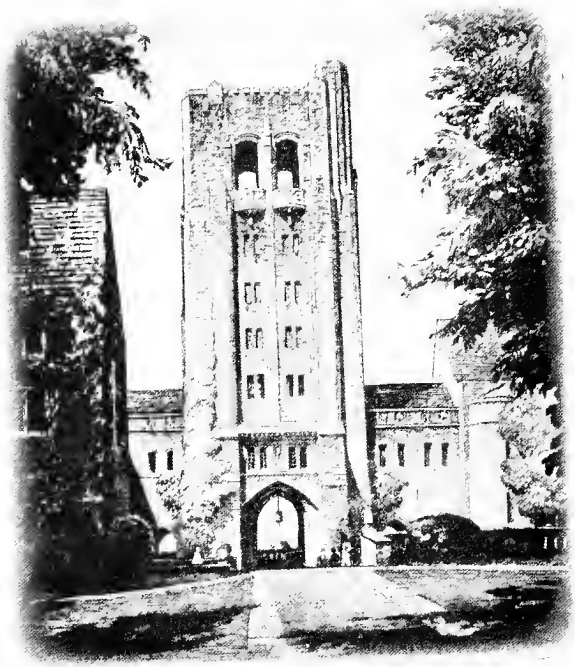

ETHICAL OBLIGATIONS OF THE LAWYER

ETHICAL OBLIGATIONS OF THE LAWYER

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TO

THE MEMORY OF

My Mother

PREFACE

THE great movement for the uplifting of the morale of the profession of law that is sweeping the country has brought prominently to the front the subject of Legal Ethics. It has become recognized among lawyers that the old custom of leaving professional ethics to the untutored ethical instincts of the individual lawyer must now give place to a definite and positive codification of ethics.

The reform movement has manifested itself in the adoption of codes of ethics by various bar associations throughout the country. The present volume is a treatise explanatory of the principles underlying the rules of professional conduct adopted by the bar associations, together with such other principles of legal ethics as would confront the lawyer in his everyday practice.

Legal Ethics include not only an intelligent watchfulness to do right but also a knowledge of long established customs and traditions of the profession. Hence, good intentions and high moral ideals do not always safeguard the lawyer against

violations of legal ethics. Even were it a plain moral issue he may suddenly be confronted by an ethical problem that demands instant decision. In the hurry of the moment he is unable to ponder it well and determine his conduct wisely. He may overlook a significant feature of the problem, or, if the point is nicely balanced and technical, his first judgment may be erroneous.

Thus arises an unintentional violation of the ethics of the profession that stamps the doer as a practitioner of questionable character. Regret however sincere and protestations of innocent intent however vehement can reach but a small fraction of those to whom the original damaging evidence has gone.

It behooves the practitioner, therefore, to take thought of ethical questions in the time of quiet when they can be regarded as abstract propositions to be decided impartially, without the rights of an injured client to warp the judgment or temper it with pity. The mission of this book is to present the great multitude of ethical problems to the reader and to cause him to think them through and, whether the author's reasoning be convincing or not, to decide each question and thus be forearmed against all probable emergencies.

SCOPE OF THE BOOK. This volume enters into every question of professional deportment that can ordinarily confront the lawyer. It does not lay down platitudes and commands without the reasons therefor, but discusses each proposition, pointing out the why and wherefore of the rule. It is practical. It enters into details. It takes up each detail concretely and solves it, instead of passing it over with a flourish of general language that means nothing definite to the reader.

The first chapter deals with the change of status from layman to lawyer and points out briefly the newly acquired obligations of the legal practitioner. Chapter two takes up in detail the various considerations that should govern a lawyer in choosing his office, together with suggestions as to conditions of the office after it has been opened for practice. Chapters three, four, five and six deal with the lawyer's obligations and duties to his clients. Chapter seven considers in detail his duties to the adverse party. Chapter eight discusses his duties and obligations to other lawyers. Chapter nine deals with the lawyer's duties to the courts. Chapters ten and eleven discuss his various duties to the State and Nation.

Chapter twelve treats the very difficult and

elusive topic of legal fees, and contains some very practical information concerning the customary charges of the profession for ordinary legal services. Chapter thirteen considers such general duties as do not readily admit of classification in previous chapters. Chapter fourteen discusses the advisability of lawyers entering politics. Chapter fifteen treats of the growing demand for lawyers in business enterprises. Chapter sixteen contains a detailed statement of the lawyer's legal liabilities to his clients for professional misconduct; while chapter seventeen treats of disbarment and suspension of lawyers, with an interesting collection of illustrative cases of disbarment. An Appendix containing the American Bar Association Canons of Ethics, Hoffman's Resolutions and a schedule of legal fees as adopted by a prominent bar association follow chapter seventeen.

Throughout the book will be found extracts from the Canons of Ethics and Hoffman's Resolutions, quoted in connection with the topic to which they refer. Although contained in full in the appendix it has been deemed wiser to quote from them directly than to put the reader to the necessity of looking up the reference each time in the appendix.

The inter-relation of topics has made necessary in some instances a summary or forecast of a topic treated more fully elsewhere, but the plan of the book has been to avoid repetition, unless for the purpose of clearness or to impress the principle by reiteration.

The same duty will be seen to exist in some instances in several aspects, as, for example, the lawyer's duty not to slander or disparage others. In chapter one, section five, the duty is mentioned as one of the newly acquired obligations of the lawyer; in chapter seven, section sixty-five, it is treated as a duty owed to the adverse party, and in chapter eight, section seventy, as a duty to other lawyers. In each connection it is necessary, since the plan of the book demands a separate treatment in each connection.

For Lawyer or Layman. Although this book is intended primarily for lawyers, yet much of its contents should be of vital interest to laymen, especially to those who are obliged to employ the services of lawyers. Chapters three, four, five, six, seven, twelve, thirteen, sixteen and seventeen, nine chapters out of seventeen, directly concern the layman. They set forth in plain non-technical language precisely what duties his

lawyer owes him, what rights he has against the lawyer, and what the range of fees for ordinary legal services may be. It is confidently believed that such information coming to the knowledge of the lay public would do much to purify the profession of law by rendering it more difficult for unscrupulous lawyers to impose upon their clients.

G. L. A.

Suffolk School of Law.
Boston, Oct. 1, 1910.

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ETHICAL OBLIGATIONS OF THE LAWYER

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OF

THE LAWYER

CHAPTER I

CHANGE OF STATUS FROM LAYMAN TO LAWYER

SEC. 1. Assumption of New Duties.
SEC. 2. Hazy Ideas of Legal Ethics.
SEC. 3. Ignorance of Legal Ethics Common Among Lawyers.
SEC. 4. Movement to Elevate Ethical Standards.
Adoption of Canons of Ethics.
Study of Ethics Advised.
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Duty of Silence as to Client's Confidences.
Duty to Uphold Dignity of the Profession.
Personal Appearance.
Personal Conduct.
Not to Disparage Other Lawyers.
Not to Joke About Rascality of Lawyers.
Duty of Loyalty to the Courts.
Duty not to Acquire Interest in Litigation.
SEC. 6. Summary of Chapter.

§ 1. ASSUMPTION OF NEW DUTIES.

In entering upon the profession of law one acquires not only new powers as an individual and a new standing in society, but with the additional powers and the newly acquired station in life come also new duties and increased responsibilities. The layman has changed to the lawyer.

Whether he will prove himself an honor to his new station in life depends upon whether he conducts himself as an honorable man should who duly appreciates the responsibilities upon which he has entered.

§ 2. Hazy Ideas of Legal Ethics.

Too often it occurs that the newly admitted lawyer enters upon his profession with hazy ideas of the ethics of the profession and without due appreciation of the responsibilities to the public that go with the practice of law.

That this condition is due partly to the indifference of teachers of law, or of the law schools in not providing positive instruction in legal ethics, cannot be denied.

The prospective lawyer is generally so intent upon the mastery of legal principles that he very naturally fails to pause and take thought, of his own volition, of what may be expected of him by the public when he becomes a lawyer. He is aware, of course, of the verdict of the thoughtless multitude that all lawyers are rascals. He does not investigate whether this has a basis in fact, but, if he has the element of true manhood about him, he approaches the day of admission to the bar with a strong feeling that, whether other lawyers are honest or not, he at least will stand out from the multitude as a lawyer scrupulously

devoted to the ethical and moral side of the profession.

But his difficulty is that when he enters the profession he has no definite conception, other than his instinctive knowledge of right and wrong, of what the ethics and morals of the profession may be. He may do an act innocently, or at least with negligent thoughtlessness of its character, that may offend the ethical standards of the best lawyers. The thing is unprofessional, and the stigma resting upon him is as blackening in the minds of those whose fellowship he supremely desires as if he had done it in deliberate contempt of the ethics of the profession. Hence arises a cloud on his reputation that may require years of irreproachable conduct to efface.

§ 3. Ignorance of Legal Ethics Common Among Lawyers.

This lack of knowledge of legal ethics is by no means peculiar to the younger lawyers, but is found among the older practitioners as well.

Without definite instruction, each lawyer gradually evolves a code of his own. If his perception of what is right and what is wrong is particularly acute, and he desires to choose the right, he acquires after a few years of practice a high standard of ethics. His law office is permeated with his own high ideals.

But, on the other hand, the lawyer who has not this keen faculty for perceiving what is right will drift along the lines of least resistance. He will accept questionable cases if he needs the money; he will copy the tactics of lawyers whose ethical standards are low, and gradually come to believe that no higher standards are practicable in the profession of law. His law office is in like manner permeated with his own questionable professional morals and becomes a menace to the community and a snare to the young lawyer who accepts an apprenticeship therein.

§ 4. Movement to Elevate Ethical Standards.

So great has been and still is the popular distrust of the integrity of lawyers, too often, alas, justified in individual cases, that the legal profession as a whole is awakening to the necessity of elevating ethical standards and forcing out of the profession those guilty of discreditable practices.

It is coming to be realized that a single offensive lawyer may bring disrepute upon the profession throughout an entire community and, even though there be scores of honorable and upright lawyers in the town, popular imagination pictures them all alike — black, even as the black sheep of the flock.

ADOPTION OF CANONS TO ETHICS

In pursuance of the policy of elevating the ethical standards of the profession, the American Bar Association has recently formally adopted rules of professional deportment known as **Canons of Ethics.** Numerous bar associations throughout the land have voted to adopt these **Canons of Ethics** substantially in the form decreed by the American Bar Association.

STUDY OF ETHICS ADVISED

The Association has gone further than the mere adoption of **Canons of Ethics.** It has recommended to the law schools of the United States the teaching of legal ethics as a required subject; not as it has hitherto been taught, by a single lecture from some busy lawyer, but by systematic and definite instruction.

§ 5. How the Lawyer Differs Socially from the Layman.

One of the first things to be impressed upon the young lawyer is the fact that upon admission to the bar he has stepped over the boundary line from the commonplace, everyday world, with its commonplace duties and responsibilities, into a new sort of life, wherein are greater duties and additional responsibilities.

He has become a lawyer and, whether he brings

honor to the profession or not, the fact of his admission to the bar places him in a new relation to his fellow men.

He has become an officer of the courts, a representative of the public, whose duty it is to assist in the working out of justice between individuals of the public, should one of them seek his aid.

THE DUTY OF SILENCE AS TO CLIENT'S CONFIDENCES

He is no longer the irresponsible layman who can betray a secret at will or gossip away the reputation of some unfortunate individual who has confided in him. Being a lawyer involves a positive duty to keep locked in his own bosom a secret confided to him by a client.[1] He has no right to disclose confidential communications without the consent of the client himself. His professional honor demands that he keep silence.

The courts safeguard this right of the client, and no man can by any process of law compel a disclosure. Here, then, is one of the duties that distinguishes a lawyer from a layman — the duty not to disclose confidential communications from those with whom he has business dealings.

[1] See also § 55.

DUTY TO UPHOLD THE DIGNITY OF THE PROFESSION

The lawyer should at all times bear in mind that he is a member of an honorable profession. He should see to it that he does not, by word or deed, cast discredit upon the profession. But even if he is not governed by regard for his station, self interest alone should prompt him to maintain a certain degree of professional dignity. Clients come to a lawyer if they respect him, but not otherwise.

PERSONAL APPEARANCE

A lawyer should maintain a neat and well-groomed appearance. This does not mean that he should dress flashily in flamboyant waistcoats, and rainbow-hued ties, but simply, with the care that betokens respect for himself and his profession. He should not appear in public in manifest need of the services of a barber, nor in soiled linen, nor in clothes that need to be brushed, or pressed free from wrinkles and bagginess.

The use of a few minutes each day to attend to these little details is time invested in a way that will pay dividends. The prospective client is prone to judge a man from his personal appearance, and the neat, thrifty looking lawyer, will always be preferred to the "seedy" attorney.

The client has a sort of pride in exhibiting a well groomed attorney to his friends as "my lawyer."

PERSONAL CONDUCT

The lawyer's success depends upon his ability to win the approval of the public. This does not mean that he should on public occasions be given to loud talk or arrogate to himself the lion's share of the conversation, whether he knows much or little of the topic under discussion.

He should not strive to be a jester, for so to do would be to invite the opinion that he is shallow-pated and really belongs in the calling whose badge of service is the cap and bells. Sobriety in conversation, neither drearily ponderous nor unduly given to frivolity, but a happy medium between the two extremes is the ideal to be sought by the lawyer.

There is perhaps no way in which a lawyer can ruin his prospects quicker than by allowing himself to acquire a reputation for intemperance and licentiousness. Obviously there is but one way of preventing such a reputation, and that is to be neither the one nor the other. A drinking man is an unsafe man in any occupation, and especially so in the profession of law. People have no confidence in his dependability. It is true that even in the law men of this class sometimes win a moderate degree of success, but it is

due to their natural abilities triumphing over great obstacles. The success that is won under such circumstances must necessarily be insignificant in comparison with what might have been accomplished if unhampered by appetite or passion.

NOT TO DISPARAGE OTHER LAWYERS

There are two reasons why a lawyer should not disparage fellow attorneys.

The first is that listeners may attribute such disparagement to jealousy, and conclude that the lawyer referred to is perhaps a more successful attorney, and deservedly so, than his critic.

The second is that even if the listeners do not reach such a conclusion, the criticism will lower the profession of law in their estimation.

A profession is judged by the characters of those who compose it, and wilful disparagement of another attorney will inevitably have a sort of boomerang effect upon the critic.

NOT TO JOKE ABOUT RASCALITY OF LAWYERS

It too frequently occurs that lawyers make light of the alleged rascality of members of their profession, carelessly regarding this age-long slander as a text for innumerable funny stories. Not that a lawyer should be so thin-skinned or so lacking in common sense as to take umbrage at

the half-joking, half-serious jibes of the layman, but in his own attempts at witticism or jest he should seek some other text.

In the early days of the law, before legal principles grew so complex and the field of the law so extensive as is the case nowadays, the practitioners at the bar were doubtless regarded as unnecessary. They were frowned upon, much as were the money-lenders who exacted interest. In our day the loaning of money, even at a considerable rate of interest, has become a perfectly legitimate enterprise. The profession of law has become a learned profession, and the lawyer nowadays is indispensable to the welfare of society. But the stigma that became embodied in the ancient joke concerning the epitaph of the lawyer who was referred to as an honest man, rests upon the lawyers of to-day, even as it did upon those of four centuries past.

The lawyers are largely to blame for this condition of affairs; the dishonest lawyers by furnishing fresh causes of comment, and the thoughtless but honest lawyers for making it a topic for jest.

How long, may we ask, would the clergy be honored and respected by the public if the clergymen were to admit generally, even for the sake of a false sense of humor, that as a class they were hypocrites and dissemblers? Yet we see such

clergymen — a few of the bad among the many who are upright and honorable. Perhaps we may say that the proportion of good and bad in the clergy is scarcely higher than in the law. Yet the one profession is honored because of the majority of worthy members, while the other is reviled because of the existence of a minority of rascally practitioners.

The lawyers of this generation who seek to bring about a change in the unjust attitude of the public should start the reform in the ranks of the profession itself. When called upon to address a public gathering, and it becomes expedient to seek funny stories to keep the listeners good-natured, let them shake some other chestnut tree than that labelled "rascality of lawyers."

Here, then, is another duty imposed upon the lawyer that did not rest upon him when he was a layman —the duty to uphold the dignity of the profession into which he has entered. This duty, as we have seen, includes not only that of irreproachable personal conduct and honorable dealing with fellow attorneys, but also a jealous watchfulness to protect the good name of the profession.

DUTY OF LOYALTY TO THE COURTS

One of the first duties confronting the newly admitted lawyer is that of loyalty to the courts. The subject of his general duties to the courts

will be treated hereafter in a chapter by itself,[1] but there is one aspect of the subject that should properly be treated here; the reason for the duty.

In the olden times, away back in the beginnings of the law in England, the administration of the crude justice then dealt out to litigants was accomplished almost wholly by the judges. The parties came before the magistrate, and their grievances and defenses were presented more or less informally. But with the growing up of the Common Law, with its accumulation of legal principles and technical pleadings, the efficiency of the presiding judge as an arbitrator between the parties grew less and less.

With the gradual evolution of law and order, the courts developed a dual character. The presiding justice passed upon the rights of the parties, but lawyers employed by the litigants became a necessary adjunct to the court. Justice demanded that each party should be represented by one specially trained in the law, who could present his client's case in its strongest aspects and call the attention of the presiding judge to the law that he claimed applied. With each party so represented, the judge could, with comparative safety, decide the case. He could feel that the respective claims of the parties were fully before him, like two men standing at full

[1] See Chapter IX.

height, back to back to be measured, and that he was simply to decide which stood the higher in the eyes of the law. Thus it came about that lawyers became an absolutely essential adjunct of the courts. They were officers of the courts, not in the sense that the judges were, but officers nevertheless. The same is true in our own day, though few people realize the full significance of the relation.

The lawyer is under a duty to be loyal to the court, because both lawyer and court are component parts of our system of justice, and, to accomplish what society demands of them, are dependent one upon the other, even as partners in a common enterprise.

Here, then, is another duty that distinguishes a lawyer from a layman, — the duty of loyalty to the courts.

DUTY NOT TO ACQUIRE INTEREST IN LITIGATION

The ordinary citizen to whom an opportunity presents itself to purchase the right to book accounts or bills receivable of another can do so with impunity. If the book accounts of a bankrupt estate are being sold for a trifle, there is no valid reason why the layman may not purchase them if he so desires.

But the lawyer cannot do these things.[1] His

[1] See also § 94.

duty is to act for others and not for himself, unless in a cause in which he is an original party. Claims procured by gift, barter, or purchase, are not causes in which he is an original party, hence on such claims he cannot rightfully sue.

The reason for this regulation is that if lawyers were allowed to purchase causes of action, it would greatly increase the volume of litigation and perhaps result in suits that ought never to be brought. For instance, the owner of a doubtful claim might not care to sue if he were liable for lawyer's fees, whereas, if the lawyer himself owned the same claim, he could bring suit without risking anything but his own time and a trifling amount for actual expenditures.

Hence, the lawyer is denied the right to acquire an interest in litigation, and herein he again differs from the layman.

§ 6. Summary of Chapter.

Upon admission to the bar one acquires new duties and responsibilities. The question of how one should conduct himself in respect to these new duties and responsibilities is a difficult one to decide because of a lack of preliminary instruction. A movement is now being made to overcome the difficulty. The lawyer differs socially from the layman in several important respects.

He is under a duty of silence as to a client's confidences. He is under a duty to uphold the dignity of the profession. It is his duty to be loyal to the courts. He is under a further duty not to acquire an interest in litigation.

CHAPTER II

LOCATION OF LAW OFFICE

SEC. 7. Its Bearing upon Ethical Development.
SEC. 8. What Must be Considered.
SEC. 9. Large City or Small.
Locating in Small Community Temporarily.
SEC. 10. Clerkship or Independent Practice.
Length of Apprenticeship.
SEC. 11. Desk Room or Independent Office.
Sharing Expenses of Office.
The Office Site.
SEC. 12. Conditions of Office.
SEC. 13. Showy, Luxurious-Appearing Office.
SEC. 14. Office not a Lounging Place.
SEC. 15. Office to be Constantly in Business Trim.
Pollution of Air by Smoking.
SEC. 16. Leaving the Office Door Ajar.
SEC. 17. Summary of Chapter.

§ 7. ITS BEARING UPON ETHICAL DEVELOPMENT.

The professional ethics of a lawyer, like his general character, take form not wholly through mental and spiritual convictions at the beginning of his career, but to a large extent through the influence of his environment and the conduct of his associates and acquaintances.

Many a young man has started out with high hopes and noble ideals, only to have these hopes and ideals, in the course of a few years or months

under adverse conditions, so completely fade out of his life that he unblushingly pursues methods and policies that lead to eventual disgrace and ruin. His mental attitude has so greatly changed that he considers his former hopes and ideals as fantastic and impracticable.

The trouble was largely in environment and association with men of lower standards of morality. If a proper choice of environment had been made, granting that a choice were possible, and the young man could have had the influence of the right kind of associates for a few years he would have developed consistently with the ideals with which he started.

With the young lawyer, the question of a choice of environment and professional associates is especially important. Many subtle temptations from the path of rectitude and honor come into the life of every lawyer, and he needs, especially in the beginning, to be fortified by wholesome, elevating influences.

§ 8. What Must be Considered.

In making his choice of location of office, he must needs consider whether he should locate in a large city, or in a comparatively small community; whether he should begin for himself, or seek a position in a lawyer's office, together with various other related topics.

§ 9. Large City or Small.

There is no subject of more vital importance to the lawyer than the choice of community in which he will practice. Were it a matter to be decided entirely with a view to the future, the large city with its great opportunities should unquestionably be the choice of the lawyer who has genuine ability and a capacity for work. But there are other considerations that demand thoughtful attention.

Establishing a lucrative law practice in a large city demands not only ability and capacity for work, but a bull-dog tenacity of purpose that will not yield to discouragements, however great. But, further than this, the lawyer who seeks the great city at the outset of his career must have, for the first year or two, some means of support, aside from his law practice, unless he has wealthy clients at the beginning.

Some lawyers enter the office of an established practitioner, on a salary basis. Others teach in the evening public schools. There are various ways, of course, according to his qualifications, in which the beginner may earn money, but in all there is the danger of being obliged to expend too great an amount of energy for a merely temporary purpose.

If there are others dependent upon him for support the question of location becomes much the more a matter of concern. The increased

expenses of city living, the more exacting demands of the landlord both at home and at the office, must all be considered.

LOCATING IN SMALL COMMUNITY TEMPORARILY

Many lawyers who have made their way to the front rank of their profession, but who were at the beginning without financial resources, have solved the problem by locating in a small community near a large city, and later, when financial circumstances warranted it, opening a city office.

The relative advantages of the large city and the small community may be summarized as follows:

The large city offers a limitless scope to the activities of an able lawyer. In the small community the lawyer, however able, can never hope for an extensive and lucrative practice.

In a large city the rents and living expenses are greatly in excess of those in the small community.

In the large city the period of struggle to establish a practice is considerably longer than in the small community.

The question after all, is for the individual to decide in view of his own peculiar circumstances. Others may advise, but unless their advice is based upon an intimate knowledge of his circum-

stances it is of little value to the individual in question.

§ 10. Clerkship or Independent Practice.

A considerable number of newly admitted lawyers are taken into large law offices every year as assistants to busy practitioners. Copying legal documents, filing of papers in court or in the Registries, looking up witnesses and such small but necessary details of practice form the chief occupation of attorneys so employed. Such experience is valuable for the first year of practice, but from a financial standpoint usually disappointing. Many lawyers serve such apprenticeships either without compensation or at most for an insignificant weekly stipend.

LENGTH OF APPRENTICESHIP

Beyond the first year or two a continuation in such employment is prone to dwarf the individual by rendering him less confident of his ability to succeed in establishing a practice of his own. He becomes a hired man, with all the uncertainties and worriments as to his future that usually go with a salaried employment.

Year by year, as expenses grow and perhaps marriage and a family increase financial burdens, the salaried lawyer finds himself more powerless to start for himself. He dares not give up a cer-

tainty, even though it be a meagre one, for an uncertainty and the prospect of a struggle to build up an independent practice.

Whether the lawyer begins soon or late, a practice comes slowly and painfully. So, unless there is a prospect of being taken into the firm, he should sever his office apprenticeship after the first year or two and make a start for himself.

§ 11. Desk Room or Independent Office.

Many lawyers prefer desk room in an established law office to an independent office of their own, especially during the early years of their practice. From the standpoint of economy this arrangement is usually eminently satisfactory.

The large office is always open during office hours, and the lawyer who rents a desk in the office may be sure that his clients will not be turned away by a closed office when he himself happens to be out on business. Telephone calls will also be attended to. Hence, for the lawyer to whom economy is an object, desk room in a first-class office, whether law office, real estate, or insurance, is preferable to an independent office.

But under no consideration should a lawyer who values his reputation take desk room in an office whose general reputation in the community is questionable. He will assuredly be adjudged of the same stamp as his office associates.

SHARING EXPENSES OF OFFICE

Should it be impossible to secure desk room in a desirable office the independent office becomes a necessity. It frequently happens that several lawyers take an office together as partners or merely share office expenses but are otherwise independent of each other. The advantages of such an arrangement are obvious: a reduction of expenses, and the possibility of arranging office hours, if the associates do not employ an office boy or stenographer, so that the office may be kept open during business hours.

THE OFFICE SITE

Care should be exercised in choosing an office site. Disreputable sections of the city, or sections where questionable business houses are congregated, should be carefully avoided. If a particular building has a reputation for harboring "get-rich-quick" concerns, or shyster lawyers, no amount of saving in rent can compensate for the loss in professional prestige occasioned by the location itself.

§ 12. Conditions of Office.

The conditions of a lawyer's office are visible symbols by which the public are prone to judge the lawyer, unless he has already conclusively demonstrated his powers in court. Success as an

advocate having been attained, clients are less disposed to be critical of office conditions. But the great multitude of lawyers are vitally concerned, whether they realize it or not, with the appearance of their places of business.

A law office should be neat and attractive. A slovenly office conveys the impression that the occupant is slovenly in his work, and that a client would be taking chances of disaster in employing him. The office should bear witness to the presence of a studious lawyer. Books should be in evidence.

If the occupant's library is small, he should arrange what books he has in the most imposing array possible. It is not necessary that all books in the collection be the latest publications — shelf-fillers are quite as serviceable when the object is to fill up shelf space. Legislative reports, and especially the annuals containing the newly enacted statutes, can be procured at a slight expense or in many cases free of charge. All such may properly be found in a lawyer's library. Law books are all alike to the ordinary client, so far as his estimate of value is concerned.

§ 13. Showy, Luxurious-Appearing Office.

Some lawyers fancy, that if by any possibility they can fit up a showy, luxurious-appearing office at the outset, prospective clients will jostle

one another in their haste to bring cases to them. But making a "great splurge," as it is sometimes called, usually carries with it a dire certainty of disaster. The prospective client is swift to perceive the real situation, to realize that the expenses for this lavish equipment must come out of somebody, and perchance fears that he himself might be a victim. So he goes elsewhere for legal assistance.

The safe way is to present merely the best appearance that is consistent with one's circumstances and reasonably certain prospects. A dignified, manly attitude toward the public is worth vastly more in the end than any amount of bluster and empty show. A law practice comes slowly, and expenditures should be regulated with that idea in view.

§ 14. Office not A Lounging Place.

A law office should not be a lounging place for the attorney's idle friends and acquaintances. The presence of idlers not only disconcerts the lawyer, who would otherwise be deeply engrossed in necessary work or study, but also tends to keep away prospective clients.

Loud, boisterous conversation, especially during office hours, gives the law office and its occupants an unfavorable reputation in the neighborhood.

§ 15. Office to be Constantly in Business Trim.

The law office should at all times during business hours be in readiness for the reception of possible clients. It is usually at the most unexpected moments that a seeker for legal services walks into the office. The lawyer should not be in his shirt sleeves unless the weather is so intolerably hot as to furnish him a valid excuse. Little things in appearance and deportment signify much to clients and especially to female clients.

POLLUTION OF AIR BY SMOKING

The air of the office should be fresh and wholesome. A person coming into an office from out of doors instantly detects any oppressiveness or improper condition of the office ventilation. This is true even when an odor in the air is so slight that the occupant does not dream of its presence.

The stifling fumes of tobacco smoke are especially objectionable. It is at best an awkward expedient to open the windows and "air out" after the client arrives. The client is embarrassed at being the cause of this sudden change in office conditions, and the occupant is disconcerted at being found in such an unwholesome atmosphere.

But disagreeable as is the odor that saturates the office from cigars and ordinary tobacco, it is as

incense compared with the villianous aftermath of cigarette smoking. Many laymen, after visiting an office in which such conditions are found, express themselves of the opinion that the lawyer or lawyers therein have little or no practice and beguile the time by deadening their senses with cigarette "dope."

Whether this be a just criticism or not, the prevailing impression of the deleterious effect of cigarette smoking should prompt the lawyer to avoid the appearance of the habit, even though his natural sense of courtesy to prospective clients is not strong enough to accomplish the same result.

§ 16. Leaving the Office Door Ajar.

A very good plan to pursue in striving to make the office attractive to prospective clients, if the office is off a corridor in an office building, is to leave the office door ajar or part way open so that a portion of the office interior can be seen. A stranger always hesitates to open a closed door but if the door is part way open the invitation to enter the office is suggestively cordial and emboldening.

If two law offices opening from the same corridor confront the person seeking legal assistance, and one office door is partly open and the other tightly closed, the chances are ten to one, granting that both lawyers are equally unknown, that the pros-

pective client will choose the office with the open door.

§ 17. Summary of Chapter.

The location of a law office has a profound influence upon the success or failure of the lawyer and hence upon his professional conduct. The large city with its manifold attractions and advantages is the goal of the ordinary lawyer, yet, under some circumstances, the small community is preferable as a location during the early years of practice.

The question of apprenticeship in the office of an older lawyer with its advantages and disadvantages is often difficult of solution. Desk room or independent office is usually a matter to be regulated by circumstances. The office, when once established, should bear evidence of the presence of a studious lawyer. The appearance of the office, the presence of loungers, atmospheric conditions, especially with reference to tobacco smoking, are each discussed. Leaving the office door ajar is a commendable practice.

