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# Address of Justice Edward J. Fox of the Supreme Court of Pennsylvania

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## Address of Justice Edward J. Fox of the Supreme Court of Pennsylvania\*

I feel greatly honored at being invited to speak on this auspicious occasion as it is one in which I have a very great interest. I am especially interested, and have been for a great many years, in the work of legal education. It was my very great pleasure in the early history of the Pennsylvania State Bar Association to be associated with Dean Trickett as a member of the Committee of Legal Education. Before my elevation to the Supreme Court, I was a member of that most unpopular body, the State Board of Law Examiners, for a long period of years and my interest, therefore, in legal education is a very deep and sincere one. I recognize what splendid work the Dickinson School of Law has done. Both the Law School and Dickinson College have an established place in the history of the nation. Chief Justice Roger B. Taney is a graduate of the law school, and Dickinson also gave to the country James Buchanan, President of the United States, and a long line of distinguished men who have been educated in the law here.

When Dean Trickett wrote me inviting me to come here with the modesty that is thoroughly characteristic of him, he did not indicate in any way that the hall to be dedicated was known as Trickett Hall, but simply wrote me that it was to be the dedication of "a Hall." He did not indicate either just what topic I should treat in my address, but left that entirely to my discretion, and I confess that I am somewhat embarrassed to determine just what should be my thought on this occasion.

I have too recently become a member of the highest appellate court of the state to feel that I am qualified to speak for the Supreme Court of Pennsylvania, but the limited experience which I have already had upon the Bench indicates to me that the work is most interesting, and at the same time I may say that this experience teaches me that you gentlemen who are members of the Bar should feel that the court wishes to have all the assistance that it can from the members of the Bar. I recall an anecdote told by Chief Justice White of the Supreme Court of the United States which, while it illustrates what I mean, perhaps goes further than is neces-

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sary. The Chief Justice said that upon one occasion a young lawyer from Virginia was arguing a case in the Supreme Court of the United States and he was proceeding to state with great precision a number of very elementary principles of law. Finally the Chief Justice interrupted him and said, "Mr. —, do you not think it safe to assume that the members of the Supreme Court of the United States have some knowledge of the elementary principles of law?", when the counsel interrupted and said, "No Sir, that is just the mistake which I made in the lower court."

Before proceeding to discuss what I have in mind, there is one matter in connection with the appellate courts of Pennsylvania to which I would like to refer, and I trust that what I say will not be misunderstood or misinterpreted. The events of the past few weeks have served to draw my attention particularly to this fact, and with the profession so largely represented in this gathering, I feel that it is an opportune time to suggest to them this thought in the hope that they will do what they can to rectify what I believe is a serious misapprehension in the mind of the public. I believe that the ordinary business man and citizen of Pennsylvania has comparatively little interest in the personnel of the appellate courts. When it comes to the election of a local judge they will probably know personally the candidates who are presented and they are sufficiently interested to vote at the election for a local judge. But when the question involved is the election of a judge to the appellate court they do not know the men who are candidates, and they either do not vote at all or vote blindly for the first or last man on the ticket, and content themselves with the discharge of their duties as a citizen in that way. I talked recently with a man who said to me that although he had lived in Easton for ten years he had never registered as a voter, and he seemed completely indifferent not only to the judicial elections but to all elections, and I endeavored to point out to him how vitally he was interested in the members of the appellate court.

Out of the large number of men convicted of crimes in our court every year there must of necessity be a considerable percentage of innocent men convicted. My friend had never stopped to reflect upon this, and in order to bring the argument home I said to him, "Suppose you are charged with some serious crime, and while the circumstances are such that they indicate your guilt, you know that you are innocent of the crime charged. You are tried in the lower court and you are convicted unjustly. You wish to take every opportunity of setting aside that conviction and you take an appeal to the appellate court. The appellate court is composed of seven

judges. Suppose the court divides as to the propriety of the conviction by a vote of four to three. One man therefore determines your fate." I think my friend realized after this presentation of the matter that he was interested in the composition of the appellate court and the citizens of Pennsylvania are all interested and they cannot tell when they will be vitally and personally affected by the decision. I feel, therefore, like urging upon this body of lawyers that they engage in a campaign of education. I venture to say that few business men in Pennsylvania can name the Chief Justice of Pennsylvania. The Secretary of the Board of Trade of my home town who is a man of education and intelligence was in my office recently and I asked him if he knew who the Chief Justice was, and he was unable to tell me. And this is not a singular experience but one which I think can be duplicated in any town.

