## THE WORK OF THE COMMERCIAL COURTS.[1]

DURING the last Long Vacation—which I am afraid, by the way, *will* be the last *long* vacation—I was just about starting out to indulge in a pastime which a don of the rival, but much inferior, university has described as "putting little balls into little holes with instruments singularly unadapted for the purpose" when a letter was put into my hand with an American stamp and a United States postmark. I opened it hastily and glanced at it, and gathered the impression that some unknown society in the United States was inviting me to proceed there in the month of November to deliver an address on some legal subject. I was flattered and puzzled. I threw the letter on the table and went out to indulge in the aforesaid pastime. It was not till I got home and read the letter carefully that I discovered what it was all about. I gathered that your Downing Professor, who prefers to spend his holiday in a dry climate—a bone-dry climate—was conveying to me the request of the University Law Society that I should come back to my old university and my old college and speak to the law students, and I was very much flattered and grateful. I felt a little, however, like the Prodigal Son, for I thought that for the Cambridge Law Society and the Law School of Cambridge to invite a man who had paid little attention to them while he was up, to come and address them, was heaping coals of fire upon his head.

It is forty-four years since I came up as a freshman to Trinity, and the law school of that day was not what it is now. I have grateful memories of lectures by one Dr. Courtney Stanhope Kenny—who is still with us—and it was one of the proudest moments of my life when I corrected him on a question relating to the income tax. I attended some of the lectures given by the then Regius Professor, which were far too good for me, and I am afraid I did not trouble much with the rest of the Law School of Cambridge of that day. The consequence was that I believe for the last three years I was here I never went to a law lecture. I did worse; I never even went to a coach. Now that I am con-

[1] An address delivered to the University Law Society on November 18, 1920, by Lord Justice Scrutton. It was given orally without notes, and is printed from a shorthand note revised by the speaker.

cerned with education in the Inns of Court, my examiners tell me that their whole life is spent in a continual fight with the coaches. At the rival university, I understand, there is a teacher who will promise you a first class if you will learn the answers to thirty-nine questions. If you will do that, and exercise a moderate amount of intelligence as to which answer you make to which question, the first class is waiting for you. And yet, under these circumstances, and despite the fact of my never having gone near a coach, you ask me to come back. I come back as the Prodigal Son. There is a picture in *Punch* in which, while the Prodigal Son enters through the front door the fatted calf, with an anxious expression, leaps over the back wall; and I have felt that my coming back as the Prodigal Son has disadvantages for someone. However, I am here.

Professor Hazeltine asked me to speak about the Commercial Court, but I propose not to do so. I have an impression that if I proceeded to address you on extremely interesting problems in the higher altitudes of marine insurance law, or some of those extraordinarily fascinating questions of the operation of a cesser clause in a charter-party, I should see this crowded room gradually empty, until only the chairman, who, through courtesy, would be obliged to remain, would be left. And consequently, the less I say about the details of the work in the Commercial Court, the better you will be pleased. But I should like to say something about the way in which the Commercial Court does its work, as illustrating, rather, the problem which must be present in all States, with which all legal institutions must be tested—whether they fulfil the objects which are required in a good legal system.

Now I take it that a good legal system should have four—at least four—attributes. Its judges should be incorruptible and impartial: that is one. The law they administer should be accurate, and founded on recognized principles: that is two. Justice or judgments should be given quickly: that is three. And justice should be accessible to citizens cheaply: and that is four. And if you find a system which combines these four attributes, I think you have got a good legal system.

Now may I say a word or two about each of these questions? First, as to the incorruptibility of the judges. We in England, fortunately, are inclined to treat that as such a matter of course that it is superfluous to mention it; and no doubt it is a tribute to the English law and the English people that this should be so; but it is by no means so in many countries of the world. If you go to some parts of South America you will find that it is