CHAPTER III

DUTIES TO THE CLIENT

SEC. 18. Is it a Duty to Accept any Client?
Not Policy to Refuse Case unless for Good Reasons.
Undesirable Clients.
SEC. 19. Freedom of Choice.
Freedom of Choice a Valuable Asset of Lawyer.
Effect of Choosing Clients Wisely.
SEC. 20. Duty not to Accept Case if a Party in Adverse Interest.
SEC. 21. Duty not to Accept if Representing Adverse Party.
Duty Where Both Contending Parties are Clients.
SEC. 22. Not to Accept if Recently Counsel for Adverse Party.
SEC. 23. Duty in Case of Divorce Sought by Friends.
SEC. 24. Duty to Accept Case against Fellow Attorney.
SEC. 25. Duty to Defend Criminals.
SEC. 26. Duty as to the Retainer.
Amount of Retainer.
SEC. 27. Duty as to Advance Costs.
Amount of Advance Costs.
SEC. 28. Summary of Chapter.

§ 18. Is it a Duty to Accept any Client?

One of the questions confronting a lawyer, especially after the waiting period is over and new clients begin to come in more frequently, is whether to accept or decline a proffered case.

Were it a matter affecting merely the case offered, the question would be less difficult, but the entire future with this particular litigant hangs

in the balance. If he is turned away and goes to a different attorney, the chances are ten to one that he will never return to the lawyer first consulted.

The ordinary client will continue with a lawyer once employed, if he gives satisfaction, rather than take his chances with a stranger. It is human nature so to do, and it is upon this certainty of return of a satisfied client that a lawyer's practice is based. Hence, the subtle temptation of the lawyer to accept a case of doubtful nature rather than lose his chances of future employment with the prospective client.

NOT POLICY TO REFUSE CASE EXCEPT FOR GOOD REASONS

It is self evident, of course, that a lawyer who wishes to build up a large practice should not turn away any client unless for good and sufficient reasons. The mere fact that the case is small and insignificant is not a sufficient warrant for declining it.

UNDESIRABLE CLIENTS

If the litigant himself is an undesirable client, or there is a practical certainty that no business of any consequence can ever come from him or his acquaintances, the busy lawyer need not hesitate in advising him to go to some less busy attorney.

Nothing is lost by so doing. In fact, there is a distinct gain of time for more important work, both at the present and in the future, for such a client will continue to bring small cases, and friends with similar cases, to pester the busy lawyer.

§ 19. Freedom of Choice.

Some lawyers declare that it is the duty of a lawyer to accept any and every case offered, irrespective of his own personal opinion as to its ethical standing. Such arguments are usually heard by way of justification of the particular lawyer for being engaged on the side of knavery. Nothing could be farther from the lawyer's duty to the public. To be sure, he is an official authorized by the public to represent any individual who may apply to him for legal services, but he has a freedom of choice. He is at liberty to decline a case, with or without reason. He may retire from active practice, even, whenever he chooses, without any violation of the rights of the public in respect to his services.

FREEDOM OF CHOICE A VALUABLE ASSET OF LAWYER

Freedom of choice among litigants who come to him for legal assistance is an invaluable asset to the lawyer. By it he shapes his own future career as a lawyer. He may specialize in a particular branch of the law and decline all cases

except from clients whose business affairs are likely to require expert services in his special line.

For example: If a lawyer wishes to confine his practice to admiralty cases or patent litigation or corporation law, his proper course is to decline cases that involve different branches of the law.

Whether it would be expedient for him to begin this specializing process at the beginning of his practice is a matter largely to be decided from a financial point of view. If he can afford to turn away cases in other than in his chosen field, that is his own affair.

Some lawyers, however, declare, and with considerable force of argument to support it, that every lawyer, whether he is to be a specialist or not, should first be trained in general practice. Specializing is to a certain extent narrowing in its effect upon the intellectual outlook of the individual. The lawyer should, above all others, cultivate a broad-minded view of life and of his profession.

EFFECT OF CHOOSING CLIENTS WISELY

Freedom of choice among litigants enables the lawyer to determine whether his practice shall be active court practice, or otherwise. If he desires court practice, he may still determine

whether he will handle contract cases, or accident cases, or defend clients accused of crime.

If he desires to confine himself to the quieter, and oftentimes more profitable, practice outside of the courts, his freedom of choice enables him gradually to develop into a corporation lawyer, or to become a salaried counsel of large business enterprises.

§ 20. Duty not to Accept Case if a Party in Adverse Interest.

No lawyer with a sense of honor would hesitate for a moment in declining to take a case if his own personal interests were adversely concerned. It would be a positive wrong to the client. It sometimes happens, however, that a lawyer who has no actual interest in the dispute has a remotely apparent interest. It may be that he is closely related to the adverse party, but has no greater interest in his relative's welfare than he would have in that of an absolute stranger. It is his duty, nevertheless, even under these circumstances, to absolutely decline to act. His own reputation demands it.

If the case were lost, the client, for clients are sometimes ungrateful, might ascribe the result to the lawyer's secret interest in the welfare of the adversary. Such a charge would be hard to refute, owing to the unfortunate circumstances.

If the case were won, it might be that the client would be dissatisfied with the amount of recovery and in like manner ascribe the result to a lack of zeal in his behalf because of his lawyer's relationship to the adversary. Thus one horn of the dilemma might be as dangerous to the lawyer's reputation as the other.

The safe course to pursue is to decline to serve at all, even though the client knows the facts before the employment begins, and even though he expresses himself as satisfied therewith. He may change his mind later.

§ 21. Duty not to Accept if Representing Adverse Party.

Another situation in which no honorable lawyer would ordinarily hesitate to decline the case is where he has already been retained by the adverse party. Obviously he could not represent both contending parties if court proceedings were resorted to. But such a pronounced situation of affairs would not come at first.

Suppose, for instance, Lawyer Blank has been engaged by A to help him adjust his differences with B. Later, B, without knowing of the fact of Blank already having been engaged by his adversary, attempts to state his case to him — with a view of engaging his services. The question immediately confronts Lawyer Blank: "Shall

I tell him not to continue with his story or let him go on until I can know both sides of the case and then try to adjust matters?"

This may seem at first thought a very commendable purpose, but the lawyer's duty is fixed and definite. He is not a judge, but a paid advocate for the adverse party. Hence, he has no right to hear a word of B's story until he has acquainted him with the fact that he is representing the other party. B comes to him in confidence, a confidence that should be held sacred by every lawyer who is worthy of his profession. B should immediately be put upon his guard.

If, after knowing the facts, B is willing to tell his story and to attempt to secure a settlement with the lawyer before him, well and good, so far as the lawyer's duty to him is concerned. A settlement out of court is always desirable, if it can be made without sacrificing the rights of one's clients.

But it should constantly be borne in mind that dealing directly with the adverse party has its dangers. The lawyer by superiority of training and greater technical knowledge has an advantage over the layman, and a sharp bargain with the layman in settling a client's case against him often breeds public distrust of the lawyer's professional ethics.

On the other hand, an agreement unsatisfac-

tory to the client may raise a suspicion that there was collusion between the lawyer and the adverse party. The safer way, if he has no lawyer, is to deal with the adverse party in the presence of one's client or of witnesses. If he has a lawyer, then the lawyer is the proper party to deal with.

DUTY WHERE BOTH CONTENDING PARTIES ARE CLIENTS

An embarrassing situation may arise in the following way: A has a grievance against B. He goes to his lawyer C for legal assistance. C is immediately aware that B is also a regular client of his. What is his duty in the matter? Should he act as counsel for A in an action against B, or does he have a choice between the two parties, provided B also desires his assistance? But the further question arises: Is it proper for him to act at all for either party, in view of his professional relation to each?

It is easier to propound these questions than to answer them. Choosing one or the other will alienate the future business of the rejected party, and even though the relative importance of the two clients may simplify the matter of choice, yet a doubt as to the ethics of choosing at all must trouble the conscientious lawyer.

Theoretically, all clients should stand on exactly the same basis. Each should command the

absolute loyalty of counsel, and financial considerations should not cause a varying degree of vigilance or devotion. But in the practical world of affairs we must recognize that theory and practice are often totally different things. The lawyer will naturally devote more attention and vigilance to the legitimate claims of a client who can pay handsomely than he will to the service of an impecunious client. It is human nature.

So perhaps the average lawyer would choose between the clients on the basis of financial worth. The client who customarily gave him the greater volume of business would be preferred. Of course he would try to placate the other and excuse himself as best he could for the choice he had made. If the case could not be settled without court proceedings, he would doubtless offer to suggest a lawyer who would satisfactorily handle the case for the rejected client.

But a severer code of ethics would dictate that the lawyer remain absolutely neutral. If he could not accomplish a compromise out of court by getting the adversaries together and by counselling a moderation of the extreme claims of each, he should leave the parties to fight it out without further services from him. A firm stand and a frank explanation to both parties of why he could not serve either should increase their respect for

him as a lawyer and do much to bring about a harmonious adjustment of differences.

§ 22. Not to Accept if Recently Counsel for Adverse Party.

If one has recently been counsel for a party against whom a stranger seeks to bring suit, he should decline the offered case. The relation of attorney and client may not then exist, but there is nevertheless a duty to the former client. Every man who employs a lawyer has a right to demand that knowledge of him and of his affairs, gained by the lawyer under circumstances of trust and confidence, should not be used against him at a later time in behalf of an adversary.

A lawyer in properly handling a client's case, especially if it concerns his private affairs, gains a more intimate knowledge of the client and his vulnerable points than anyone else save his immediate relatives. Justice demands that this should be so and that the confidential relation between lawyer and client should be unhampered by any fear that the lawyer will afterward make a wrongful use of the knowledge thus acquired.

The familiar principle of the law of evidence that the lawyer cannot voluntarily nor under compulsion testify in court to confidences from his client except with the client's consent is one phase of this general subject of the lawyer's duty

to his client. The topic under discussion is not governed by positive law, but the well-being of the profession of law demands that a lawyer should implicitly keep faith with former clients.

This duty remains, even though the client has ill-used his lawyer and wrongfully severed relations with him. The fact of ill-usage, or of refusal to pay fees rightfully due, does not release the lawyer from his professional obligations to the client. The client may have proved himself a mean and contemptible creature, but the lawyer should not, in passion or spite, forget his own high obligations and duties, and shame himself and his profession by taking a mean and contemptible revenge.

§ 23. Duty in Case of Divorce Sought by Friends.

It sometimes occurs that a lawyer who is a friend of both parties is asked to act in behalf of one party desiring to institute divorce proceedings against the other. The situation is a delicate one. The first duty of the lawyer so consulted, and in fact of any lawyer, even though a stranger to the unhappy couple, is to endeavor to effect a reconciliation. The marital ties of husband and wife should not be set aside except for grave causes.

An angry husband or wife is prone to distort and magnify the present causes of disagreement.

An unprejudiced lawyer to whom the story is told should be a calmer judge of the grievance. He should make due allowance for exaggeration and, if there is a possibility even remote of a harmonious settlement of the matter without divorce, it is his duty to do his utmost to effect a reconciliation.

To advise divorce proceedings and to encourage the resentful feelings of the aggrieved party merely for the sake of the legal fees that will result from such proceedings is a positive breach of duty to the public. A lawyer who will do this is unworthy of his profession.

The lawyer who is a friend to both parties is under a double obligation to effect a reconciliation: a duty to the public, and an additional duty arising from friendship to the estranged couple.

Of course the cause of divorce may be of so aggravated a nature that the offending party forfeits all claims of friendship of the lawyer. It may be that justice demands that the injured party should no longer be compelled to bear the shame that the other has brought upon their common name. Adultery, confirmed drunkenness, or persistently brutal conduct toward the other should justify any lawyer in taking the side of the innocent party, even though he has been a lifelong friend of the wrongdoer.

§ 24. Duty to Accept a Case against Fellow Attorney.

It sometimes transpires that a prospective client brings a story of apparently unjust treatment at the hands of a member of the bar. The offending lawyer has acted as counsel for him and, in some way, has been guilty of wrongful conduct toward him. It may be that he has refused to account for money paid to him in settlement of a suit, or that he has misappropriated trust funds, or grossly overcharged for services, or taken his pay from the client's funds before paying over the balance.

There is a generally prevailing reluctance among lawyers to bring suit against other attorneys, especially if the wrongdoer is a prominent member of the profession. But it is the positive duty of a lawyer to rebuke in the most effective manner in his power the misconduct of a fellow attorney.[1] Not only is his wrong-doing an injury to the public and to the individual, but it sullies the fair name of the profession of law. The basis for the popular mistrust of lawyers is, as we know, the misconduct of the few. The only effective way to reassure the public of the moral integrity of the profession in general is for honest lawyers to rise in indignation against rascals and knaves who wear the badge of the law and scourge them

[1] See also § 72.

out of the profession. Assuredly it is not wise for an honest lawyer to shrug his shoulders and decline to undertake the case. The layman will misunderstand the act, and conclude that all lawyers are alike, and furthermore that they are banded together in a great fraternity to shield one another when accused of crime.

Professional courtesy is due to brethren of the bar so long as they conduct themselves honorably, but no longer. When they show themselves to be criminals they should be treated as such and prosecuted with a severity due to their two-fold offense — the injury to the public and to the good name of the profession of law.

A word of caution however should be added. Not every disgruntled individual who brings a story of ill-usage by his attorney has a real grievance. A layman who is accustomed to measuring the value of services by the standard of day labor with the hands cannot readily understand that professional services are worth vastly more than the toil of a day laborer. All stories of overcharging should be scrutinized carefully before condemning thel awyer against whom complaint is entered It .may be that, if both sides of the story were told, his charge was a moderate and proper one.

§ 25. Duty to Defend Criminals.

One of the most damaging evidences of the depravity of lawyers to the minds of many people who have never given the subject much thought is the fact that lawyers defend criminals. Such people do not pause to consider that a person accused of crime is not necessarily a criminal. The accused may be the victim of circumstantial evidence and entirely innocent of the crime charged.

If one were not given the right to defend himself and meet incriminating evidence with evidence of a contrary nature, no citizen, however law abiding, could be sure of his liberty. Take, for example, the indictments returned by the grand juries, and compare them with the acquittals that result from later trials. While not all persons acquitted are necessarily innocent, yet many of them are innocent.

The proceedings before the grand juries are those in which the side of the accused is not represented. Only the evidence against him is adduced. Hence, he is convicted, or would be if that were the only form of trial. Yet this is the sort of trial that many critics of the legal profession would impliedly advocate.

The prosecution of an accused person is conducted by a skilful attorney who sees only the damaging evidence against him. The prosecutor's professional zeal prompts him to present to

the court and jury in an actual trial as strong a case against the accused as is possible under the circumstances. Hence, it becomes a necessity, if justice is to be done, that the prisoner have the services of a lawyer to present, in defence, all the favorable evidence. The United States Constitution guarantees this right of defence to all criminals. But the real basis of the provision is to protect the innocent from unjust convictions, and not merely to provide a form by which avowed criminals may be convicted.

It is true that guilty persons do take advantage, undue advantage sometimes, of this right of defense. It is true also that some lawyers so far forget their duties to the public as to invent unworthy means of delay and throw all manner of obstacles in the way of justice. But the fact that a few guilty persons make a mockery of a humane provision does not impeach the justice of that provision, so far as the great mass of the people are concerned. Nor does the fact that a few lawyers go to unworthy extremes in the defense of notorious criminals impeach the honor and integrity of the great mass of the profession.

It is necessary and right that all persons accused of crime, whether guilty or innocent, for in some cases there is no human means of determining either guilt or innocence to a certainty, should have the ablest defense possible.

The American Bar Association in the Fifth Canon of its *Code of Ethics* sets forth the lawyer's duty in this respect thus:

"It is the right of the lawyer to undertake the defence of a person accused of crime, regardless of his personal opinion as to the guilt of the accused otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

"The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible."

Again in Canon 15:

"In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit,

much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client."

A lawyer who lived many years ago, David Hoffman by name, who was renowned for his professional integrity, embodied his idea of a lawyer's duty in this regard in the following manner:

"When employed to defend those charged with crimes of the deepest dye, and the evidence against them, whether legal or moral, be such as to leave no just doubt of their guilt, I shall not hold myself privileged, much less obliged, to use my endeavors to arrest or to impede the course of justice, by special resorts to ingenuity, to the artifices of eloquence, to appeals to the morbid and fleeting sympathies of weak juries, or of temporizing courts, to my own personal weight of character — nor finally, to any of the overweening influences I may possess from popular manners, eminent talents, exalted learning, etc. Persons of atrocious character, who have violated the laws of God and man, are entitled to no such special exertions from any member of our pure and honorable profession; and, indeed, to no intervention beyond securing to them a fair and dispassionate investigation of the facts of their cause, and the due application of the law. All

that goes beyond this, either in manner or substance, is unprofessional, and proceeds, either from a mistaken view of the relation of client and counsel, or from some unworthy and selfish motive which sets a higher value on professional display and success than on truth and justice, and the substantial interests of the community. Such an inordinate ambition I shall ever regard as a most dangerous perversion of talents, and a shameful abuse of an exalted station. The parricide, the gratuitous murderer, or other perpetrator of like revolving crimes, has surely no such claim on the commanding talents of a profession whose object and pride should be the suppression of all vice by the vindication and enforcements of the laws. Those, therefore, who wrest their proud knowledge from its legitimate purposes to pollute the streams of justice and to screen such foul offenders from merited penalties, should be regarded by all (and certainly shall by me) as ministers at a holy altar full of high pretension and apparent sanctity but inwardly base, unworthy, and hypocritical — dangerous in the precise ratio of their commanding talents and exalted learning."

§ 26. Duty as to the Retainer.

Of the retainer itself little can be said. It would not be a safe rule to adopt that every client must deposit a retainer before his case would be

accepted. Many perfectly honorable and fair dealing clients, deeming that their own word was sufficient assurance, might take offence at having thus to pledge their good faith.

But were it possible to tell at the first interview with a client whether he was reliable or unreliable, and if he were found to be the latter, a retainer should be insisted upon. A lawyer's time is his capital, and to be called upon to expend a portion of that time in research or endeavor for a client who might be financially irresponsible and refuse payment is a positive injustice to the lawyer.

In this country the lawyers are few who demand a retainer, and those few are usually lawyers of eminence in the profession, whose services are much in demand.

AMOUNT OF RETAINER

The amount of the retainer, when one is demanded, depends, of course, upon the circumstances. The size of the claim, the probable difficulty of preliminary investigations, and the financial responsibility of the client must all be considered. A larger retainer would be expected from a wealthy client than from a poor man.

§ 27. Duty as to Advance Costs.

There is a topic, however, somewhat related to the retainer, that should properly be treated in

this connection — the subject of advance costs. The lawyer is under no duty to advance the money for the actual costs of proceedings, although in dealing with clients who are perfectly responsible financially this is often done and the amount is charged against the client's account.

AMOUNT OF ADVANCE COSTS

The amount to be exacted for advance costs depends upon the circumstances. A sum that would be ample in one case might be wholly inadequate in another, so the lawyer must exercise foresight in determining the amount.

In the author's recent work, *Law Office and Court Procedure*, this topic is treated. Some suggestions there given may be pertinent here:

"In ordinary suits on bad bills, from five to ten dollars will cover actual expenditures. In considering the amount of advance costs, you should remember that you become personally liable for the officer's charges for service, and that such charges are likely to be anywhere from one dollar up, according to the difficulty of service. The entry fee is another item to consider; in the inferior courts it is usually one dollar, and in the Superior Courts three dollars.

"Travelling expenses in interviewing witnesses must also be considered. It is often necessary to go to the house of a witness to secure an inter-

view, and car fares or carriage hire for such purposes may amount to a considerable sum.

"It should perhaps be added in passing that the ordinary client is much more inclined to be liberal before suit is started than he will ever be afterward; especially if the suit is unsuccessful. If advance costs are obtained it may save embarrassment to all concerned." [1]

§ 28. Summary of Chapter.

The question of whether a lawyer should accept or decline a proferred case is a difficult one to decide, and a great deal depends upon the decision finally made. The lawyer has a freedom of choice among those seeking his services. By this freedom of choice the lawyer regulates the branch of the law in which he will specialize, if he decides to specialize. The lawyer is under a duty not to accept a case if he is himself a party in adverse interest, and is perhaps under the same duty even if remotely connected with the case. He is under a duty not to accept if representing the adverse party, and this is true if both litigants are regular clients of his. In the latter case it may be a question whether he can conscientiously act for either. He is under a duty not to accept a cause if recently counsel for the adverse party. The lawyer's duty in case of divorce sought by

[1] Archer's Law Office and Court Procedure, page 11.

friends forbids him to do anything except to try to effect a reconciliation, unless one of the parties has so acted as to forfeit the ties of friendship. He is under a duty to accept cases against erring lawyers. He has a right to defend criminals, although he is not always under a duty so to do. General suggestions are also made as to lawyers, rights and duties respecting retainer and advance costs.

CHAPTER IV

DUTIES TO CLIENT (Continued)

SEC. 29. Duty not to Hastily Advise.
Hasty Decisions Dangerous to Lawyer.
An Illustration.
Another Illustration.
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Holding Out Delusive Hopes.
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SEC. 32. Duty that Advice should be Clear.
An Illustration of the Result of a Client's Misunderstanding.
SEC. 33. Duty in Respect to Over-Inquisitive Client.
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An Illustration of the Headstrong Persistence of a Client.
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SEC. 36. Unjust or Inequitable Suits.
An Illustration of Effect upon Lawyer's Career.
SEC. 37. Is it a Duty to Advance Money to Client?
No Duty Ordinarily.
SEC. 38. Summary of Chapter.

§ 29. DUTY NOT TO HASTILY ADVISE.

The client has a right to the carefully considered judgment of his attorney. The client must shape his conduct in accordance with the advice given him, and if that advice be ill-considered the client's

rights may be jeopardized or lost. He has a right to assume that the lawyer is doing his best in so advising and will conclude that if his best advice is so disastrous when followed a change of lawyers is desirable.

HASTY DECISIONS DANGEROUS TO LAWYER

The longer the experience of the lawyer, the more thoroughly does he understand the danger of snap judgments and the more carefully does he avoid them. Caution and deliberateness of judgment are characteristics of successful lawyers, for no man can acquire any degree of success in his profession if he gains the reputation of "going off at half cock." Clients are afraid to entrust cases of any importance to such a lawyer and run the risk of a fatal blunder.

AN ILLUSTRATION

How truly this result works out in everyday life may be seen from the following:

In a certain New England State, not many years ago, a young lawyer, an ardent temperance worker, was elected prosecuting officer for the county. The liquor traffic was under the ban of the law in the State, and the county which the young lawyer was to serve was particularly odious for the illegal liquor traffic carried on in its principal towns.

"Kitchen bar rooms" and disorderly houses had become so shamelessly prevalent that the good people of the county rose up in might to stamp out all such evils. A campaign was waged to elect a county attorney who would enforce the law. The successful candidate was a brilliant young man, witty, eloquent, and resourceful in debate. Everyone predicted a brilliant future for him, for the office of county attorney was regarded as a stepping-stone to the bench or to a large and lucrative law practice.

In spite of the young man's wit, eloquence, and undoubted zeal, nearly every prosecution that he brought resulted in a discharge of the accused. His indictments were frequently defective, his evidence was often imperfectly prepared, and the lawyers for the defence found it easy to checkmate him at every turn.

The real difficulty lay in the fact that the county attorney was addicted to snap judgments. In his zeal to convict, he failed to verify first impressions and went to court unprepared. The result was that the young man met with disaster on every hand and, strangely enough, never seemed to realize where the fault lay. His former supporters deserted him in disgust, and when his term of office expired he had shown himself to be the most inefficient prosecutor that the county had seen for many years.

He returned to private practice, but his reputation as a blunderer followed him, and he was soon obliged to leave the county and try his fortunes in a distant part of the State.

ANOTHER ILLUSTRATION

Another illustration quoted from a work already cited [1] may serve to further impress the moral upon the reader.

"As an illustration of the ease with which the young attorney may fall into error through attempting to apply common-law principles without investigation of possible statutory changes, let us assume the following: X is a young lawyer who has recently graduated from a law school in a State other than the one in which he is now beginning his practice. A client comes to him with an assignment of wages upon which he desires legal advice. X learns from his client that the assignor has left the employ of the firm for whom he was working at the time of the assignment. He remembers the common-law principle that an assignment of wages can apply only to wages earned under a contract existing at the time of the assignment. He thereupon concludes, without further consideration, that the assignment does not apply to the present employment and informs his client that he has no remedy.

[1] Archer's "Law Office and Court Procedure."

"The client demurs to this conclusion and declares that he has known many cases where an assignment was enforced under just such circumstances. X, in his perplexity, looks up the Revised Laws of the State and finds there is a statute which provides that assignments of wages are operative against contracts of employment subsequent to the original one, provided the assignment has been recorded. His client's assignment has been duly recorded, so X reverses his opinion and promises to immediately institute the proper legal steps to enforce payment.

"The client goes away joyfully, and X hastens to consult an older attorney as to how he shall proceed in the matter. To his dismay he is informed that the assignment is after all valueless, because a statute, more recent than the Revised Laws, which was in force at the time of the assignment, provides that a married man who assigns his wages under the circumstances related must procure the written assent of his wife in order for the assignment to be valid. No such written assent had been obtained by X's client from the wife of the assignor.

"When the client learns the true situation and how little X knew about the law of assignments, X's reputation for legal knowledge suffers considerably in his estimation, and he is likely to consult a different lawyer the next time he desires legal information.

"The cause of this unfortunate experience of X was not that the law school he attended failed to give him the latest law; for law schools teach general principles, and cannot, ordinarily, concern themselves with statutes outside of their own State. The real cause was X's failure to properly investigate the law before giving his opinion, *and a similar experience may come to any young lawyer unless he guards against a tendency to hasty opinions and ill-considered actions.*" [1]

§ 30. Not to Make Positive Assertions of Outcome of Suit.

Another duty that every lawyer owes to his client is to refrain from positive assertions of a favorable outcome of litigation. Surprises of one sort or another are sure to occur, and some unexpected evidence or legal obstacle raised by one's opponent may give the victory to the adversary.

HOLDING OUT DELUSIVE HOPES

If the lawyer of the defeated party has held out delusive hopes and the client, in his natural enthusiasm for his own side of the controversy, has accepted these assurances as foregone conclusions, defeat will come to him as a rude awakening. He is likely to feel a bitter resentment toward his lawyer and to regard him as in a measure respon-

[1] "Law Office and Court Procedure," page 2.

sible for the result, either through lack of ability or through insufficient preparation. The client still believes his own case to have been unassailable if properly handled.

PREPARING FOR UNPLEASANT SURPRISES

The lawyer, therefore, should prepare for unpleasant surprises by assuring the client that even though his case may appear certain, yet there is always a possibility of disappointment through a witness' testimony being shaken or unexpected evidence being introduced by the other side.

American Bar Association Code of Ethics, Canon 8:

"The miscarriages to which justice is subject by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end litigation."

§ 31. How Much Advice should be Given.

Some lawyers make the mistake of explaining too fully to the client the exact legal steps to be taken and the law governing the case. Such

explanations serve no useful purpose and, if made to some clients, cause positive embarrassment to the lawyer. The client who plumes himself on his ability to grasp any point, however intricate, usually carries away erroneous recollections of the explanation. He is over-ready to explain, in his turn, to less sophisticated mortals, or to dispute, even with lawyers, and quote his own lawyer as authority for the most absurd propositions.

AN ILLUSTRATION OF THE EVILS OF TOO MUCH ADVICE

For example: A lawyer had explained to his client who wished to purchase some land that if a sealed agreement of sale were given him this would be sufficient to bind the bargain. The lawyer then went on, without reason other than to air his knowledge, to explain to the client the difference between the provisions of the fourth and seventeenth sections of the Statute of Frauds and how a bargain for the purchase of personal property under the seventeenth section could be made binding by a simple payment of money without a writing.

The client apparently absorbed this knowledge but promptly went to the owner of the land and made a part payment, assuring him, when he offered to give him an agreement of sale, that he

could not wait for it, and besides his lawyer had told him that a part payment was sufficient. The purchaser received a simple receipt acknowledging the payment of money.

The owner of the land later refused to convey and tendered back the money. The client lost the land and blamed his lawyer for misinforming him. No amount of explanation could convince him that he had misunderstood the instructions. It is easy to see that if the lawyer had confined his explanations to the really necessary proposition the client would have acted properly.

§ 32. Duty that Advice should be Clear and Intelligible.

Whatever advice or explanation is given to the client should be made perfectly clear and definite. The client is sure to blame the lawyer for his own mistaken ideas of the explanation, and perhaps, after all, the lawyer is to blame for not ascertaining by questioning whether the client really understood.

AN ILLUSTRATION OF THE RESULTS OF CLIENT'S MISUNDERSTANDING

A client had a claim for necessaries against a certain party. Under the statute in the State it was provided that, by an equitable process after judgment, a debtor could be ordered by the

court to pay the judgment in weekly or periodical installments. The client wished to take advantage of this law.

Her lawyer explained the steps to be taken and added that the amount of payments ordered by the court would depend upon how much the debtor was earning, for he would always be allowed to retain enough to support his family. From this it might readily be inferred that unless the debtor were earning more than enough for family needs no payments would be ordered. But the lawyer did not make this point explicit. He assumed that the client understood. Suit was brought, and an attachment was attempted. The attachment failed, so there was nothing to do but rely upon the statutory remedy of equitable process after judgment.

The client met the lawyer on the street shortly after suit was entered and asked about the attachment and its cost. When they parted the client asked anxiously:

"But I am sure of getting my money from him finally?"

"No. The court will order him to pay if he is earning more than enough to support his family, but he may not be doing that."

"What? You told me the court would make him pay, anyway."

"Pardon me, madam. You have made a mis-

take. I never told you such a thing as that. I told you the court would always allow him to retain enough of his wages to support his family. I thought you understood from that that unless we could prove that he was earning more than enough for his family, the court would not order him to pay, and we would have to wait and try again when he was earning more money.

