us carefully consider if any other method would be more free from defects.

I have long been actively engaged in the law Courts, Counsel and Judge; and I give it as my deliberate opinion that a jury of twelve men is in most cases as good a tribunal for determining fact as any other which has ever been devised, and in many cases the best. The Legislature has in some cases, as, for example, in actions against municipalities for damages, said that juries shall not, but a judge shall, try the issues—I presume because it was thought that juries would incline toward the private individual and against the corporation. Other corporations besides municipalities think that jurors are prejudiced against them, and it may be that there is much truth in that supposition. There are other cases involving law or of a commercial or complicated character which it is not well to trouble juries with; but taking the ordinary case of a conflict of fact between man and man I would rely upon a jury arriving at as sound a conclusion as any bench of judges or any other conceivable tribunal.

Criminal cases are peculiarly for the consideration of a jury under the direction of the judge upon the law—the facts are generally simple and easily understood, and in most cases juries can be relied upon to do their duty.

Your President has asked me to speak to you particularly as to certain cases and explain them to you. Some of these I must not say anything about, as they are still in the Courts. Such of them as are finished I shall speak of, as I understand some of you have been troubled about them. When rightly understood, there is no reason, I think, for uneasiness.

In one case a man was charged with murdering his wife by beating her to death. He had been drinking; but at the trial no one thought that there had been such intoxication as would make any difference, and he was convicted. A new trial was ordered; and the idea seems to have got abroad that the law was laid down that drunkenness is an excuse for crime. If that were so, it would indeed be cause for alarm, for then all a man would have to do when he wanted to murder would be to get drunk. But nothing can be further from the fact. This is what the Court said: Where one man kills another, it is murder if he intended to kill. And a man is held to have intended the natural consequences of his acts, so that if he, without an actual intent to kill, does something which he ought to have known to be likely to kill, it is quite the same as if he actually intended to kill. If a man, drunk or sober, intends to kill and does kill, he is guilty of murder; but although he kill, if he did not intend, actually intend, to kill, but did something which he did not intend to cause death, it may be different. If he was in the possession of his faculties, he must be held to intend the natural result of what he did; but if he was so drunk that he did not know that the natural effect of what he did would be to cause death, the case is different. Then he is guilty of manslaughter only. The judge who

presided at the first trial had not, it was considered, charged the jury fully upon the law; and it was thought right to have a new trial. The law was fully explained to a second jury, and they thought the culprit should be found guilty of manslaughter only. Some juries might have thought otherwise, so might some judges; but that jury had to pass upon the evidence upon their oaths. If they made a mistake, it cannot be helped; the law, however, has not been altered or modified.

In another case a woman was charged with murder of a child. The jury found her guilty of manslaughter. No one who did not hear all the evidence can say whether the jury were justified in so finding or not. If not, and if the jury allowed sentiment or sympathy to modify their verdict—and I do not suggest that such is the case—that is a matter between them and their God, which must be answered for some day—but the law cannot change the verdict, and the law is not changed.

A man was charged with murder, the only evidence against him being that of an accomplice—the law is that it is the duty of the trial judge to advise a jury that it is not in general safe to convict upon the evidence of an accomplice only, but that they may convict notwithstanding, if they see fit. The judge did so charge—the jury did acquit. Until the law is changed (and the judges cannot change it) the jury cannot be blamed.

A company claimed that they had performed all the duties prescribed to entitle them to certain mining lands—the Minister of the Crown whose duty it was to examine into such matters said they had not—the land was sold by the Province for a large sum to another company. This company complained that the former company was claiming what the complaining company had bought from the Province and paid for. The Legislature decided that the title of the purchasing company should be made secure; and such an Act was passed. The Court held, as it must needs hold, that the Legislature had the power to pass the Act. It has been represented that the judge condemned the legislation; that is untrue (he would have been going beyond his duties had he done so)—all he did was to hold that the legislation was valid. If you do not like the legislation, have it changed.

