

150

ADDRESS

DELIVERED BEFORE

THE LAW CLASS

OF THE

University of Maryland,

AT THE

Annual Commencement of the Law Department,

June 15th, 1872,

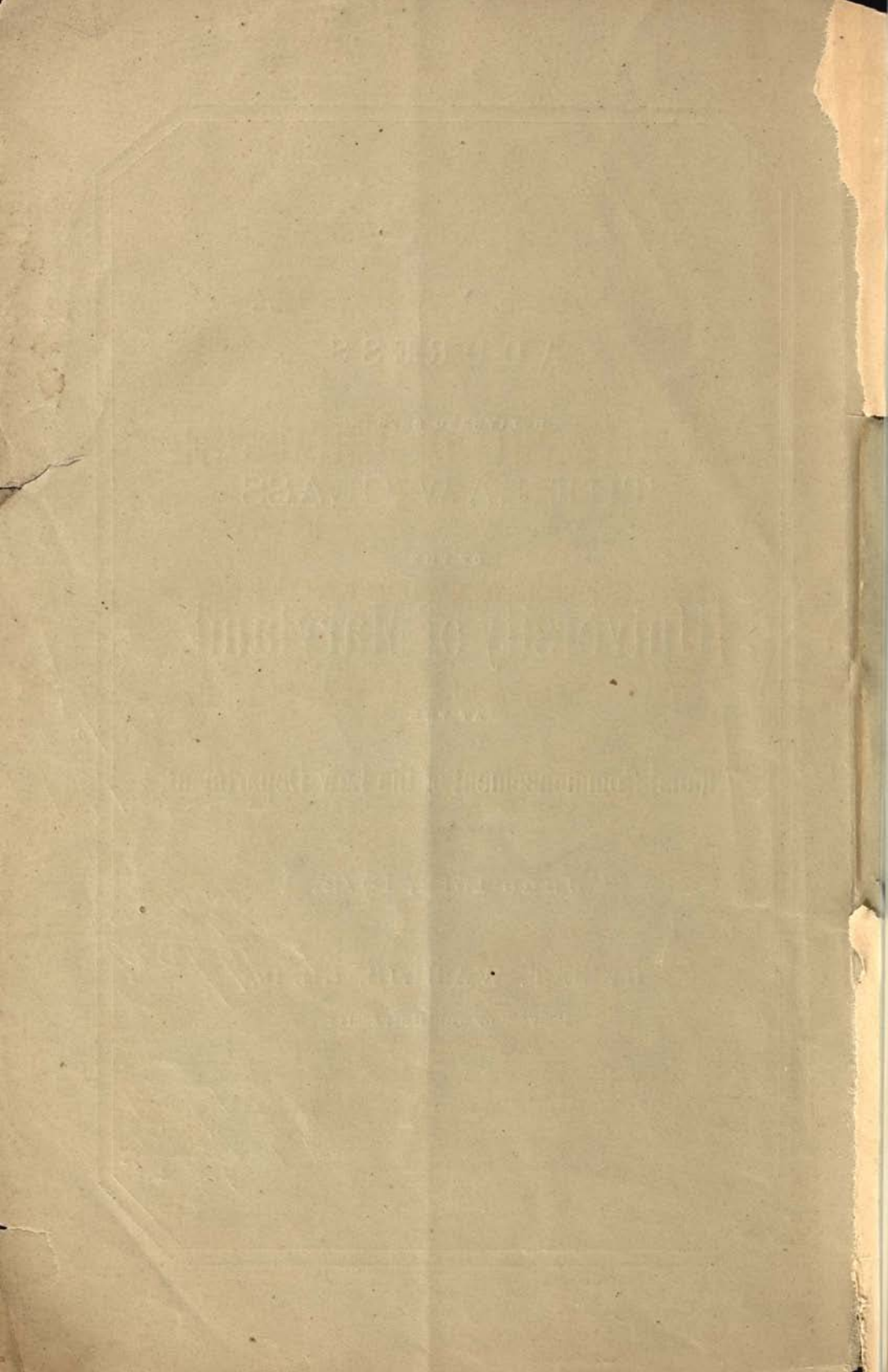
BY S. T. WALLIS, LL. D.,

PROVOST OF THE UNIVERSITY.

950  
10 222  
19 722

1022 29  
950 20  
19 72 29

19 87 54  
19 72 29  
15 25



A D D R E S S

DELIVERED BEFORE

THE LAW CLASS

OF THE

University of Maryland,

AT THE

Annual Commencement of the Law Department,

June 15th, 1872,

BY S. T. WALLIS, LL. D.,

PROVOST OF THE UNIVERSITY.

---

PRINTED FOR THE  
LAW FACULTY AND THE GRADUATES,  
BY JOHN MURPHY & Co., BALTIMORE.

1872.



\*

## ADDRESS.

THE Faculty of Law, gentlemen, have done me the honor to request that I should vary, upon this occasion, the routine of my official intervention, and—not exactly deliver you an oration, as I see is announced—but address you more at length than would otherwise have been my province. I should have yielded to their wishes with less reluctance, had my engagements permitted me to command the time for more careful thought and preparation. Indeed, agreeable as is the duty, in itself, to one whose sympathies are warmly with the struggles and aspirations of youth, I should hardly have undertaken to discharge it, but for the assurance of that indulgent consideration from my professional brethren, which only men, who are themselves over-tasked, can fully feel to be the right of their over-tasked fellows. When the career upon which you are just entering shall begin to be near its close, you will be more fortunate than they who have preceded you, if your recollections of the best efforts of your lives shall not be clouded by the painful consciousness, that you were able to give to them but divided faculties and the weariness of a jaded brain.