I would like to direct your attention for a few moments, however, to some popular fallacies that exist as to the profession of law and lawyers. That they are fallacies there can be no question, and that a prejudice does exist in the community against lawyers is equally true. Long ago, Jack Cade exclaimed, "First let us kill all the lawyers," and this simply typifies the sentiment that still exists in large part among the people generally, namely, that lawyers are not to be trusted, and that they are untruthful and that in many ways they are unworthy of confidence. Some years ago a good old lady inquired about a young man just leaving college, and when she was told that he was about to enter the profession of the law, she expressed great surprise and dismay because she was under the impression that he had intended to enter the ministry, and endeavored to sustain her attitude by saying that her father had originally intended to study law and when he was converted to Christianity he found that it was impossible for him to be a lawyer, and then he entered the ministry. I think this impression lies only on the surface, and that really, as lawyers all know, there are constant instances in which the people at large manifest their confidence in the profession.

One of the fallacies is that the term "lawyer" is synonymous to "liar." We all know that this is not true. As long ago as in the Statutes of Edward III, it was a penal offense for any servant to indulge in deceit, and the penalty was a year's imprisonment. In no other profession except the clerical profession is there any vow or oath taken, but when the lawyer begins his practice, he swears not only to support the Constitution of the United States and the Constitution of Pennsylvania but also that "he will use no falsehood and that he will delay no man's cause for malice or lucre." I have had a long

experience at the Bar and I am glad to say that in that long experience I have encountered comparatively few instances in which a lawyer's word could not be absolutely depended upon. It is the constant practice of the courts to recognize the unsworn statement of a lawyer as absolute verity. One of the reasons which perhaps gives rise to this impression is the fact that in the trial of cases the lawyer is engaged in an attempt to elicit the truth, and instead of recognizing this fact, the public believes that the effort is made to obscure or hide the truth and to bring out only facts that will assist the particular litigant. I believe that most witnesses on the stand intend to tell the truth, and yet in a great many instances, without intending to do so, they are guilty of perverting and distorting the truth to a very great extent. This is due to the fact that a witness is obliged to exercise not only his memory but his powers of observation. We all know how fallacious human memory is, but I think we do not all appreciate fully how little we exercise our powers of observation. Did you ever make the experiment of walking by a show window in a department store, noticing the articles in the window and then determining after you left how many of them you can write down or call to memory? This simply illustrates the fact that we are all of us prone to make inaccurate observations and the result is that when it becomes a matter of testimony in court, it is difficult to give accurate testimony because of the lack of accurate observation. The art of examination and of cross-examination, if I may so speak, is a perfectly legitimate method to use for the purpose of eliciting the truth. It may aid the honest witness by developing his knowledge, and it is equally true that the dishonest witness ought to be exposed. I recall an instance that occurred in the trial of a case in our local courts when Judge Scott was the cross examiner. A witness was undertaking to tell that he had delivered a certain number of loads of wood, and he gave the days and dates on which the deliveries had been made. Judge Scott, with an account book in his hand, induced this witness who was not frank and truthful, to testify that he had delivered the wood on a large number of days when there had been no actual deliveries and the witness was misled simply because he believed that the entries were made in the book which Judge Scott held in his hands. There were no such entries and the witness was completely discredited when Judge Scott came to make his address to the jury.