A few remarks in conclusion: I feel that I shall have entirely failed in the objects I had in view, if I have not made clear that we all, you and I, are responsible for the law as it stands. The other day there was a very able and interesting article in a Toronto paper. The theme was that the people of Canada had hanged a murderer. Referring to myself he said "Mr. Justice Riddell helped to hang the culprit." Now, I must willingly accept my share of the responsibility for that Macedonian's death—not quite in the way which may suggest itself to most—that is, in that I pronounced the sentence of death. For that, I disclaim responsibility; I but carried out the explicit direction of the law. But I am one of the citizens of Canada—if I was not satisfied that murderers should be put to death, it was my privilege to raise my voice against judicial killing and exert all my influence against it. This I did not do, and it is, therefore, partly due to me that hanging still takes place. So, too, of you. I am now an officer of the law and I should not take part in changing the law; but if you think that the red slayer is not to die by the hangman's hand, it is open to you to say so. If you can persuade a majority of your fellow-Canadian voters that this practice is wrong, it will be changed; if, however, you think that the assassin should be the first to stop killing, and that the best way to prevent murders is to continue the death penalty, you will do what you can to have the law remain as it is.

Again, the Courts are solely occupied with the law as it is, not as it should be, or might be. No judge is above criticism—he is a public servant and his office exists for the public good—if he is ignorant or negligent or procrastinating, this

is a matter for legitimate complaint. Courts are places for doing business, not for wasting time. But be definite; don't indulge in vague grumbling; name your man, and state what is complained of. Above all things, before complaining, be very sure that the matter complained of is not in reality the law which the judge has been obliged to declare and that the apparent procrastination is not due to the difficulty of the questions of the law to be determined. Of this be very certain—the man who questions the law as laid down by the Court may possibly be right, though the chances are against it—but the man (and there are such) who tries to shake your confidence in the integrity of the Courts is a public enemy. We Judges are not busied with things with which the public have no concern any more than we are demigods, above criticism—we are employed every day in matters of the greatest living importance. We are not apart from, but a part of, the people. We are all loyal Canadians; we are all jealous for the reputation of Canadian Courts and Canadian justice—our interests are the same as yours. If I thought that there were any considerable number who held a contrary opinion, I should begin to despair of the future of Canada; as yet there is no ground for such a fear and, please God, there never will be.

And lastly, may we not all carefully consider whether our people are not allowing themselves to be unduly swayed by sympathy; whether from the influence and example of the adjoining country (or some parts of it), or from loss of moral fibre and strength, or from some other cause, we are not becoming somewhat lax in our administration of justice, getting away from traditional English methods? Is it that we do not look at crime with the abhorrence we should, and so allow some to escape who richly deserve punishment? If so, we must be ourselves punished by our land becoming in respect of the sanctity of human life like those we copy. It may be full time for the public at large to consider whether those whose duty it is to detect crime are assisted as much as they should be, whether in their legitimate efforts they receive the backing of public opinion as they should. We are all perhaps too apt to look upon the prisoner in the dock as a quarry—a game animal—and his prosecution as being in the nature of a sport, and to consider that it is no great matter to anyone but the accused of what he is convicted or whether he is convicted at all; instead of looking at a trial as a stern and careful inquiry by the people into an offence against themselves in which it would be as great a failure of justice and as harmful to the people that a guilty man should escape as that an innocent man should be convicted. And the future of this land, so far as the security of life and limb and property is concerned, lies not in the hands of the police alone, but largely in the hands of jurors. If jurors do their duty we are secure; if not, we retrograde into the ranks of an inferior people.

I have spoken longer than I had intended, but the whole subject is very near to my heart. I want Canadians to get rid of the idea that the Courts are some mysterious entities existing remote and separate from them, and making edicts based upon some absurd and peculiar doctrines or upon the whim and caprice of the judge. I want you to feel that the Courts are yours, administering your law, law which you make, or at least approve, and doing all possible for you, having no interests or desires apart from or antagonistic to yours. We are bone of your bone and flesh of your flesh—brother Canadians and proud of it. So long as you and we understand each other, we shall work in harmony; and so long as we are in harmony and do our honest best, so long, with all the defects which we have in common, and with perhaps a thousand stumbles and falls, the administration of justice in Canada will be held in respect, and the aspiration of the patriot in all ages—"Justice according to Law"—will continue to be realized.