SUGGESTIONS TO YOUNG LAWYERS.

Although the *YALE LAW JOURNAL* was intended for, and enjoys circulation among, lawyers, yet, I may not be in error in assuming that it was primarily intended as a University publication addressed chiefly to students. To such, the few remarks which you have done me the honor of inviting me to make, are addressed and for them intended. Active practitioners have learned by experience aided by reflection the truth of what is here said. To those, however, who still stand upon the threshold of the temple of Justice and gaze with wondering and longing eyes upon the dim mysteries of its shrine, they may afford some hints not wholly useless, perhaps, some guidance not utterly misleading.

Young men, especially those who pursue their studies in a university, unavoidably removed from actual contact with the practical every day administration of justice, are very apt to become enamored with the intricacies of the law, its subtleties, its technicalities. The endless but ever logical refinements of the lawyers who moulded the common law in the days of the schoolmen, possess a certain fascination to which the eager student readily and pleasurably surrenders his intellect. The result is apt to be a disposition to look upon law as an exact science, governed by fixed unvarying rules, susceptible of precise application in legal controversies, and affording an unvarying solution of legal problems.

The truth is, however, that, whatever it may be in theory, in practice law is far from being an exact science. Its rules are constantly modified or entirely swept away by influences and forces neither described nor even hinted at in the volumes of Jurisprudence. A correct appreciation of these forces and influences and the faculty to utilize them and turn them to advantage, often constitutes the budget of the successful practitioner, and serves to explain why it is that very learned lawyers are not infrequently very unsuccessful triers of cases, and men of very mediocre legal knowledge often achieve no unenviable success.

It is not within the scope of this article to describe at length these various extraneous forces and influences. They are too numerous and varied. It may suffice, if we confine ourselves, for

the present, to the consideration of the power which, in practice, the innate sense of justice of mankind exerts in disturbing and nullifying the application of the best settled rules of law.

This innate sense of justice is, of course, older than legislation. It constitutes, in fact, but a part of the faculty of perceiving truth. The ability to know what is just or unjust under a given state of facts, is nothing more than the faculty of perceiving what are the true relations of those facts. Laws are but the expressions of the relations thus perceived. They do not create, they simply express the idea of justice as understood by the legislator. While in theory the rules formulated by the law-maker or by the law-making judge, are intended to be of universal application under the same state of facts, yet, in practice, a thousand unforeseen circumstances are sure to arise to make their application in the particular instance shock the innate sense of justice. When this takes place, it is not long before some device will be adopted to neutralize the application of the rule. It is this sentiment which engrafted Equity Jurisprudence upon the rigid trunk of the Common Law, and which, to this day, makes juries and even judges, yielding to their impressions of justice in the case in hand, override rules which they themselves declare, or are instructed to believe, to be immutable.

As this article, as already stated, is addressed to students about to commence practice, a few illustrations will better serve to explain my meaning, and to impress it upon the mind than any labored metaphysical dissertation.

Begin, then, with the operation which the sense of justice of a jury has in influencing its verdict and directing it in channels which neither the law nor the evidence of the case have traced.

Take this instance:

In early days there came to the Pacific Coast a married couple, whom, if you please, we will call Oliver, accompanied by a boy of tender years. The child bore their name. They treated him as their son. He looked upon them as his parents. No one in the community dreamed that he was not their child. The family prospered and, in the course of time, accumulated very considerable wealth. The boy grew up a good-natured popular young man, but neither remarkably bright nor industrious. Prosperity, however, as not infrequently happens, brought discord, and the couple in their old age were divorced, the husband being allowed to retain the property upon securing to the wife a generous annuity for life. Young Oliver then learned, for the first time, that he was not the son of those whom he had always looked upon

as his parents. He was no favorite of his supposed father, and, after the divorce, lived with his supposed mother. She having soon thereafter died, he was thrown upon his own resources, and commencing to lead a rather vagabondish life—the elder Oliver refused any longer to countenance or assist him. Soon after his wife's death, and when past seventy, the old man wooed a young girl of twenty-two, and in a short time, in turn, died, leaving his large fortune to his widow, whom he appointed executrix of his will.

At this point the machinery of the law began to be put in motion. Young Oliver presented to the executrix for allowance, a claim of about seventy-five thousand dollars, alleged to be due for principal and interest, upon a promissory note of fifty thousand dollars, purporting to have been executed years before by the elder Oliver to him. The executrix rejected the claim, on the ground that the note was a forgery. Suit was then brought against the estate. It came on for trial before a jury of the vicinage, the sole issue raised by the pleadings being the genuineness of the note. Experts in handwriting were called on both sides, and the usual paraphernalia of enlarged photographic exemplars, colored charts, magnifying glasses and microscopes, were brought into court. The evidence was very decidedly, not to say overwhelmingly, against the genuineness of the note. Independent of all expert testimony, the appearance of the document, the relation of the parties, and numberless surrounding facts were abundantly sufficient to satisfy a dispassionate mind that the elder Oliver had never executed such a paper.