Before I go farther, gentlemen, you must permit me to congratulate you upon your good fortune, and the good judgment of your advisers, in the selection of the means which you have chosen for elementary professional instruction. I do not say this as matter of form, nor by way of compliment to the able and accomplished teachers, of whose learning and labors you have enjoyed the fruits. Professional opinion has been very much divided as to the advantage of university-instruction, by way of lectures, to students of law. My own experience and observation, I confess, have not inclined me towards that system, if pursued with any approach to exclusiveness. In England, the sentiment and custom of the profession have hitherto been strongly against it, and, even now, the effort to make it compulsory there is resisted by some of the ablest and broadest intellects of the Bar. Even those of the laity, who are in the habit of rallying us upon that "glorious uncertainty," which they seem to think belongs to the law, as contradistinguished from the rest of human things, would be surprised to know the extent of the conflict which exists on this point, among those who are best qualified to judge. In a recent debate in the House of Commons, upon certain resolutions of Sir Roundell Palmer, relating to the establishment of a School of Law in London,

this diversity of opinion was almost amusingly developed. The learned and eminent author of the resolutions used strong language in regard to the existing system of office-education. I doubt whether he would have made it less strong, if his experience had extended to this country as well as to his own. He said it is, "in truth a hand-to-mouth system, under which everybody is left to pick up his own instruction in law, as well as he can, entirely with a view to practice, and by doing it in that manner, with the assistance of those who are themselves engaged in practice, it is impossible that any foundation of a scientific knowledge of the law can be laid, however desirable it may be, and, as a matter of fact, it is not." He then spoke of the law itself, in terms any thing but respectful. "There is no doubt," he said, "that the body of our law contains many most excellent things, yet it is, on the whole, a very unmethodical and undigested mass." He went further, and drew a distinction between "the technicalities of the English law, or that sort of law which people study in England and practice in the English Courts," and "the law as a system and a science." He thought that the simplification of the law depended upon its scientific teaching, and that such teaching and the formation of scientific and enlightened lawyers by it, were best to



be secured by the establishment of a great legal University, with lectures and scholarships, and with examiners whose certificate should be essential to admission.

The project was opposed by no less distinguished a leader (among others) than the Attorney General, Sir John Coleridge. He professed to agree with the learned mover, in principle, but, as is usual in such case in our Craft, (if I may be permitted to say so,) he differed the more widely on that account, from Sir Roundell, in applying it. He said that "to teach English law by lectures was a pure delusion. It could be learned by practice only, and that"—he was irreverent enough to add—"on account of its unscientific system." He hoped "to see the day when the scandal of unscientific law would be removed by a Code," but, without a Code, he insisted that "it is utterly impracticable to teach the law, as it stands, without practically demonstrating it in the Courts."

The resolutions were negatived by the House, though not altogether on grounds which preclude their principle from being, to some extent, hereafter adopted. I have referred to the debate, chiefly because it shows how much more sharply than perhaps you are aware, the line is drawn, among leading professional thinkers, between the advocates of office-routine and those who favor



University-instruction. The conflict of these extreme opinions seems to justify to my own judgment the middle view which it has for many years approved. I mean the superiority of the double system, of which it has been our effort to give you the advantage, under the auspices of the University of Maryland. You have had, on the one hand, the benefit of a thoroughly practical office-education, with daily attendance on the Courts, and, upon the other, you have been carefully and systematically trained, by your Professors, in legal principles and reasoning. The tendency of the office to sharpen, contract and render technical, has been met and counteracted by that larger exercise of thought, which expands the intellect and weds analysis to generalization. The Regents of the University are pleased to be able, from the report of your teachers, to express their gratification at the diligence and success with which you have labored to improve the opportunities afforded you. It is but just, for us to recognize the promise of usefulness and honor which your opening career has given.

You of course understand your present position, and know what lies before you, too well to be discouraged by the suggestion, that your labors, thus far, have brought you but to the beginning of your fitness for the task you have undertaken. The future is to be for you not only an enduring strug-

gle for success, but a perpetual effort to deserve it. You not only cannot stand still where you now are in knowledge, but there will be no point in your career, protracted and fortunate as it may be, at which you can safely rest, in the conviction that you have learned enough and need labor no more. On the contrary, you will find the horizon expanding and receding as you advance, and, long as your day may be, the darkness will come on while it is yet far away from you. Experience of course gives confidence, and the long exercise of his powers enables every man of sense to form a reasonable calculation of his own strength and reasonably to trust it. So, too, increasing knowledge, and familiarity with the use of it, beget a proper and healthful self-reliance and self-possession as we grow older; but it is only fools who become self-sufficient with age. To the eye that has been trained in seeking after truth and wisdom, the distance that lies behind us is always less than that which is left to travel. With a life-long task then before you, it becomes you to consider well how you shall undertake it best. No man, of course, is able to make his life a logical process, and deduce results, from his plans and calculations, like conclusions from premises; but it is still possible for us, in the main, to give a general direction to our course by following out some general ideas and principles. The greatest soldier, it is



true, will often find that his campaign depends as much upon his enemy as on himself. His best plans quite as frequently will come to naught, but still, a campaign without a plan is not very apt to end in a *Te Deum*. If you would not find yourselves astray in a dark wood like Dante, when you are "midway upon the journey" of your lives, you must endeavor, now that the responsibilities of manhood are opening upon you, to form some definite understanding of what you have to do, and what your own qualifications are for doing it. Concerning the latter branch of the subject, mistakes are, I fear, as natural and as inevitable to you as to the rest of us. With respect to the former, we are all in the habit of making a good many more than are necessary. We are much under the dominion of phrases, which appear to mean a good deal, but really mean very little, if any thing. We accept a great many things as axioms, which are only platitudes. We pin our faith to the traditions of "unlanterned nights," (as Lamb calls them,) the darkness of which, heaven be praised, has long since departed. In all this, I suppose we differ but little from the rest of the world, for it is sad to think—nay, what a bloody lining there is sometimes to the thought—how much the fate of individuals and the fortunes of society and nations are made to hang upon words, which are passionately taken to be things.

Assuredly there is no one who has less disposition than myself to undervalue the profession to which I am proud to belong. Least of all would I desire to lessen its attraction or its value in your eyes, at a moment when you are looking forward to its honors and rewards, in the first fulness of that generous enthusiasm which is the brightest and most winning of the traits of youth. But to understand what your calling really is—to take the true measure of its importance and its dignity—is only to be just to yourselves and to it. There are many illusions which we ought never to part with so long as we can persuade them to linger, but those which distort to us the practical objects and purposes of our lives belong to a different class.