the regular thing for the Judge to receive a present; and the experienced litigant does not waste too much on the Judge of first instance, but waits for the final Court of Appeal and saves his resources. We have a system in England by which a foreigner, coming to sue in England, is required to deposit a sum as security, in case he should leave without paying his costs; and in one case in the Commercial Court an order was given by Mr. Justice Bigham for £100 security for costs. The foreigner was very indignant, and said: "What is this you tell me about your English justice, and the first thing is £100 for the Judge!" And the Judge was very much amused. The fact is that we are so used to the incorruptibility of Judges in England that we do not understand that it may be absent. The other word I used was "impartiality." This is rather difficult to attain in any system. I am not speaking of conscious impartiality; but the habits you are trained in, the people with whom you mix, lead to your having a certain class of ideas of such a nature that, when you have to deal with other ideas, you do not give as sound and accurate judgments as you would wish. This is one of the great difficulties at present with Labour. Labour says: "Where are your impartial Judges? They all move in the same circle as the employers, and they are all educated and nursed in the same ideas as the employers. How can a labour man or a trade unionist get impartial justice?" It is very difficult sometimes to be sure that you have put yourself into a thoroughly impartial position between two disputants, one of your own class and one not of your class. Even in matters outside trade-unionist cases (to some extent in workmen's compensation cases) it is sometimes difficult to be sure, hard as you have tried, that you have put yourself in a perfectly impartial position between the two litigants. This difficulty does not arise in the Commercial Court. So much for the first head.

Now the second thing that you want in a judicial system is what I may call accuracy in results of fact, settled principles of law upon which you proceed. You will observe that I have said nothing about the results being just, because justice is not what we strive after in the Courts, paradoxical as it may seem. A Judge once told a London cabman to drive to the Courts of Justice. "Where's that, yer honour?" "Why, the Law Courts," the Judge replied. "Ah! now you're talkin', but it's not the same place." We are not trying to do justice, if you mean by justice some moral standard which is not the law of England. The oath which every Judge takes is: "I will do right to all manner of people without fear or favour or prejudice, according

to the laws and customs of this realm." And it is the laws and customs of the realm that the Judges have to administer. Sometimes hard cases make bad law. If once you allow the laws and customs which you have to administer to be diverted by the particular view you take of the particular case, another Judge may think otherwise on the same facts, and there ceases to be any certainty in the law. If the laws and customs you have to administer are wrong, it is for Parliament to put them right—not for the Judges. It is important that the Judges should interpret the settled laws without altering them according to their views of right or wrong in the particular cases. And that is why I have not used the word "justice." There is another difficulty that may arise under that head. You may be so careful to be accurate in fact that you do not decide the fact until everybody concerned is dead, or at least until the plaintiff wishes he were dead, and the defendant wishes he had never been born. You want to be accurate, but not so accurate as to be too long in settling facts and in administering settled laws. That, of course, verges on the third question: that justice ought to be speedy. It is no good talking so long over a case that all the original persons concerned have died, and the lawyers have got all the estate. Your decisions should be given quickly, and, lastly, they should be given cheaply. If you make justice expensive you deny it to the poor man; and the justice of the English Courts should be such that rich or poor should be able to obtain it from the Courts without being ruined. Some of you know the summing-up of Mr. Justice Maule which is supposed to have been responsible for the great alteration of the divorce laws. A man was brought up before him on a charge of bigamy, and the man defended by saying his wife had run away with another man, and he had not been able to afford a divorce. Another woman had come to live with him, and he tried to make an honest woman of her by marrying her. In the most burning sarcasm, not directed to the man but to the system, the Judge told him he was making a great mistake; he should have brought an action for criminal conversation against the other man, and then he should have made an appeal in the House of Lords for an Act of Parliament to annul the marriage: "This, you will tell me, will cost you £600 and you have not 600 pence, but the just law of England makes no distinction between rich and poor." Now it is one of the present dangers of English justice that the ability and energy of counsel and the fertility in suggestion of expert witnesses are making justice too expensive for the poor. There is a case at present going on in the House of

Lords—you have probably seen references to it in the papers—where a colliery tip on a hillside slid down, and two or three thousand pounds' worth of damage was done to the houses below, and another two thousand or so was spent in stopping the colliery refuse from slipping further. An action was brought by the Local Board against the colliery, and when I tell you that it involved the case of *Rylands* v. *Fletcher*, an answering thrill will pass through the heads of all students. At the present moment, in the House of Lords, the costs on both sides are over £150,000. Now if it had been a poor man's house, what justice could he have had with expenses like that? And this is one of the dangers which needs meeting at present in English procedure. It is partly owing to the industry of counsel and partly owing to that particular class of relatives of Ananias to whom I have already referred. It is most extraordinarily expensive to fight any case involving scientific investigation.