The jury retired, and, after a brief consultation, returned a verdict in favor of the plaintiff for the full amount of the claim. Walking from the court room with one of the jurors, the counsel for the plaintiff expressed some curiosity to know the ground upon which the jury had placed their verdict. "Oh," answered the juror, "we thought the estate was large enough to give the young man a share, and the widow would not miss it much."

The verdict thus rendered, is not to be disdainfully brushed aside into the heap of proverbially inexplicable verdicts. To the thoughtful, it affords food for reflection and instruction. It was simply a rough expression of the sense of justice of those who gave it. They knew all about the family. They knew that this young man had been allowed to grow up to manhood in the belief that he was the son of this wealthy and childless couple, and entitled to entertain reasonable expectations of succeeding to their estate. They knew that his supposed parents had permitted him

to shape his course in life in accordance with this idea. Then, the mother who really loved him had died, and the father who did not love him had remained in possession of the fortune which had been accumulated by the joint labor of both. This fortune he had left, after a brief period of marriage, to a young girl, whose claim did not seem adequate to deserve so ample a reward. The jury righted what they considered an injustice by giving the young man a share of the estate.

Now, note how the jury's decision, however illogical it might appear to one knowing the workings of their minds, would, even according to the rules of law, ultimately prevail. The judge of the trial court, when applied to for a new trial, would doubtless reply, "Upon the issue of the genuineness of this note the testimony was conflicting. It was for the jury to judge of the credibility of the witnesses and the preponderance of the evidence. By their verdict they have established the genuineness of the note. The verdict being supported by competent evidence should not be disturbed." Were an appeal taken, the appellate court would at once answer, "Upon the only issue in the case, there was a substantial conflict in the evidence. We, therefore, have no power to disturb the verdict." And thus, the plaintiff would retain a judgment legally based upon a promissory note, when in point of fact, the genuineness of that note, which was the only point in dispute, had never been judicially decided.

It would be an error to assume that the same feelings do not sway the decisions of judges, and is not the keynote of many a learned opinion apparently dealing with pure questions of abstract law.

I remember hearing a venerable judge, a member of the Supreme Court of one of the Western States almost from its creation, and its Chief Justice for nearly a quarter of a century, relate the following incident: A father leaving as his only heirs a son and daughter, had made a will bequeathing his estate in equal shares to his two children, but on condition that his daughter should not marry until she had passed her twenty-fourth birthday, and that, if she did, her share of the estate should go to her brother. Of course, as might have been foreseen, the girl fell in love when still in her teens, and, unwilling to wait for the remote and fateful birthday, married. The brother then insisted upon his right to the whole estate. His greed and ungallant treatment of his sister were the subject of much adverse comment; but it seemed plain that his legal rights were indisputable. The trial court having so decided, the daughter took an appeal to the Supreme

Court of the State. Upon the hearing, the counsel for the brother seemed to have it all his own way; the arguments advanced against him were not even plausible. It appeared clear that, upon the law, the girl must lose. Upon the submission of the case, the court retired to its consultation room. No sooner had the door closed behind them, than the Chief Justice, a man of generous and impulsive temperament, turned to a brother judge near him, exclaiming, "Brother C., we must beat that rascal." "I agree with you," replied Judge C., "that he ought to be beaten; but we must decide the case according to law, and the law seems to be all the other way." "Well," replied the Chief, "you'll find law enough if you only hunt for it." And of course they did. Whenever a judge's mind is made up that justice and fairness demand that he should decide a case in a particular way, he will seldom fail to find, or, not finding, make, law to justify his decision. In other words, though a judge's sense of justice may be more enlightened than a juror's, yet, when there is opportunity for its operation, it forms, in the one case as well as the other, the ultimate basis of the decision.

Lest it should be thought that this illustration comes from too far west, I transcribe here an extract from a letter from Chancellor Kent, published, when I first saw it, in the *American Law Record* of October, 1872. "My practice," writes the Chancellor "was first to make myself perfectly and accurately (mathematically accurately) acquainted with the facts. It was done by abridging the bill and the answer, and then the depositions; and, by the time I had done this slow and tedious process, I was master of the case and ready to decide it. I saw where justice lay, and the moral sense decided the case half the time. And then I sat down to search the authorities until I had exhausted my books; and I might once in a while be embarrassed by a technical rule, but I almost always found principles suited to my views of the case, and the object was so to discuss the point as never to be teased with it again, and to anticipate an angry and vexatious appeal to a popular tribunal by disappointed counsel."

If any lesson is inculcated by these illustrations, it is too plain to require pointing out. You may succeed by merely showing that the law is with you. You will seldom fail if you convince the jury or the court that justice is on your side.

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