Another fallacy with regard to our profession is that a lawyer is constantly defending people whom he knows to be guilty and that this is discreditable. I have not been in the criminal courts for a good many years so far as the active trial of cases is concerned, but

I have kept in close touch with them and I think I know where of I speak when I say that so far as my experience goes it is a very rare experience for a lawyer to know that a client is actually guilty of a crime, and when he does discover this he usually advises that the client shall plead guilty. There is nothing discreditable in using your knowledge of the law and your skill as a practitioner in defending a man who is accused of crime. There is always a possibility that he may be innocent and it is his constitutional privilege to be defended by one who is learned in the law and there should be no criticism for this reason. In the trial of Queen Caroline, Lord Brougham thus states his conception of his duty to the client, "I once took occasion to remind your Lordships, which was unnecessary, but there are many whom it may be needful to remind, that an advocate by the sacred duty which he owes to his client, knows in the discharge of that office but one person in the world, that client and none other. To save that client by all expedient means, to protect that client at all hazards and costs to all others, and among others to himself, is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the distraction which he may bring upon any other, nay, separating even the duty of a patriot from those of an Advocate. He must go on reckless of consequence if his fate it should unhappily be to involve his country in confusion for his client's protection."

This is perhaps an exaggerated statement of the duty which a lawyer owes to his client, and indeed Lord Brougham subsequently confessed that the statement which was made was partially for the influence which he hoped it would exercise upon the King, but, nevertheless, the real basis of the relation which all lawyers sustain to clients is contained in this excerpt.

Another fallacy is that lawyers are not to be trusted. It is constantly exemplified in our practice that our clients and the people generally do not really feel in this way. A client will confide in his counsel the most sacred family secrets which he would not divulge to any other person. He will commit his interests wholly and absolutely to the care and custody of his counsel in a way that exhibits the greatest possible confidence. He will deposit securities that he would not leave with the banker under similar circumstances without the most careful receipts. If you will pardon a personal illustration, I recall that some years ago I was engaged in a litigation with reference to a divorce in New York where, in order to effect a settlement, it became necessary for my client and his wife, who were the parties to the divorce proceedings, to make a conveyance of a large amount of real estate to me. The deeds were executed and to

my amazement when I proposed that I should give some indication of the fact that I held this property only in trust, my client demurred and said that it was totally unnecessary. Of course I was unwilling to permit the matter to stand in that way, but it exemplified the thought that I have in mind that our clients are constantly entrusting to our care substantial interests with absolute confidence that their trust will not be abused.

Again there is the popular idea that lawyers are not a hardworking profession, that their money is made easily and that they grossly overcharge for their services. There are so many practicing lawyers here present today that it seems idle to say that this is a fallacy. The work of the legal profession is most exacting and onerous. The constant multiplication of reports is one item alone that illustrates the immense amount of labor involv[ed] in keeping up with the work of the profession. We have almost 260 volumes of Pennsylvania State Reports and a large number of Superior Court reports, not to mention the United States Reports, and the reports of other states to which resort must constantly be had in aid of the successful work of the practicing lawyer. A lawyer's work is never done. He may be engaged in the trial of a case during the entire day and perhaps nervously and physically exhausted from the work and yet he must go to his office and prepare for the continuance of the work of the next day by unremitting toil, industry and study. The compensation which he receives for work of this kind is not excessive and is often inadequate, and it has been my experience that most lawyers are absolutely honest and fair in their endeavors to make the charges proper and satisfactory.

I have thus briefly indicated some fallacies that obtain as to our profession. The legal profession is a glorious one and we must see to it that there is nothing done that will tend in the slightest degree to tarnish it or take away the lustre to which it is properly entitled. I am very glad to participate in the ceremonies attending upon the dedication of this Hall to Dean Trickett, and think that it is fitting that the Hall should be so named. Dean Trickett can well exclaim "exegi monumentum aere perennius." He has indeed erected a monument more lasting than bronze in the hearts of men who have gone out from this splendid school of law. You who have sat there at the feet of the Gamaliel have enjoyed a rare privilege and which I can well see you all prize most highly. If we wish to keep the lustre of our profession untarnished, may all of us, both you and I, mould our professional lives upon this life of the great teacher here who is so eminent and so justly distinguished in the world of legal education as a Master in the profession.