Now, how do these requisites apply to the disputes between merchants? You begin, if you look into the history of the laws of England, by finding no disputes between merchants in the law books at all. Nor will you find any such cases in the Year Books. The reason for this is that the merchants of old times—up to the time of Lord Coke—travelled about with their goods in ships, or went to fairs with their goods, and it was no use saying to them: "The next time the King's justices come into this county the Judge will deal with you"; they simply replied that they could not wait. And so all the early disputes between merchants were fought out in special Courts of the merchants at the fairs; or there were local Courts in the seaports. And these Courts gave decisions quickly—the Courts *pie-poudre* gave their decisions while the dust fell from the feet. The Courts in the maritime towns gave justice while the mariners waited for their tide. Now, fortunately, we have got one or two references to these merchants' Courts; for here and there the person who kept the fair was a big ecclesiastic, and when this was the case, very often his monks would keep records of what happened at the fair.

The Selden Society has published a record of cases that were brought up at the fair of St. Ives, a neighbouring town to yours, which was a very big fair and attended by merchants from all over the country. Well, let us see what happened at the fair of St. Ives in 1275.[1]

Thomas of Wells complains of Adam Garsop for that he unjustly detains and deforces from him a coffer which the said Adam sold to him on

[1] Selden Society Publications, II, 138 *et seq.*

Wednesday next after mid-Lent last past for 6d., whereof he paid to the said Adam 2d. and a drink in advance, and on the octave of Easter came and would have paid the rest, but the said Adam would not receive it nor answer for the said coffer, but detained it unconditionally to his damage and dishonour 2s.; and he produces suit.

The said Adam is present and does not defend the customary words of court. Therefore let him make satisfaction to the said Thomas and be in mercy for the unjust detainer; fine 6d.; pledge, his overcoat.

The next defendant was not so fortunate as to have an overcoat.

Reginald Pickard of Stamford came and confessed by his own mouth that he sold to Peter Redhood of London a ring of brass for 5½d., saying that the said ring was of the purest gold and that he and a one-eyed man found it on the last Sunday in the Church of St. Ives near the cross. Therefore it is considered that the said Reginald do make satisfaction to the said Peter for the 5½d. and be in mercy for the trespass; he is poor; pledge, his body.

There are people alive to-day who sell brass rings for gold and painted sparrows for canaries. There is another very complicated case, in which

Nicholas Legg complains of Nicholas of Mildenhall, for that unjustly he impedes him from having, *according to the custom of merchants*, part in a certain ox which Nicholas bought in his presence in the vill of St. Ives on Monday last past to his damage 2s., whereas he was ready to pay half the price, which price was 2s. 6d. And Nicholas defends and says that the law merchant doth well allow that every merchant may participate in a bargain in the butcher's trade if he claim a part thereof at the time of the sale; but to prove that the said Nicholas was not present at the time of the purchase nor claimed a part thereof, he is ready to make law.

Then they went to the proof. In another case it is recited in the abbot's roll:

The case is respited till it shall be more thoroughly discussed by the merchants. And the merchants of the various commonalties being convoked in full court, it is considered . . .

And the discussion goes on.

That is why you will not find commercial cases in the law reports of that time; they were all dealt with by the Courts at the fairs or the Courts in the various seaport towns; they were dealt with as quickly as possible; and by Judges who knew the merchants and knew what they were talking about. This brings us up to the time of Lord Coke. At the time of Lord Coke, a little after 1600, the fairs were dying out, the local Courts were dying out, and the King's Courts were getting more jurisdiction, but still you will find very few reported cases in the *Law Reports*. Why?

For this reason, that the mercantile cases came into the Court not as the law of England but as the custom of merchants, and therefore had to be proved as facts and not administered as law, and there are recorded cases where a man, sued on a bill of exchange for which he was alleged to be liable as a merchant, pleaded in defence that he was not a merchant but a gentleman, and if he was a gentleman the custom of merchants did not apply to him; and so if in each case you proved the custom as a fact, there was no need to report it in the law books, because you were only proving facts.

