

DUTIES OF LAWYERS*

(A lecture delivered by the Hon. Mr. Justice W. Harding,
B.Litt.,LL.D.)

THE lecturer began by stressing the point that he did not intend to lay down a rigid catalogue of does and donts ; he would merely express his personal views on the matter. His aim was twofold: to inculcate good counsel in the minds of law students and to impress upon them the high standards of the profession which it was their duty as potential lawyers to maintain.

There existed, however, an inveterate popular prejudice against the legal profession — a prejudice as impossible of explanation as the instinctive dislike of Dr. Fell in the old rhyme. Three charges seemed to be at the root of this profound prejudice.

In the first place it had been pointed out that advocates could not be sincere and honest man in their private life once, in the words of that mordant satirist Swift, they were men “bred up from their youth in the art of proving by words multiplied for the purpose that white is black and black is white.” The answer to this charge was that in pleading a case an advocate was not stating his own opinions ; it was no part of his business, and he had no right to do so. What it was his business to do was to present to the Court all that could be said on behalf of his client’s case, all that his client would have said for himself if he had possessed the requisite skill and knowledge. Outside the court a lawyer was paid for affecting warmth for his client, he was briefed to express his client’s views, and therefore there was no dissimulation : the moment he left the Bar he resumed his usual behaviour.

A second charge was concerned with the law’s delays. In that connection it was well to weigh carefully the words of Mr. Justice Eve : “The reputation of a Court of justice is built on the soundness of its judgments and not, as in the case of motor-cars, on tests for speed.” The third charge related to the alleged mercenary character of his forensic triumphs. There was a repugnance in the popular mind to the idea of paid advocacy. People were too ready to accuse the lawyer of “selling his ingenuity to the highest bidder. That in a sense might be regarded as paying an involuntary tribute to the Bar for it recognized the fact that the advocate in exercising his profession was discharging a public duty which it would not be fitting to place upon a mere business footing.

After advocating the closest co-operation between the Bench and the Bar, and warning his listeners against the layman’s pointed satire exemplified in Swift’s definition of the Judges as those “who had long talked while others slept and now slept while other talked”. The lecturer went on to lay down the following golden rules embodied in the Code of Louisiana supported by the New York Commissioners, and quoted by Jameson :

1. *To maintain the respect due to the Courts of Justice and judicial officers, — Contempt of Court meant contempt of the Sovereign.*

2. *To counsel or maintain such actions, proceedings or defences only as appear to him lawful and just, except in the case of a person charged with a public offence, i.e. a crime.*

3. *To employ such means only as are consistent with truth and never to seek to mislead the Judges by any artifice or false statement of fact or law. — The Court was entitled to rely on counsel’s not misleading it. With regard to a question of law, no water-tight rules existed, but*

* Reported by Edwin Busuttil, B. A., and Paul Mallia, B.A.

Lord Birkenhead in *Glebe Sugar Refining Co. v. Greenoch Harbour Trustees* expressed the view that all authorities which bore one way or the other upon matters under debate should be brought to the attention of the Court by those who were aware of them, even if the particular authority did not assist the party who was aware of it.

4. *To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client.* — A lawyer secured client's confidence only in so far as he showed himself worthy of it.

5. *To abstain from all offensive personalities and to advance no fact prejudicial to the honour or reputation of a party or witness, unless required by the justice of the cause with which he is charged.* — He must not go too far in cross-examination and it was his duty to see that no man's good name was wantonly attacked.

6. *Not to encourage either the commencement or the continuance of an action from any motive of passion or interest.* — The advocate was a representative but not delegate. He gave to his client the benefit of his learning, his talents and his judgement, but he had no personal interest in the case. In the words of Lord Eldon : " The lawyer lends his exertions to all; he lends himself to none".

7. *Never to reject for any personal consideration the cause of the defencies or the oppressed* — the services of counsel were open to every member of the public alike for the Bar was, in the words of Maitre Moro Giafferi, " the bulwark of each citizen against the rage and violence of authority".

The lecturer then struck a new note. He emphasizes the fact that no one could possibly be a good lawyer without being a good scholar. Intellectual attainments were of the utmost importance to lawyers. A lawyer must live a life of intellect; his studies must not end on his leaving the Alma Mater but must today than he knew yesterday. He must ever strive to know more today than he knew yesterday. He must make the legal profession a veritable " aristocracy of the brain." Lastly, a lawyer must possess that "indefinable something" which was best termed "gentleman". And the best equivalent to that word "gentleman" was given by Arthur Bryant in his book "English Saga"— "a Christian".

Mr. Justice Harding then reminded lawyers of the cardinal fact that every lawyer stood for a great tradition ; a priceless inheritance was bequeathed to every lawyer. A lawyer must have a proper conceit of himself as a member of a great profession and must bear in mind that, were it not for the Bar, our liberties and privileges would be very much less than at present. Two examples from the past, to which the lecturer referred, showed clearly enough the high esteem in which Maltese Judges, who after all were also lawyers, were held.

The lecturer ended up by urging the present Law Students to make use of the opportunity which would surely come their way in the days of post-war reconstruction (a word certainly not limited to buildings, though the lecturer suggested that the Law Courts should occupy a building more dignified and more worthy of the legal tradition than hitherto). Finally he echoed the words of a Canadian Prime Minister who exhorted his compatriots to devote to their country—their work, their arms, and their hearts.