"I think you're just horrid! I'd rather lose that money than spend any more when I'm not sure of getting it back. You did tell me the court would make him pay anyway, so there!"

So there it was. The lawyer could not convince her of her error and, although he had shortly before won an important case for her, she went away in "a huff" over this trivial matter, told him not to do any more on the case, and never brought him any more business. She did not even offer to pay the expenses that she knew had been incurred. The lawyer paid these bills and charged them up to "experience."

§ 33. Duty in Respect to Over-Inquisitive Client.

A garrulous, over-inquisitive client, if given any encouragement, will pester his lawyer with innumerable questions. He will "drop in for a talk on the case" when there is no necessity of

a conference and disturb his lawyer when his time should be free for important work.

The better plan is to give the client merely the explanations that are necessary to an intelligent understanding of his duties and liabilities with respect to any part he may be called upon to perform in connection with the case. He will respect his lawyer more if dealt with at arm's length in a thoroughly business-like manner than if taken into confidence in respect to things that are immaterial to his own conduct in the case. The lawyer will also be spared the nuisance of unsolicited calls from his client.

There is another phase of the subject that should not be overlooked. The client who knows precisely the amount of work and the time spent by the lawyer on his case, is likely to estimate the value of his services on the basis of day labor and to dispute a perfectly legitimate charge when settling time comes.

§ 34. Duty to Advise against Illegal Acts.

Clients sometimes disclose to their lawyers an intention to do an illegal act. Not necessarily do they ask the lawyer to participate in the act, or to take any active part even remotely connected therewith, but they come for advice as to the probabilities of conflict with the authorities and the extent of their liabilities if caught.

What is the lawyer's duty? Should he make a simple explanation of the law and its manner of enforcement? Is it his duty to intrude himself into the client's affairs to the extent of exhorting him to give up his illegal purpose?

Perhaps the client wishes to commit an assault and battery upon an enemy and desires to know if there is not a way of evading the law by provoking the enemy to strike the first blow. Or, perhaps he has committed embezzlement and desires to know where he can flee to escape punishment; or, perhaps he wishes to burn his property to secure the insurance and desires to know certain technicalities of insurance law.

It is the lawyer's duty in all such cases to advise the client against the intended act. It is his further duty to absolutely refuse to give him any information on the desired point. If the client still persists in his evil purpose he should be shown the door and dismissed summarily. A lawyer never loses but gains by severing his relations with a client who turns out to be a rascal.

§ 35. Duty not to Take a Hopeless Civil Case.

Clients are constitutionally inclined to feel that they are sure of winning a case. They see their own side of the controversy and can not understand the points favorable to their adversary.

They are therefore optimists of the most pronounced type.

The lawyer has a two-fold temptation to advise favorably; the temptation to secure business if the client is willing to take the chances of suit, and the temptation to please the client by coinciding with his views.

But there is a duty that should be stronger than self-interest and the desire to please. To disregard the duty would be a most short-sighted and fatal policy. The client may be pleased by favorable advice at the time, but his anger against his adversary will not endure for long. When the possibility of defeat and heavy costs loom up before him, he will bitterly repent his rashness and will blame the lawyer for not advising against it.

AN ILLUSTRATION OF THE HEADSTRONG PERSISTENCE OF A CLIENT

The headstrong persistence of a client may be illustrated by the following: A and B fell out, as neighbors sometimes do. A fierce quarrel ensued, and A unjustly charged B with injuring a cow that had been found with a broken leg near the line between the pastures owned by the two men. A threatened to sue B for the value of the cow, which had to be killed in consequence of the injury, and B met the threat with defiance.

A's regular lawyer refused to bring suit, because

of insufficiency of evidence. Not satisfied to let the matter drop, A sought out another lawyer, who readily agreed to sue. After many expensive delays, the trial was held, and B proved by witnesses that the cow fell and broke her leg when jumping the fence into B's pasture. B won the case.

After A had paid the costs of suit and reluctantly given up a huge fee to the lawyer who had acted for him, he returned, like the prodigal, to his regular lawyer and besought him to defend him in a suit for malicious prosecution brought by his victorious neighbor.

EFFECT OF SUING UPON HOPELESS CASES

So it is unwise for the lawyer to take a case unless he has a reasonable chance of success. He has no right to his retainer or to fees in such a case unless the client, understanding all the probabilities, voluntarily assumes the risk. Even then the lawyer owes a duty to his own reputation as an attorney not to take cases in which he must inevitably fail. If it can be said of a lawyer that he frequently loses his cases, the public will not inquire what the causes are but will conclude that he is an incompetent practitioner.

"You should not be over-hasty, however, in deciding that a case is hopeless. It is a very important matter to your client and deserves your most careful attention. If, upon mature

consideration, there remains a doubt in your mind as to whether your client has a good case, that doubt should be resolved in his favor. There are instances on record where lawyers have won enduring laurels by winning cases, equitable and just in themselves, but so apparently hopeless that many other lawyers had previously declined to undertake them.

"Ordinarily a lawyer is over-confident as to the outcome of his case, but it sometimes happens that a jury are more liberal in their verdict than the plaintiff's attorney had dared hope. A case came under observation not long ago where the plaintiff's counsel had offered to settle for about three hundred dollars, and his offer was refused. Later a jury awarded the plaintiff two thousand dollars, and the court refused to set aside the verdict as excessive.

"But it should be said in passing that no lawyer ever won enduring laurels by successfully conducting an unjust or unequitable suit. He may be called upon to defend a guilty person who is in the toils of law, and it is his duty under such circumstances to see that his client's constitutional rights as to trial and defence are safeguarded, but that is a very different matter from actively aiding the questionable endeavors of a dishonest client in a civil suit." [1]

[1] Archer's "Law Office and Court Procedure," pages 14, 15.

In Hoffman's *Resolutions* we find the following statements as to a lawyer's duty in this particular.

Resolution Eleven:

"If, after duly examining a case, I am persuaded that my client's claim or defence (as the case may be), cannot, or rather ought not to, be sustained, I will promptly advise him to abandon it. To press it further in such a case, with the hope of gleaning some advantage by an extorted compromise, would be lending myself to a dishonorable use of legal means in order to gain a portion of that, the whole of which I have reason to believe would be denied to him both by law and justice."

Resolution Nineteen:

"Should my client be disposed to compromise, or to settle his claim, or defence, and especially if he be content with a verdict or judgment that has been rendered, or, having no opinion of his own, relies with confidence on mine, I will in all such cases greatly respect his wishes and real interests. The further prosecution, therefore, of the claim or defence (as the case may be), will be recommended by me only when, after mature deliberation, I am satisfied that the chances are decidedly in his favor; and I will never forget that the pride of professional opinion on my part, or the spirit of submission, or of controversy (as the case may be), on that of my client, may easily mislead the judgment of both, and cannot justify

me in sanctioning, and certainly not in recommending, the further prosecution of what ought to be regarded as a hopeless cause. To keep up the ball (as the phrase goes) at my client's expense, and to my own profit, must be dishonorable; and however willing my client may be to pursue a phantom, and to rely implicitly on my opinion, I will terminate the controversy as conscientiously for him as I would were the cause my own."

§ 36. Unjust or Inequitable Suits.

Dangerous as it is to the lawyer's reputation to bring suits hopeless in law but which have a moral basis to support them, it is infinitely more dangerous to bring suits that are unjust or inequitable in themselves. If a client wishes to extort money from a victim by trickery and fraud, the lawyer should not be a party to the attempt. He cannot excuse himself by any claim of professional obligation to do a client's bidding. Such obligation does not extend beyond legitimate and proper tasks. The public will condemn the lawyer long before he is aware that he has been found out.

AN ILLUSTRATION OF EFFECT UPON LAWYER'S CAREER

A certain young lawyer who started out with a reputation for intellectual ability and oratorical attainments was once reproached by an acquaint-

ance for bringing suit on a note the consideration of which had utterly failed. The holder of the note was notoriously unscrupulous and evidently hoped, by bringing suit, to frighten the defendant into paying the note or offering to compromise. The young lawyer who was acting for the plaintiff replied that it was not his affair, and whether he approved or disapproved he was under obligation to his client to do what the client asked him to do.

Such philosophy as this led to the attorney's undoing. It has been seven years since the instance related and now, for a number of iniquitous transactions, the attorney and his client, together with a dozen others, are under indictment. A part of them have been convicted, and the others are to stand trial for the second time.

If the lawyer referred to had started out with a different code of morals, he would doubtless have been successful and happy to-day, instead of being a ruined and discredited man facing another harrowing ordeal of trial for crime.

§ 37. Is it a Duty to Advance Money to a Client?

Occasions sometimes arise when it is necessary to advance money in a moderate amount to protect a client's rights. The lawyer's duty is then clear — he should advance the money and look to his client for reimbursement.

For example: A client had left advance costs with his lawyer, but the fund had been exhausted. The defendant filed a demurrer to one count of the declaration. The count was an immaterial one, and the counsel of the absent plaintiff decided to withdraw it. A statutory right existed whereby the defendant could demand a term fee if he chose to oppose the granting of amendment. In a spirit of vindictiveness, the defendant's lawyer insisted upon the term fee, and the plaintiff's lawyer was obliged to pay it out of his own pocket in order to save his client's case from being dismissed.

NO DUTY ORDINARILY

But under ordinary circumstances the lawyer is under no duty to advance money to his client for personal use or to further his cause. It would be contrary to the best interests of the public to permit such a practice, even when the lawyer is actuated by the highest of motives, for it would open the way for less scrupulous individuals to act in the same manner with a far different motive.

§ 38. Summary of Chapter.

The lawyer is under a duty not to hastily advise his client. Aside from the duty to the client, hasty decisions are dangerous to the lawyer's reputation. He is under a duty not to make positive

assertions of the outcome of suit. The lawyer should not give unnecessary advice to the client, but such as he does give should be clear and intelligible. He is under a duty to advise his clients against illegal acts. He should not take a hopeless civil case, for so to do would be a wrong to the client and to his own professional reputation. He should not sue upon an unjust or inequitable cause. He is under no duty ordinarily to advance money to clients.

CHAPTER V

DUTIES TO CLIENT (Continued)

SEC. 39. Duty of Unswerving Loyalty.
SEC. 40. How Far Should Loyalty Extend.
SEC. 41. Not a Duty to do All of Client's Biddings.
When Act Requested is not Illegal.
SEC. 42. Duty to Sever Relationship for Cause.
Basis of Duty.
SEC. 43. Duty to Client in Ascertaining Facts.
Danger of Over-Confidence in Clients.
An Illustration.
SEC. 44. Duty in Attempts to Settle.
An Illustration of the Danger of Hasty Settlement.
Every Element to be Considered.
Amount of Preliminary Offer as Compared with Actual Damage.
SEC. 45. Negotiating for Settlement with the Adverse Party.
When the Adverse Party Attempts Cajolery.
Effect of Lessened Vigilance for Client.
Not to be Over-Awed by Brilliant Opposing Lawyer.
SEC. 46. Duty in Court.
To Avoid Putting Leading Questions to Client.
Lawyer's Duty not to Forfeit the Good Will of Court or Jury.
Bullying.
Duty to Protect Witnesses from Vicious Cross-Examination.
SEC. 47. Summary of Chapter.

§ 39. DUTY OF UNSWERVING LOYALTY.

Once engaged in behalf of a client, the lawyer is under a duty of unswerving loyalty to the client

so long as he proves himself worthy of loyalty. The client becomes for the time being the principal and the lawyer an agent, subject to a considerable extent to the will of the principal. It is his duty to follow his client's instructions as to terms of settlement and to bend his will to that of the client in respect to general dealings, although his discretion as to specific details exceeds that of ordinary agents.

Having a legitimate object to attain, it is the lawyer's duty to put forth every legitimate effort to win that object for his client. The skill and fidelity with which he discharges his duties as a lawyer give to the public the evidences upon which it will measure his worth and assign him a standing in the community.

Hence, there is no case so trivial and no client so insignificant as to be unworthy of the best endeavors of a lawyer. He is working not for a trivial temporary success merely but for the future. Self-interest therefore should prompt the lawyer, even if an abiding sense of duty to the client did not, to do his very best for each and every client.

§ 40. How Far Should Loyalty Extend.

It has been said by lawyers, even by some who have attained eminence at the bar, that one's duty to a client supercedes all other obligations

that might conflict with it, even that of one's duty to the State and Nation. But it is recognized nowadays that such an attitude results from a fantastic and distorted idea of duty, or from a guilty desire to excuse criminal conduct in behalf of a client.

Nothing is clearer among ethical obligations than that of the lawyer's duty to keep the solemn oaths which he has taken upon admission to the bar. His duties to the State and Nation are paramount, for it is by virtue of authority vested in him by them that he acts as a lawyer. Any act that it would be unlawful for him to do as an individual, or as a lawyer, would be unlawful for him to do in behalf of a client, however urgent the case might be.

Even though the lawyer may personally believe in the justice of his client's cause and feel sure that available legitimate proof is insufficient to convince the jury, this does not justify him in procuring, or allowing to be procured, manufactured evidence. The end will not justify the means, especially when professional honor is involved. The client will not respect the lawyer, nor will the lawyer respect himself, however great the victory that may result from trickery and fraud.

So it remains a fixed duty of the lawyer, in choosing ways and means of conducting the client's case, to conscientiously refrain from violating any

law, or outraging any unwritten ethical obligation to the public.

§ 41. Not a Duty to do All of Client's Biddings.

The lawyer's duty, even when positively ordered by his client to do a thing, remains the same as when he is choosing voluntarily. The client has no right to demand an illegal service, and the lawyer stands strictly upon his rights in refusing to obey. No circumstance, however distressing or pitiful, that moved him to act, will justify the lawyer if brought to account for his misconduct.

WHEN ACT REQUESTED IS NOT ILLEGAL

But let us suppose that the client's request is not to do a positively illegal act, but to perform, or to assist in performing, something that is not in itself an act endangering the lawyer's professional future. It merely offends his ethical ideals without descending to the plane of ethical duties. What should he do in such a case?

The answer is the same. If, upon a fair analysis of the ethical ideal, and a resulting conviction that it is well-grounded and not merely fantastic and impracticable, the lawyer may rightfully decline and should so decline even though it cost him the future business of the client.

The lawyer is the keeper of his own conscience

and if any of the client's biddings offend his conscientious ideals, he is not under a duty to obey.

§ 42. Duty to Sever Relationship for Cause.

If the client has proven unworthy, or if things have arisen between the attorney and client that have abated the attorney's zeal in behalf of his client, the only proper course to pursue is to sever the relationship, if this can be done without unduly jeopardizing the client's interests.

It is related of Abraham Lincoln that once, when trying a case in court for a client whom he caught in an untruth on the witness-stand, Lincoln dramatically severed his relation as attorney then and there and angrily stalked from the court-room. Whether this story of the great and good man is true or not, it may still be a question whether such an act would be wise.

Even though grave causes arise during the progress of trial, the severance of the relation, if made in such a way as to acquaint the jury with the cause of the disruption, might so greatly injure the client's cause as to make it the lawyer's duty to continue until a more favorable opportunity.

BASIS OF THE DUTY

But the duty of severance of the relation, with or without the client's consent, is obvious. If the lawyer cannot give his best efforts and fullest

enthusiasm to his client's cause, he should make way for another lawyer who can. It is a mistaken idea of duty: to try to force one's self to render enthusiastic service in behalf of a person who can be regarded with no other feeling than that of aversion and contempt.

The defence of a criminal in the toils of the law, however, raises a different question. The lawyer may believe him guilty, and actually feel the greatest contempt for him, yet this is no reason why the lawyer may not conscientiously present every defence known to the law and use all honorable means to prevent his conviction.[1] If he is capable of doing these things as well as any other available lawyer, there is no reason for a change at any stage of proceedings.

§ 43. Duty to Client in Ascertaining Facts. When the client comes to the office for the first interview concerning his case, he should have the keen and watchful attention of his lawyer. Every material point in his story should be carefully noted. Every uncertain or weak place in his story, or his knowledge, or recollection of events, should be thoroughly probed, and memoranda should be made for the purpose of future verification or correction from other sources.

The client should be questioned and cross-

[1] See also § 25.

questioned that nothing escape attention. His story should be sifted and analyzed until the vital and essential elements are separated from the rest. When the whole story is unfolded, it should be reduced to writing by the lawyer, so that nothing be forgotten and no second going over the ground be necessary except for purposes of verification.

After the client's knowledge of the facts has been exhausted, the duty then arises of corroborating or correcting the essential facts. If there is documentary evidence of any sort it should be carefully examined. If there are witnesses, whether friendly or unfriendly, no time should be lost in interviewing them. All results of investigation should be reduced to writing and not trusted to memory.

DANGER OF OVER-CONFIDENCE IN CLIENTS

One other caution should be added. Many lawyers make the mistake of trusting too implicitly to the story told by their client and take action without first submitting it to a careful investigation. The testimony of over-zealous friends is quite as dangerous a basis of action. The version of a hostile witness is often far more valuable, since it reveals the other side of the controversy and enables the lawyer to arrive at a more dispassionate view of his client's rights.

AN ILLUSTRATION

Lawyer X was interviewed by A, who had been injured in a collision with B while both were driving on the highway. A's version of the affair was that he was driving at a moderate pace when he met B, who was coming at an excessive speed. B's heavy wagon collided with A's light rig and tore off the rear wheel and badly wrecked the carriage. A himself was thrown out and injured. There was one witness, according to A's version, a neighbor C, who was in the carriage with him at the time. C verified A's story, and both men reported that B had used abusive language to them, both at the time and after the accident. B had refused to settle for the damage done.

Lawyer X, after notifying B of his having been retained, brought suit and attached B's property. Shortly after suit was entered, X discovered sundry evidence tending to discredit the stories of A and C. As the time of trial drew near, he learned more and more to the disadvantage of his client.

At the trial it was alleged, and fairly proven by the evidence, that A and C had conspired to extort money from B by means of a bogus accident. The injured vehicle was a rattle-trap affair fit only for the junk-heap. A and C had been overheard by witnesses to boast that B would be "easy money," since he always drove fast horses,

and an accident could be easily arranged. It was shown further that previously in the same evening they had met B, and he had narrowly avoided running them down. When the accident occurred, they had made believe turn out around an excavation in the street, and B had been unable to avoid striking them.

They had tried to extort money from B and, upon failure so to do, had threatened him with legal proceedings. The case was so evidently fraudulent that even lawyer X, who had acted innocently enough, was suspected to be a party to the attempted fraud. The jury found for the defendant. A and C disappeared, and lawyer X received nothing for his services except some very embarrassing and humiliating experiences.

§ 44. Duty in Attempts to Settle.

Before any efforts at settlement are made, the exact damage to the plaintiff should be ascertained, or at least so nearly as is possible under the circumstances. A hasty settlement without due consideration of the various elements of damage can be productive of nothing but regret and dissatisfaction later on. The damage first apparent may be the least of the damages caused, and if the case is settled on the basis of the damage first disclosed, there is no redress for that subsequently appearing.

AN ILLUSTRATION OF THE DANGER OF HASTY SETTLEMENT

Y was injured slightly, as he thought, in a railroad accident. On the same day he consulted a lawyer, and the claim agent of the railroad was soon closeted with the lawyer and client. Y settled on the spot for an insignificant sum. That night serious trouble developed, and Y became an invalid and remained so for several months. Throughout his illness, he noted the growing items of expense with bitter thoughts of his own and his lawyer's rashness in settling as they did, for the damages to which he was rightfully entitled should have been fifty times the sum actually received.

EVERY ELEMENT TO BE CONSIDERED

The lawyer, in justice to his client and to himself, should consider the question of the amount of damages from every possible view-point before deciding the terms upon which he will settle.

AMOUNT OF PRELIMINARY OFFER AS COMPARED WITH ACTUAL DAMAGE

In making the preliminary offer of settlement, due allowance must be made for the fact that a compromise of the claim is the customary mode of settlement. It would be unwise to set the claim at an amount too close to the minimum estimate

of damages. This does not mean that one should demand an unreasonable sum in the hope of securing an advantageous compromise. It does mean that the sum should be sufficiently high to allow some flexibility to the negotiations. A firm, manly stand, without haggling or attempt to drive a sharp bargain with the adversary, should do much to secure a fair settlement and to add to the lawyer's reputation as a worthy member of the profession.

§ 45. Negotiating for Settlement with the Adverse Party.

It is the duty of the lawyer both to himself and to his client to exercise caution in dealing with the adverse party. He should constantly bear in mind that the adversary is really an enemy whose interests are antagonistic to those of his client. A smiling face and an insinuating manner may count for a great deal socially, but when an enemy employs them to discuss the terms of settlement the lawyer should beware lest he unconsciously be weakened in his client's cause. The "good fellow" is nevertheless the enemy.

WHEN THE ADVERSE PARTY ATTEMPTS CAJOLERY

It may be that he will employ something more than the smile and the insinuating manner. He may drop the hint that he has some legal work in

view that a friend has advised him to give to this very lawyer, and that he was on the point of turning it over to him and would do so after the present difficulty is adjusted. Such transparent ruses can scarcely influence a level-headed lawyer, but it so happens occasionally that the adverse party actually offers the attorney a case or convinces him that employment will be forthcoming. It is needless to say that the attorney who allows himself to be thus tempted will be less antagonistic in dealing with the adversary.

EFFECT OF LESSENED VIGILANCE FOR CLIENT

The only proper method to pursue is to set oneself unflinchingly to the task of gaining the best possible terms for the client without thought of consequences as to future relations with the adversary. A lawyer who lessens his vigilance in behalf of his client can never expect the confidence of the adversary. It would be natural to suppose that he would betray any client if occasion arose when it was for his own interest so to do. But the lawyer who gives the adversary a severe beating becomes at once a desirable man in his eyes and will very likely be sought out with offer of employment when the present litigation is closed.

NOT TO BE OVERAWED BY BRILLIANT OPPOSING LAWYER

Some lawyers lose courage upon learning that a well-known lawyer has been retained by the adversary. It is by no means certain that the employment of a brilliant attorney will result in a victory for the opponent. A mediocre lawyer with a strong case is more than a match for an attorney, however brilliant, who is enlisted on the weak side of the controversy. Such an opponent should put the lawyer upon his mettle and move him to exert the highest and best that is in him to gain a victory and the prestige that will result therefrom.

§ 46. Duty in Court.

The lawyer owes his client the duty of respectful treatment in court. If the client is stupid, or is slow of speech, a patient and tactful examination becomes necessary. An exhibition of ill-temper, or of disgust at the replies of one's client, conveys an unfavorable impression to the jury and the court, either against the client or his lawyer, and whether against the one or the other, working injury to the client's case. No better way of securing the respectful interest of the court and the jury in the occupant of the witness stand can be devised than by the questioner himself appearing to entertain respect and deference for him in the first instance.

TO AVOID PUTTING LEADING QUESTIONS TO CLIENT

The lawyer owes his client the duty, when interrogating him in court, to studiousy avoid putting leading questions. Such questions have the effect of discrediting the value of the testimony elicited, because they give the impression that the lawyer is prompting the witness. Only such questions as are absolutely necessary should be asked. The client rather should be encouraged to tell the story in his own way without interruption or suggestive inquiries. The lawyer also owes his client the duty to treat his client's witnesses courteously and to avoid the appearance of prompting them.

LAWYER'S DUTY NOT TO FORFEIT THE GOOD WILL OF COURT OR JURY

One of the most fatal things for one's client that can arise during a trial is for the lawyer to forfeit the sympathy and respect of the court and jury. The lawyer becomes so identified with the case that he is often the centre of interest, and the client is overlooked. In an unreasoning sort of way the friendliness or hostility of the auditors frequently takes shape around the personality of the advocate and it becomes a question of which lawyer shall win, rather than which client is in the right and is really entitled to win. Hence, the lawyer should avoid any appearance of being

domineering or supercilious, thus incurring the enmity of those upon whose decision his client's rights depend.

BULLYING

In his treatment of the adverse party the same thought should be borne in mind. Gentlemanly conduct on the part of the attorney in all phases of the trial is a right to which every client is entitled. Bullying the adversary will arouse sympathy for him and thus result in injury to one's client.

DUTY TO PROTECT WITNESSES FROM VICIOUS CROSS EXAMINATION

Another duty of the lawyer to his client and to his client's witnesses is to protect them, so far as is possible, from embarrassment when being cross-examined by the adverse counsel. Questions that are immaterial to the issue but which are intended to cause the witness mental distress by laying bare secrets of his or her life should be blocked by objection. The attorney should be a vigilant guardian of those who may properly look to him for protection against the efforts of an unscrupulous adversary.

§ 47. Summary of Chapter.

The lawyer is under a duty of unswerving loyalty to client, but this duty extends only to

services that may be rendered within the law and not to those in contravention of it. He is not under a duty to do all of the client's biddings. It is his duty to sever his relationship as attorney if causes have arisen to bring about a lessening of zeal in his client's behalf. He is under a duty to ascertain all possible facts having to do with a client's cause of action. Over-confidence in a client is often dangerous to the lawyer. In attempting to settle, the lawyer is under a duty to fully consider all the elements of damages that have accrued or are likely to accrue to his client. In dealing with the adverse party, it is the lawyer's duty to protect himself from suspicion of disloyalty or lack of zeal in a client's behalf. He owes his client a duty in court to show respect to the client and his witnesses, to win respect for himself, and to prevent the adversary from bulldozing the client or his witnesses.

CHAPTER VI

DUTIES TO CLIENT (Continued)

SEC. 48. Duty not to Overcharge.
Charges to Wealthy and to Poor Clients.
How an Avaricious Lawyer Regretted a Small Charge.
SEC. 49. Not to Drive Sharp Bargain with Client.
Procuring the Signing Away of Client's Rights. An Illustration.
SEC. 50. What Should be Considered in Fixing Charge.
SEC. 51. Bringing Suit for Fee.
When Compromise is Wiser than Suit.
When Suit for Fee is Advisable.
Honest Misunderstandings to be Settled in Court.
SEC. 52. Duty not to Mix Trust Funds.
Trustee Accounts in Banks.
An Expedient for Lawyer Whose Practice is Small.
Method of Keeping Trust Funds a Question for the Individual.
SEC. 53. Duty to Account.
Trust Estates to be Settled Promptly.
SEC. 54. Return of Document and Papers.
SEC. 55. Duty to Respect Confidences.
SEC. 56. Summary of Chapter.

§ 48. DUTY NOT TO OVERCHARGE.

A duty to the client that a lawyer is tempted to abuse, is that of fixing a charge for service commensurate with the services rendered. It is frequently true that lawyers are governed more by

what other lawyers charge and by what they shrewdly believe the client will pay, even grudgingly, than by the monetary value of the time expended and of services rendered. To a certain extent this practice is legitimate, for the customary charge of lawyers of the same standing may rightfully be considered, as well as may the financial standing of the client.

CHARGES TO WEALTHY AND TO POOR CLIENTS

If the client is wealthy, a good-sized fee is proper even for a service for which a smaller charge would be made if the client were a poor man. In other words, compassion for the impecunious client may well move the lawyer to charge a fee lower than the normal and legitimate amount.

But it is contrary to the proper standard of ethics to charge an amount in excess of what can be said to be the normal and legitimate amount, merely because the client is well-to-do.

HOW AN AVARICIOUS LAWYER REGRETTED A SMALL CHARGE

An amusing instance of an avaricious lawyer regretting the smallness of his charge occurred a few years ago in a small New England city. In conversation with another lawyer he related the following story: He had been retained by a ragged, seedy-looking farmer to defend him in an insignificant trial. He won the case and charged

the man twenty dollars, little expecting that he would pay it. The seedy-looking farmer drew from his pocket a roll of bank notes that caused the avaricious lawyer to gasp with amazement. He selected two ten-dollar bills, handed them to his lawyer, and cramming the roll into the pocket again, made off for home.

"Ah!" groaned the lawyer, in telling the story, "I've been sorry ever since that I did n't charge that man fifty dollars instead of twenty."

"But twenty dollars was all your services were worth."

"That's so," admitted the other, "but he would have paid fifty just as well as twenty."

The injustice of such an attitude toward the client is too obvious to need further comment.

§ 49. Not to Drive Sharp Bargain With Client.

In dealing with a client, unless with a shrewd individual who is fully able to look after his own rights, the lawyer should remember that he occupies a fiduciary relation. He should not bargain with his client for an exorbitant fee, either by taking advantage of his necessities or by making capital of his stupidity or ignorance.

There are clients so short-sighted that a future gain, however great, has little real significance to them. Like Esau, they will bargain away their

birthright for a mess of pottage. The present need, or a tangible trifle, looms large in their mental horizon. Hence, when a lawyer suggests handling their case for a contingent fee, the proportion of which to the possible net result is very large, they accede readily, for the lawyer's services are much desired in the immediate present, his services will cost nothing until the case is settled, and the day of settlement is indefinitely remote.

The lawyer should therefore bear in mind this weakness of human nature and forbear to take advantage of it. The widow, the orphan, or the person of weak intellect should arouse the lawyer's sympathy and compassion. His charge, whether the fee be contingent or not, should be only what he could consistently claim if the whole world were to sit in judgment on the justice of his fee.

A contingent fee, or for that matter any fee, should be dependent upon the case, with abundant leeway to compensate for any difficulties. A contingent fee is sometimes arranged with minimum and maximum limits. If the case develops normally, the charge is to be somewhat near the minimum figure, but if it develops difficult and perplexing features, the maximum figure may be approached, as a fair-minded practitioner may see the need.

PROCURING THE SIGNING AWAY OF A CLIENT'S RIGHTS

Some lawyers, especially those whose reputations are questionable, persuade their clients to sign away their rights in litigation without revealing the amount recovered. They bring them a form of release of all demands and procure their signature to the release, with the amount receivable therefor either left blank or stated obscurely as "one dollar and other good and valuable consideration." Such a practice opens the way to fraud. The client should be informed of the total recovery.