Now the time when the mercantile cases do begin to get into the Law Courts is when Lord Mansfield becomes Chief Justice, in the eighteenth century. Lord Mansfield set, as one of his principal works, to codify, to make consistent, to state as law, the principles which underlay the custom of merchants. One of the great tributes to him is the tribute by Mr. Justice Buller. He was giving judgment in the case of *Lickbarrow* v. *Mason*, familiar to any of you who are working for an examination. He said: "Thus the matter stood till within these thirty years; since that time the commercial law of this country has taken a very different turn from what it did before. Lord Hardwicke himself was proceeding with great caution, not establishing any general principle, but decreeing on all the circumstances put together. Before that period we find in courts of law all the evidence in mercantile cases was thrown together; they were left generally to a jury, and they produced no established principle. From that time we all know the great study has been to find some certain general principles, not only to rule the particular case then under consideration, but to serve as a guide for the future. Most of us have heard these principles stated, reasoned upon, enlarged, and explained, till we have been lost in admiration at the strength and stretch of the human understanding. And I should be sorry to find myself under a necessity of differing from Lord Mansfield, who may truly be said to be the founder of the commercial law of this country." Lord Mansfield laid down the principles, and for the sources of the law of merchants he went to nearly every civilized system of law—Scotland, Rome, and the old laws of the sea; from every source Lord Mansfield codified his principles. He wanted also the facts; how did he get them? Lord Campbell has left an account of that: "Lord Mansfield reared a body of special jurymen at Guildhall who were generally returned on all commercial cases to be tried there. He was on terms of the most familiar intercourse with them, not only conversing freely with them in Court, but inviting

them to dine with him. From them he learned the usages of trade, and in return he took great pains in explaining to them the principles of jurisprudence by which they were to be guided. Several of those gentlemen survived when I began to attend Guildhall as a student, and were designated and honoured as 'Lord Mansfield's jurymen.' One in particular I remember, Mr. Edward Vaux, who always wore a cocked hat, and had almost as much authority as the Lord Chief Justice himself." Lord Mansfield supplying the principles, and the city merchants, whom he trained, so to speak, in the principles, telling him the facts, one got a proper system of commercial law established in this country. It would be administered partly in London, of course, and partly on the circuits, although at the time the towns we now consider important commercial towns were hardly in existence.

While I was at the Bar I was engaged in a heavy arbitration about the building of a warship, in the room at the Admiralty where the old Admiralty Board used to sit in the seventeenth century. Over the fireplace there was a big sort of table of the points of the wind, on a map with a moving weather-cock corresponding to the weather-cock above the Admiralty. The old admirals sitting round the board, and fearing the Dutch fleet coming across, would see, as they sat in council, what the wind was doing. Now Southwold is on that map in large letters, but Liverpool is not there at all. One does not appreciate how recent is the growth of some of our commercial towns.

During the time that followed Lord Mansfield's system the commercial law went on being administered by the Judges of the King's Bench, some of whom had some special familiarity with commercial law, and some of whom had not, but who all complied with the rather strict legal rules of procedure of that time. You picked your skilled counsel as you might pick the University XI., and he set to work to find out which was the correct legal way of expressing the exact legal position. The gentleman on the other side set to work to beat his claim, and so you went on until each side thought its case was in the right form. Then they both went to a Judge, who said they were both wrong and must start over again. This was a good legal system for getting at the right legal result, but it proved distressful to commercial people. It took such a time to get an answer to the question, and when they got the answer it was that they were told to start all over again. The consequence was that a rival judicial system began to be set up in England—the system of arbitration. Commercial men who could not get things settled quickly in the Law Courts

took to going to their own Judges. When an arbitrator decided against a man, the victim tried to upset his judgment in the Law Courts. For some commercial disputes, commercial arbitration acted admirably. Take the innumerable disputes which arise every day where the goods are said not to be up to the contract in quality; now if you went to a Judge who knew nothing about it, and three expert witnesses talked to him on one side and three expert witnesses on the other side contradicted them, the result was you might get any answer from the Judge, whereas, if you went to one merchant who *knew* what he was talking about he would smell the sample, handle it, pull it about, and say " it is a good delivery," or " it is bad." So, for quality arbitrations, the case is obviously more quickly done; the arbitrator generally decides without having the parties before him, just having a sample and a contract note. It was quicker, cheaper, and more accurate, to go to a man who knew something about it, who could generally decide without having the parties before him. With more complicated cases, however, and a commercial arbitrator, you often got the oddest legal results. Impatience with the delay in the Courts, due to attempts to be extremely accurate, which merely resulted in being dilatory, produced side by side with the legal system a very extensive system of arbitration. Most of the commercial work in the Courts was done at the Guildhall sittings, which heard the London disputes. Counsel who were lucky, such as Mr. Justice Mathew, started off from the Temple with a four-wheeled cab full of briefs. Mr. Justice Mathew as a junior would probably be at every case in the six Courts at the Guildhall—all his cases on at the same time; and spending his time wandering from Court to Court supervising his leaders. The fault of the Guildhall was that you did not necessarily get Judges who were acquainted with commerce, and the arbitration system in the City of London therefore increased. At last there came an incident, when I was one of the counsel concerned, which led the commercial community and the Bench to the conclusion that something more must be done. A large sailing-ship, laden with a number of bales of cotton, was coming up the Channel in the winter, and, owing to heavy fog and stormy weather, had not seen land for two days. The captain was getting very anxious, and suddenly, in a momentary clearing, he saw a bright light flash high up on his port bow. He thought at once " Beachy Head." " Port your helm, hard ! " He did so, and went off to the south. But instead of Beachy Head, it was the light on Cape Gris-Nez, and the ship went hard on the rocks under the French cliffs. The weather was