It is the fashion among us to speak of the law as a science, and I cannot tell how many clever and ingenious young men I have myself known, whose first experience of their profession, in its practical working and application, was made one of painful disappointment, and almost disgust, by this exaggeration. Jurisprudence is a science, certainly, and the noblest of all sciences, in so far as it applies to the regulation of human conduct that Eternal Law which “is laid up in the bosom of God.” But, Gentlemen, I pray you consider the distance between jurisprudence, so understood, and the common law of England as



patched from the civil law and supplemented by the Maryland Code! Doubtless, the common law, in some of its titles and divisions, may justly be regarded as eminently scientific. But to call it, as a whole and with all its modifications, a science, or the exposition of a science, is really to trifle and delude. The rhetoricians who liken it to a great river, which has brought down upon its bosom all the treasures of the realms of time through which it has rolled, seem to forget that great rivers bring down many things which are not treasures. They forget the waters, turbid with ooze and slime—the worthless spoil of devastated fields and homesteads ruined—the floating rottenness and waste of ancient forests and primeval plains—the rafts that cumber the surface, and the sands and stranded trunks that lie in wait, beneath, for shipwrecks. I fear that the simile, thus qualified, may be juster than it seemed at first, and I gave you, a moment ago, the exact language of some of the learned and able lawyers who participated in the recent debate in the House of Commons, in order that I might not seem to be speaking with presumption, or to be alone and without authority, in saying what some might regard as unduly derogatory to the system on which our profession is grafted. Some uneasy suspicions in the same direction must have crossed your own minds, I am sure, during your studies, in spite of the

reverence you naturally felt for the mysteries into which you were about to be initiated. The separation of Law from Equity must have stricken a rude blow at your notions of juridical philosophy. When you were first taught that a document with a scrawl to it was a "sealed instrument," and of "higher dignity," as such, than a paper identical with it, save as to the hieroglyphic in question, your previous ideas of dignity must have been very much shaken. But when you went further and learned that this dignity was no "insubstantial pageant;" that it dispensed with proof of consideration; that it sanctified a promise otherwise worthless; that it implied priority of satisfaction, in certain cases, and gave the happy possessor of the treasure four times as long to have the luxury of suing as if the mystic sign were away, you must have had some droll misgivings that your science, like that of human nature, belonged to the class commonly called occult. When you learned that an estate in land for ninety-nine years, renewable for ever, subject to the annual rent of a barley-corn, was not only a lesser estate than one for somebody else's life, or your own, but was of no higher respectability than a chattel, and passed to the executor instead of the heir, you must have had some difficulty in realizing that you were not the victims of a puzzle. When you were gravely taught by learned



men—who were bound to teach it, whatever they might think of it—that statutes derogatory of the common law must be strictly construed, so as to alter the law as little as possible; in other words, that reformatory legislation must be prevented, as far as practicable, from working the reform intended; it must have cost you some time and thought, to understand upon what theory of longevity such a canon of interpretation could have survived until your time. Nor could the reasons on which these anomalies are founded have bewildered you much less than the anomalies themselves. It is difficult to be reconciled to the absurd and antiquated distinctions between the law of real and the law of personal property, as administered to-day, and the rights and remedies thereon dependant, by being told that personal estate, in contemplation of law, is a trifling and “transient commodity,” of which, according to Blackstone, our heroic Anglo-Saxon ancestors “entertained a very low and contemptuous opinion.” Such an opinion was doubtless reasonable enough, in the days of King John, when a wealthy Hebrew, on a gridiron, was their only banking institution, or even at the more advanced and enlightened date, when Mr. Solicitor Coke knelt before his virgin mistress, and her majesty’s first pair of silk stockings had no better carpet to be displayed on than a handful of rushes; but it is

hardly respectable, as a scientific basis of right, in these days of coupon-bonds and aggregated capital. It would be ludicrous, if it were not mortifying, to see the most enlightened Courts compelled every day, by this descended nonsense, to hold that the same words, in the same paper, from the hands and mind of the same man, and expressing, at the same moment, the same purpose and intention, convey precisely opposite meanings when applied to real and personal estate. Of a truth, Lord Coke spake wisely to King James, when he said that the reason of the law is not "natural reason." It might perhaps require wisdom beyond Lord Coke's to show why it should not be.

In presenting these familiar illustrations of the sort of science you are called on to expound, I do not seek merely to make merry over the imperfections of our nursing mother. It becomes you to recognize and understand the defects of the system in whose service you are about to be enlisted, so that you may do your part towards leaving it better than you find it. You should enter your profession with no blind reverence for its superstitions, but with a manly and rational respect, forbidding you to confound its absurdities with its wisdom or to suppose that its anachronisms are of its essence. *Nolumus mutare* may have been a wise resolve, before Runnymede,



but one may be permitted to believe that times have changed since then. We invite you therefore to a rational worship, and not to make fetiches of ancient stocks and stones.

There is another delusion in regard to your profession, which presents itself on the romantic side. I mean the notion that lawyers are a sort of Round Table Knights, whose duty and custom it is to sally forth, at all times, championing the right and redressing the wrong. There is a popular impression that even if this be not the case, it ought to be. Large numbers of benevolent people, who would deliberate long and seriously before employing you, themselves, to protect the widow and the orphan, are full of the charity which would expect the poorest of you to do it at his own expense. Doubtless such persons are somewhat kept in countenance by the frequent and foolish claim to that species of chivalry, which is made in our behalf. To the practical mind, the difficulty of providing sustenance for man and horse has always been a stumbling-block in the way of knight-errantry, and in our case it is as formidable an obstacle as in any other. And alas! even when Sir Tristram or Sir Lancelot girds on his armor, with a righteous zeal, and goes out in pursuit of the oppressor, is not Sir Pelleas or Sir Percevale retained for the knave, and does not one of them sit mounted at his gate, with his very

best lance in rest? Nay, if Lancelot and Tristram, themselves, had been spoken to in time, are there not many chances that they would have been upon the other side? They would perhaps have thought better of the oppressor, in that event, for we see much more clearly through the glass, when we are inside the house, than when we look in from without. The time has never been, I glory in saying, when the right has fallen to the ground, for the lack of a lawyer to defend it, at any and every cost, whether of liberty, or life, or toil, or fortune. But the honor belongs altogether to the noble men who do these good works. It is an honor which they reflect on the profession—not honor borrowed from it. They are brave men, who in any other condition or calling would have stood up for the weak against the strong—devoted men, who would have felt, anywhere, that the charities of life are the chiefest of its duties and its pleasures. All that they owe to their profession is the opportunity which it affords them—the learning, the discipline and the experience which make their energy efficient—the countenance and sympathy which uphold their hands.