AN ILLUSTRATION

In disbarment proceedings against a certain lawyer, it appeared that he had acted as attorney for a widow whose husband had met his death in a railroad accident. The action had remained on the court dockets for a long time, and the widow, who had a child to support and was in poor circumstances, had begun to despair that she would ever receive any damages from the railroad. One day her lawyer informed her that the company had offered to settle and he hoped to be able to get fifteen hundred dollars for her, if that was satisfactory. After some indecision she finally signed a release as her lawyer directed. The company had really agreed to pay thirty-five

hundred dollars in settlement of the claim. Thus, the lawyer received two thousand dollars, and the poor widow only fifteen hundred. Knowledge of the transaction reached the ears of a prominent lawyer, and upon his complaint the offending attorney was disbarred.

§ 50. What Should be Considered in Fixing Charge.[1]

The lawyer should first consider whether the circumstances of his client make necessary, as a matter of compassion, a charge less than what might reasonably be required. If the client's family would suffer in consequence of the exacting of a moderate fee, the charge should be greatly reduced or dispensed with entirely. If, on the other hand, the client can afford to pay liberally the amount of the fee should be determined from the following considerations, quoted from Canon Twelve of the **American Bar Association Code of Ethics:**

"In determining the amount of the fee, it is proper to consider: (1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude

[1] See Chapter XII for a more complete treatment of the subject.

the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

"In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade."

§ 51. Bringing Suit for Fee.

Should a lawyer sue a client to enforce the payment of a fee? Suppose the client disputes the size of the bill, but avers that he is willing to pay a lesser amount. Is it policy to allow the client to dictate the fixing of the fee, or should the lawyer stand firmly on his rights and insist upon his original estimate being considered as final?

WHEN COMPROMISE IS WISER THAN SUIT

In general it may be said that the claim should be compromised rather than sued upon. A law suit with a client in a dispute over the amount of an unpaid fee is at best an embarrassing experience. An impression may go abroad that the lawyer has made an unjust charge, for, even though the amount of the charge be known, the public, being unacquainted with the facts, can never judge the matter fairly. The lawyer is sure to be blamed. A compromise may be adjusted quietly without the knowledge of outsiders, and is for that reason the wiser course to pursue.

WHEN SUIT FOR FEE IS ADVISABLE

Occasions may arise, however, when a client willfully and in a spirit of meanness withholds the payment of a hard-earned fee. The client may be of the species sometimes encountered that never pay a bill unless forced to do so. If the amount of the claim is sufficient to warrant a suit, such a client should sharply be brought to account. Imposition and fraud, especially when attempted to be exercised brazenly upon a lawyer, should be rebuked as severely as the law will permit, for if a client has the hardihood to attempt to overreach one so amply able to defend himself and is not rebuked, he will hesitate at no degree of impo-

sition and fraud when dealing with a comparatively defenseless layman.

HONEST MISUNDERSTANDINGS TO BE SETTLED IN COURT

There are also occasions when a genuine misunderstanding should be adjusted by suit unless a satisfactory compromise can be effected. If the lawyer has served under the impression that his compensation is to be equal to a certain proportion of the net recovery, and the client insists, after the suit is determined, that a different interpretation should be placed on the facts, the issue is joined, and the legal rights of the parties should be determined by the court.

American Bar Association Code of Ethics, Canon 14:

"Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition, or fraud."

§ 52. Duty not to Mix Trust Funds.

One of the fruitful causes of disaster to lawyers and to others who have in charge the money of another is the mingling of trust funds with moneys of their own. Carelessness of bookkeeping may

render impossible a correct separation of the moneys so mingled, and the attorney may thus be laid under a suspicion of dishonesty. Few lawyers are accurate keepers of accounts; the memory is trusted too frequently and, when a few days of time have either effaced the recollection or confused it, the only exact check upon mistake would be a keeping separate of the two funds.

Another result from mingling funds is that the lawyer in so doing will gradually come to feel that the fact of the certainty of an ample fund at a future date, before the time for settling with his client, will justify him in using the mingled funds for immediate needs. He regards it as a simple matter of debit and credit to be adjusted at the time of settlement.

Let us suppose the funds have been used, the trust fund with the other. The client suddenly demands an accounting, and the lawyer is unable to meet the demand. His expected funds do not materialize, and he finds himself in the wretched predicament of an embezzler, with the likelihood of being disbarred from his profession.

With the lawyer who has abundant financial resources, such a predicament as the above could not very well occur, because he could make up the deficit without detection. But for the lawyer with no other resources than his professional fees,

the practice is extremely dangerous. Aside from expediency, the mingling of trust funds is a wrong to the client, and no lawyer who values his reputation will be guilty of it.

TRUSTEE ACCOUNTS IN BANKS

Many large firms carry trustee accounts in National Banks and Trust Companies. All moneys paid to the firm in behalf of clients are deposited in this general fund; a mingling of clients' moneys results, but not a mingling with the funds of the lawyers themselves. From this general account are checked out balances due to clients, or expenditures in their behalf. The partners' shares of fees are taken out from time to time, or weekly withdrawals of definite sums are agreed upon, with a general settlement of profits at stated intervals.

AN EXPEDIENT FOR LAWYER WHOSE PRACTICE IS SMALL

The lawyer whose practice is still small may not need a checking account for trustee funds. How then shall he keep separate the moneys of clients? Some lawyers find a system of cash envelopes very satisfactory. A cash envelope is kept for each client, and as money is added to the envelope an indorsement is made of the date, the name of the case, and the amount of the deposit. The total

amount due each client is thus always at hand. In order to check up the client's envelope, endorsement is made upon the wrapper of the case from which the money comes.

For example: Two payments are made by debtors of John Brown, John Jones paying ten dollars and John Smith five. The lawyer makes the following entries; on the wrapper of John Brown *v.* John Jones, "June 15, 1910, cash $10;" on the wrapper of John Brown *v.* John Smith, "June 15, 1910, cash $5;" on the cash envelope of John Brown he makes the following entries:

June 15, 1910 — John Jones . . $10.
" " " — John Smith . . $5.

The cash envelope thus becomes an index to all payments on a client's account. If the cash envelopes of the various clients are kept in a strong box or safe, the necessity of a trustee account in a bank is obviated. Settlement should be made with each client as often as is conveniently possible. If the lawyer maintains a private checking account, settlements may readily be made by means of a check for which cash withdrawal is made from the client's cash envelope.

METHOD OF KEEPING TRUST FUNDS A QUESTION FOR THE INDIVIDUAL

It is after all for the individual lawyer to determine how he shall keep separate the money of his

client from his own. Various practical experiments may become necessary before a satisfactory method is found, but if through all his experimenting the lawyer bears in mind that duty to his client and to his own professional reputation forbids the mingling of trust funds, he will thereby avoid probable embarrassment and possible disgrace.

§ 53. Duty to Account.

A lawyer who is occupying the relation of trustee to a client, whether managing an estate, looking after a particular business, or receiving moneys on the client's account, is under a duty to respond to any reasonable demands made by the client for an accounting. The settlement should be satisfactory, and if any accounts or transactions are withheld from the client's inspection without a valid excuse being offered, the client has a right to insist peremptorially upon a full disclosure.

TRUST ESTATES TO BE SETTLED PROMPTLY

It is a breach of duty to the client unreasonably to delay the settlement of the trust estate. Such delay may be advantageous to the lawyer from a financial point of view, but it is unprofessional and illegal. An instance in point came to the writer's attention recently. A lawyer had been appointed administrator of a small estate.

For over four years he delayed, upon one pretext and another, to settle the estate. The heirs then joined in a concerted action to force the administrator to file an inventory, which up to that time had not been filed. His charge for services, as shown by the first and final account was in the neighborhood of three thousand dollars, a sum greater than that to be received by any one of the heirs. They contested the account on the ground that the charge was grossly excessive. The administrator's duties were trivial. The heirs alleged that the estate could as well have been settled at the end of the first year as four years later. The court disallowed the item, and it was reduced to a comparatively modest sum.

§ 54. Return of Documents and Papers.

If, after the suit is settled, the client desires the return of documents, letters, or papers entrusted to a lawyer during the pendency of litigation, it is the lawyer's duty to return them at his earliest convenience. The documents may have become as so much waste paper, but they belong to the client, and his wishes should be respected.

§ 55. Duty to Respect Confidences.[1]

Communications of a client to his attorney are privileged. Hence, the lawyer owes the client a

[1] See also § 5.

duty not to reveal any information that comes to him from the client that was called forth by the confidential relation existing between them. Nor does lapse of time, nor an estrangement between the parties, lessen the lawyer's duty in this respect. The client possesses the sole right to waive the privilege.

Greenleaf says: "The protection given by the law to such communications does not cease with the termination of the suit, or other litigation or business, in which they were made; nor is it affected by the party's ceasing to employ the attorney and retaining another; nor by any other change of relations between them; nor by the death of the client. The seal of the law, once fixed upon them, remains forever, unless removed by the party himself, in whose favor it was there placed." [1]

§ 56. Summary of Chapter.

The lawyer is under a duty to his client not to over-charge, nor to drive a sharp bargain with the client. He should not procure the signing away of a client's rights in litigation without acquainting the client with the exact sum to be paid for such surrender. The various considerations entering into the fixing of a charge are enumerated. The lawyer should not sue his client for a fee

[1] Greenleaf on Evidence, Sec. 243.

unless to prevent imposition or fraud or to settle a legitimate misunderstanding. He is under a duty not to mingle trust funds with moneys of his own. He is under a duty to his client to render an account whenever reasonably demanded. Documents and papers should be returned promptly to the client after being used, if he so desires. The lawyer is under a duty to keep sacred all confidential communciations from a client.

CHAPTER VII

DUTIES TO ADVERSE PARTY

SEC. 57. Not to Procure Employment Against.
SEC. 58. Not to Confer With Except in Presence of Counsel. If Adverse Party has no Counsel.
SEC. 59. Not to Advise Adverse Party as to the Law.
SEC. 60. Not to Procure the Signing Away of Rights of Adverse Party.
SEC. 61. Not to Procure Opponent's Evidence by Trickery.
SEC. 62. Not to Circulate Slander Concerning Him.
SEC. 63. Duty in Reading Adversary's Pleadings in Court.
SEC. 64. Duty to the Adversary When on the Witness Stand.
SEC. 65. Not to Slander for Mere Effect in Plea to Jury.
SEC. 66. Summary of Chapter.

§ 57. NOT TO PROCURE EMPLOYMENT AGAINST.

In ordinary walks of life there is no especial duty not to become a partisan against an enemy or even, of one's own volition, to seek out some person who has a grievance against the aforesaid enemy and make common issue with him against the enemy. But is this true in the profession of law? Let us suppose a lawyer has a personal grievance against an individual and learns that a third person has a claim against him. If suit were brought upon the claim, it would vex and financially embarrass the man who had incurred the lawyer's enmity. Suppose the lawyer were to

go to the third person and volunteer to conduct the case for him, actually persuading him to bring suit. Would such conduct on the part of the lawyer be a violation of legal ethics?

To answer the question we need only consider that a lawyer is an officer of the court. As an officer he has no right to stir up litigation, whether it be for sake of the resulting fee or to satisfy a personal grudge. But, on the other hand, if a case should come to him, even against an enemy, he has a right to accept it, although he may be suspected of having solicited the employment.

American Bar Association Code of Ethics, Canon 28:

"It is unprofessional for a lawyer to volunteer advice to bring a law suit, except in rare cases where ties of blood, relationship, or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law."

§ 58. Not to Confer With Except in Presence of Counsel.

If the adverse party has engaged a lawyer, it is grossly unprofessional to attempt to deal with him except with the consent of, or in the presence of the lawyer.[1] So to do would be to affront the lawyer and to cast discredit upon the profession

[1] See § 71.

of law. Furthermore it would demonstrate a spirit of trickery and a lack of professional honor in the lawyer so acting.

A person who has engaged a lawyer to look after his interests in a given cause places the entire matter in his charge. He engages him because he is learned in the law and can protect his client's rights. It is the right of the client to have all persons representing adverse interests go to the attorney and negotiate with him rather than try to take advantage of his own lack of technical knowledge of his rights.

American Bar Association Code of Ethics, Canon 9:

"A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law."

IF ADVERSE PARTY HAS NO COUNSEL

If the adversary has not engaged a lawyer, it is of course necessary to deal directly with him. The question then arises; how shall it be done without laying one's self open to suspicion of unfair

treatment, either to the adverse party, or to one's own client? Suppose also the adverse party makes damaging admissions during the negotiations; how shall these admissions be proved?

The answer to both questions is either to employ a stenographer to take down the entire conversation, or to confer in the presence of witnesses. If the nature of the conference is such that the presence of witnesses would embarrass the adversary and prevent frankness, questions may be put in writing and the answers made in the same way. A permanent record is thus obtained, and if the answers are in the adversary's own handwriting they may be used against him in evidence, even more effectively than a stenographic record might be.

Hoffmann's Resolutions, Resolve 44:

"Should the party just mentioned have no counsel, and my client's interest demand that I should still commune with him, it shall be done in writing only, and no verbal response will be received. And if such person be unable to commune in writing, I will either delay the matter until he employs counsel, or take down in writing his reply in the presence of others; so that, if occasion should make it essential to avail myself of his answer, it may be done through the testimony of others, and not by mine. Even such

cases should be regarded as the result of unavoidable necessity, and are to be resorted to only to guard against great risk, the artifices of fraud, or with the hope of obviating litigation."

§ 59. Not to Advise Adverse Party as to the Law.

The lawyer has no right, either directly or indirectly, to advise the adverse party as to the law concerning his case. Even though the lawyer may honestly feel that he is giving him a correct version of the law, there is always the possibility of mistake, and if a mistake is made favorable to the interests of one's client, suspicion at once arises that the lawyer has intentionally misrepresented the law. Such a charge would be hard to meet, even if the issue were tried in court. The impression unfavorable to the lawyer and to the profession of law that would go out generally, would be impossible to recall.

But, aside from the question of possible injury to the lawyer's reputation, the practice is unjustifiable from any point of view. The lawyer has assumed the view-point of his own client. It is his duty to be antagonistic to the adversary. Hence, legal advice to him is necessarily made with the purpose of intimidating him and thus bringing about a settlement.

American Bar Association Code of Ethics, Canon 9:

". . . It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law."

§ 60. Not to Procure the Signing Away of Rights of Adverse Party.

The attorney's duty to his own client is to secure the best settlement of a case that is honorably possible. But this does not warrant attempts to over-reach the adversary, either by surprising him into making damaging admissions to some one whom he thinks to be a friend, or by procuring the signing away of his rights before he can fully realize what his rights are.

If the lawyer represents a railroad company upon the road of which an accident has occurred, he cannot honorably persuade a person whom he has reason to believe is really physically injured to sign away his rights for a trifling sum immediately after the accident and before the full effects of the injury have had time to manifest themselves. Such prompt action on the part of the lawyer may win the approval of the road and secure the lawyer's promotion in the service, but it is not justice to the injured party, nor even the justice that should be meted out to an adversary.

This does not mean that the lawyer has no ethical justification in securing a release of all demands from persons who were not really physically injured but who, if they fell into the way of an unscrupulous lawyer, might use the accident as an excuse for bringing a suit against the company. In such cases it is justifiable; but conscientious discrimination should be exercised.

If a lawyer represents a client who is one of the heirs to a considerable estate, he would not be justified in going to the other heirs in a distant part of the country and, by belittling the estate, procure a signing away of their rights in it for insignificant sums.

The lawyer who aspires to a great and enduring success in his profession must not be blinded by partisanship for his client, but should exercise a conscientious regard for the rights of others, to the end that he may be an instrument of justice and not a worker of injustice.

§ 61. Not to Procure Opponent's Evidence By Trickery.

However advantageous it may be in the conduct of a client's case to learn precisely what the evidence of the adversary may be, or the course of action he is planning to pursue, the lawyer should not resort to trickery to obtain the knowledge. Whatever knowledge comes to him in the

natural course of events he is entitled to make use of, but for him to adopt underhanded methods to obtain it is contrary to legal ethics.

It would be an act coming within this prohibition to go personally to the adversary to whom one was unknown, and pretend friendliness in order to draw him out in regard to the controversy. Again: to go or to send a representative into an assembly of creditors who had met for the purpose of deciding what action they would take against one's client, and deceiving the creditors into thinking the newcomer was also a creditor, would be contrary to the proper standard of ethics.

§ 62. Not to Circulate Slander Concerning Adversary.

The lawyer owes a duty to the adverse party not to circulate slanders concerning him. The contest should be in the open, where the party against whom accusations are made can have a full and free opportunity to reply. He cannot effectively combat insinuations that are spread about covertly or through the public prints. The lawyer who inspires a newspaper article that casts reflections upon the adverse party is guilty of unprofessional conduct, whether or not he believes the charges to be true.

§ 63. Duty in Reading Adversary's Pleadings in Court.

At the beginning of a trial, it becomes the duty of the plaintiff's attorney, in introducing the case to the court or jury, to read or to state in substance all the pleadings filed in the case. In reading the adversary's pleadings, it is unprofessional to omit a material portion, or so to read it as to render it unintelligible to the listeners. It is necessary to a proper understanding of the case that the pleadings of both parties be stated fairly and honestly.

§ 64. Duty to the Adversary When on the Witness Stand.

When the adversary is in court and on the witness stand, he should be treated with the same courtesy accorded to other witnesses. The fact that he is an adversary does not justify a lawyer in adopting an aggressive, domineering manner toward him. The attorney injures his own cause by undue harshness or display of temper.

A quiet, gentlemanly demeanor in the examination of a hostile witness is always more effective than any amount of bluster or theatrical assumption of suspicion. It is all very well for the lawyer to convey the impression to the jury that he is suspicious of the witness, but it is disastrous to his cause to simulate a suspicion of the witness.

An obviously sincere suspicion is one thing, the make-believe suspicion of a hireling is quite another. The lawyer may to his advantage bear in mind that the jury are practical men of affairs, they champion the persecuted, if occasion arises, and they scorn trickery and shams.

§ 65. Not to Slander or Disparage for Mere Effect in Plea to Jury.

Although a privilege exists that protects a lawyer from liability for accusations made in course of argument in court, yet he is under an ethical obligation to refrain from unjustly disparaging an adversary for mere effect. Such disparagement may prejudice the jury against the adversary and help win the case, but it has a boomerang effect upon the lawyer. The court is not slow to perceive the meanness of the act and to despise the attorney accordingly. Other lawyers also form unfavorable opinions concerning him, and a victory thus gained is dearly bought.

§ 66. Summary of Chapter.

The lawyer is under a duty not to procure employment against a person, however much he may dislike him. He should not confer with an adversary who has retained counsel except in the presence of his counsel. If the adversary has no counsel, all conferences should be by means of

writing or in the presence of witnesses. The lawyer should not advise the adverse party as to the law governing his rights. He should not, for an insufficient consideration, procure the signing away of the adversary's rights. He should not procure his opponent's evidence by trickery. He should not circulate slanders concerning the adversary. In reading the adversary's pleadings in court he should exercise utmost fairness. In court he should treat the adversary courteously, and in his plea to the jury should refrain from disparaging him for mere effect.

CHAPTER VIII

DUTIES TO OTHER LAWYERS

SEC. 67. Not to Take Case Belonging to Another Attorney.
SEC. 68. If Lawyer Has Proved Unworthy.
SEC. 69. Competition Among Lawyers.
Commercialism Among Lawyers.
Duty of Older Lawyers to Young Practitioners
SEC. 70. Not to Disparage Other Lawyers.
Caustic Comments Have Boomerang Effect.
Caustic Comments Cause Evil Results.
SEC. 71. Not to Deal With the Adversary Without Knowledge of His Lawyer.
(1) Duty to the Opposite Lawyer.
(2) Duty to the Profession of Law.
(3) Duty to the Adverse Party.
(4) Duty to One's Own Reputation.
SEC. 72. Duty to Prosecute or Sue Fellow Attorney for Cause.
SEC. 73. Right to Defend an Accused Attorney.
SEC. 74. Not to Force Trial when Opposing Lawyer is Ill or Under Bereavement.
SEC. 75. Not to Lay Undue Stress Upon Technicalities.
SEC. 76. Not to Try to Over-reach the Other Through Questionable Practices.
SEC. 77. Duty as to Agreements.
SEC. 78. Not to Abuse Fellow Attorney for Mere Effect.
SEC. 79. Summary of Chapter.

§ 67. NOT TO TAKE CASE BELONGING TO ANOTHER ATTORNEY.

A lawyer owes a duty to fellow attorneys not to accept a case from a client if he has already

retained another lawyer in the same case, except where the other lawyer desires him to act as an associate. It frequently happens that lawyers of established reputation in a particular line of advocacy are sought, by mutual agreement of attorney and client, to render assistance in the cause; and, of course, under these circumstances, the admonition above does not apply.

But when a client seeks out a new attorney because of some alleged cause of dissatisfaction with the lawyer already retained, the attorney consulted should decline to take any action in his behalf, unless fraud or positive wrongdoing on the part of the first lawyer is evident, until the client has obtained an acknowledgment of the first lawyer's discharge from the case. This acknowledgment opens the way for the engagement of a new lawyer.

The basis of this duty is that lawyers should not directly nor indirectly encroach upon the business of each other. A person who has no regular lawyer is a legitimate client for any member of the bar to whom he goes for advice. But when he has once retained a lawyer in a given case, that lawyer has a right to the sole handling of the case, unless he forfeits the right by misconduct, or is dismissed by the client. To induce the client by fair promises and favorable representations to dismiss his lawyer is a positive wrong to the

lawyer. To do as one would wish to be done by applies to lawyers as to all other persons.

§ 68. If Lawyer has Proved Unworthy.

If the lawyer first engaged has proved unfaithful to his trust or grossly incompetent, the next lawyer consulted has a right, and even a duty,[1] to advise the client and, furthermore, to take the case into his own hands, irrespective of the first lawyer's attitude in the matter. But he should see to it first, that the client's story is based upon facts, and that the lawyer has really proved unfaithful or incompetent.

An attorney should always be extremely cautious in deciding that a fellow lawyer has been guilty of wrong. It is so much easier to condemn a lawyer and do him grave injury than to withdraw the condemnation and repair the injury, that every lawyer should take thought before speaking or acting against a fellow attorney. Zeal for business should never blind a lawyer to his higher duties, the duty to the individual attorney and to the profession of law which must suffer from the disgrace of any of its practitioners.

Caution and fear of misjudging, however, should not be an excuse for shirking one's duty. The duty to see that justice is done, that the client who lodges the complaint be not wronged, that

[1] See also § 24.

the profession of law be not shamed by the guilty conduct of one of its members, should move every honest lawyer to whom complaint is made to give ear to the complaint and, if he cannot investigate it personally, to call it to the attention of the local bar association for due investigation.

A lawyer who will shirk this duty, even though his own professional conduct be above reproach, is nevertheless tacitly abetting the wrongdoing and injuring the profession of law. A client who has been wronged by one lawyer and then politely dismissed by another to whom he tries to tell the grievance, is likely to conclude, without further attempts to find a lawyer who will aid him, that lawyers are all alike and are banded together to shield one another from punishment for wrongdoing.

American Bar Association Code of Ethics, Canon 7:

"A lawyer should decline association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case. . . . Efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the bar; but, nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against the unfaithful or neglectful counsel, generally

after communication with the lawyer of whom complaint is made."

Hoffman's Resolutions, Resolve 7:

"As a general rule, I will not allow myself to be engaged in a cause to the exclusion of, or even participation with, the counsel previously engaged, unless at his own special instance, in union with his client's wishes; and it must, indeed, be a strong case of gross neglect or of fatal inability in the counsel, that shall induce me to take the cause to myself."

§ 69. Competition Among Lawyers.

Competition in the business world is all very well, because it is established by immemorial custom and is necessary to the welfare of the community; but competition among brethren of the bar is unseemly and contrary to the established customs of the profession. The basis of the prohibition doubtless is that it would encourage litigation and stir up unnecessary strife in a community if competition were to render a lawyer's compensation greatly reduced in amount. Then, too, law is a dignified profession and it could not retain its dignity if practitioners were to offer their services as hucksters offer their wares at cut rates and bargain-day prices.

COMMERCIALISM AMONG LAWYERS

Complaint is sometimes heard among the older practitioners that too great a spirit of commercialism has grown up among lawyers; too many lawyers have departed from the traditions of the profession and have brought to their law practice the customs of the market-place.

Take for example Lawyer X, a bright, industrious, young man. His father being a successful business man, X was brought up in a commercial atmosphere. He was trained to the business by his father and has turned to the law only because his personal inclinations prompt him to be a lawyer. Since admission, he has applied the principle of competition, importuning anybody and everybody for business and offering to render services more reasonably than other lawyers. He has not yet learned the true relation that the lawyer bears to the public. Doubtless he will learn it, and speedily, but his present example is contagious. He is honest and well liked socially, and other young lawyers will follow his example; if not for this reason, then because they are driven to it for self protection.

DUTY OF OLDER LAWYERS TO YOUNG PRACTITIONERS

There is an increasing number of young lawyers recruited from the ranks of the business world,

and it is the duty of older practitioners and of teachers of law to endeavor to impress upon them what the customs and traditions of the profession may be, that is, if these customs and traditions are to be preserved to future generations.

Candidates for the clergy are taught that there are certain worldly customs that they must lay aside upon entering the profession. The same attitude should perhaps be taken by the lawyers of the land. Those who are newly admitted to the bar should be admonished to lay aside any method of procuring business that militates against the dignity or honor of the profession of law.

§ 70. Not to Disparage Other Lawyers.

It is written in the Great Book to which all Christendom goes for ethical teaching: "Blessed is the man that backbiteth not with his tongue nor speaketh evil of his neighbor."

This applies to lawyers as well as to others of mankind. In this saying there is an implied reprobation of the man whose conduct is at variance with it. The man, lawyer or layman, who speaks evil of his neighbor cannot expect a blessing for so doing. He may justly expect that such conduct will be followed by unpopularity and by others speaking evil of him.

There is no vice more common than that of disparaging one's neighbor either through envy

or a foolish belief that to belittle the neighbor will magnify oneself in the opinion of present company.

CAUSTIC COMMENTS HAVE BOOMERANG EFFECT

The lawyer should be broad-minded and wise if he expects to win enduring success. He must cast aside petty jealousies, and envyings, and speaking evil of his neighbor. The listener may wag an acid tongue, but he is quick to perceive the same fault in another and to condemn him for it. He will speedily form his judgment of the critic and pass on his impressions for the benefit of the multitude. Thus a reputation will go abroad that will do much to prevent a full measure of success.

Envy and jealousy are never felt against those who are less successful and less fortunate. Hence the deprecatory "He's all right, but," etc., indicates that the lawyer referred to has a better practice and a higher standing in the community than has his critic. Therefore, if a lawyer cannot speak well of another attorney, he had better by far maintain a discreet silence, or evade the issue by some commonplace remark.

CAUSTIC COMMENTS CAUSE EVIL RESULTS

The attorney criticized is also injured by caustic comments. The power of suggestion is very great.

All of us have had the experience of hearing a disparaging comment directed at an acquaintance, who had before that time inspired perfect confidence. "He is a time server," "He is tricky," "He stretches the truth," "He looks too hard at the dollar," "He's so conceited," and so on. Whatever the disparaging remark may be, we instantly refute it in our own minds, but presently it comes back to the memory, and the friend is watched to see if the fault described really exists.

Confirmatory evidence of anything that we are looking for in another is reasonably sure to be forthcoming in time. We would not notice it ordinarily, but when watching for it, the whole horizon is darkened by its appearance. The attorney is injured in one mind at least, and the chances are that it will not be kept a secret. Others will hear and conjecture and surmise until the attorney concerned is regarded, temporarily at least, with suspicion by a large number of people.

A thought that should constantly be borne in mind is that which is the basis of many of a lawyer's duties, — whatever injures the profession should be avoided. Blackening the reputation of a fellow member of the bar becomes indirectly an injury to the profession of law, and hence should be shunned and avoided by every worthy practitioner.

Hoffman's Resolutions, Resolve 37:

"Should a professional brother, by his industry, learning and zeal, or even by some happy chance, become eminently successful in causes which give him large pecuniary emoluments, I will neither envy him the fruits of his toils or good fortune, nor endeavor by any indirection to lessen them, but rather strive to emulate his worth, than enviously to brood over his meritorious success, and my own more tardy career."

§ 71. Not to Deal with the Adversary Without Knowledge of His Lawyer.[1]

The lawyer is under a fourfold duty not to deal with the adverse party except through his duly authorized attorney.

(1) DUTY TO THE OPPOSITE LAWYER

He is under a duty to the adversary's lawyer not to belittle his services or cast reproach upon him in the eyes of his client. To ignore the lawyer is to affront him personally and by implication to affirm that he is unworthy of his high profession.

To deal with the client directly, and especially to make a monetary settlement with him, embarrasses the lawyer concerned by rendering possible the dictation of the amount of fees by the client, who, having the money in his own possession, is

[1] See also § 58.

likely to wish to keep as much of it as he possibly can. It is a psychological fact that a man who already possesses the fruits of another's labors is less willing to pay the other a reasonable sum for his services than if the money had come through the hands of the other, and fees for services had been taken out at the time.

The lawyer, generally, has a lien on the proceeds of a suit in his possession until his own fees have been adjusted. It is his right, and has been so recognized from time immemorial, to have the settlement of a suit made to him personally, so that he may be able to protect his client's rights to the last moment before settlement, and to protect his own rights to legal fees by possession of the proceeds until a settlement with his client. His right that a settlement should be made to him and not to his client should therefore be respected.

(2) DUTY TO THE PROFESSION OF LAW

There is also a duty to the profession that this long established custom, which has been shown to be wise and prudent and necessary to the welfare of the individual lawyer, be preserved both by precept and example. The dignity of the profession and its standing with society in general demands that one lawyer show no disrespect to another by ignoring him in a settlement with his

client. The fraternity of lawyers is not unlike a family: so long as they show respect to one another and prove themselves champions of each other's good name, so long are they held in respect in the community, but as soon as they show mutual disrespect and play mean, underhanded tricks upon each other, just so soon do they lose standing in the community and become the objects of contempt and reproach.

(3) DUTY TO THE ADVERSE PARTY

There is also a duty to the adverse party not to deal with him directly.[1] If he has employed a lawyer to represent him, he has a right to the full benefit of the lawyer's services. He is not qualified to match his own imperfect knowledge of his rights against the persuasion of his opponent's lawyer, who is seeking the advantage for his client.