rough. They got the bales of cotton out slowly and with considerable expense, because every Frenchman near looked upon this as a benefaction of Providence. They managed to get them on to the beach, and cover them with tarpaulin, and then hauled them up to the cliff. They gradually got them to the railway, and brought them through by railway and the Channel steamers to London. The shipowners then claimed the freight. It was now that the fun with the lawyers began. There is such an institution as "general average," by which, when sacrifice and expenditure are made for the good of the whole cargo, the expenditure is proportioned over the whole cargo, saved and lost, under very strict rules. With the question of how this expenditure was to be spread out over all the cargo, the greatest dispute arose. There were certain people who produced great books of average statements, which stood two feet high, and another person produced a second book which proved the first one all wrong. Then it came into Court. It came before a Judge—a very popular Judge—who had practised in a purely agricultural county, and whose elevation to the Bench was not wholly unconnected with his devoted services to his party, and he had to listen to this case—probably hearing of general average for the first time—for nearly a fortnight; during which the leaders, Mr. Arthur Cohen on one side and Mr. Gorell Barnes on the other, addressed him, and he carefully took down everything they said. And he said at the end: "I will consider my judgment." And three months passed, and he was still considering his judgment; and six months passed, and he was still considering his judgment; and nine months passed, and he was *still* considering his judgment. And counsel timidly took their courage in both hands, and went to ask whether his Lordship would be able to give the results of his consideration shortly. And he said he would. He came into Court, and he said this was a case raising questions of general average. "The first question was—What was the first question, Mr. Cohen?" Mr. Cohen told him what the first question was. He said: "Yes; I agree with the average stater." "And the second question—the second question, Mr. Barnes, what exactly was it?" And so with the third question, he said, "I agree with the average stater; judgment for the plaintiff." The case went to the Court of Appeal, and then to the House of Lords, and they restored the judgment of the Judge below for entirely different reasons. By this time the various business men concerned said: "What is this system you are offering us? Let us have Judges who understand our disputes. We have no desire to bring our cases

on as a means of educating people who have never heard of the matters involved before." The result of this case, coming on the top of some thirty or forty years of struggle, was that on May 24, 1894, an elaborate system of rules for the Commercial Court was set up. It was largely the work of that very great lawyer—even a greater lawyer than he was an advocate—Lord Russell of Killowen; and he got to help him, and to carry out the ideas he had in his head, that very great commercial man, Mr. Justice Mathew. I do not know that anybody considered the latter a great lawyer—I do not think he professed to be himself. He was certainly extraordinarily bad at figures. If he was considering what damages he should give a plaintiff he would put down two and three, add them up as seven, and give the plaintiff nine. But he presided in the Commercial Court giving great satisfaction until he was raised to the Court of Appeal; and for this reason: he was thoroughly acquainted with commercial law and practice; he understood what the case of the plaintiff and of the defendant was from the commercial point of view, and when he gave his judgment each side understood what he was talking about. There have been Judges who have given admirable judgments according to the law, which were perfectly unintelligible to the commercial men concerned. Now, with Mr. Justice Mathew, the parties might think his judgment wrong, but they always understood what he meant, and why he decided as he did. And the system that Lord Russell and Mr. Justice Mathew between them established was this. (You fortunate young men have not yet come across the "White Book." There are gentlemen here who know what that terrible institution is. There are now in the White Book about 2,000 pages of rules and cases, closely printed, which are supposed to settle the practice in ordinary actions.) The founders of the Commercial Court said "Our object shall be this: Get the parties before us the moment the writ is issued. Know what they are fighting about. Let the plaintiff tell us what he says the dispute is, and the defendant what he says the answer is. Without binding ourselves with any rules, make an order suited to that case so as to dispose of it as quickly as possible and as cheaply. Try the case next Monday." That was the sort of line that they adopted in the Commercial Court. I have as counsel issued a writ on the Monday and tried it on the Tuesday, and settled it the same day with perfect satisfaction to both parties. Now you will see at once one fault of the system: it depends on your Judge. Get an inefficient Judge, and the whole system goes wrong; get a Judge who cannot make up his mind quickly, and