Germane to this subject is another professional pretension, which it seems to me that candor does not justify—at all events, in the broad sense in which it is generally urged. I refer to the claim, so commonly set up on behalf of the Bar, that the



world is indebted to it for free institutions and their preservation. Here, again, I am persuaded that the glory belongs to individuals and not to the profession. What the Barons of England crushed with their gauntleted hands, were but the long contrived devices of lawyers, who had pandered to usurpation. Hume speaks but the truth, when he tells us that the great rights established and consecrated by Magna Charta had to struggle long "with the chicanery of lawyers, supported by the influence of power." Go over the whole history of English freedom, and ever against the illustrious champions in whose fame we rejoice, you will find a herd arrayed, of "vile prerogative fellows"—equally the offspring of your profession and full of its learning and intellect—who wrought all night, like Penelope, to unravel the shroud, which genius and courage had woven, all day, for tyranny. Turn back a quarter of a century before the day when Lord Coke became immortal as the framer of the Petition of Right, and you will blush to see him, as Solicitor General of "that thrice noble and virtuous Queen Elizabeth, of ever blessed memory," and Speaker of her faithful Commons, engineering her subsidy-bills through the House, like a slave, and laying the lives of himself and his fellows "prostrate at her feet to be commanded." You remember, how, even in his old age, in the Preface to the First Institute, he

chatters about her "roseal beauty"—but that is nothing to the adulation with which Mr. Speaker grovelled before her, and told her how "under her happy government, they lived upon honey, and sucked upon every sweet flower." For himself, he assured her that he was but a *corpus opacum*, in the absence of her "bright shining wisdom." He must have been more opaque than he said, if her thrice virtuous Majesty did not see through all that.

But why should we go back to the Tudors, for proof that the learning and ability of your profession are not always with right and liberty against power? Young as you are, the annals of your own times and your own land are full of the sad story of professional subserviency, cowardice and prostitution. It is part of the history which you have been compelled to read. It is bound up with the law which you have had to study. You cannot escape it in the judgments of tribunals, alas! too many and too high. You must sigh over it, in the altered Constitution of your country.

And this brings me to another and like theme—the traditional and glorified image of the advocate—not in his capacity of legislator and popular leader, but in his place at the bar, vindicating the rights of the citizen against the power and the malice of rulers. I touch this illusion with reluctance, for I have not forgotten the kindling of



the imagination, at the eloquence of Curran or of Erskine, which lights and warms the hopes and the ambition of early and generous manhood. I know how the pulse quickens, and the heart swells—how the very soul rises up, with the dream and the longing, that some day or other the time may come, when we too shall have our chance of fighting that glorious fight, and fighting it to win or die. I know how even the dull brain persuades itself that great thoughts might be struck from it by the collisions of such a conflict, and the torpid tongue feels as if, in such an hour, it too might be cloven and aflame. Thanks to our better nature for such dreams and such ambitions, which lift us on their wings above all that is sordid and mean! And yet I fear that, like too many of the creatures of enthusiasm, they fade away, because they are dreams only. We are stirred, as with a trumpet, by the words of the great English advocates whom we revere, but we forget the eminent crown-counsel, our brethren likewise, whose story, good or bad, is a part of the record of our profession, and who fought for the wrong as our champions for the right. We forget Raleigh, when we remember Coke, but history has a better memory, and the strident voice of Mr. Attorney as he shouts to his victim—"thou spider of hell!"—will float on its echoes in shame forever. Nor, strange as it may seem, can we expect in this country the

same opportunities of distinction which arose in England in so many cases now historical. Indeed, even there they can seldom again occur, popularized as British institutions have become. What we are still pleased to call a republican system, here, is approaching nearer, day by day, to a pure democracy. We cannot all meet in one place, as they did in the classic times, and legislate and adjudicate by simple outcry. But we are endeavoring to approach that happy condition, as nearly as our territory and population will allow, and every department of government is expected practically to represent the will of the majority, even if it be but a majority of one. What is expected in that way, we know, from experience, generally happens after a while, and it may be regarded as established doctrine, that constitutions should (or at all events will) interpose no permanent obstacle to its happening. In ordinary times, when passion is asleep and fellow-countrymen are content to make money out of each other and be fraternal and happy, the majority do not desire to oppress the minority, except perhaps in the way of business. There is then no room for championship, because there are no victims, and all goes "merry as a marriage bell." In such times, we roam in the Elysian fields of democracy and justly call them blessed—little thinking how near we are to another and a different place in the Plutonian



realm. But let strife come, and bitterness and blood, and there is no despot like a majority enthroned. A mob in its wrath is the wildest of wild beasts, and it is none the less savage, when its ferocity is formalized into law, and it rends its victims with the cold, hard hands of what it calls its justice. There is no place for the advocate then. His eloquence is a vain breath, and his courage, at best, but a noble insignificance. The divinest of divine rights is against him, and the very "Palladium" itself is a part of the enraged divinity. The voice of the people—is it not the voice of God? And is not the majority the people?

Having felt it my duty to say thus much to you of what may perhaps have been in some regards discouraging, I rejoice that we can still welcome you to a profession which, stripped of all false pretences and exaggerations, is worthy your best faculties, your highest qualities, your complete and earnest self-dedication and devotion. Its influences are as wide as society. Its duties are arduous, elevated, delicate and responsible. Its honors and rewards, when fairly sought and earned, may fill the measure of a great ambition. You cannot be too wise, too learned, or too virtuous for it. You can make all knowledge tributary to it, and yet not transcend its compass. With the common midnight oil of its

lamp you may burn the most precious perfumes, and yet not waste them. On the other hand, I am bound to say that it is a calling which you can readily degrade, degrading yourselves along with it. Instead of an honorable and liberal profession, you may convert it, with fatal ease, into a sordid trade, which no talent can dignify, no eminence can make other than corrupting and corrupt.