Yet few laymen have the good judgment and the resolution to refer the matter to their lawyer and positively refuse to discuss it. It is human nature to talk, especially when the subject is one's own rights.

Lawyers, therefore, are under a duty to refrain from placing the adversary under the temptation to commit himself one way or another. The opponent's lawyer is the only proper party to

[1] See § 58.

deal with, however unreasonable his demands may appear.

(4) DUTY TO ONE'S OWN REPUTATION

There is still another duty in this connection — the duty to one's own reputation. It is recognized by lawyer's generally that it is unprofessional, if not positively dishonorable, to deal with an adversary behind the back of his lawyer. Hence to do so is to invite censure and to defame one's own reputation.

American Bar Associations Code of Ethics, Canon 9:

"A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. . . ."

§ 72. Duty to Prosecute or Sue Fellow Attorney for Cause.

As we have noted elsewhere,[1] a lawyer is under a duty both to himself and to the profession to endeavor to rid the profession of undesirable lawyers. If a lawyer is known to have committed a breach of the ethics of the profession, it is the duty of fellow members to so effectually rebuke him as to prevent his repeating it in the future, or, if

[1] See §§ 24 and 68.

he manifests a depraved or unworthy spirit, to put forth every effort to oust him from the profession which he dishonors by his membership.

As regards prosecution for criminal acts, the attorney to whom complaint is made by the injured party does his full duty by placing the facts before the prosecuting officer of the state or county, or before the proper officials of the local bar association. It is for the association to bring an action for disbarment of the offending attorney, but individual lawyers should render what assistance or advice may be possible, that the offender have a fair trial and that justice may be done.

If the complaint against the attorney justifies a civil action for damages, it is the duty of the attorney to whom the complaint is made either to bring the suit himself, or, if too busy or for other valid cause unable to act, to procure some other reliable attorney to bring the suit.

The lawyer cannot excuse himself by turning the complainant away, even on the plea that he is personally unable to take the case. Accusation has been made against a brother attorney, and it is the lawyer's duty to see that the complaint is fairly and impartially adjudged, in order that no unjust stigma rest upon the profession of law.

If the complainant should meet with rebuff, however politely worded, he would doubtless regard it as a part of a conspiracy among lawyers

to protect unworthy members, and would conclude that all lawyers were rascals.

American Bar Association Code of Ethics, Canon 7:

"It is the right of any lawyer without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made."

Canon 29:

"Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities."

§ 73. Right to Defend an Accused Attorney.

For the same reason that it is one lawyer's duty to institute a prosecution against a fellow lawyer who has seemingly been guilty of crime, it is a duty of others to whom the accused may appeal to defend him in his trial. Justice demands that both accuser and accused should find champions to set forth their respective rights. If the accusation is unjust, it should not prevail. If the

attorney is innocent, proof of his innocence will lift a cloud from the profession of law; if he is guilty, proof of his guilt, and a summary disbarment from the profession, will likewise elevate the profession in the estimation of the community.

§ 74. Not to Force Trial When Opposing Lawyer is ill or under Bereavement.

Although it is the duty of every lawyer who has a case pending in court to refrain from prolonging litigation and to oppose any such attempts on the part of the opponent's lawyer, yet there are occasions when this general duty yields ground to a special set of circumstances. If a situation has arisen, without fault of the party concerned, under which the opponent's case cannot be properly presented, it would be manifestly unfair to urge immediate trial. Justice fairly demands continuance until such a time as the disability be removed.

If the opposing attorney is ill, not actually confined to his bed, but in such a physical condition that he could not undergo the strain of trial and do justice to his client's case, the case should be continued by agreement. There is little glory to be gained from a victory over a sick man. Courtesy to a brother attorney would prompt a lawyer to allow him an even chance in a contest of professional skill.

The same would be true if the attorney were undergoing a great mental anxiety, such as the critical illness of a wife, or child, or other person in whose welfare he was profoundly interested. To force trial at such a time would be nothing short of brutal.

The courts, however, would doubtless grant a continuance under any of the circumstances referred to, even against the protest of the adversary; but the fact that the courts stand ready to deal justly does not lessen the attorney's duty to be humane to his opponent.

If a case may be tried as well on a different date, it would be ungenerous of a lawyer to insist upon immediate trial, when he knew that such trial would be extremely inconvenient to the opposite lawyer. Suppose, for example, the lawyer had just completed a long and arduous trial in a distant part of the State; it would be a hardship upon him to insist that the case go to trial the very day of his return and before he had had time to review his evidence and get his witnesses together.

American Bar Association Code of Ethics, Canon 24:

"As to incidental matters pending the trial, not affecting the merits of the cause or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement, forcing the trial

on a particular day, to the injury of the opposite lawyer, when no harm will result from a trial at a different time, agreeing to an extension of time for signing a bill of exceptions, cross-interrogatories, and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he shall do anything therein repugnant to his own sense of honor and propriety."

§ 75. Not to Lay Undue Stress Upon Technicalities.

One of the causes of reproach of our system of justice is the frequency with which apparently trivial technicalities defeat the ends of justice. The courts are reproached for setting free a wealthy criminal because of some technical error in the proceedings by which he was convicted. Lawyers are reproached for their proneness to seek out, and to argue, technical objections that have no material bearing upon the issue and which serve no purpose except to impose a delay upon proceedings that should promptly be terminated. These criticisms of lawyers and courts are frequently just, but in many cases the real fault is in an antiquated system of justice that is, in our day, gradually giving way to a more modern and less technical procedure.

The spirit of the times is to adopt the more

liberal attitude and to consider the substance rather than the form in which it is embodied. Many lawyers of the present day disdain to take advantage of a mere formal defect in an opponent's pleading, unless the opponent is clearly seeking an unjust end and the means of opposing him are doubtful or inadequate. In other words, their aim is to see that justice is done and, unless it will further the ends of justice to take advantage of the technicality, they ignore it entirely.

In the examination of witnesses, if the opponent violates the rules of evidence, it is not always wise to interpose objections. Unless he is seeking to introduce evidence that will injure his adversary, or by prolonging examination to weary and vex a hostile witness, it is usually wiser to let him go on than to interrupt proceedings by frequent objections.

§ 76. Not to Try to Over-reach the Other Through Questionable Practices.

There was a certain lawyer of whom it was said that he delighted in outwitting his opponent by obtaining an agreed statement of facts as to the entire case or some portion of it. The statement would seem fair enough upon its face, yet there would be a hidden defect that was nearly always fatal to the opposite side. Such a practice as this cannot be too severely condemned.

§ 77. Duty as to Agreements.

All agreements between counsel, whether they be oral or reduced to writing, should be equally obligatory upon each. It is not a sufficient excuse for failure to live up to the terms of an agreement that it was not really reduced to writing and therefore difficult of proof. Any promise or agreement that involves the personal honor of a lawyer cannot be too strictly fulfilled. A lawyer who proves himself worthy of the confidence of other attorneys will speedily find that he enjoys their confidence, but the lawyer whose recollection is faulty with respect to the terms of agreements made with other lawyers will as speedily find himself the object of distrust.

Hoffman's Resolutions, Resolve 9:

"Any promise or pledge made by me to the adverse counsel shall be strictly adhered to by me; nor shall the subsequent instructions of my client induce me to part from it, unless I am well satisfied it was made in error, or that the rights of my client would be materially impaired by its performance."

§ 78. Not to Abuse Fellow Attorney for Mere Effect.

In making their plea to the jury, some lawyers feel called upon to abuse roundly all persons connected with the opposite side. In this sweeping

arraignment the opposing counsel is often included. It is either directly stated or left to be inferred that the opposing counsel is a conscienceless knave or he would never have taken the adversaries' case; or it may be that the accusation against him is that he is a party to a conspiracy to defraud the accuser's client.

Whatever form the accusation takes, it is, unless the circumstances strongly warrant it, reprehensible practice for one lawyer to abuse another for mere effect upon the jury. The end does not justify the means. During the progress of trial personalities between counsel are undignified and unprofessional. A scolding-match between two sarcastic lawyers may be amusing to the spectators, but it does not indicate that the contestants are well-balanced lawyers. But abuse heaped upon an opponent in a closing argument, at a time when he cannot reply, calls down just condemnation upon the speaker.

American Bar Association Code of Ethics, Canon 17:

"Clients, not lawyers, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to

the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel, which cause delay and promote unseemly wrangling, should also be carefully avoided."

§ 79. Summary of Chapter.

It is a duty of a lawyer not to take a case of another lawyer unless he is to act as an associate, or unless the first lawyer has been dismissed from the case. If the first lawyer has been guilty of wrongdoing in the case, it is the right and the duty of another to take the case into his own hands, even against the other's objection. Competition among lawyers is unprofessional. The lawyer is under a duty not to disparage fellow attorneys. He is under a duty not to deal with the opposite party without the knowledge of his counsel. He is under a duty to protect the good name of the profession by exposing rascally practitioners. It is a lawyer's duty not to force trial when the opposing counsel is ill or under bereavement. He should not lay undue stress upon technicalities. He should not try to over-reach another lawyer through questionable practices. He should respect all agreements with counsel, whether such agreements be legally binding or not. He should not abuse a fellow attorney for mere effect.

CHAPTER IX

DUTIES TO THE COURTS.

SEC. 80. Basis of the Duty.
SEC. 81. The Duty of Loyalty to the Courts.
SEC. 82. Duty of Loyalty to the Judges.
SEC. 83. Duty of Respect to the Judges in Court.
SEC. 84. Duty not to Delay Trial.
SEC. 85. The duty of Punctuality.
SEC. 86. Duty not to Prolong Trial.
SEC. 87. Duty not to Offer Improper Evidence.
SEC. 88. Duty not to Argue Upon Matters not in Evidence.
SEC. 89. Duty not to Offer Garbled Law.
SEC. 90. Summary of Chapter.

§ 80. BASIS OF DUTIES.

In another connection [1] it has been noted that an attorney is an officer of the courts. Through the gradual evolution of society he has become a necessary adjunct to the courts in the administration of justice. In a case that presents complex features, it has become necessary that one skilled in the law should represent each of the contesting parties, in order that their respective claims may be presented to the court, each in its strongest array, so that the judge may determine which side should prevail. This peculiar relation to the

[1] See § 5.

courts is the basis of the duties hereinafter set forth.

§ 81. The Duty of Loyalty to the Courts.

Being an officer of the courts involves the duty of loyalty to the courts. It is improper, therefore, for the lawyer to disparage the system of justice. No human institution can be perfect, and there are few indeed that, even in our limited human wisdom, cannot be improved. But a judicial system that has not a basis of public sentiment behind it is not in the way of improvement, quite the reverse.

Thoughtless disparaging of the courts by attorneys has the effect of lessening the listener's respect for the court or courts in question. To say that a court is a farce and that the suitor with the longest purse is sure to win is to say that which is not true of any court. Exaggeration of faults that are quite generally known, but the *extent* of which is not known, except to the lawyers and judges, is to give to the public, not qualified to detect the exaggeration, a false and harmful impression.

It is rather the duty of lawyers, who necessarily mingle with the people more than do any other officials of the court, to speak fairly of the courts and to disseminate a healthy optimism concerning them. Lawyers may thus strengthen the hands

of justice, for the decrees and orders of a court that is respected are far more likely to be obeyed by the layman than if the court were held in contempt and derision.

§ 82. Duty of Loyalty to the Judges.

The previous section deals with the court as a system of justice. We have now to consider the highest representatives of the court, — the judges who preside therein. Some lawyers take malicious satisfaction in blaming the judges for an adverse decision. They excuse themselves to their clients and friends for an unfavorable outcome of a suit by intimating that the judge acted unfairly or was so stupid as not to appreciate the real merits of the case.

The judge is thus defamed in the minds of those who are seeking some explanation of the unexpected result. If this were the practice of one lawyer merely the resulting injury to the fair name of our courts would be a negligible quantity, but with a large number of lawyers thus excusing their own mistakes the result is really deplorable. Doubtless there are judges in our courts to-day who are incompetent or unworthy, but the great majority of them are competent and worthy.

Judges are so situated that they cannot know of, nor reply to criticisms of their conduct. Justice should be accorded them by the members of the

bar, and every lawyer should see to it that he does not unjustly or hastily criticize them.

Hoffman's Resolutions, Resolve 39:

"When the controversy has been judicially settled against me, in all courts, I will not fight the battle o'er again, *coram non judice;* nor endeavor to persuade others, as is too often done, that the courts were prejudiced, or the jury desperately ignorant, or the witnesses perjured, or that the victorious counsel were unprofessional and disingenuous."

§ 83. Duty of Respect to the Judges in Court.

When the court is in session, the judge should be accorded the respect and courtesy that is due his high station, irrespective of the personality of the temporary occupant.

So far as openly manifested disrespect is concerned, little need be said. The judge has the power to summarily punish the offender, and not even the most reckless lawyer will knowingly take his chances of fine or imprisonment for contempt of court arising from openly manifested disrespect. But of the more or less secret mental attitude of disrespect much could be said.

"As a man thinketh in his heart so is he;" if he allows his lack of respect for the individual to

govern his mental attitude toward the occupant of the bench, it must necessarily affect his conduct to some degree. Sharp retorts to the court, or attempts to provoke a laugh at the judge's expense are dangerous practices and clearly unprofessional. Such examples are contagious. The whole morale of the court may be undermined by the influence of a few hostile practitioners.

The loyal support of all members of the bar is therefore due to the occupant of the bench, whatever the private character or deportment of the individual may be. If the judge is deserving of impeachment, he should be impeached, but so long as he remains a judge, he embodies the majesty of the law when presiding over a court room.

Hoffman's Resolutions, Resolve 3:

"To all judges, when in court, I will ever be respectful. They are the law's vicegerents; and whatever may be their character and deportment, the individual should be lost in the majesty of the office."

Resolve 4:

"Should judges, while on the bench, forget that, as an officer of their court, I have rights, and, treat me even with disrespect, I shall value myself too highly to deal with them in like manner. A

firm and temperate remonstrance is all that I will ever allow myself."

§ 84. Duty not to Delay Trial.

It is a matter of common knowledge among laymen as well as among lawyers that lawsuits drag along for discouragingly extended periods of time. All thinking men must deplore this condition of affairs. Not only does it cast disrepute upon our whole system of justice, but it works a serious hardship upon parties who are earnestly and honestly seeking to adjust their rights.

The dread of being obliged to testify in court, coupled with the inevitable long delay of proceedings and the uncertainty of the ultimate result is driving more and more people every year to compromise their claims out of court or to abandon their rights altogether. Thus the object for which the courts were created is being defeated, and the situation is growing more serious every year.

In a recent address,[1] President Taft made the following statement: "We have got to arrange it so that cases are decided promptly. I am bound to say that the United States courts are not models in this, but all courts may be reformed in this regard. What is driving you merchants out of courts into arbitrations? It is the cost of

[1] Delivered at St. Louis, May 4, 1910.

litigation. Now, we ought to have courts that can dispose of the business promptly and end litigation. I speak as a lawyer and I speak as a judge, and therefore I speak with confidence, because I know what I am talking about."

A remedy must be sought. Either the antiquated procedure still prevailing in many sections must be abolished and a simpler procedure substituted, or more judges must be appointed and the court's capacity for business in this way increased. But there is a duty resting upon members of the bar which, if properly appreciated and conscientiously discharged, would do much to lessen the evil described.

Every case that comes into a lawyer's office should as speedily be adjusted as is consistent with the object sought to be attained. The fact that the amount of a fee depends somewhat upon the length of time spent upon the case does not justify dilatory tactics on the part of the lawyer handling the case. Procrastination is no more justifiable in the lawyer than in the business man, nor so much so. The lawyer is acting in behalf of another person and he should therefore take thought of the additional expense and the mental distress and anxiety resulting to his client from the delay.

If suit is to be brought, he should not wait for a more convenient season but bring suit at the earliest date compatible with good judgment.

After suit has been entered, it should not be neglected indefinitely but marked for trial at an early date. It should not be continued when once on the court docket, unless for very urgent reasons.

Lawyers should co-operate with the courts to clear the court dockets as speedily as may be, and, in this way, make possible the handling of a greater volume of business, thus relieving the congestion now generally existing.

§ 85. The Duty of Punctuality.

There is no fault more common among lawyers than tardiness in attendance upon court. It is no uncommon thing to see dozens of cases that are ripe for trial passed over because of the absence of the lawyers concerned.

Tardiness in attendance at court means not only an injustice to one's client and an economic loss to the State through a slowing down of the court's progress, but it means also annoyance and vexation of spirit to the presiding justice. The judge finds enough cause for perturbation during the progress of trials without having the beginning of his day marred by inexcusable tardiness of counsel. The tardy lawyer is usually most insistent that his case be tried speedily when he does at length arrive, and the judge and clerk are pestered and irritated by frequent inquiries and

requests. Such a condition of affairs ought not to exist. Punctuality in attendance at court, therefore, is one of the duties that every lawyer owes to the court.

§ 86. Duty not to Prolong Trial.

Another fruitful cause of the congestion of court dockets is the tendency of lawyers to prolong trials unduly. It frequently happens that a case that should not, if properly presented, occupy more than an hour of the court's valuable time, is so lengthened by dilatory tactics that an entire day is consumed. The county or State pays the bills, and other claimants wait through tedious hours for a chance to be heard.

In many instances, attorneys seem to be absolutely heedless of their duty to expedite matters. A witness is examined or cross-examined in a haphazard way, and taken over the same ground again and again. The case could really be presented to better effect if the lawyer would continually bear in mind that his duty is to present his case as speedily as is consistently possible.

The author's experience with law students in the School Superior Court of his own institution may serve to illustrate the topic under discussion. Actual cases were being tried; certain of the students were impersonating the witnesses and testifying as nearly as they could recollect the

facts assigned to them. The students who acted as attorneys usually became so earnest in their cross-examination of the witnesses that they did precisely what the ordinary lawyer does in the regular courts, — kept the witnesses on the stand very much longer than was wise or proper. The result was that the trials became lengthy and wearisome.

There seemed to be no way of obviating the difficulty. Finally the experiment was tried of requiring each side to present its evidence within a certain given time, the time allotted to include both direct and cross-examination. If, for example, more than half the allotted time were used in the direct examination of one's own witnesses, it left only the balance of the time for cross-examination of the opponent's witnesses.

The experiment proved eminently successful. The cases tried became more entertaining to the other students present. A conciseness and expedition was attained that had never prevailed under the former system. The students were forced to make the very most of their time and to avoid questioning that was immaterial to the issue.

If some such compulsion could be felt by lawyers in court, the machinery of justice would run more swiftly. Every lawyer should consistently endeavor to economize his own time and that of the courts. In examination of witnesses he should

seek brevity and directness. In argument to the court or jury he should aim at conciseness and eschew long speaking and the multiplying of words.

§ 87. Duty not to Offer Improper Evidence. The lawyer owes a duty to the court not to attempt to offer improper evidence. When a judge is endeavoring impartially to hear the facts in the case, it is improper for a lawyer to willfully attempt to introduce evidence that, under the established rules of evidence, ought not to be introduced.

If the opposing attorney objects, the judge is called upon suddenly and abruptly to decide a point of law, and his attention is withdrawn from the facts in the case. Such interruptions, coming at frequent intervals, renders the judge's task a very difficult one.

There are some attorneys who apparently consider it a clever and commendable practice to get inadmissible evidence before the jury. Their method of procedure is to start to introduce the evidence with apparent good faith. The opponent cannot block it by objection until he can perceive the nature of the evidence sought, and by the time he can halt the examination the jury have caught the full import of the inquiries. It is idle for a court to tell the jury not to con-

sider the evidence thus placed before them. They are but human and cannot eliminate it from their recollection.

It may be that some past misconduct of the witness, conduct that has no bearing whatever upon the present issue, is revealed to the jury. The angry objection of the opposing counsel serves only to heighten the effect; the jury attach greater importance to it than it really deserves. A prejudice against the witness is thus created, and the effect of the prejudice may prove far reaching in its influence upon the verdict in the case.

§ 88. Duty not to Argue upon Matters not in Evidence.

In the lawyer's plea to the jury he should carefully avoid arguing upon matters not in evidence, or attempting to deduce conclusions that are known to him to be unsound, but which he hopes the jury will accept.

It is not for the lawyer to testify, unless he does so as a witness in the regular course of events. Statements made in the course of argument might be mistaken or utterly false, and there would be no opportunity for the adversary to disprove them. The judge cannot be expected to interrupt a lawyer in the course of his argument, to admonish him to argue from the

evidence only; neither should he be expected to bear in mind all erroneous statements of counsel and correct them, or direct the attention of the jury to them in reviewing the evidence before making his charge. Hence, the honorable lawyer should avoid arguing upon matters not in evidence.

Hoffman's Resolutions, Resolve 47:

"The minds and hearts of those we address are apt to be closed when the lungs are appealed to, instead of logic; when assertion is relied on more than proof; and when sarcasm and invective supply the place of deliberate reasoning. My resolution, therefore, is to respect courts, juries, and counsel as assailable only through the medium of logical and just reasoning; and by such appeals to the sympathies of our common nature as are worthy, legitimate, well-timed and in good taste."

§ 89. Duty not to Offer Garbled Law.

Judges are profoundly influenced by precedents. If it can be shown that a case involving the same point of law has already been decided by an appellate court of the jurisdiction, the judge in the trial court feels himself bound to follow the previous decision. If an attorney, in requesting a certain ruling on a point of law, can

cite a number of cases as in accord with his contention, the judge, particularly if he has confidence in the attorney and lacks the necessary time to verify the statements, is likely to give the ruling requested. If it is an incorrect ruling it reflects somewhat upon the judge, although it is not to be expected that busy trial judges will always be accurate in their statements of law. A lawyer is therefore under a duty to present to the court only such statements of law as he can fairly and conscientiously say are established by the authorities cited. To garble the law under such circumstances is inexcusable.

Hoffman's Resolutions, Resolve 41:

"In reading to the court or to the jury authorities, records, documents or other papers, I shall always consider myself as executing a trust, and as such bound to execute it faithfully and honorably. I am resolved, therefore, carefully to abstain from all false or deceptious readings, and from all uncandid omissions of any qualifications of the doctrines maintained by me, which may be contained in the text or in the notes; and I shall ever hold that the obligation extends not only to words, syllables and letters, but also to the *modus legendi.* All intentional false emphasis and even intonations in any degree calculated to mislead, are petty impositions on the

confidence reposed, and whilst avoided by myself shall ever be regarded by me in others as feeble devices of an impoverished mind, or as pregnant evidences of a disregard for truth, which justly subjects them to be closely watched in more important matters."

§ 90. Summary of Chapter.

The basis of a lawyer's duties to the court is that the lawyer is an officer of the court. He should not disparage the court as an instrumentality of justice. He should be loyal to the judges out of court, as to his superior officers. In court he should be respectful and courteous in his relations with them. He is under a duty not to delay trials and thus cast reproach upon the courts. For the same reason he should be punctual in attendance and expeditious in the trial itself. He is under a duty not to offer improper evidence, nor to argue upon matters not in evidence. He is also under a duty not to offer garbled law in making requests for rulings.

CHAPTER X

DUTIES TO THE STATE

SEC. 91. Basis of Duty to the State.
SEC. 92. Duty not to Bring a Groundless Suit.
SEC. 93. Duty in Respect to Inequitable Claim that is Legally Sound.
Illustrations.
SEC. 94. Duty not to Acquire Interest in Litigation.
SEC. 95. Duty as to Contingent Fees.
SEC. 96. Duty of Punctuality in Court.
SEC. 97. Duty not to be Unduly Influenced by Wealthy Clients.
SEC. 98. Duty not to Assist in Circumventing the Law.
An Illustration.
SEC. 99. Duty to Restrain Client from Doing Unlawful Acts.
SEC. 100. Summary of Chapter.

§ 91. BASIS OF DUTY TO THE STATE.

As we have already seen,[1] a lawyer is an officer of the courts and as such owes them various duties. But the courts compose one of the co-ordinate branches of the government. Hence, the duties owed to the courts are indirectly owed to the State and Nation. But there are many other duties that the lawyer owes directly to the State.

The ordinary citizen is under certain obligations to the State, and a failure to keep, or a willful violation of these obligations renders the

[1] See. § 80.

offender liable to punishment. Upon admission to the bar, the duties and obligations of the citizen remain and the duties and obligations of the lawyer are added to them.

The State has, through one of its agencies, the courts, conferred upon the lawyer, upon his admission to the bar, a new standing in the community in which he lives. It has granted him new powers and privileges. It is proper, therefore, that it should exact greater accountability from him than from the ordinary citizen.

§ 92. Duty not to Bring a Groundless Suit.

Every lawyer upon admission to the bar binds himself by a solemn oath, taken in open court, not to bring a groundless suit. There can never be an honest reason for bringing such a suit, if the party bringing it is aware of its real nature. A groundless suit maliciously brought must originate either from a hope of extorting money or from a desire to harrass and distress the defendant.

The courts were founded to provide a means whereby persons having a just grievance may find redress. The court dockets in nearly all jurisdictions are so crowded that just and legitimate claims must remain for months unadjusted. A groundless suit that is brought to trial delays,

to that extent, just and legitimate cases that are ripe for trial. An economic loss to the State and injustice to other suitors thus results.

For example: In a remarkable case of recent date, a certain testator had left his estate to a son William, with the provision that if a second son Daniel, who had left home when a youth and had not been heard from for twenty years, should return, the estate was to be divided between the two brothers.

A claimant appeared, alleging that he was the long-lost Daniel. William refused to recognize him as his brother. Court proceedings were instituted and continued for several months. The former acquaintances of the long-sought heir took sides in the matter, many of them declaring that the claimant was in truth the son of the testator, while others branded him as an imposter.

Detectives employed by the estate alleged that the claimant was really of a different parentage and brought an aged couple to court, where they testified that the claimant was their son. Alleged relatives of the claimant corroborated their testimony. Toward the close of the trial a new man appeared, alleging that he was the long-lost Daniel.

The result was that the second claimant was acknowledged by William as his brother. The court decided that the first claimant was not the

real Daniel. Charges and counter-charges have been made, and there is promise of more court proceedings. One or the other of the rival claimants is a fraud and has brought a groundless claim. For a lawyer to knowingly handle such a claim and thus to occupy the time of the court would be a breach of duty to the State.

§ 93. Duty in Respect to Inequitable Claim that is Legally Sound.

In every State and community will be found people in abundance who endeavor to avoid financial responsibilities. For example: A debt has been incurred by one B through excess of confidence in the honor of A. B has not taken the legal precautions to insure his rights. A is so well versed in such matters as to know that he is not legally bound. He seeks out a lawyer and asks him to act for him in defeating B's rights. What are the lawyer's duties to the State and to A in such a case?

The question is difficult of solution. Morally A has no rights, but legally his rights are well defined. Is the lawyer under a duty to oppose his own conception of right and wrong to a perfectly well established rule of law?

It is commonly heard in justification of a rule of law that works well in nine cases out of ten but unfairly in the tenth case, that the welfare

of the community demands that the rule should be preserved, and that the tenth litigant suffer for the welfare of the public. So the courts enforce the rule.

But does this mean that the lawyer is under the same duty? Let us see. The courts cannot turn away a case that is brought before them; they are under a duty to enforce the law, whatever their opinions may be concerning it. The lawyer has a perfect right to turn away a case that is brought to him in the ordinary course of his practice.

The courts have no right to ask the litigants to pause and consider before invoking the law; they act merely as interpreters of law and as referees of the contest between the litigants. The lawyer has a perfect right to endeavor to effect a reconciliation. It is a commendable practice for him to counsel moderation and forbearance.

So it would seem that if, after a careful and conscientious survey of the case, the lawyer feels that his client is not justified in invoking the remedy sought, he should endeavor to persuade him to adopt the upright and manly course of discharging his moral obligations with the same fidelity that he would discharge his legal obligations.

Of course if the careful analysis of the case revealed circumstances that rendered the defense

a safeguard of the well-being of the client, the lawyer's duties to his client and to the State demand that he set up the defense as effectively as may be.

ILLUSTRATIONS

Thus far of generalities; now to speak concretely. A owes B five hundred dollars. A has made many promises to pay but has never done so. When six years have nearly expired he makes a final promise to pay, and B, who has faith in the honor of the debtor, allows the statute of limitations to intervene before bringing suit. A consults a lawyer and asks him to defend him in the action. The lawyer discovers that A has craftily led B on and is really able to pay the claim without inconvenience. It is his duty to endeavor to persuade A to act as an honorable man should and pay his debt. The Statute of Limitations simply bars the right of the creditor to recover; it does not discharge the debt. If A insists upon the defense, the lawyer should refuse to act. The fact that some other lawyer will doubtless be found who will act for A does not justify the lawyer in question in accepting the employment.

Again: X desires to purchase a piece of land of Y and pays him some money to bind the bargain but does not receive a written agreement to

sell, being informed by Y that it is unnecessary. Y gives the advice in good faith, but later learns that such writing was necessary to bind him to convey. He does not wish to convey and seeks a lawyer to defend him in an action brought by X. The lawyer should advise him to abide by his oral agreement and convey the land. The bargain may not be advantageous, but no one is to blame for that except Y himself.

Again: C owes D a debt that is barred by the Statute of Limitations. D has brought suit, and if the defense is to be taken advantage of it must be set up in the usual way. The lawyer consulted by C learns upon investigation that D is a wealthy man, whereas C is very poor and, in consequence of a long continued illness of one of his children, has difficulty in paying current expenses. If the suit brought by D were to succeed, it would cause trouble and embarrassment to the debtor's family. The lawyer's duty in such a case is to defend C and plead the Statute of Limitations. The debt is due as in the first illustration, but this is a situation where the operation of the statute would result beneficially to the public, for the debtor would be benefited without real injury to the wealthy creditor. This is precisely the sort of a case to which the statute was originally intended to apply.

§ 94. Duty not to Acquire Interest in Litigation.

It is for the best interests of the public that lawyers should act strictly as officers of the courts, to represent one or the other of the litigants. If they were permitted to purchase claims and sue upon them in their own behalf, it would encourage litigation and occupy the time of the court with suits that perhaps ought never to have been brought, thus excluding or delaying bona fide claimants.