the whole system goes wrong. You really want a succession of Mr. Justice Mathews to work it. You want a man who can give his decisions very quickly, and who can make an order fairly. You must not hurry the case too much. It may be that the plaintiff is not so honest as he looks, and keeps documents back; you must not be beaten by that. You must know all the facts. It requires a great many very exceptional qualities in the Judge; it requires great good faith in the solicitors. If you put a counsel or solicitor who is a good defender of prisoners in the Commercial Court, it probably would not work. You want counsel and solicitors who are working with the Judge, to be sure that the dispute between the parties shall be fairly tried. There have been Judges in the Commercial Court—most able men, most popular men—who have not worked the system very well; sometimes they have been too good-natured; to everybody who said "Let us adjourn for a week," they said "Oh, certainly—take a fortnight." Now this does not work. Again, the system does not work very well if your Judge is too conscientious; if he is too anxious to arrive at a right and fair conclusion and, from over-anxiety, takes too long to do it. There have been excellent lawyers who see so many sides of a question that they find it difficult to make up their minds on facts; there was one great lawyer who spent six weeks making up his mind who should pay the costs in a certain case. Now you cannot run life on that scale in business. And so it is one of the faults of the system that, unless you can get Judges like Mr. Justice Mathew to work it, it may break down. Fortunately, we have had a succession of Judges in the Commercial Court who have been able to work it. The present Judge who sits in the Commercial Court, Mr. Justice Bailhache, is carrying on the traditions of the Court with the greatest success and the fullest confidence of all who appear before him. I asked him how long he was taking at present to try his commercial cases, and he said that the average time from the time you went to the Judge to the time the case was heard was two months. Now, in the United States no commercial case is heard under a year. And these quick hearings in our Commercial Court are the things that have struck lawyers over here from the United States. Apparently in the United States they are still in the stage that we used to be in. They are using the old English forms and particulars for delay, freely availed of by defendants who want to be dilatory. There the plaintiff complains that he cannot get a decision, because the Judges, being popularly elected, are tied down by strict rules of procedure. Here the speed is such that the defendant may

howl because the case is decided before he has time to turn round.

Now, that is the system which at present has been introduced to deal with commercial disputes. The Judges are impartial and incorruptible; they decide settled principles of law. It is quick and, unless you pay extravagant fees to counsel, it is cheap. And I think it is one of the most satisfactory systems which has yet been introduced. That is all I desire to say about the work of the Commercial Court.

One thing more I want to say before I sit down. It is a great pleasure to me as an old Cambridge man—an old Trinity man—to come back to speak to the young men who are coming on. I almost tremble to think how many future Judges of the High Court I may be addressing to-night. Indeed, there may now be in front of me one or two Lord High Chancellors. I expect you are thinking, "Well, if this old fogy has got near the top of the judicial tree, surely *I* can get on there": I think you can, and I hope you will—men *or* women. I come from the Middle Temple, which for some reason has been more specially and abundantly favoured by the ladies than any of the others. I think three-quarters of the ladies at present studying for the Bar are at the Middle Temple. We wish them every success. One lady at the last examination got a first class in one subject and a second in another, and her examiners told her she had done extraordinarily good papers—I hope she will keep it up. The ladies must not expect special courtesy at the Bar; they will get, like all barristers, a fair field and no favour, and it will rest with themselves whether they get on or not.