You must bear in mind that although yours is a learned profession, it is an eminently practical one—living and moving and never standing still. Its archæology therefore belongs to its literature, rather than its life. You have no time to waste on its quaint pedantries and scholastic riddles. *Petere fontes quam sectari rivulos* is a very good maxim, but it must not be too literally followed. It is well to know the heads of the streams and what is to be found there, but you cannot afford to sit angling, with *Piscator* and *Venator*, by the water-side, and meditating under the willows. You are to be men of active thought—not antiquarians. You must keep your every day faculties bright for every day use, and train them to keep pace with every day's progress. More than any other quality or condition of mind, your profession demands that enlightened practical sagacity which is known as common sense. Do not misunderstand me. Your



merely practical men are useful, doubtless, and often successful, in their way. But they are, for the most part, little and contracted—excellent and worthy drudges if they are good men—almost inevitably pettifoggers, unless under remarkable moral restraint. When, therefore, I exalt common sense, I do not speak of the small sense of that class of people. I mean the large assimilative faculty, which digests the learning of the profession into solid and useful food—which extracts substantial knowledge from study, and not theories or speculations—which makes the intellect capacious and healthy, cleaning it wholly of cobwebs and crotchets. It has been otherwise forcibly described as “rectitude of understanding.” All cannot possess it in its highest, or indeed in a high degree, but all should strive to cultivate it and develop it. Without it, you may go on studying more and more and knowing less and less, every day, for all useful purposes, until your minds become as crowded and confused as the last edition of a popular and much-edited text-book.

But although what I have just said is universally true in our profession, it is still proper to observe, that we are apt to generalize too much in speaking of the faculties and qualities which it demands—as if all its departments required the same gifts. This is as far as possible from being true. In this country, and notably in this State,

the organization of the profession is so imperfect, and there is so little distribution of its various functions, that almost every lawyer is compelled to prepare himself, well or ill, for the labors of every department. It is only in very exceptional cases, and where there is great good fortune as well as peculiar ability and adaptation, that a Maryland lawyer is able to choose his own path altogether—unless indeed he selects the humblest. This is a great evil, of course, and our community, until of late, has been too small to justify us in attempting to remove it. It not only prevents that concentration of thought and pursuit which is necessary to the highest excellence, but renders burdensome, almost beyond endurance, the toil of an ordinarily successful career. In the absence of a proper professional classification, the wisest thing you can do is to endeavor to classify yourselves—to find out what you are best fitted for, and devote yourselves to it. How many of our brethren do we not daily see, who waste, in the struggles of the trial-table, for which they are wholly unfit, abilities which would yield them reputation, in the quiet of chambers? How many, whose tact and cleverness would give them name and place at the bar, are digging and delving, in hopeless drudgery, perhaps self-imposed? Of course, it is not the easiest thing in the world for a man to measure his own abilities fairly, and there is nothing about which



the public is more apt to differ with us than the estimate we place upon ourselves. There is some consolation, it is true, in knowing that the public judgment is not always very enlightened or discriminating. It sometimes assigns us places for which even we ourselves know that we are wholly unfit. Indeed it is often surprising to see how men will deliberately select blind guides, who lead them into the ditch, and into how many ditches some men will consent to be led. It is one of the hardest trials, for young men of real ability, to have to witness such exhibitions, yet you will have to witness them and be patient. The best use that you can make of the inevitable season of hope deferred, is to study yourselves: to find out, by honest, manly self-examination, what you are best fitted for, so that, when you see your opportunity, you may know it and seize it. I do not mean that you should yield to the temptation of subsiding into what is easiest, any more than that you should commit the folly of aspiring to what is beyond your reach. Earnest and continued effort will often develop, into great effectiveness, powers of which men were hardly conscious at the beginning—just as conspicuous failure will demonstrate the delusion under which they have exaggerated their abilities. But, be assured that nothing worse can happen to any man, young or old, in the matter of which I speak, than to persuade himself that

he is an admirable Crichton and can develop himself into anything he pleases to be. In such case, he is apt to be developed into nothing but a warning to others.

After what has been told you of the scope and dignity of your profession, it will perhaps seem paradoxical in me to say, that some of the highest intellectual and moral qualities which you possess may perhaps partially disqualify you for success, and especially as advocates. Nevertheless, it is true, and to feel it is another of the most trying experiences through which young men of merit can pass. Although the scheme of our calling has been framed with great wisdom, for the attainment of truth and justice, it is nevertheless an artificial scheme, and hence is much misunderstood. No one has described it better than Sydney Smith—no one so well, to my knowledge. In his remarkable sermon, entitled "The Lawyer that Tempted Christ," he says that, "Justice is found experimentally to be most effectually promoted by the opposite efforts of practised and ingenious men, presenting, to the selection of an impartial judge, the best arguments for the establishment and explanation of truth. It becomes, then, under such an arrangement, the decided duty of an advocate to use all the arguments in his power to defend the cause he has adopted, and leave the effects



of those arguments to the judgment of others." Thus it will be seen that our function, as advocates, is one of persuasion rather than of demonstration—to illustrate, discuss, convince—not to ordain or to establish. We deal, forensically, with arguments concerning truth, rather than with truths. Now, although many ingenious men are undoubtedly deluded and misled by their own ingenuity, I fancy that he discusses truth best; he presents the views and arguments most ably, by which others are to arrive at it; who has sought after it most earnestly, and understands it best, himself. While, therefore, it is undoubtedly the fact, as the wise preacher adds, that this practice of an advocate is not without danger to the individual, however useful it may be for the administration of public justice, I am sure that it is compatible with the highest sense of truth and the manliest respect for it. I am confident that the intellects and the principles which are safest from danger because of it, are those of the ablest and best and most successful advocates. Nevertheless, there are minds and characters, of high order, which are not plastic enough to adapt themselves to it. There are many men, whose consciences are no tenderer than those of their fellows, but whose minds are so constituted that they cannot reason, except in the direction of their own convictions or conclusions. There are

others, whose instincts embarrass them in doing this, even when they are satisfied that it is their duty to do it. An observation recently made, in a leading English periodical, concerning the late Earl of Elgin, will fully illustrate my meaning. "He would have failed utterly as a professional advocate," the writer states, "from his inability, even for the sake of argument, to look at one side of a question only and close his eyes to the other. His intellectual and moral constitution rendered it impossible for him to see a truth and conceal it." This is a portrait of a wise and great character, or of an extremely impracticable one, according to circumstances. Such traits may give us a great moralist or a mere dogmatist—an enlightened judge or a perpetual doubter and dissenter. With large and vigorous intellect—great energy and wisdom, and an instinctive perception of truth and right—men of that stamp may lead the thought and mould the temper of a century. With more limited faculties and a less ample nature, they are apt to stand in the world's way—the victims of their own scruples and the chief disciples of their own opinions. When an ordinary man is so sure of himself as to exclude from the possible categories of truth all that does not seem true to him, his intellect is at least in no great danger of suffering from over-expansion.