So it is the policy of the law to limit by positive prohibition the powers of attorneys in this respect. They are allowed to act for such claimants as may choose to hire them, but they are not allowed to sue upon an acquired cause of action.

§ 95. Duty as to Contingent Fees.

Somewhat related to the previous section is the question of contingent fees. If the lawyer's compensation for services to be rendered in a case is contingent upon its successful termination, the situation resembles that in which a claim has been acquired outright. In the former case the lawyer, together with his client, is interested in the outcome of litigation, while in the latter case the lawyer alone would be interested.

Between the two classes of cases the law has drawn a line, and under certain conditions con-

tingent fees are declared legal, whereas any contingent fee that approaches an interest in the subject matter of suit is illegal, as being an acquired interest within the meaning of the law.

The distinction drawn between permissible agreements for contingent fees and champertous agreements is uncertain, in so far as agreements in respect to damages recoverable is concerned. The courts say that if the agreement is to share the proceeds of the suit the agreement is illegal.

If suit is brought to recover land it is easy to see that if the attorney stipulates that he is to have a certain proportion of the land, the agreement would be champertous. But if money damages are recovered, the lawyer has a right to deduct his charges from the actual proceeds of suit, whether his charge be contingent or definitely agreed upon prior to the suit. How, then, is it to be determined that the agreement is to share the proceeds of the suit?

The question is a perplexing one. The subject of champerty is too extensive to be discussed here, but this much may be said: If the agreement for compensation, although contingent upon the amount of recovery, is that the client shall become liable for the fee, and is not that the lawyer and client are to become sharers in a common enterprise, the agreement is legal.

Thus it is to be seen that lawyers are under a

duty to the State not to enter into certain kinds of agreements for contingent fees, whereas in other kinds of similar agreements there is no such duty.

A person unacquainted with actual conditions of society might well inquire why the law did not consistently prohibit all kinds of agreements for contingent fees, and thus remove the possibility of abuse of the milder form of the custom. The difference between the legal and the illegal agreement is largely one of degree, and a legal quibble is often resorted to to distinguish one from the other.

There is a sound reason for not abolishing all forms of contingent fees. Many litigants are too poor to hire a lawyer unless he is willing to base his charge upon the amount of recovery, and in event of failure to charge nothing. Justice would be practically denied to the poorer members of a community if the law prohibited attorneys from engaging their service for contingent fees. The welfare of the community demands that the courts shall be accessible to every inhabitant of the land, whether he be rich or poor. Hence, it is a lawyer's duty to the State to accept cases on the basis of contingent fees, provided he does not go to the extent of making a champertous agreement.

Hoffman's Resolutions, Resolve 24:

"I will never be tempted by any pecuniary advantage, however great, nor be persuaded by any appeal to my feelings, however strong, to purchase in whole or in part my client's cause. Should his wants be pressing, it will be an act of humanity to relieve them myself, if I am able, and if I am not, then to induce others to do so. But in no case will I permit either my benevolence or avarice, his wants or his ignorance, to seduce me into any participation of his pending claim or defense. Cases may arise in which it would be mutually advantageous thus to bargain, but the experiment is too dangerous, and my rule is too sacred, to admit of any exception, persuaded as I am that the relation of client and counsel, to be preserved in absolute purity, must admit of no such privilege, however guarded it may be by circumstances; and should the special case alluded to arise, better would it be that my client should suffer, and I lose a great and honest advantage, than that any discretion should exist in a matter so extremely liable to abuse, and so dangerous in precedent.

"And though I have thus strongly worded my resolution, I do not thereby mean to repudiate, as wholly inadmissible, the taking of contingent fees. On the contrary, they are sometimes perfectly proper, and are called for by public policy,

no less than by humanity. The distinction is very clear. A claim or defense may be perfectly good in law and in justice, and yet the expenses of litigation would be much beyond the means of the claimant or defendant — and equally so as to counsel, who, if not thus contingently compensated in the ratio of the risk, might not be compensated at all. A contingent fee looks to professional compensation only on the final result of the matter in favor of the client. None other is offered or attainable. The claim or defense never can be made without such arrangement. It is voluntarily tendered, and necessarily accepted or rejected, before the institution of any proceedings."

§ 96. Duty of Punctuality in Court.

The courts are maintained at public expense. If longer sessions become expedient, if additional judges or increased court-room facilities become necessary, the government must raise the extra funds by placing greater burdens of taxation upon the people.

Every needless delay in court occasioned by the absence of lawyers who have cases scheduled for trial makes necessary a slowing down of the progress of court work and reduces the court's efficiency, thus causing a congestion of business and the resulting necessity of more judges and

more court-rooms. So it becomes the duty of every lawyer who has a case pending to be ready for trial promptly.

It is sometimes observed, even in jurisdictions where the courts are several years behind in cases pending, that lawyers are so delinquent about attendance that the judge is obliged to excuse the jurymen and adjourn court for the day. The cost of maintenance of the court is the same to the county or State whether the court adjourns for the day or transacts a large volume of business. The congestion of the court docket has been increased by the delay.

The duty of punctuality, therefore, is one that the average lawyer may well take to heart as his part in the limiting of court expenses, and the securing of greater efficiency in the speedy administration of justice.

§ 97. Duty not to be Unduly Influenced by Wealthy Clients.

There is no gainsaying the fact that the average lawyer will go to greater extremes of loyalty for a wealthy client than he will for a poor one. Human nature is the same everywhere, whether the man be a lawyer or a layman; the greater the expected reward the greater will be the diligence with which the required duties will be pursued.

Acting strictly within the law and obeying the spirit as well as the letter in displaying loyalty to his client, no lawyer can offend a fair-minded public. It is rather the attorney who, in behalf of a wealthy client, goes beyond the limits of the law or succeeds in circumventing its plain meaning, yet is protected by a technicality, that merits the just condemnation of the public.

No one would question the right of a wealthy client to command unusual diligence and extraordinary services on the part of his lawyer, if he is willing to pay the price for such diligence or services. The lawyer is under a duty to the State to protect the legitimate interests of wealthy citizens. The well-being of a State or Nation rests largely upon the security that it can guarantee to law-abiding citizens who are possessed of wealth. The lawyers of the land have a distinct mission of public usefulness in protecting the rights of wealthy clients.

There is a duty resting upon lawyers, however, to discriminate between legal and illegal services that may be requested of them by a wealthy client. The lawyer cannot justify himself for illegal services by the lame excuse that his client ordered him to perform them. The client may not really understand that he is asking an illegal service. Self-interest often blinds a person to the real nature of a request, whereas if another

were to make a similar request he would instantly recognize it as wrongful.

But the lawyer is in a position to judge the request from a dispassionate view-point, in the light of existing law. If he then allows the desire to retain the good-will of his client, or to earn a generous fee, to influence him to do a dishonorable act, he is unworthy to be called a lawyer.

§ 98. Duty not to Assist in Circumventing the Law.

It is a dishonorable act to assist a client to secretly violate existing law. It is scarcely less dishonorable to assist him to circumvent the spirit of the law while obeying it to the letter. Many wise and just laws have been rendered nugatory by some crafty lawyer finding a way whereby a wealthy client might still carry on, with impunity, the very business that the statute was aimed to remedy. Such things cast the profession of law into disrepute and foster a public distrust of all laws and judicial institutions. This contest between law-makers and law-breakers is much the same as that waged between safe-makers and safe-breakers.

AN ILLUSTRATION

As an illustration in a small way of the topic under discussion: In a certain New England State where the interest charges of money lenders

had brought about a condition of virtual bondage among increasing numbers of poor people, the legislature passed a law regulating the making of loans by loan companies of all sums under two hundred dollars. It was thought that this law would prove a death-blow to the so-called "loan sharks." For a time the law was apparently effective. It is now reported, however, that a way has been found to evade the law.

A person desiring a small loan is given two hundred dollars plus the small loan, and is then required to immediately repay the two hundred dollars, which is indorsed on account. Whether such an obvious ruse to evade the law would be declared valid by the courts remains to be seen, but it illustrates the ingenuity with which persons desiring to break the law will seek a loophole in the most beneficent statute.

§ 99. Duty to Restrain Client from doing Unlawful Acts.

Suppose it comes to the knowledge of a lawyer that his client is contemplating the doing of an unlawful act. It may be that the client has revealed his intent while in confidential communication with the lawyer, or that the lawyer has inferred such intent from unequivocal statements or acts. Is the lawyer under a duty in the matter?

If the client has asked the lawyer's advice as

to what his liabilities will be if convicted of the act contemplated, it is obviously the lawyer's duty to endeavor to restrain him from the contemplated course of action. If the lawyer merely infers the illegal intent, but has no positive knowledge of its existence, he is probably under no duty, unless the circumstances are such that the act of the client, if performed, would reflect upon his own professional reputation.

If, for example, the client is planning to procure perjured testimony from a certain witness, or attempt to corrupt some of the jury, such acts would reflect upon the honor of the lawyer and it is his duty to forestall them.

Clients who are contemplating a resort to questionable practices, but have retained a lawyer whose honesty is apparent, sometimes deceive the lawyer and accomplish their purpose in secret. Attorneys whose clients are known by them to be dishonest and tricky should be quick to take the alarm and prevent possible illegal acts or sever professional relationship at once.

American Bar Association Canons of Ethics, Canon 16:

"A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards courts, judicial officers, jurors, witnesses,

and suitors. If a client persists in such wrongdoing, the lawyer should terminate the relations."

§ 100. Summary of Chapter.

The lawyer owes greater duties to the State than does the ordinary citizen. His additional duties arise through the fact of his being an officer of the courts, one of the governmental agencies of the State. He is under a duty not to sue upon a groundless claim. He should not sue upon, nor set up in defense, an inequitable claim, even though it be legally sound, unless there are special circumstances of justification.

He is under a duty not to acquire an interest in a suit which he is bringing for a client. In the matter of contingent fees caution should be exercised, since the dividing line between contingent fees that are legal and contingent fees that are illegal is very indistinct.

The lawyer is under a duty to the State to be punctual in his attendance at court when he has a case ripe for trial. He is under a duty not to be influenced from the way of honesty by the persuasions of wealthy clients. He is under a duty not to assist a client to evade the law by technical subterfuges. He is also under a duty to prevent his client from violating the law, if that can be done by reasonable means.

CHAPTER XI

DUTIES TO THE STATE (*continued*)

SEC. 101. Not to Discuss Pending Cases through the Newspapers.
SEC. 102. Not to Attempt to Procure Perjured Testimony.
SEC. 103. Duty not to Attempt to Influence Jury.
SEC. 104. Duty not to Try to Influence the Court.
SEC. 105. Duty not to Prolong Litigation.
Appeals.
SEC. 106. Duty in Respect to Questionable Practices of the Profession.
SEC. 107. Summary of Chapter.

§ 101. NOT TO DISCUSS PENDING CASES THROUGH THE NEWSPAPERS.

One of the fruitful causes of embarrassment to the courts and to the State is the discussion of pending cases through the newspapers. Reporters are only too eager to secure details concerning a case that has attracted public interest. If a lawyer, either through a desire for personal notoriety, or with an intent to injure the adverse party, gives out facts or allegations of facts that should properly be reserved until the trial day, he is guilty of improper conduct.

Not infrequently it happens that the public is so thoroughly informed, or misinformed, concerning all the known details of a case, that

citizens become partisans of one side or the other, and it becomes practically impossible to secure an unprejudiced jury; hence, justice is handicapped.

This is especially true in the case of persons accused of crime. For the sake of a good story, reporters with lively imaginations seize upon an insignificant fact and feature it with all possible embellishments. The lawyer should be on his guard not to disclose evidence that will prejudice the case one way or the other.

As an illustration of the romantic glamor that is thrown over the most sordid and repulsive facts by enterprising and sentimental reporters, we have but to recall the nauseating Thaw trial, the testimony of the "Angel Child," and the sentiment of sympathy for the murderer fostered by the yellow press.

A still more recent illustration of pandering to public sympathy in behalf of a criminal was the case of a young self-confessed bank looter. It was spread broadcast that he was engaged to be married to a beautiful and refined young lady. It was stated that a long sentence for the criminal would wreck two lives instead of one. The lawyer for the criminal even intimated in his plea that the aforesaid beautiful and refined young lady would reform his unfortunate client and make a real man of him.

Of course the public were sympathetic, and many believed in leniency for the sake of the unfortunate young lady. But after the young man had been sentenced he was brought into court as a witness in another trial. On cross-examination he testified, among other disgusting things, that he had taken the aforesaid beautiful and refined young lady from a house of ill-fame in New York and had kept her as his mistress, paying large amounts to the house of ill-fame for the privilege of so doing.

Lawyers, therefore, should remember that in allowing garbled facts, or only one side of a story, to get into the public press they are doing an injury to the courts, for the courts must decide upon the evidence submitted by both sides, even though the public has already formed a contrary opinion through reading the newspapers. They are also doing a grave injury to the State, for an unpopular verdict or decision stirs up wrath and engenders disrespect for the judicial branch of the government.

American Bar Association Canons of Ethics, Canon 20:

"Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme cir-

cumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid any *ex parte* statement."

§ 102. Not to Attempt to Procure Perjured Testimony.

Every lawyer is under a duty not to directly nor indirectly endeavor to procure perjured testimony. This duty he owes to the State in common with every other citizen. The solicitations of a client, even though he or she be in desperate straits, and truly believed to be innocent, will not justify the lawyer in departing from his duty.

He is under a duty also not to consent to his client's endeavoring to corrupt a witness.[1] Even though the client attempts to keep his endeavors a secret from his lawyer, the discovery of them by the lawyer raises a duty to endeavor to prevent the client's wrongful acts. Self-protection, as well as a sense of duty to the State, should prompt the lawyer to restrain his client from wrongdoing in this respect, since the discovery of the perjured nature of the evidence reflects upon the honor of the lawyer who introduces the witness.

[1] See § 99.

§ 103. Duty not to Attempt to Influence Jury.

It is highly reprehensible for a lawyer to attempt to influence the conduct of a juror. An offer of money, or of gifts, calculated to influence the conduct of a juryman, is punishable criminally.

There is another phase of the subject not covered by the criminal law. If the lawyer is personally acquainted with a juror, or if the juror is a friend of the client, it would be wrong for either the lawyer or the client to discuss the case privately with the juror. The lawyer is under a duty not to knowingly permit his client to do so, nor to employ a mutual friend to interview the juror.

In very important trials it would not be possible for the juror to be approached, since the jury are guarded by officers night and day during the trial. But in the ordinary case, where the juror is permitted to live at his home and is accessible to all of his friends, such a practice would be possible.

The lawyer should bear in mind that in all cases, whether great or small, he owes a duty to the State to refrain from attempting to influence the jury in his favor except by honorable tactics in open court. Justice should be unhampered by clandestine appeals of whatever nature.

§ 104. Duty not to Try to Influence the Court.

Every lawyer is a partisan and espoused to the cause of his client. It is proper and right that this should be so. But the public welfare demands that the judges who are to preside over a trial be absolutely unprejudiced. They could not retain this neutral attitude if one of the lawyers were allowed to talk over his case privately with them.

It is improper, therefore, for the lawyer to attempt to discuss a case with the presiding judge except in open court. It is his duty, moreover, even though he is a personal friend of the presiding judge, to refrain from frequenting the judge's chambers or being seen in company with the judge while the case is pending. So to do would be to expose the judge to unfriendly criticism, especially if the case were to be decided favorably to the lawyer in question.

The position of a judge when a lawyer friend is trying a case before him is a delicate one. He cannot very well repulse the lawyer if he should thoughtlessly intrude upon his society, for such an action might cause a breach of their friendship. The duty is upon the lawyer to exercise a thoughtful consideration for the good name of his friend.

There are lawyers who seek a reputation for

being on terms of intimate friendship with the judges, in order that clients may be attracted to them in the belief that they have "a pull" with the courts. They intrude themselves upon the judges upon every occasion possible, and drop hints among their acquaintances of the degree of friendship existing between them and certain judges. Such conduct cannot be too severely condemned.

§ 105. Duty not to Prolong Litigation.

Every lawyer owes a duty to the community not to add to the financial burdens of the taxpayers by unnecessarily prolonging litigation. The delay to worthy claimants who are waiting their turn, as well as the financial loss to the community, should prompt the lawyer to refrain from unnecessary delays.

APPEALS

Used merely as an instrument of delay, an appeal may work a grave injustice to the opposite party. Take the case of a wealthy defendant, sued by an injured party who is in humble circumstances. If, after all the expenses and vexatious delays incident to trial, the suitor wins, it is a positive hardship to him to have the defendant appeal the case. The resulting delay decreases the amount he will finally receive, be-

cause the fees of his lawyer will be greatly increased through the necessity of fighting the case in the appellate court.

Hence, a lawyer should refrain from appealing a case, unless there is a reasonable hope of a successful outcome of the appeal. He should never use it as an instrument of delay.

§ 106. Duty in Respect to Questionable Practices of the Profession.

Every lawyer is the keeper of his own conscience and any practice of the profession that conflicts with his ideas of right and wrong, even though it be sanctioned by custom, should be avoided.

Hoffman's Resolutions, Resolve 33:

"What is wrong is not the less so from being common. And though few dare to be singular, even in a right cause, I am resolved to make my own and not the conscience of others, my sole guide. What is morally wrong cannot be professionally right, however it may be sanctioned by time or custom. It is better to be right with a few, or even none, than wrong, though with a multitude. If, therefore, there be among my brethren any traditional moral errors of practice, they shall be studiously avoided by me, though in so doing I unhappily come in collision

with what is (erroneously, I think) too often denominated the policy of the profession. Such cases, fortunately, occur but seldom; but, when they do, I shall trust that moral firmness of purpose which shrinks from no consequences, and which can be intimidated by no authority, however ancient or respectable."

§ 107. Summary of Chapter.

It is the lawyer's duty to the State not to discuss pending cases through the newspapers, thus presenting to the public a one-sided statement of the case. The wrong impression thus created might prejudice citizens who may later be called for jury duty, or render the court's decision, after trial, unpopular and thus breed disrespect for the court.

He is under a duty not to directly, nor indirectly, procure perjured testimony, nor even knowingly to permit a false witness to go on to the stand in his client's behalf. He is under a duty not to attempt to influence the jury except by honorable means in open court. If the lawyer is a personal friend of the presiding justice, he should conscientiously refrain from appearing to be over friendly with the judge during the trial. He should not frequent the judge's chambers nor intrude himself upon the judge when in public.

He is under a duty not to increase court ex-

penses, and occasion delay to other suitors, by prolonging a trial beyond the time that is reasonably necessary for its presentation. He should not use the right of an appeal as an instrument of delay. If custom has sanctioned practices that do not accord with the lawyer's sense of right, he should follow conscience rather than custom.

CHAPTER XII

LEGAL FEES

SEC. 108. An Unfair Charge.
SEC. 109. The Law not a Mere Money-getting Trade.
SEC. 110. The Lawyer should not Overestimate the Value of Services Rendered.
SEC. 111. Actual or Implied Agreement as to Fees.
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- Minimum Fee.
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§ 108. An Unfair Charge.

A certain man who lived in a rural district had a claim of twenty dollars for board against a man who had lodged at his house while out of employment. The debtor had gone to the city and secured employment but had afterward ignored all requests of his creditor to settle the bill. One day when the creditor was in the city, he called at a lawyer's office and left the bill, with the request that it be collected. Some months later he was again in the city, so he called upon the lawyer and inquired what had been done with the claim. The attorney looked up the account.

"I have collected it," he finally declared; "he paid the last payment about a month ago."

"Well, why did n't you send me the money," demanded the creditor.

"To tell you the truth," replied the lawyer, "I had a hard time to collect it. The claim was n't worth the work I put into it, but I shall not charge you anything extra; twenty dollars is my fee."

"And that means that I don't get a cent," roared the irate old farmer. "If I had known that, I would n't have left the claim. I'd rather he would have the money than you, for he 's a poor man and needs it."

The creditor had never sought the aid of a

lawyer before and, so far as is known, has never consulted one since. He regards lawyers as shameless villains, and will have nothing further to do with them.

The lawyer in question fixed the amount of his fee either with a deliberate intent to treat his client unfairly, or with a mistaken idea that he should be paid a good-sized fee for his services irrespective of the size of the case upon which he was working.

Giving him the benefit of the doubt, and assuming that his error was one of judgment merely, let us inquire what considerations should have governed him in making his charge. And to broaden the scope of our inquiry: What considerations should govern a lawyer in making charges generally?

§ 109. The Law not a Mere Money-getting Trade.

The lawyer should constantly bear in mind that the law is a profession whose basis is public service. It exists solely to promote justice and to facilitate the action of courts of justice. The lawyer is an officer of the courts and in lieu of a salary is given the right to charge reasonable fees to persons employing him in his professional capacity.

To charge unreasonable fees is unprofessional,

and, if the charge is grossly unreasonable and is actually taken from moneys or securities of the client in the hands of the lawyer, the latter may be disbarred from the profession. Hence, unless the lawyer can, through his ability and good fortune, win such a practice that the aggregate of reasonable charges brings him a large yearly return, he can never hope to become wealthy.

There is an impression abroad among many simple-minded citizens that the practice of law is a certain and early road to wealth. Many young men enter the profession with that idea in mind, only to be disillusioned by the stern reality of the uphill way before them. Many parents send their sons to the law schools with the fond belief that they are securing for them a future of ease and quickly acquired riches.

Quite recently a parent of a young law student called on the writer to find out just what the son's prospects might be. His record for the year had not been a very promising one and, especially during the latter part of the year, there had been a noticeable neglect of his studies. The parent wished to know whether it would be wiser for the son to continue his studies or to go into business. When reminded that the son should be consulted and that his own ambitions and inclinations were more to be considered than any-

thing that others could devise for him, the parent replied:

"Oh, he does n't care what he does. He wants to make lots of money as quick as he can; that is all."

The parent was advised to consult with the son soberly and earnestly, and if this was the real reason for his decision to study law he should be advised to give up the idea and enter some congenial business in which the returns were more certain and less remote.

§ 110. The Lawyer should not Overestimate the Value of Services Rendered.

It is perhaps natural for any man to overestimate the value of his own services. This is especially true of lawyers. It is often not a question with a lawyer what his services are actually worth, but what charge will his client pay. The fact is lost sight of that the client may pay a fee without protest and yet realize that he has been overcharged and resolve in his own mind that he will never be overcharged again by the same lawyer.

The client *must be satisfied*, if he is to return with future business or if he is to send other clients to the lawyer. There is no surer way of satisfying the client than to regulate the charge by the actual value of the services rendered.

Because the client is wealthy does not justify the lawyer in making a fifty-dollar charge where but twenty-five dollars would be charged ordinarily.

It is true that a lawyer's services cannot be accurately measured in dollars and cents, for the circumstances of the case render it different from every other case. The various considerations entering into the making of a charge for services will be considered hereafter, but the thing to be remembered by the lawyer through all his deliberations as to charges is: "What can I conscientiously, as a public servant, charge this client for the services I have rendered him?"

§ 111. Actual or Implied Agreement as to Fees.

If, before services are rendered, the lawyer has indiscreetly offered to perform the necessary services for a fixed sum, without really knowing the extent of the services to be required of him, the only honorable thing for him to do is to abide by his agreement, unless the client will voluntarily release him therefrom. If the client is willing to disregard the agreement and pay a reasonable fee for services rendered, well and good, but if he insists upon the agreement being lived up to, the lawyer's duty is fixed. He will be wiser another time.

Even though there be no definite agreement, there is still the possibility of an implied agreement, or of the client's honest misunderstanding of estimates made. Bearing in mind the fact that the lawyer should never allow a client to go from his office dissatisfied, or with a feeling that he has been wronged, if such a state of mind on the part of the client can be dispelled by reasonable concessions, the lawyer should ordinarily abide by the supposed agreement.

For example: A client who had engaged a lawyer to render a certain service earnestly requested an estimate of expenses. There was a court fee of thirty dollars to be paid. The lawyer explained this and then estimated the cost of services to be rendered, provided the case developed no unexpected difficulties. Through a misunderstanding, the client carried away the impression that the estimate of cost of services contained the court fee. Later he sent the lawyer the amount of the estimate, and the lawyer accepted it on account, paying the court fee from it.

When the case was closed the lawyer presented a bill for a balance, thirty dollars. The client of course disputed the claim. He had made a memorandum of the amount of the estimate upon leaving the lawyer's office, and felt certain that his version of the matter was the true one. The lawyer became convinced that the client

was honest in his belief and, rather than antagonize a desirable client, let the matter drop, assuring him, however, that his demand was just and honorable but was abandoned merely because of the misunderstanding.

§ 112. Circumstances should Govern Charges. A lawyer's charges for services rendered should be fixed with a view to all the circumstances of the case. If his client is wealthy he can afford to pay liberally for services rendered, and charges may be made accordingly, *but never in excess of their real value.* If the client is in humble circumstances, charges should be made considerably less than would be made ordinarily. If the client is a proper object of charity, or is a widow or orphan of a deceased lawyer, services should be rendered gratuitously.

The personal element is therefore an ever present consideration in determining the size of a lawyer's fee. There are various other circumstances that may or may not be present in a given case, but which, being present, must be taken into account in determining the fee. Taken all in all, the question of an attorney's fee considered abstractly is a most baffling one.

A schedule of fees cannot be satisfactorily established because no two cases are exactly alike. It cannot justly be said that because the charge

for a trial that occupied less than one day is set at fifty dollars the same charge is adequate for all trials of no greater duration. Another trial of the same length may involve ten times the amount of money and have required far more extensive preparation for trial.

Neither can it be said that because the fee in a bankruptcy case was one hundred dollars, all bankruptcy cases should be handled for that figure, for the first case may have involved a small estate, and have been uncontested, while others concern larger estates and are hotly contested. So also, if the fee in a later case were five hundred dollars, it would be unjust to fix that as a standard, because uncontested cases would not demand so great a charge.

Thus it is that charges must be fixed in view of the circumstances of the particular case and at the discretion of the lawyer concerned. It would be equally unjust to the lawyer and to the public to establish inflexible standards of charges.

Let us consider then in detail the various circumstances that enter into the fixing of a legal fee.

§ 113. The Time and Labor Involved.

The time required of a lawyer in which to effect an adjustment of a case always enters into consideration. Did the case require a day, a

week, or a month of the lawyer's entire time, or only an hour a day, or a few minutes a day for an extended period?

Obviously the lawyer cannot trust his memory to recall all the details of his employment upon a given case. The proper method of keeping a record of time is to write down in his "Lawyer's Diary," or indorse on the case itself, the date on which a certain service was rendered and the charge therefor. When the total of charges is found, the lawyer has a basis from which to determine his fee.

The nature of the labor performed is also an element to be considered. Obviously the intense mental application necessary in research work is worth more than the same amount of time spent in less arduous employment.

A lawyer's time becomes more valuable as the lawyer grows more experienced and efficient. An eminent lawyer may charge one hundred dollars a day with more justice than he could have charged fifteen dollars a day at the beginning of his legal career. His time cannot be measured by standards of day labor. The years of study and preparation necessary to qualify him for practice entitle him to larger rewards for professional services. The public often overlook this fact.

An amusing instance of a lawyer's charges

versus those of a sign painter came to the writer's attention not long ago. The sign painter had fallen into legal difficulties and had consulted a lawyer. He was given the necessary advice and promptly charged five dollars. The sign painter expostulated and paid the bill only when the lawyer called his attention to the fact that it was not necessarily the time spent in the consultation itself that rendered the charge just, but the years of study and preparation that had been necessary to qualify the lawyer to give the advice called for. The sign painter was obviously impressed by the explanation.

Shortly afterward the lawyer removed his office to a more modern location and bethought him of his late client, the sign painter. He requested the painter to letter the glass of his office door. Now in the sign-painting fraternity there is a fixed schedule of so much per letter, and according to this schedule the bill for the lettering should have been something less than two dollars. The painter, however, presented a bill for five dollars and, when taken to task for such excessive charges, averred that it was not so much the lettering itself that made his charge just, but the long apprenticeship and experience that made it possible for him to do it so nicely.

The lawyer gravely pointed out to the sign painter that the lawyer was obliged to sacrifice

many years of his youth and pay out large sums of money to obtain his education in order to qualify for the profession, whereas the sign painter had sacrificed nothing to obtain his skill; he had earned money from the beginning and his skill after all was more of the fingers than of the brain. The sign painter reduced the bill to a proper figure. Having vindicated the principle, the lawyer paid the bill and made the painter a present of the balance of the five dollars.

§ 114. Novelty of the Question Involved.

If the question involved in a case is one that has frequently been adjudicated by the courts and the principles of law governing it are perfectly well defined, every reasonably well-informed lawyer should be able to handle the case without any special amount of research. Hence, no special charges need be made for research work. But if the question presented is a novel one, the amount of work necessary to search out law on the point may be considerable.

It may be that there is no law covering the point in one's own jurisdiction, nor in any neighboring jurisdiction, and the lawyer is obliged to resort to his inventive faculties to establish a plausible analogy between existing law on some other point and the ruling sought on the point in question. Obviously, such services on the part

of the attorney merit a larger reward than in the ordinary case. The mental effort of creative work as compared with applying ready-made principles places the former on an altogether different basis. In the same ratio as the mental effort of creative work is greater than the other, compensation therefor should be greater. Novelty of a question involved in a case is, therefore, a legitimate consideration in the fixing of a lawyer's fee.

§ 115. Whether Taking Case will Deprive Lawyer of other Business.

A is a member of a partnership which has fallen into financial difficulties through the absconding of the other partner with a large portion of the assets. He consults B, a prominent lawyer, with a request to defend him against suits that he fears may be brought against his personal estate by creditors of the partnership. It is reasonably certain that many of the creditors may wish to employ B in their controversy with A, so that if he were to engage himself with A he could not act for them and would thus lose a considerable volume of business. It is just, therefore, that A should be required to pay a larger fee for the services of the lawyer in order to compensate him for his probable losses.

The same right of additional compensation

would accrue if the lawyer were engaged on an unpopular side and his activities therein would tend to create antagonisms or hatred on the part of those who might otherwise become clients.

§ 116. Customary Charges of the Profession.