What I want to say to you all—men and women—is this: You are about to enter one of the noblest and one of the most loyal professions in the world. You will hear people—members of the Labour Party particularly—say lawyers are unproductive. It is not true; we are productive of justice. And there can be no nobler task than to take part in the administration of justice in a civilized country. Do not make the mistake of thinking that you are to go into the profession to win for your client by whatever means you can—you must win by justice. You fight with the sword of the warrior, not with the dagger of the assassin. You are all taking part in the administration of justice, and if you succeed in bringing justice you are engaged in providing one of the greatest necessities for any civilized country. May I give you a word of advice? Nearly forty years I have now been at the Bar, and ten years on the Bench. For some fifteen years before I went on the Bench I was earning

nearly double the salary of a Judge, and from my experience I advise you that the first thing you have to do in dealing with a case is to get your facts clearly in order. I heard Lord Russell once say to an amiable advocate who was throwing facts about in wild confusion: "Mr. So and So, can you give me no order? Alphabetical will do if you can give me no other." When you have got your facts in order, you are some way to answering the question; because to grasp the real sequence of events takes you a long way. When you have got your facts in order, do not set to work to see whether case B is more like it, or case C; try next to get hold of the principles, not the facts, of these cases, but the elementary principles they lay down, and apply the elementary principles to the facts that you have got in order.

May I tell you how my dear old master in the law (also a Cambridge man, and especially known at Cambridge because when the Cambridge crew sank at the boat race he was the only one who could not swim; his name was A. L. Smith, and he was commonly known at the Bar as "A. L.") used to put it? You would find him sitting in the pupils' room on the table in his shirt sleeves, and if you went in to him with an armful of books, to consult him about a case, he would say (if the ladies will excuse me), "Damn the books--tell me the facts"; and when you had told him then he would begin to work on the principles, and so get to the result. Then he would say "Have you got anything in your beastly books to beat that?" Try to get your facts in order, and a good grasp of principle. No Judge, nor anyone else, knows anything like the whole details of the law; it is impossible to know all the statutory law, and not very possible to know all the common law. You know where the law is to be found, and if you have a good grasp of principle you can work it out, as applied to your facts.

Now another thing. When you are in Court, remember that you have to keep up the reputation of an English barrister, and that is this: that if you make a statement of fact, the Judge shall be able to rely absolutely on your statement. That does not mean that when you open a case the witnesses will prove what you say—male witnesses are unexpected, and female witnesses are still *more* unexpected. The best thing is to understate the case, and hope the witnesses will prove more than you say. If the Judge says to you: "What was the evidence on this point?" or, "What is in that document?" or asks you any question of the facts that have been proved, you should answer with such accuracy and honesty that he may rely on every word you say. Understand! That is the reputation of a first-class English

barrister—we are a thoroughly honourable profession. When you are dealing with law, do not demean yourself by putting forward a proposition of law you know or suspect to be wrong, because probably the Judge will know it too. And the effect is this—either he thinks that you are an ignorant fellow, which will not do you any good; or he thinks that you think *he* is an ignorant fellow, which will do you still less good. Of course, you cannot always assume that the Judges know all the law. There is a well-known tale, which comes from America, of an advocate in the States who was proceeding to expound at great length the elementary principles of the Law of Contract. At last one of the Judges of the Court of Appeal said: "But Mr. So and So, you must give us credit for knowing *something.*" "That was the mistake I made in the Court below, your Honour," he replied. You have to instruct the judges sometimes, but do not, for heaven's sake, instruct them in law which you know to be wrong.

I hope that every man coming to the profession of the law will attain success. But whether you do this or not, so conduct yourselves that you may live up to the present high standard of one of the most honourable professions in England.

T. E. SCRUTTON.

In reply to a vote of thanks, the Lord Justice said: "The mover of this vote has observed that the fact of having listened to me to-night will help to make him and his fellow-students less nervous when the time comes for them to appear before a Judge for the first time. I assure all young men coming to the Bar that one of the great desires of the whole Bench is to assist them in presenting their cases. Interruptions and contradictions by the Bench become more frequent according to the eminence of the counsel addressing them. But to the young man in a very clean wig (and some of them look very white indeed) and nervous in his first case (and some of them evidently suffer tortures), both the Judges and the senior members of the Bar seek to offer nothing but help. One of my pleasantest memories is that of two letters I received when, after sitting as Commissioner of Assize on the North Eastern Circuit, I was raised to the Bench. They were from young men who had held their first briefs before me as Commissioner, and they wished to thank me for the help I had given them. No young man entering the profession need be in any fear of appearing before the present Bench of Judges."