But, whatever be the gifts of this class of minds, they are certainly not those of the advocate. It may be a compliment to them to say this, but for us who are considering the elements of professional success, it is sufficient to know that they will find their idiosyncrasies an obstacle—none the less perplexing, perhaps, from being worthy of respect. They lose sight of the fact that the questions they are discussing are often new and therefore speculative—that the truths involved, most commonly, are purely artificial. They will accordingly hesitate—or scorn, if you please—to address arguments to the judgment of others, which do not convince their own. They will shrink from advancing theories, which they feel or suspect to be fallacious. They will restrain suggestions, perhaps conclusive to others, because they would not themselves adopt them. Now, there might be some reason why counsel should be silent, when they think themselves in the wrong, if they were always in the right when they believed themselves to be so. Unhappily, this is not the case. I will not speak of juries—for their ways are too much in the depths of the sea—but the Courts are constantly teaching us the vanity of our conclusions—overruling us, when we are most firmly persuaded of success, and then kindly refusing to share our doubts, when we are half-persuaded they are insurmountable.

If, therefore, we have nothing to urge on their consideration but our own convictions, we are fighting a one-sided battle and asserting our infallibility at the cost of our clients. I have known causes lost, by capable men, for no other reason than that they were too fully convinced of the conclusiveness of a favorite point, to feel the necessity of urging others equally obvious. They forgot that it was their business to convince other people and not themselves merely, and that all minds are not alike.

You may perhaps make another discovery, early in your practice, quite as disheartening as the fact which we have just been considering. You may find that the tastes and the accomplishments which nature and education have given you will not always hasten—nay, possibly, may retard—your advancement. A young man of high culture and self-respect must shrink, in spite of him, from many of the first lessons of his experience. He will find himself expected, yet utterly unable, to welcome and embrace things which repel and disgust him. He will be ashamed to surrender himself to the tawdry and thread-bare commonplaces and conventionalities which enter so largely into a certain department of forensic discussion. He will almost envy the dulness which is unconscious of its self-exposure, and the ignorance which runs on, because it does



not know when it has run out. He will wonder, painfully, whether he can ever descend to the charlatanism and the fustian which he hears applauded to the echo, if not by the judicious who grieve, yet at least by the groundlings who pay. He may sit—happy is he who does not remember those weary and repining days—he may sit, idle and poor, while incompetence and audacity advertise themselves and prosper, till he feels almost ready to curse, in his despair, the very excellences which were the goal and the ambition of his youth.

Nor am I sure that you will always find, even among the elders of your calling, that encouragement and countenance, in this regard, which might be expected from the leaders of a liberal profession. It is not to be disguised that there is a superstition still haunting the bar of this country—though in England it has nearly disappeared and on the Continent never existed—that a man cannot know much law, who knows much of any thing else. There are many able and successful lawyers who devoutly believe, of the law, as certain Mahomedan sectaries, of the Koran, that there is nothing written outside of it which is good, and it is therefore sinful to read any thing which is not in it. You will of course rarely hear this proposition so nakedly or frankly stated, but you will assuredly have to meet and overcome, as

best you may, a quiet and perpetual, and doubtless a sincere disparagement of your professional ability, proportionate to the culture and accomplishments with which you may be able to adorn it. I trust that you will have the manliness to succumb to no such prejudices, but will take your part, as enlightened and educated gentlemen, in relegating them to the barbarism from which they are descended. It may be that Lord Bolingbroke spoke rather in excess, when he recorded his opinion, that "unless men prepare themselves for this profession by climbing what Lord Bacon calls the vantage grounds, Law is scarce worthy a place among the learned professions—it degenerates into the practice of the grovelling arts of chicanery." His Lordship perhaps attributed, as was his wont, too exclusive a control to merely intellectual restraints. A greater than he has told us, with a wiser and more courtly moderation, what every man among us, who strives to know himself, must know to be the unexaggerated truth. "He was bred to the law," says Mr. Burke, in speaking of Mr. Grenville, "which is, in my opinion one of the first and noblest of human sciences—a science which does more to quicken and invigorate the understanding than all other kinds of learning put together: but it is not apt, except in persons very happily born, to open and liberalize the mind precisely in the same proportion." And it is because



the study and the practice of your profession thus tend to narrow and not to liberalize the understanding, that you must keep it broad and liberal, if you can, by wider and less artificial thought. You shall soon cease to know Hercules, by his foot, if it be kept cramped and bandaged like a Chinese woman's. No, gentlemen! Your profession calls upon you for no sacrifice of your best gifts and powers. There is room for all of them within it, unless pedantry has the making of its pale. There is scope in it for Fancy and her nobler sister Imagination. There is room for all literature, all science and every liberal art. There is field for Wit and for Humor, for Taste and Grace—for all that is splendid in the mastery of Eloquence—all that can influence the human mind and penetrate and control the human heart. History has no record of an advocate whose genius and culture were above his office, and it is in part the fault of just such prejudice as I am combating, that we have so few in the country, to-day, who approach the level of its real greatness.