The customary charges of the bar for similar services has great bearing upon the question of the amount of a lawyer's fee. But the great difficulty is to ascertain what these customary charges may be. Lawyers differ greatly in their standards of charge and the same lawyer, even, varies from year to year, but always in an ascending variation. The difficulties in the way of establishing uniform schedules of charges have already been pointed out in section 112.

The writer has recently endeavored by a series of investigations among lawyers to obtain some statistics on the question of legal fees. Combining these with his own experience as a lawyer, the following rather indefinite figures result.

MINIMUM FEE

Practically all law offices have in theory a minimum fee, below which they will not go. For all small services, except notarial work, for which the fees are set by statute, the minimum fee is in some offices three dollars; in others, five dollars, and so on.

Thus, if a small bill is brought to the office for collection, the minimum fee is exacted, even though it involves a large percentage of the amount recovered. The practice is proper, since otherwise the lawyer might be harassed by small matters that would occupy his time without yielding financial reward. The minimum fee protects the lawyer against trifling cases.

But even the minimum fee has its exceptions. In talking with one lawyer, whose minimum fee was stated as five dollars, he admitted that if the client was in great poverty he reduced the fee to a very much lower figure, even to one dollar, or waived it entirely.

DRAWING DEED OR MORTGAGE

The fee for drawing a deed or mortgage is more uniform, ranging from three to five dollars.

CHARGE PER DAY FOR COURT SERVICE

Every lawyer has his price for this sort of service and, as the various lawyers differ in experience and ability and also in the volume of their practice, we would expect a great variation in their charges for court work. The nature of the case and the amount involved therein have great influence upon the charge for service.

From twenty-five to seventy-five dollars is perhaps the ordinary range, but lawyers of con-

spicuous ability, when engaged in very important work, are sometimes paid as high as five hundred dollars a day. The lawyers are few, however, who can successfully charge over one hundred dollars a day. The prices here referred to are those charged by experienced lawyers and do not concern the beginner.

The newly admitted lawyer usually feels himself fortunate to have a case to take to trial. It would not be prudent for him to charge recklessly, after the fashion of the older attorneys, for the first cases that come to him are oftentimes given out of charity, or as feelers by men who have considerable business and wish to try out the young man as a future possibility. Large fees will be likely to drive away the friendly investigators and retard the young man's chances of building up a practice. Ten dollars a day would probably be a liberal fee for the beginner, unless he were engaged in a really important case.

Tact and judgment must be exercised in fixing a charge. The case itself, the circumstances of the client, whether he is receiving money or paying it out, are all important considerations.

The lawyer cannot hope to reach the one hundred dollar a day stage until he has acquainted himself with all the intervening stages from ten dollars a day up.

SETTLING A CASE INVOLVING LESS THAN ONE HUNDRED DOLLARS

If the case involves the collection of a sum of less than one hundred dollars, and the result is attained without suit or without unusual difficulty, the customary charge is probably about ten per cent of the amount collected, unless ten per cent would not equal the minimum fee.

If, however, the amount is secured in small instalments, and the debtor needs frequent admonitions to induce him to keep up payments, the charge for collection frequently runs as high as twenty-five per cent of the amount recovered.

If suit should be necessary, but the case be settled before actual trial, ten dollars and costs would be a reasonable charge. Should actual trial be necessary, the charge would depend somewhat upon the labor expended, but of course could not be very large because of the small amount of money involved.

SETTLING A CASE INVOLVING MORE THAN ONE HUNDRED DOLLARS

When the case involves more than one hundred dollars and the settlement is on a collection basis, the percentage of charge would naturally vary with the amount involved.

The greater the amount recovered, the smaller

could be the percentage. To collect five thousand dollars might be no more difficult than to collect five hundred. A charge of ten per cent on five hundred dollars would yield fifty dollars to the lawyer while a charge of five per cent on five thousand would yield two hundred and fifty dollars. It is usual, therefore, to have a descending scale of charges as the amount of the claim increases.

If suit is brought on a large claim, more leeway for charge is of course possible. It is proper that the lawyer should be compensated more liberally for the same amount of work if the claim is large, for greater responsibilities are encountered.

ORGANIZING A CORPORATION

Fees for organizing corporations of course vary with the amount of skill required to draft the charter, and the difficulty encountered in organizing the corporation. For ordinary business corporations, organized under general statutes, the charge varies from fifty dollars to two hundred and fifty. If, however, the corporation involves a great aggregation of capital and the charter must be drawn with great skill, the fees of lawyers who are intrusted with so momentous a duty are paid fabulous fees. Samuel Untermyer is said to have received seven hundred and seventy-five thousand dollars for completing a

copper merger, and one million dollars for organizing a chain of breweries.

The lawyer's experience, ability, and the duties required of him by his clients are the factors that determine the amount of a fee. He cannot safely exceed the figure that his client considers is proper, for such action would forfeit the future business of the client. So whether the lawyer is to charge fifty dollars or thousands of dollars for organizing a corporation depends entirely upon the circumstances.

FEES FOR BANKRUPTCY CASES

Fees for bankruptcy cases vary greatly, according to the amount of time and labor involved and the size of the estate. From fifty to one hundred and fifty dollars is perhaps the usual range of fees, but circumstances may render five hundred or one thousand dollar fees not excessive.

DRAWING WILLS

The fee for drafting a simple will is set by some lawyers as low as five dollars, but ordinary practitioners charge anywhere from ten to fifty dollars. If the will is complicated and contains trust provisions, and the like, the labor and skill involved may render necessary a charge of hundreds and even thousands of dollars.

WRITTEN LEGAL OPINIONS

The fees for written legal opinions may range from ten dollars up to hundreds and thousands of dollars, according to the importance of the question involved, the amount of labor necessary, and the standing of the lawyer in the profession.

FEES FOR EXAMINATION OF TITLE

The charge for examination of title depends of course upon the amount of time necessary to make a proper examination. Lawyers employed by title companies and banks usually receive anywhere from fifteen to twenty-five dollars a day for research work. The charge for examination of a title is usually based upon the number of days' labor involved.

FEES FOR DIVORCE PROCEEDINGS

The ordinary fees for divorce proceedings range anywhere from fifty to five hundred dollars, according to the difficulties encountered.

§ 117. Amount of Money Involved.

The amount of money involved in litigation has also a material bearing upon the size of a lawyer's fee. Obviously a client could afford to pay more handsomely for a service if ten thousand dollars were to come to him as the result of it than he could pay for the same service if it resulted in a gain of only one thousand dollars.

Whether money is coming in or going out is another matter to consider. A client who has won a large sum of money through the efforts of his lawyer is more inclined to be liberal than is a client who has been successfully defended in a suit involving the same amount. It is human nature to be more reluctant to pay out a sum of money already possessed than to share with another a sum that is to pass through the other's hands in coming into possession.

In event of defeat, however large the amount involved and however ably the case may have been conducted, the lawyer cannot hope for a very liberal fee. To a client who has lost a large sum of money through the suit, it would seem like adding insult to injury for the lawyer to charge a considerable fee.

§ 118. Whether Fee is Contingent or Certain.

If the case is taken on a contingency, so that the lawyer is rendering services without a certainty of ever being paid therefor, it is proper that he should receive a very liberal fee in the event of success.

So long as contingent fees are confined to legitimate and proper bounds, they do not offend the ethics of the profession. In fact there seems to be a growing toleration of the practice, since

it enables persons without financial resources to obtain redress in the courts through the efforts of able counsel. The subject has already been referred to in another connection.[1]

§ 119. Casual or Regular Employment.

If the client has never employed the lawyer before, and there is no prospect that he will have other legal business in the future, it is justifiable to charge a larger fee than would be charged to a regular client.

§ 120. Should a Lawyer Sue a Client for a Fee.

American Bar Association Canon of Ethics, Canon 14:

"Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and his right to receive recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition, or fraud."

§ 121. Summary of Chapter.

In fixing the amount of a legal fee the lawyer should bear in mind that the profession of law is not a mere money-getting trade. The lawyer should not overestimate the value of services

[1] See § 49.

rendered. He should conscientiously keep faith with his client in respect to actual or implied agreements as to the size of the fee. The circumstances should govern the amount of a charge, hence, no fixed rule for charges can be laid down. The elements to be considered are the time and labor involved, the novelty of the question, whether taking the case will deprive the lawyer of other business, the customary charges of the profession, the amount of money involved, the contingency or certainty of fee, and whether the employment is for a casual or regular client.

CHAPTER XIII

GENERAL DUTIES

SEC. 122. Should a Lawyer Take Acknowledgments over the Telephone.
SEC. 123. The Lawyer as a Witness for his Client.
SEC. 124. Duty to Answer Letters Promptly.
SEC. 125. The Duty of Diligence.
SEC. 126. Lawyer should Cultivate a Passion for his Profession.
SEC. 127. Advertising.
SEC. 128. Advertising — Professional Cards.
SEC. 129. Advertising — Circulars.
SEC. 130. Newspaper Advertising — Cards.
SEC. 131. Newspaper Advertising — Divorce.
SEC. 132. Advertising — Newspaper Discussion.
SEC. 133. Advertising — Politics as an Advertising Medium.
SEC. 134. Advertising — Social Acquaintance and Club Life.
SEC. 135. Advertising — Employment of Runners.
SEC. 136. Summary of Chapter.

§ 122. SHOULD A LAWYER TAKE ACKNOWLEDGMENTS OVER THE TELEPHONE.

It is customary for a lawyer to become, through special appointment by the Governor of the State in which he practices, an officer, commonly known as Justice of the Peace or Notary Public, with power to administer oaths and take formal acknowledgments of legal documents. The acknowledgment to which the lawyer certifies contains the affirmation "Then personally ap-

peared the above named," etc. Unless the person referred to actually appears and makes the affirmation, the attesting official would be guilty of misconduct in certifying that he had done so.

The question arises, however, whether a person desiring to take oath, or to make an acknowledgment, may be constructively present. Suppose for instance that the lawyer talks with him over the telephone and takes the acknowledgment in this way. Would the lawyer be justified in certifying, "Then personally appeared the above named John Jones and made oath that," etc.?

Unquestionably there are many lawyers who take acknowledgments over the telephone. But there are many others who decline to do so on the ground that the practice is dangerous to the welfare of the community. The opportunity for fraud is obvious. If an impostor were to attempt to validate an instrument known to be in the hands of a lawyer, the lawyer would have only the voice to guide him in making sure of the identity of the person with whom he was talking.

The metallic rendering of a voice over the ordinary telephone reduces the chances of absolute identification. Voices of different individuals sound more alike over the telephone than in other forms of conversation, hence, a deception might easily be practiced upon the most careful attorney.

For this reason a proper conception of one's ethical duties should prompt the lawyer to avoid the taking of acknowledgments over the telephone.

§ 123. The Lawyer as a Witness for his Client.

American Bar Association Canons of Ethics, Canon 19:

"When a lawyer is a witness for his client, except as to merely formal matters, such as attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client."

Hoffman's Resolutions, Resolve 35:

"I will never be voluntarily called as a witness in any cause in which I am counsel. Should my testimony, however, be so material that without it my client's cause may be greatly prejudiced, he must at once use his option to cancel the tie between us in the cause and dispense with my further services, or with my evidence. Such a dilemma would be anxiously avoided by every delicate mind, the union of counsel and witness being usually resorted to only as a forlorn hope in the agonies of a cause, and becomes particularly offensive when its object be to prove an admission made to such counsel by the opposite litigant.

"Nor will I ever recognize any distinction in this respect between my knowledge of facts acquired before and since the institution of the suit, for in no case will I consent to sustain by my testimony any of the matters which my interest and professional duty render me anxious to support. This resolution, however, has no application whatever to facts contemporaneous with and relating merely to the prosecution or defense of the cause itself, such as evidence relating to the contents of a paper unfortunately lost by myself or others, and such like matters, which do not respect the original merits of the controversy, and which in truth adds nothing to the once existing testimony, but relates merely to matters respecting the conduct of the suit or to the recovery of lost evidence; nor does it apply to the case of gratuitous counsel — that is, to those who have expressly given their services voluntarily."

§ 124. Duty to Answer Letters Promptly.

Hoffman's Resolutions, Resolve 36:

"Every letter or note that is addressed to me shall receive a suitable response, and in proper time. Nor shall it matter from whom it comes, what it seeks, or what may be the terms in which it is penned. Silence can be justified in no case, and though the information sought cannot or ought not to be given, still decorum would require

from me a courteous recognition of the request, though accompanied with a firm withholding of what has been asked.

"There can be no surer indication of vulgar education than neglect of letters and notes. It manifests a total want of that tact and amenity which intercourse with good society never fails to confer. But what dogged silence (worse than a rude reply) in which some of our profession indulge on receiving letters offensive to their dignity, or when dictated by ignorant importunity, I am resolved never to imitate, but will answer every letter and note with as much civility as may be due, and in as good time as may be practicable."

§ 125. The Duty of Diligence.

Too many lawyers begin their law practice with the mistaken idea that admission to the bar puts an end to the necessity of study. The lawyer who would succeed must realize that he has entered upon a profession in which study is vitally necessary from the first to the last day of his practice.

The great lawyers of to-day are without exception those who have by unwearied diligence mastered some particular field of law. They have toiled early and late. They have lived honest, upright lives. They have impressed their clients and the public that they were worthy of success. Their

reward has come to them in the natural course of events. It could not be otherwise.

The aspiring young lawyer should therefore realize that if he is to win such rewards he must do as these successful lawyers have done, — pay the price by long study and arduous toil.

§ 126. Lawyer should Cultivate a Passion for his Profession.

Hoffman's Resolutions, Resolve 48:

"The ill success of many at the bar is owing to the fact that their business is not their pleasure. Nothing can be more unfortunate than this state of mind. The world is too full of penetration not to perceive it, and much of our discourteous manner to clients, to courts, to juries, and counsel has its source in this defect. I am, therefore, resolved to cultivate a passion for my profession, or, after a reasonable exertion therein, without success, to abandon it. But I will previously bear in mind, that he who abandons any profession will scarcely find another to suit him. The defect is in himself. He has not performed his duty and has failed in resolutions, perhaps often made, to retrieve lost time. The want of firmness can give no promise of success in any vocation."

§ 127. Advertising.

On the question of advertising there is probably more difference of opinion than upon any other that confronts the lawyer. There is a tradition in the legal profession that it is beneath the lawyer's dignity to seek business, that he must sit in his office and wait for clients to come to him rather than take any active measures to attract them to him.

All lawyers agree that certain forms of advertising are unprofessional, but not all are willing to include every form of advertising under the ban. Let us then consider what forms of advertising are considered permissible.

§ 128. Advertising — Professional Cards.

There is no form of advertising more time-honored or respectable than the issuance of professional cards bearing the name, profession, and office address of the lawyer. The practice is universal but, because it is so common, is not always considered to be advertising. The lawyer may circulate his cards freely among his friends, or they may refer their own friends who are in need of legal advice to him by means of his cards.

The card itself should of course be modest and dignified. It should not contain self-praise nor ostentatious display, but consist merely of the name, address, and profession of the attorney con-

cerned. If the lawyer pursues a special branch of the law, it is of course permissible for him to announce his specialty in a modest and dignified manner.

§ 129. Advertising — Circulars.

Circulars are of various kinds, some of them sanctioned by custom while others are not. A form of circular that is really an enlarged business card is the printed or engraved announcement sent out to the profession or to the clients of the lawyers concerned, containing the information that the lawyers named have formed a copartnership for the general practice of law or to pursue a certain special branch of the law. Such announcements are usually of letter size rather than in the form of a card.

If a new member is added to the firm, or if the firm dissolves, the same method of informing the public is resorted to. So, too, if a firm of lawyers, or an individual lawyer, removes from one building to another in the same town, or removes to a different town, it is perfectly proper to announce the fact in this way. Although such circulars are in effect advertisements, and are usually so intended, yet the custom is dignified and sanctioned by long and unquestioned usage.

But for an attorney to issue a circular boldly soliciting business as a merchant might solicit

trade is unprofessional. Because of the fact that no distinct training has been given them in the traditions and ethics of the profession, young lawyers sometimes fall into this error and thus unwittingly violate the unwritten rules of professional deportment. This is perhaps not a grave offense in itself, but the lawyer doing it, however innocently, will doubtless be considered by strangers to be a shyster or a lawyer of questionable professional ethics.

It is unprofessional for lawyers to send out circulars extolling their own professional abilities or recounting the successes they have met with in court, whether these circulars are sent to clients or to strangers.

§ 130. Newspaper Advertising — Cards.

In small cities or rural communities, long usage has sanctioned the insertion of professional cards in the advertising columns of the local newspapers. But in the large cities where advertising in the public prints is carried to such extremes, the profession frowns upon advertising by lawyers. It is considered undignified for a lawyer's card to be inserted in company with the appeals of clairvoyants, medical quacks, matrimonial bureaus, and get-rich-quick schemes.

§ 131. Newspaper Advertising — Divorce.

The persistent and shameless advertising by lawyers who seek divorce litigation is a positive disgrace to the legal profession. While the lawyer has an unquestioned right to accept divorce cases, it is unprofessional for him to encourage divorce by inviting unhappy husbands or wives to consult him under the assurance of secrecy or of inexpensiveness of proceedings. Divorces cannot be obtained secretly in any jurisdiction, nor inexpensively unless the lawyer is a relative or acts through intimate friendship.

Lawyers who advertise to procure divorces "quietly," "without publicity," "without everybody knowing," usually advertise under a fictitious name or by giving no address except a post-office box, thus admitting that they regard their own conduct as dishonorable and fear the just condemnation of the public if their real names were known.

Divorce has grown to be an evil of national proportions. A disagreement between husband and wife sets one or the other to thinking of securing a divorce, and it needs but little encouragement to induce them to make the attempt. The attorney who advertises to secure the divorce without notoriety and at a trifling expense thereby furnishes the necessary encouragement and, whether they employ him or some other lawyer, the evil is accomplished.

A lawyer who advertises for divorce litigation is therefore unfaithful to his duties to the public and deserves the severest condemnation of fellow-members of the profession which he has disgraced.

In the case of People *v.* McCabe [1] the court said: "The ethics of the profession forbid that an attorney should advertise his talents or his skill as a shopkeeper advertises his wares. An attorney may properly accept a retainer for the prosecution or defense of an action for divorce when convinced that his client has a good cause. But for any one to invite or encourage such litigation is most reprehensible. The marriage relation is too sacred; it affects too deeply the happiness of the family; it concerns too intimately the welfare of society; it lies too near the foundation of all good government, to be broken up or disturbed for slight or transient causes. . . . When a lawyer advertises that divorces can be legally obtained very quietly, and that such divorce will be good everywhere, such advertisement is a strong inducement — a powerful temptation — to many persons to apply for divorces who would otherwise be deterred from taking such a step from a wholesome fear of public opinion. . . . Such an advertisement is against good morals, public and private; it is a false representation and a libel upon

[1] 18 Colorado, 186, 32 Pacific Reporter, 28, 36 American State Reports, 270.

courts of justice. Divorces cannot be legally obtained very quietly which shall be good everywhere. To say that divorces can be obtained very quietly is equivalent to saying that they can be obtained without publicity — a libel on the integrity of the judiciary."

§ 132. Advertising — Newspaper Discussion.

The consensus of opinion seems to be that a lawyer has a perfect right to enter into any newspaper discussions of current topics, even though the natural result of such publication may be to bring clients to the lawyer. Such discussion may in fact be a distinct public service. The lawyer of ability, with his training in the logical analysis of a cause, is qualified to become a leader of popular thought. In every great movement in the history of our nation keen, analytical, and eloquent lawyers have led the public through the crisis to safety. The same is true to-day. From national affairs to the smallest of local problems the lawyer's position as a moulder of public opinion is second only to that of the press. But a lawyer should not take part in a newspaper discussion if he is in the employ of corporations or interests concerned, unless he discloses his employment. He should not endeavor to influence public opinion as to cases then pending in which he is in any way concerned.

§ 133. Advertising — Politics as an Advertising Medium.

"There are two ways of going into politics: One as the active worker in a limited section of territory, such as a precinct, and there one may grow acquainted with a certain number of plain people, and if he is patient and a good fellow, and they like him, sooner or later those plain people, or their friends, will need, and must have, the advice and service of an attorney. The other method is to start in as an orator or spellbinder. The latter method sometimes leads the young lawyer to retainers in sensational suits, but there are so many spellbinders in the city or country, and so few sensational suits, that oratory is hardly an employment one can count on.

"When it comes to office-holding, the lawyer is usually disappointed, and if be does hold office, though his name is before the people, he does not advance especially in his profession. The offices are few and the aspirants many, and rewards, at best, are scant compared with the industry which is needed. The failure of the young lawyer who goes into politics to obtain the proper sort of advertising, is because of the fact that he finds himself advertised, not as a lawyer, but as a politician, or that he becomes known as one who succeeds so little in law that he has

time to devote to the duties of every right-minded citizen." [1]

§ 134. Advertising — Social Acquaintance and Club Life.

"Some men hope to become advertised through social connections. . . . The average business man would rather lend his legal friend one hundred dollars, without any clear hope of getting it back than trust him with a ten-dollar law-suit. He will do the first thing as a matter of friendship, but when he does the second it is a matter of business, and the business man's whole training has taught him that the men who do the best work are not the men who have much time for pleasures of the rich. Of course, there are exceptions. . . . About one lawyer a day plans to increase his acquaintance by joining a club or lodge, and therefore whether he join for golf or billiards, or for fraternal insurance, he is sure to find the territory overcrowded and overworked, while the whole social fabric is honeycombed with members of the profession; and there, again, the men whose business is worth while resent the insurance agent, and the dentist brings up unpleasant memories, but of the lawyer, most of all, they are cautious. If they get to know him well as a man, they respect him too highly to confess their financial embarrassments or marital

[1] Robbins on American Advocacy, § 192.

infelicities or moral delinquencies; and yet they will bring those same troubles to a lawyer whom they do not know, without reserve." [1]

§ 135. Advertising — Employment of Runners.

The employment of runners or "ambulance chasers" by lawyers to increase their business is a practice that meets with strong reprobation both by the courts and by the better class of lawyers. In some jurisdictions statutes have provided that an attorney may be disbarred for employing runners.

In a California case,[2] in which lawyers had agreed to pay a runner one-third of the fee for any case procured through his efforts, the court said: "Was not Bolte really allowed to use their names in the prosecution of a matter in litigation? Under the employment of them as attorneys, made through Bolte's procurement, they engaged to use their faculties as attorneys and counselors at law for his benefit, and that, too, in a cause in which he had no interest as a party. By the terms of the agreement he was to derive a benefit from the rendition of their services in their professional capacity, and to receive a share of their fee, as if he had been concerned with them as a regularly

[1] Robbins on American Advocacy, § 193.

[2] Alpers *v.* Hunt, 86 California, 78, 24 Pacific Reporter, 846, 21 American State Report, 17, 19 Lawyer's Reports Annotated, 482.

admitted attorney. He was thus enabled through their agency, vicariously, and not openly in his own name, to aid in the prosecution of a matter in litigation, and to receive through it such a reward as is usually gained by an attorney regularly admitted to exercise his profession. . . . If such a practice were allowed, an attorney might have a number of undisclosed associates through his agency exercising the functions of an attorney and counselor, and reaping the rewards flowing therefrom, without resting under any of the responsibilities incident to such a position, and possessing none of the qualifications which the law demands and requires."

§ 136. Summary of Chapter.

An ethical question of recent origin is the taking of acknowledgments or oaths over a telephone. The difficulty in recognizing a person definitely from voice alone when imperfectly transmitted should prompt the lawyer to conscientiously refrain from such a practice. A lawyer should not, except under extraordinary circumstances, become a witness for his own client. Every lawyer should esteem it a duty to answer all letters or communications addressed to him in his professional capacity as promptly as is possible under the circumstances. The lawyer owes a duty to himself and to his clients to cultivate diligent application

in legal research and in other branches of his work. Every attorney should feel a love for his profession, and if this regard does not come spontaneously it should be cultivated. The question of advertising by lawyers is indeed hard to solve. Certain kinds of advertising, such as business cards and circulars announcing a change of location, or the formation of or change in a legal copartnership are conceded by all to be legitimate forms of advertising. But circulars soliciting business are unprofessional. The insertion of a business card in the advertising columns of a newspaper may or may not be professional, according to the circumstances. In a small community it is regarded as proper, but in a large city such a practice is frowned upon by the profession for reasons stated in the text. Divorce advertising is unprofessional. A lawyer has a right to mingle in newspaper discussions concerning questions of public welfare even though the natural result of such discussion will be self-advertisement. Politics are at best dubious means of advertising. The same is true of social clubs or secret societies. The employment of runners is considered by the profession to be highly reprehensible.

CHAPTER XIV

THE LAWYER IN POLITICS

SEC. 137. Its Bearing upon Ethics.
SEC. 138. Why Lawyers are Attracted to Politics.
Honor of Public Office.
Public Office Leads to Extensive Acquaintance.
The Emoluments of Public Office.
Apparently Brilliant Opportunity.
SEC. 139. The Real Situation.
Campaign Expenses, etc.
The Political Treadmill.
Hopeless Prospects.
Temptation.
SEC. 140. Evolution of the Grafter.
SEC. 141. Need of Lawyers in Politics.
SEC. 142. Summary of Chapter.

§ 137. ITS BEARING UPON ETHICS.

We are all familiar with the fact that many lawyers enter political life. We are familiar also with the fact that politics have a tendency to develop grafters. Is there, then, such a danger in political life that the ambitious young lawyer should hold himself aloof from politics?

§ 138. WHY LAWYERS ARE ATTRACTED TO POLITICS.

It is common knowledge that a large percentage of young lawyers enter politics and a

still larger percentage have disappointed political aspirations.

Let us inquire, then, what are the attractions that lure young lawyers into political life. There are doubtless many, but there are three important ones.

HONOR OF PUBLIC OFFICE

A position of honor and trust as a prize to be won through political campaign, with its enthusiasms and its speech-making, appeals to ambitious, self-confident young men. The young lawyer especially is filled with a desire to be up and doing, to take a part in civic movements and to become a leader among men. To be a representative in the State legislature or to fill any of the various minor elective offices appeals to him as a stepping-stone to higher usefulness. Election to such an office will mark him as a man apart from the multitude who are devoid of ambition. It will give him a distinction among his neighbors and townsmen, and raise him to an equal power with men whose names are household words in the community. He will bear an honorable part in the making of public laws; his mind is perhaps already at work formulating most beneficent and sagacious legislation that will bear his name.

This is the prize that lures him. He sees a rainbow path leading to it. Along the path he sees po-

litical campaigning, brilliantly lighted halls filled to the overflowing with enthusiastic partisans, himself upon the speaker's platform, blushing under the praise of his fellow orators on being called upon to speak, and meeting an unheard-of ovation. His imagination paints him the man of the hour, a sort of conqueror out for a whirlwind tour of his dominion. Then he sees the election day — the bulletins watched by eager crowds; he hears the roars of victory from his supporters when the final result is announced; the next day, the newspapers full of the election news and pictures of the successful candidates.

Thus, hoped-for honors attract young lawyers to public office.

PUBLIC OFFICE LEADS TO EXTENSIVE ACQUAINTANCE

The young lawyer who turns his attention to politics sees, or fancies he sees, another reason for seeking political distinction. He will acquire an extensive acquaintance, and this, he reasons, will mean law practice. If he should retire temporarily to private practice his constituents will seek him out in large numbers for legal advice. He has seen such things occur,— ex-governors, ex-congressmen, and the like, overwhelmed with business. His fancy pictures the same happy fate awaiting him also.

Here, then, is another attraction that the holding of public office has for a lawyer.

THE EMOLUMENTS OF PUBLIC OFFICE

A salary goes with the office,—not a munificent sum perhaps, but a salary, and one that is fairly earned. To the lawyer with a small practice and no resources other than his professional earnings this last temptation is the most insidious of all. Every lawyer has at first a hard struggle financially to build up a practice. He must wait for clients and for business. Why not utilize the waiting time by earning a salary, by doing something really worth while that will establish his reputation in the community, and bring him a law practice besides?

APPARENTLY BRILLIANT OPPORTUNITY

Legislative duties are comparatively light, he reasons, and he will have time to attend to his law practice before and after sessions. The whole matter seems so fair on its face that the lawyer can discover no flaw at all. The opportunity seems in truth a heaven-sent provision to set him on the high road to fame and prosperity. He throws himself into the contest for election, fights hard, spends his hard-earned money, and perhaps wins the election.

§ 139. The Real Situation.

The real situation with the lawyer is often this. If his official duties occupy him during the day, he is practically eliminated from law practice. He cannot do his duty by his constituents and work at his private business at the same time. He must choose. He desires re-election, so he chooses to devote his time to his constituents. The few clients that he had gained drop away, and his law practice disintegrates.

He is now dependent upon his salary for support, and no official salary in this country is large. He must recoup his fortunes after the campaign expenditures have been met. Perhaps he saves some of his salary during the winter months. Summer comes, and with it inactivity and no salary. The courts are not open, so there is little to do.

CAMPAIGN EXPENSES, ETC.

Then come the autumn elections, — either his own fight for re-election, or the general party fight for its various candidates. If it is for others and not for himself, he must nevertheless contribute to the campaign fund or lose standing with the powers higher up. If it is his own fight, he must spend every dollar he can rake and scrape to secure his re-election. He must pay for printing, for campaign expenses, for caucus services, for this, that, and the other thing, until his salary

of the previous year has shrunk to the proportions of a snowdrift in July.

THE POLITICAL TREADMILL

But perhaps it may be said that a lawyer who encounters such a strenuous life of disillusionment in politics will quit and settle down to the practice of law.

Ah! there is just the trouble. He has no practice of law to settle down to. It is not in the nature of man to give up a definite thing for something altogether indefinite. The success that he has achieved is so unflattering that he dares not trust to the possible law practice that may come to him as the result of his legislative reputation. Perchance he has a family to support — a wife and child. Will he voluntarily put them in jeopardy? Assuredly not. He will fight for re-election for their sakes if not for his own.

HOPELESS PROSPECTS

He is in a bad way. His salary is small, and there is little prospect for the future — that annual drain of campaign expenses must be provided for and his family must be fed. Here is the danger point.