There is a consolation in reflecting, that when you are called to overcome difficulties such as have been alluded to, and others like them, you are required to do no more than your brethren have done before you. I have seen a charming French *vaudeville*, the whole point of which is in the contrast between two lovers, one of whom

loses all his ardor as soon as he meets with an obstruction, while the other grows as cold as Plato the very moment that obstacles disappear. The devotion of the most ardent worshippers of jurisprudence is hardly passionate enough to develop such vivid contrasts in our professional drama, but, in the main, the men who win the favors of our "jealous mistress," are they whom difficulties only brace to resolution. Given a certain amount of good sense, force, and education, and—accident apart—the rest is matter of perseverance, industry and courage. It may not be to-day, nor to-morrow—it perhaps may never be. We witness too many shipwrecks, to dare foretell a prosperous voyage for every gallant bark that we "see from the beach when the morning is shining." Still, we have the happiness to know, that sooner or later, and with reasonable certainty, success generally comes when it is deserved—though it oftentimes may come when it is not.

But, gentlemen, what is success in your profession? Upon the answer which you give that question, in your hearts and minds, will depend all of the career in which this is your first step before the world. If success means to you only business, and business, according to the clever sarcasm of Dumas, means to you only "other people's money," you are wasting your time with



professors and diplomas. You can attain the ends of such an enterprise, by shorter processes and simpler ways than any taught in universities. Do not imagine that I can so far forget my duty as to perplex you with cant and sentimentalism on an occasion like this, instead of practical and healthy counsel. I know that you are beginning the serious task of your lives—your struggle for a place among your fellows, and for bread. I recognize pecuniary reward as not only fit to be within your professional purposes and just contemplation, as a right and a possession, but as a means of that personal independence which is the most "glorious privilege" of manhood. When my Lord Chief Justice Montagu said, at his installation, "I have no need to be corrupt, neither in action nor affection, for I have estate sufficient," he spoke, if in no higher spirit, at least as a man of sense and of the world, who knew and acknowledged the weakness of our nature and the supports which it needs, at the best. It is no part of my purpose, therefore, to disparage, in the slightest degree, the manly and reasonable pursuit of professional emolument. It is your right, as I have said, and you should insist on it, whenever it is a question of mere right, and higher considerations do not make it your pleasure or duty to resign it. You will find strange notions on the subject in the community. Gentlemen, in

other walks of life, your own contemporaries, entering upon their vocations side by side with you—your superiors in no regard certainly, not even in the moneyed capital with which they begin their career—will measure your labors and efforts, years hence, by a scale which it would cause them great indignation to have applied to their own daily commercial transactions. They will earn, in an hour, by a single effort of mercantile sagacity, or a single act of mercantile trust, what would pay you, richly, for a half year's income, and yet wonder at the exorbitance of your comparatively moderate demands, for the most devoted and successful exertion of the highest professional ability. Some men seem to think that only money ought to breed money, and cannot understand that the investment of character as high as theirs, in a calling infinitely more laborious than theirs, requiring ten-fold the learning and faculties which are needed in theirs, ought to yield at least as large return as theirs, when the harvest-sun is on the grain. They are almost like the Arab, whom Dr. Hogg, the companion of Lamartine in the East, had cured of a serious malady. As soon as the patient grew strong enough to walk, he called on his physician for a present, and was lofty and indignant when refused. "I had hoped," he said, "to find you more disposed to show your gratitude to God, for having made you wise enough to cure such



dreadful diseases." It is astonishing how many persons think that virtue and knowledge are their own sufficient reward, when they would otherwise have to pay the reward themselves. If, then, fees come honestly and fairly in—fill your skull-caps with them, if you have any, like my Lord Keeper Guilford, and temper your exultation, if need be, as he did, by reading Littleton's Tenures every Christmas.

What is to be shunned and deprecated is not that. It is the surrender and subordination of your profession and yourselves to gain—the abandonment of your dignity and freedom to mere money-making and the base arts which are almost inseparable from such degradation of a liberal calling. It is a common thing to say that ours is a specially money-loving age. I doubt whether this is true—whether men are at all worse in that regard, to-day, than they have always been, since the root of all evil was planted. In one of the recently opened houses in Pompeii, a mosaic pavement has been found, in the centre of which, in large letters, is the motto, "*Salve Lucrum.*" Such a profession of faith, on the part of the luxurious Roman whom the ashes of Vesuvius overwhelmed with his lucre, was only a superfluous and ostentatious piece of candor. Perhaps, like Lord Byron, he desired to be taken for something worse than he was. But he scarcely

loved money any more than a robber baron or a Lombard usurer, or any less than a Wall street financier or a lender on "approved collaterals." The curse of our times is not the mere love of acquisition, nor of money as a treasure and possession, but the self-prostration of society before it, as a dignity, a principality and a power. The Roman was content to print his text on the stones, and tread it beneath his feet in the revel. In our times, we reverence the wisdom which, in Poor Richard's Almanack, expanded it into a gospel and founded on it a religion, whose first and great commandments are multiplication and addition. And it is because money is, thus, not merely the object of a common human lust among us, but of a homage as degrading as that of the Castilian courtiers to the crowned and sceptred corpse of Pedro's leman—that no friend can say God-speed to you, without a word of warning. Down in the abyss of such a worship may sink talents, learning, promise. In it may be lost, without hope, every aspiration that is noble, every principle that is pure, every quality that is generous and high. Against its demoralizing propagandism there can be no stronger bulwark, humanly speaking, than the resistance and example of a learned and intellectual profession, powerful from its numbers and its influence; intimate and controlling in its necessary connection



with every variety of human affairs; trained to vigorous and independent thought and downright, public and effective speech. If it but dares assert its dignity and character, there is no social agent which has half its power to curb and to reform society. If it is true to itself in speech and counsel; if it has courage and integrity enough to spurn association with fraud and wrong, in every shape, and to expose and denounce them wherever they appear, it can control whole classes of society, whom the preacher will not reach and to whom moralists are a jest. If, on the other hand, it is capable of nothing better than to sell itself—to adopt every man's cause, and help or defend every man's contrivance, who pays—it is a social nuisance and deserves to be despised. Better “to lie in cold obstruction and to rot,” than to be part or parcel of it.

I speak plainly,—not because so to speak is virtuous, or seems to be, but because your profession is growing in discredit, and I fear deservedly, and because its regeneration must come from within and not from without. You cannot look to the public to reform professional morals, for, unfortunately, whatever want of principle exists in our ranks is but a supply created by the public demand. As long as we are willing to touch pitch, the community, though it sneer at us, will keep our hands defiled, to its profit at least

as much as ours. I pray you then to bear in mind, even in your lightest day-dreams—in the framing of every plan and the nursing of every hope—that while learning and intellectual versatility and power are the thews and sinews of your calling, integrity of purpose and of conduct is its living soul. Its every relation, properly considered, involves confidence and implies frankness, fidelity and honor. You owe these last, not merely to the clients who trust you, but to the tribunals, the public, your brethren and, above all, yourselves. You should be as far above the charlatantry and imposture which deceive and mislead, as the coarser dishonesty which plunders or lets plunder. Nay, it is your business, not only to make honor the guide of your own conduct, but to make no terms with dishonor. The demoralization of the hour comes far less from the sins which are committed, than from the slipshod acquiescence by which honest men condone them. I know that it is the fashion to call plain speech “invidious,” and of course any man who goes crying aloud, like Cassandra, will probably be listened to no more than she, let him speak what truth he may. But there are times when for a gentleman to be silent is to forego a duty, because it is unpleasant, and to compromise himself by unmanly toleration. He must take the consequences of the accustomed slur—that he sets himself up to



be better than other people. Lord Bacon did undoubtedly himself take bribes, the while he exhorted Mr. Justice Hutton to keep his hands "clean and uncorrupt from gifts." But still there are such things, in fact, as honesty and dishonesty, and a professional man's position is not encouraging, if he cannot say, without presumption or Pharisaism, that there are some people than whom he claims to be better.

And now, gentlemen, a very few words to you as working-men. You have dedicated yourselves to a pursuit which, in its best estate, entails on you a life of toil. Whether or not it shall be the toil of drudgery, unrelieved and unending, depends in a measure on yourselves, and on what you shall do for yourselves in this your season of freshness and strength. Your first and most manifest necessity is to become thoroughly grounded, so far as your talents may permit, in the principles which are the true learning of the law. Simplification, the happy result of all sound analysis, should be the prime object of your labors. The more you rid your minds of non-essentials, the nearer you will bring them to the knowledge which avails. You are enlisted in an army where the knowledge which does not avail belongs to the *impedimenta*, and must be sent to the rear. You will need to be not only thoroughly informed, but ready, and

this last you can never be, unless you have what you ought to know stored away within easy reach, and unless, when you reach it, you can grasp it. "No attorney," exclaimed Lord Tenderden, from the Bench, "is bound to know all the law. God forbid that it should be imagined that an attorney or counsel, or even a Judge, is bound to know all the law." Yet there is not a mendicancy more pitiful, on earth, than that of a lawyer, in active practice, who has to beg, every day, from his books, the bread of his daily need. But let me entreat you to have it ever present before you, that the great end and effort of your labors should be to learn to think. You may pile such a mountain of other men's thoughts upon your minds that, though they were Titans, they could not turn under it. Until a second Omar shall rise up, in the order of Providence, to burn your books, or the Courts shall agree, a little more generally, to prefer a reason, now and then, to a report from some "far countree," you will of course have to wander much in the labyrinth of cases. But, I charge you, wander there with cautious feet, and do not delude yourselves with the conceit that case-hunting is study or case-knowledge learning. You must keep side by side, as I have said, with the progress of the law, but a single shelf of your libraries will measure the most of that progress which is real.



In the preparation of your causes, put no trust in genius or inspiration. If a man ever has a great success without working his best for it, it is rarely more than once in a life-time—like marrying for love. Be careful, nevertheless, to shun over-preparation, which is a grievous impediment to thought and argument. It is painful to see how many causes, which ought to be won, are lost, by being conscientiously studied and tried to death.

Next to self-possession and self-control, the working quality which will stand you most in stead, is clearness of mind and speech. Whether the stream be deep or shallow, it matters little what golden sands lie in the bed, if men cannot be made to see them. Clearness of statement can hardly be without clearness and directness of thought. This last, perhaps, is commonly a gift of nature, but there are few good minds, in which discipline and use will not breed a habit of it. It is not given, as we know, to all men, to be eloquent, or great, or very wise, but he whose mind goes straight to its own purpose and conclusions, and can light the minds of other men along its processes, as with the light of perfect day, has, as an advocate, as little reason as the best to rail at fortune.

While nothing can be more unworthy of your calling than the arts of sycophancy, there can be

nothing worthier of it than respectful courtesy to those who seek your counsel, and kindly sympathy beyond the formal line of duty to them as your clients. To be consulted as oracles and looked up to from afar, is very pleasant, undoubtedly, to men of a certain character; but, in the end, they generally find themselves with a small congregation of worshippers, while around the more genial of their brethren there gather every year, fresh troops of friends. And, after all, what is human life, at its proudest, without human sympathies?

On your personal intercourse with your brethren must to a great extent depend the degree of satisfaction which will attend your labors, whatever be their course or your success. The antagonisms and the inevitable partisanship of the profession render it necessary for you to be ever on your guard, lest you trench upon the rights and feelings of your fellows. There can be no severer test, of both temper and manners, than the trial-table, and few are so happily endowed as to be superior always to its provocations and temptations. That the best of us profit, as we should, by its lessons of forbearance and self-restraint, it would be rash indeed to say—but when you shall have felt, as few escape, the mortification which is inseparable from the consciousness of having neglected them, you will understand how impossible it is for you to



heed them too much. To the Courts before which you appear your first duty is deference and respect. There can be no two things more different than discourtesy and proper independence, in your dealings with them. A right-minded and right-hearted judge is always at a disadvantage in a collision with counsel. The very superiority of his position makes it doubly his duty and inclination to forbear, and he hesitates to strike, lest the judge should be moved by the resentment of the man. I need not say how ungenerous it is to forget this and so forget yourselves. If you would have, with the Bench and with the Bar, the legitimate influence which is one of the most attractive of professional rewards, you must give as well as take. You must yield respect if you would receive respect. You must be courteous, considerate and liberal, if you would have courtesy, liberality and consideration. Above all, you must deserve confidence if you would enjoy it, and, believe me, no weight of intellect, no copiousness of learning, will commend you or your cause one-half so strongly as a life of stainless rectitude, of kindly offices, of manly frankness and of lofty purpose.