TEMPTATION

Some business house may approach him to suggest reasons why legislation unfavorable to their interests should not be enacted, or perhaps to suggest favorable legislation. He is assured of

political support if he will not espouse the opposite side, and the matter is represented in so fair a light that it would seem a dereliction of duty to do other than favor his business friend.

Perhaps it is a case of public improvements for his own constituency, and he has every confidence in the contractors who are seeking the contract that may be awarded. Surely he will vote for the improvements to be made. It is his duty to do so.

Suppose these friends, the contractors, desire, purely out of friendship, to make him a present. Why should he, because he is in public office, refuse to receive friendly gifts that would be perfectly proper for him to receive as a private citizen. No one will ever know it. And think how it will assist his loved ones at home. Perhaps there is sickness at home — rent due, grocery bills unpaid, and the sick one cannot be provided with the little luxuries that every husband or father yearns to provide. Can he look his wife and children in the eyes at a time of such distress and feel that but for a foolish scruple he might for this once provide the much-needed things or the sighed-for luxuries? It is such a little thing, and yet means so much to those he loves!

§ 140. Evolution of the Grafter.

This is the way that the temptation comes to the man to take the first step in the path that leads

to political dishonesty. There are many "good fellows" abroad who represent interests seeking legislation. They are wise in their judgments of men. They know how to approach and when to approach. In a time of trouble — and that time always comes sooner or later — they offer cheer and encouragement to the intended victim. He is in a receptive mood, and who would not be in such a case!

In a conflict between love and an uncertain sense of duty, love will triumph every time. Let the victim go home to his family — let him behold helpless suffering there — let him see misery and know there is a way to alleviate it, and he will cast his scruples to the wind and take the proffered gift. It may be bribery, but he is inclined to consider it otherwise. He will justify himself, and it will be easier to accept a similar gift at another time. Hence, by degrees, his conscientious scruples will be completely supplanted by more sordid tendencies, and he becomes an out and out grafter, a menace to the community and a deplorable example to his fellow men.

So it is that many lawyers who enter politics with high hopes and commendable ambitions are by force of circumstances led step by step into the maelstrom of political degradation and dishonor.

If they had resisted the call of politics until they had accumulated enough of worldly goods to be

independent of their official salary, or of political defeat, they would then have dared to spurn the bribe in whatever form it might be offered. The fear of bringing suffering upon their helpless families would not then have proved an irresistible power dragging them into the pit of dishonor.

§ 141. Need of Lawyers in Politics.

It is not the purpose of this chapter to discourage lawyers from entering political life. There is need enough of strong, earnest lawyers who will enter politics and scourge out grafters. The greatest statesmen of the past have been lawyers, and it is doubtless from the profession of law that the great statesmen of the future will arise. But in order to insure the best results to the public and to the individual lawyer, it seems wise that the lawyer await the time when, with financial independence assured and in the full maturity of his powers, he can enter political life and accomplish things really worth while. The experiences of such a man as former Governor Charles E. Hughes of New York, now a member of the Supreme Court of the United States, illustrate the possibilities awaiting the upright, fearless lawyer who enters politics under favorable circumstances in the full maturity of his powers.

§ 142. Summary of Chapter.

The honor of public office, the advertising possibilities, the salary attached, and the apparently brilliant opportunities therein render politics especially alluring to the lawyer. But the real situation of the lawyer who is elected to public office and has not an independent means of support to fall back upon in case of defeat is unfortunate in the extreme. He must practically abandon his law practice if he does his duty by his constituents, and he thus becomes dependent upon a small salary for support of his family. Campaign expenses and the necessary fight for re-election make alliance with corrupt officials or designing interests well-nigh inevitable. The prospects for advancement are dubious, and the easy road to dishonesty becomes more and more alluring. The grafter is often evolved from the luckless individual who entered politics with the best of intentions and the most commendable ideas of honesty, but who became a victim to circumstances. The conclusion reached is that the lawyer should avoid politics until he is so situated financially that he will not be dependent upon his salary for support. There is need of strong, earnest lawyers in political life who are independent of bosses or "the interests."

CHAPTER XV

THE LAWYER IN BUSINESS

SEC. 143. Is the Legal Profession Overcrowded?
SEC. 144. Broadening of Lawyers' Duties.
SEC. 145. Business becoming more Complex and Hazardous.
The Advent of Railroads.
The Rise of Trusts.
SEC. 146. Abuse of Power by Trusts.
The Independent Dealer a Check upon the Trusts.
The Trusts Supplanting Independent Operators.
SEC. 147. National Welfare Demands a Strengthening of the Hands of Independent Dealer.
SEC. 148. Business Problems.
SEC. 149. Lawyers Needed in Business.
SEC. 150. The Result of a Further Broadening of the Lawyer's Duties.
SEC. 151. Summary of Chapter.

§ 143. IS THE LEGAL PROFESSION OVERCROWDED?

A cry is going up from the alarmists of the profession that there are too many lawyers, that the profession is becoming overcrowded. It is a fact that more men are studying law to-day in the United States than ever were before in the history of the nation. More stringent rules for admission to the bar are clamorously advocated by some. They regard the influx of new lawyers as a menace to the community, on the ground that there will be insufficient business for all.

It becomes, therefore, a question profoundly affecting the ethical standards of the profession: What is to be done with the increasing numbers of lawyers? Lawyers will become dishonest and corrupt if starvation or a bare living is their only outlook, for lawyers cling to their profession, even though they have become disillusioned concerning it, and decline to enter other vocations. Many of them feel that if they have made a failure at law and are forced to give it up they are forever discredited in the eyes of the world. Let us inquire, then, if the immediate future is likely to witness a further broadening of the scope of a lawyer's activities, so that the man who studies law with the intention of using his knowledge professionally may not be disappointed.

§ 144. Broadening of Lawyers' Duties.

In the olden times the lawyer's field of activity was limited. The handling of cases in court or the prosecution or defense of criminals comprised the greater part of his professional activities. Not necessarily was he excluded from following other pursuits a part of his time, but, acting strictly as a lawyer, there were no other demands for his services.

Time, however, has wrought a change in this condition of affairs. At the present time there is a large class of lawyers who rarely go to court in

the trial of a case. Their services are mainly advisory. They effect consolidations of business houses, or direct the formation of large concerns. When vast amounts of capital are to be invested in a business, binding agreements and a consolidation that will withstand every possible attack of its enemies become a necessity, and a skillful lawyer must be employed to accomplish these things. Thus it comes about that lawyers so employed are the highest paid of any in the profession. They become advisers to business houses, and in this way extend the sphere of a lawyer's activities.

By a process of evolution, the lawyer has kept pace with society in general. He has retained all his old powers and privileges, and he has gained new. The lawyer as an adviser to proprietors of large enterprises has become an established feature of society. Is there a likelihood of a further broadening of the lawyer's activities in the field of business?

§ 145. Business becoming more Complex and Hazardous.

One of the most significant features of our national development is the change that is taking place in business and commerce. A few generations back manufacturing and commerce were carried on by small companies or by private in-

dividuals. There were no large cities and hence no great demand for foodstuffs or fuel in any particular locality. The suburban farms and the outlying districts furnished a fairly adequate supply of necessary commodities to the city population. Transportation was then in the hands of the producer. There were multitudes of small business houses, each doing a fairly lucrative business.

THE ADVENT OF RAILROADS

But with the coming of the railroads and the possibility of transporting necessaries of life from a much greater distance, larger populations in the cities became possible. Hence, a great movement of centralization of population set in. Great cities have grown greater, and small manufacturing towns have become large centers of population. Markets for foodstuffs and other necessaries of life have thus developed. Far-sighted business men have seen the possibility of tremendous profits if the control of the markets could be wrested from the hands of the small business houses and combined in the hands of a few giant corporations.

THE RISE OF TRUSTS

For more than a generation the business and commerce of the country has gradually passed under the domination of the trusts. Great cor-

porations are in fact a necessity under present-day conditions. Private individuals could not, if working independently, supply the markets of the world, or, if they could, the cost of production would be greater per article than when great corporations carry on the same enterprise on a mammoth scale.

§ 146. Abuse of Power by Trusts.

We need not be told that trusts are inclined to abuse their power. It is painfully apparent that great corporations are not conducted as philanthropies. So soon as one corporation or a limited number of corporations gets to the point where a control of the market is possible, a rise of prices results. If the beef trust can force up the price of meats several cents a pound in defiance of a nation-wide protest, it is time to consider calmly what is to be done to curb its powers and to prevent other trusts from doing the same thing with other necessaries of life.

THE INDEPENDENT DEALER A CHECK UPON THE TRUSTS

It is obvious that independent producers and dealers existing in any considerable numbers hold in check the rapacity of predatory trusts. Until a trust can secure an effective control of the market, that is, attain a virtual monopoly, it cannot force up prices beyond a legitimate level.

THE TRUSTS SUPPLANTING INDEPENDENT OPERATORS

But the trusts are continually fighting the independent companies and, in nearly all fields, are accomplishing a steady progress of elimination. If this progress is to continue, all the business of the country will eventually be consolidated in the hands of a few powerful combinations of trade. The evils that such a situation of affairs would usher in we have already had samples of in the conduct of the beef trust and a few others.

§ 147. National Welfare Demands a Strengthening of the Hands of Independent Dealer.

It becomes, therefore, a matter of national concern that the hands of the independent dealer be strengthened. The trusts have been created and rendered powerful through the efforts of able lawyers in the employ of capitalists. Lawyers are always, sooner or later, found arrayed on each side of a controversy. May we not expect to find them, even more effectively than at present, arrayed on the side of the independent dealers? Let us see of what nature is to be the services rendered.

§ 148. Business Problems.

The new man or corporation entering into business at the present time must begin with small capital as compared with the trusts. His establishment must necessarily be modest, and from the outset he must fight for business in competition with powerful adversaries. The public has a way of waiting for a new man to make good before lending him any degree of approval. While the public is looking on ready to say "I told you so," the trusts, by devious methods, usually force the newcomer into the pit of financial ruin and turn their attention to the next comer.

In order for a small enterprise to make head against powerful adversaries, it must be conducted scientifically. Every contract that is made must be legally binding. The Statute of Frauds requires certain contracts to be in writing; the statute concerning sales of personal property must be satisfied if it is a contract falling within its provisions; the law of negotiable instruments is intricate and technical. Thus it is that there are many ways in which the business man may meet with a business loss through an imperfect knowledge of law. A few losses may cancel his profits and result in business ruin.

Aside from danger from his own mistakes, there are causes that may lead to his ruin, however well managed his own business may be. If the trans-

portation companies, by rebates or other means that are iniquitous, transport merchandise very much cheaper for his powerful rival than it will for him, the rival can undersell him and thus encompass his ruin.

Still other difficulties in the way of the independent dealer arise from ill-advised legislation. The State legislatures and the Federal Congress are every year piling up new laws and new restrictions upon business. A law is enacted to curb the powers of the trusts, and, lo, we find that the trust lawyers devise a way to circumvent the law, and the trusts go on their way as before, while the smaller concerns, that are doing a legitimate business, are caught in the web. They are forced to the wall, and the trusts quietly extend their sway over the newly relinquished territory. Thus it is that ill-advised legislation, or legislation that is enacted under compulsion, but with deliberately planned defects, results in disaster to the small concern and secret joy to those who have been denominated by our valiant Ex-President as "malefactors of great wealth."

Every business failure, through the downfall of a small concern, results in economic loss to the nation. The accumulation of such losses in the United States amounts to an appalling total every year. A more efficient business man is needed.

§ 149. Lawyers Needed in Business.

The business man of to-day needs to be able to make legally binding contracts. In order to protect his business from unjust discrimination in favor of a business rival, he should be thoroughly familiar with his legal rights and the methods to pursue in protecting them. He should be so familiar with the law and its administrations in court that he can decide wisely upon the merits or demerits of legislation that is introduced ostensibly for his benefit.

The time has passed when the business man can go on his way in serene ignorance of the law and simply call in a lawyer when he gets into trouble. Every act of the business man who would succeed in future competition with the trusts must be decided upon with a full understanding of the law and of the legal significance of the act. He must himself possess a technical knowledge of law gained in the same way that the lawyer gains it, by years of study, or he must employ a lawyer to superintend the legal phases of the business. It would seem a reasonable conclusion that the lawyer is to assume an increasingly important part in the future development of the country.

§ 150. The Result of a Further Broadening of the Lawyer's Duties.

A broadening of the lawyer's activities should mean a greater prosperity alike to the profession and to the community. Future captains of industry are doubtless to be recruited from the great numbers of lawyers now being educated in the United States. One of the necessary qualifications of a manager of a business enterprise will doubtless be that he be a lawyer, or have received a legal education equivalent to a law-school training.

The broadening of a lawyer's activities would result in a separation of the profession into three general classes, instead of two, as formerly. First, the practitioner actively engaged in the courts; second, the office lawyer whose practice is chiefly advisory; third, the lawyer who enters business as an out-and-out business man. Whether the newly admitted lawyer would enter one or the other of these three classes would of course depend upon his natural aptitude for one or the other. If he failed in the first two, the alternative of business would still remain. There have been conspicuous instances of lawyers who failed as advocates, but later entered business life and became extremely wealthy.

§ 151. Summary of Chapter.

The increase in the number of lawyers raises the question whether the profession is to become overcrowded. The scope of a lawyer's duties have gradually broadened. The lawyer who acts as confidential adviser to large business enterprises is becoming a more and more important member of the profession. Business is becoming more complex and hazardous. The railroads have opened up greater markets to the manufacturer and producer. Giant corporations are gradually gaining monopolies of the various fields of business activity. These corporations are, in many instances, abusing their power. Independent dealers who are skilled in the law and can fight the trusts successfully are becoming necessary as safeguards against the trusts. Lawyers are therefore needed in business, and a large percentage of them are likely to enter business in the near future, thus disposing of the overflow of lawyers, if such should occur, and extending anew the field of a lawyer's activities.

CHAPTER XVI

LIABILITIES OF A LAWYER TO HIS CLIENT

SEC. 152. Liability for Disregarding Instructions or Exceeding Authority.
Illustrations.
SEC. 153. Liability for Failure to Exercise Reasonable Care and Skill.
SEC. 154. Errors in Law or Judgment.
SEC. 155. Negligence in Collecting Moneys.
SEC. 156. Negligence in Trial of an Action.
SEC. 157. Negligence in Drawing Legal Documents.
Illustrations.
SEC. 158. Liability for Money Collected on Client's Account.
SEC. 159. Summary of Chapter.

§ 152. LIABILITY FOR DISREGARDING INSTRUCTIONS OR EXCEEDING AUTHORITY.

In all matters except those of a professional nature, the lawyer is under an obligation to obey his client's instructions so long as the relation of attorney and client continues to exist. If the client authorizes the lawyer to settle a case for a stated sum and the lawyer settles for a different sum, the client would ordinarily be bound by the transaction and should therefore have a right of action for damages against the offending attorney.

ILLUSTRATIONS.

(*a*) In a case where an attorney without the authority of his client enters a satisfaction of judgment without full payment having been made, the court held that the lawyer was liable in damages for the loss of the balance of the claim.[1]

(*b*) A client who lived outside the State sent a note to a lawyer for collection with a request that immediate attachment of maker's property be made. The amount involved was comparatively small. Willard, the maker of the note, was doing an apparently extensive business. The lawyer saw him and was assured that the note would be paid upon presentation. On March 15 the lawyer wrote to his client informing him of the promise and requesting the forwarding of the note. The note was sent and duly received. No new instructions were given. After several attempts to induce Willard to pay, the lawyer on May 2 issued a writ of attachment against his property. But Willard made new promises, and the writ was not served. On June 15 Willard was arrested for debt, and many attachments were filed by various creditors. The plaintiff failed to recover upon the note and brought suit against his lawyer for the damages sustained. The court held that the defendant was liable, and based its decision upon

[1] Cox *v.* Livingston, 2 Watts & Sargeant, 103, 37 American Decisions, 486.

the following rule of law: "Whenever an attorney disobeys the lawful instructions of his client, and a loss ensues, the attorney is responsible." [1]

(*c*) The attorney would also be liable to his client if, through his neglect to bring suit when requested, the debtor evades the debt by operation of the Statute of Limitations, or by insolvency, or avoids service by leaving the jurisdiction.[2]

§ 153. Liability for Failure to Exercise Reasonable Care and Skill.

Every lawyer impliedly guarantees to his clients that he possess at least the average degree of skill and learning in his profession. He impliedly undertakes to exercise reasonable care and diligence in applying his skill or learning in the client's behalf. Failure so to do will subject the lawyer to an action for damages to the extent of his client's injuries.

But it is to be borne in mind that the lawyer does not guarantee infallibility. He will make mistakes occasionally, but, unless a mistake is due to negligence or want of ordinary skill and learning, no liability arises. He is judged by the standard of the ordinary man in his position in life. The lawyer who claims to be a specialist in corporation law should be judged by a higher stand-

[1] Gilbert *v.* Williams, 8 Massachusetts, 51, 5 American Decisions, 77.

[2] People *v.* Cole, 84 Illinois, 327.

ard of skill and learning in corporation law than would the ordinary practitioner. The same would be true of an admiralty lawyer, a patent lawyer, or an attorney who held himself out to be an expert on mining laws. In other words, there are certain fundamental rules and principles of which every attorney who undertakes to practice law must not be ignorant; as experience accumulates and as he specializes in some particular field of law, the standard of comparison is gradually elevated, and his accountability to his client keeps pace with his changing status as a lawyer.[1]

§ 154. Errors in Law or Judgment.

"Many attempts have been made to state a comprehensive rule upon this subject, and, in a well-considered case,[2] the court lay down the rule to be that, if the law governing the matter in question was well and clearly defined, both in the text-books and in the decisions of his own State, and

[1] See Leighton *v.* Sargent, 27 New Hampshire, 460, 59 American Decisions, 388; Goodman *v.* Walker, 30 Alabama, 482, 68 American Decisions, 134; Pennington *v.* Yell, 11 Arkansas, 212, 52 American Decisions, 262; Fitch *v.* Scott, 3 H. & W. (Mississippi) 314, 34 American Decisions, 86; Palmer *v.* Ashley, 3 Arkansas, 75; Mardis *v.* Shackford, 4 Alabama, 493; Morrill *v.* Graham, 27 Texas, 646; Reilly *v.* Cavanaugh, 29 Indiana, 435; Chase *v.* Heaney, 70 Illinois, 268; Stevens *v.* Walker, 55 Illinois, 151; Caverly *v.* McOwen, 123 Massachusetts, 574; Holmes *v.* Peck, 1 Rhode Island, 242; Eggleston *v.* Boardman, 37 Michigan, 14.

[2] Goodman *v.* Walker, 30 Alabama, 482, 68 American Decisions, 134.

if it has existed and been published long enough to justify the belief that it was known to the profession, then disregard of it, by an attorney-at-law, renders him accountable for the losses caused by such negligence or want of skill, — negligence, if, knowing the rule, he disregarded it; want of skill, if he was ignorant of it.

"But in general, no more definite rule upon the subject can be laid down than that already given; that the attorney contracts for reasonable skill and reasonable diligence, but not for infallibility, or freedom from error. He cannot be held liable, therefore, for an error of law or judgment such as a cautious man might fall into;[1] nor for an error in construing a doubtful act of the legislature;[2] nor for an error upon a point of law upon which a reasonable doubt may be entertained;[3] nor upon an error of judgment upon points of new occurrence or of nice or doubtful construction.[4] So he cannot be held chargeable with negligence if he accepts as a correct supposition of the law, a solemn decision of the Supreme Court of his State, in the absence of a contrary decision of the Supreme Court of the United States, upon a question there subject to review.[5]

[1] Montriou *v.* Jefferys, 2 Carrington & Payne, 113.

[2] Elkington *v.* Holland, 9 Meeson & Welsby, 658; Bulmer *v.* Gilman, 4 Manning & Granger, 108.

[3] Kemp *v.* Burt, 1 Neville & Manning, 262.

[4] Godelfroy *v.* Dalton, 6 Bingham, 460.

[5] Montriou *v.* Jefferys, 2 Carrington & Payne, 113.

"He is, however, liable for the consequences of ignorance or non-observance of the ordinary rules of practice of the courts in which he has undertaken to do business; for the want of reasonable care in the preparation of his cases for trial, in his attendance at the court with his witnesses, and in the management of so much of the conduct of the cause as is entrusted to him." [1]

§ 155. Negligence in Collecting Moneys.

Although the lawyer does not undertake to exhaust every possible means to collect money due to his client, yet he does undertake to employ all reasonable and proper means to secure it. If he permits the claim to be lost through negligent inattention to his duty, the client has a right of action against him for the amount of the damages sustained.[2]

If the client has expressed his desire to have suit brought, or the circumstances are such that authority to sue has impliedly been given, it is the lawyer's duty to bring suit with a reasonable promptitude. If the client has given express orders

[1] Mechem on Agency, § 825. Elkington *v.* Holland, 9 Meeson & Welsby, 658; Bulmer *v.* Gilman, 4 Manning & Granger, 108.

[2] Cox *v.* Sullivan, 7 Georgia, 144, 50 American Decisions, 386; Goodman *v.* Walker, 30 Alabama, 482, 68 American Decisions, 134; Gilbert *v.* Williams, 8 Massachusetts, 51, 5 American Decisions, 77.

to have suit started immediately, the lawyer is liable for damages caused by delay in starting suit, even though he believed that the delay was justified and for the best interests of his client.[1]

§ 156. Negligence in Trial of an Action.

"The attorney who undertakes the trial of a cause in court, does not thereby agree that he will win it at all events, or that he will conduct it with the highest degree of learning, skill, or eloquence; but his contract is simply for a reasonable degree, as in other cases. But if the attorney fails without good cause to attend the trial at all;[2] or if he permits the cause to be called on without seeing that it is in readiness for trial;[3] or if, without sufficient reason, he abandons the action;[4] or withdraws the defense;[5] or if the action or defense fails by reason of his neglect to make that preparation or to take those steps, which the circumstances reasonably required, and his client thereby suffers loss, the attorney is responsible."[6]

[1] Gilbert *v.* Williams, 8 Massachusetts, 51, 5 American Decisions, 77.

[2] Swannell *v.* Ellis, 1 Bingham, 347.

[3] Ruce *v.* Rigby, 4 Barnewall & Alderson, 202.

[4] Tenney *v.* Berger, 93 New York, 524, 45 American Reports, 263; Evans *v.* Watrons, 2 Porter (Alabama), 205.

[5] Godefroy *v.* Jay, 5 Moore & Payne, 284.

[6] Mechem on Agency, § 828. Walsh *v.* Shumway, 65 Illinois, 471; De Roufigny *v.* Peale, 3 Taunton, 484.

§ 157. Negligence in Drawing Legal Documents.

If a lawyer is acting in his professional capacity, and not merely as a scribe, in the preparation of legal documents, he is under obligation to his client to exercise the skill and carefulness in drawing it that the ordinary lawyer would exercise under the same circumstances. If he fails to exercise a reasonable degree of skill and diligence, he becomes liable to his client for any loss occasioned by a resulting defect in the instrument.

ILLUSTRATIONS

(*a*) If a seal were necessary to the validity of the instrument, and the lawyer prepares a simple contract which is duly executed, the client has a right to damages for the loss resulting from the defect.[1]

(*b*) If the lawyer misdescribes the premises in a conveyance of land and a loss is occasioned thereby, the client has a right of action.[2]

(*c*) So, also, if the due acknowledgment of the instrument is omitted through the fault of the lawyer.[3]

[1] Parker *v.* Rolls, 14 Common Bench, 691.
[2] Taylor *v.* Gorham, 4 Irish Equity, 550.
[3] Scott *v.* Harrison, 73 Indiana, 17.

§ 158. Liability for Money Collected on Client's Account.

If a lawyer neglects or refuses to pay over money to his client after due demand has been made, he thereby becomes liable to a suit for its recovery.[1]

He is liable also for interest, and in some States for more than the legal rate of interest.[2]

§ 159. Summary of Chapter.

If a lawyer disregards instructions, or exceeds his authority, the client has a right of action for any damages that may have accrued in consequence thereof. Every lawyer impliedly guarantees that he possesses at least the average amount of skill and learning in his profession, and that he will exercise the same with due diligence in his client's behalf. Failure so to do will render him liable to his client in an action for damages. Errors of law or judgment, if negligently made, give the client a right of action. Negligence in

[1] Roberts *v.* Armstrong, 1 Bush (Kentucky), 263, 89 American Decisions, 624; Taylor *v.* Bates, 5 Cowen (New York), 376; Chapman *v.* Burt, 77 Illinois, 337.

[2] "An attorney at law who unreasonably neglects to pay over money which has been collected by him for and in behalf of a client, when demanded by the client, shall forfeit to such client five times the lawful interest of the money from the time of the demand." Massachusetts Revised Laws, chap. 165, § 49.

collecting money, or in the trial of an action, or in drawing legal documents has a similar effect. The lawyer is liable for money collected in his client's behalf, and under some circumstances for interest thereon.

CHAPTER XVII

DISBARMENT AND SUSPENSION

SEC. 160. Meaning of the Terms.
SEC. 161. To Inflict either, Discretionary with the Court.
SEC. 162. Reinstatement of Disbarred or Suspended Attorney.
SEC. 163. Causes for Disbarment or Suspension.
SEC. 164. Violation of Oath of Office.
Analysis of Attorney's Oath.
Attorney's Oath in the various States of the Union.
SEC. 165. Offenses Recognized by the Common Law as Causes for Disbarment.
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Conviction of Crime.
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SEC. 168. Summary of Chapter.

§ 160. MEANING OF THE TERMS.

Disbarment: "In England, to deprive a barrister permanently of the privileges of his position is analogous to striking an attorney off the rolls.

In America, the word describes the act of a court in withdrawing from an attorney the right to practice at its bar." — Black's *Law Dictionary.*

Suspension: To suspend an attorney is to forbid him practicing law for a certain definite time or for an indefinite period.

§ 161. To Inflict either, Discretionary with the Court.

The court before which charges are brought, which upon trial are fairly proven against the attorney, has discretionary power to disbar or suspend the offender. Disbarment proceedings are distinct from any criminal proceedings that may be brought, even though the cause for each may be identical. Disbarment or suspension affects the attorney merely in his professional capacity and does not abridge his ordinary rights as a citizen. It is not necessary that actual criminal conduct be proven, but it is sufficient if such facts are proven as show him to be an unfit person to practice law. Proof falling short of this may subject the accused to suspension or to mere judicial reprimand.

§ 162. Reinstatement of Disbarred or Suspended Attorney.

If an attorney is suspended for a definite time, his right to resume practice upon the expiration

of the period is unquestioned. If an attorney who has once been disbarred seeks to resume practice, he can do so only upon positive proof of reformation and of subsequent good character.[1]

His application for reinstatement must be under oath and must set forth the facts concerning the disbarment proceedings, as well as the alleged causes for reinstatement.[2]

§ 163. Causes for Disbarment or Suspension.

Causes for disbarment or suspension may be divided into three general heads, — violation of oath of office, commission of offenses recognized by the common law as causes for disbarment, and commission of offenses especially designated by statute as causes for disbarment or suspension.

§ 164. Violation of Oath of Office.

The attorney's oath of office usually involves, in addition to the oath respecting his conduct as an attorney, the oath to support and defend the constitutions of the United States and of the State in which he is to practice.

As for the oath respecting his conduct as an attorney, there is considerable variation among the States of the Union. In some the oath is exceed-

[1] *In re* Simpson (North Dakota), 93 Northwestern Reporter, 918.

[2] *In re* Newton (Montana), 70 Pacific Law Reporter, 510.

ingly simple, while in others it is complex. In order that the exact nature of the oath taken by the attorney may be understood, the oath prescribed in its most complex form has been separated into its component parts, and the names of the States that have prescribed oaths of office for attorneys are given in alphabetical order, with the elements contained in their respective oaths indicated therewith.

By reading the portions of the analysis in the order indicated after each State, the gist of the lawyer's oath in that State will be seen. Thus, the figures with the State of Delaware are 7, 1, 6. The actual oath in Delaware reads as follows: (7) "I —— do solemnly swear (or affirm) that I will behave myself in the office of an attorney within the court, according to the best of my learning and ability and with all good fidelity, as well to the court as to the client; (1) I will use no falsehood, nor (6) delay any person's cause through lucre or malice. So help me God (or so I affirm)." [1]

ANALYSIS OF ATTORNEY'S OATH

"1. You shall do no falsehood,

"2. Nor consent to any to be done in the court,

"3. And if you know of any to be done you

[1] Revised Statutes of Delaware, 1893, Chapter XCII, page 698.

shall give knowledge thereof to the justices of the court, or some of them, that it may be reformed,

"4. You shall not wittingly or willingly promote, sue or procure to be sued any false or unlawful suit,

"5. Nor give aid or consent to the same,

"6. You shall delay no man for lucre or malice,

"7. But you shall conduct yourself in the office of an attorney within the courts, according to the best of your knowledge and discretion, and with all good fidelity as well to the courts as your clients. So help you God."

Attorney's Oath in various States of the Union

Alabama, 7, 1, 6.
Arizona, 7.
Arkansas, 7.
California, 7.
Colorado, 7.
Connecticut, the oath entire.
Delaware, 7, 1, 6.
Florida, 7.
Georgia, 7.
Idaho.[1]

[1] The oath in Idaho is as follows: "1. To support the constitution and laws of the United States and of this State;

"2. To maintain the respect due to the courts of justice and judicial officers;

"3. To counsel or maintain such actions, proceedings or defenses only as appear to him legal or just, except the defense of a person charged with a public offense;

Illinois, 7.
Indiana (same as Idaho).
Iowa, 7.
Kansas, 7.
Kentucky, 7.
Louisiana, 7.
Maine, the oath entire.
Maryland, 7.
Massachusetts, 1, 2, 4, 5, 6, 7.
Michigan, general oath.[1]
Minnesota, 7, 1, 6.
Mississippi, 7, 1, 6.
Missouri, 7.
Montana, 7.
Nebraska, 7.
Nevada, general oath.[1]
New Hampshire, the oath entire.
New Jersey, 7.
New York, 7.
North Carolina, 7.
North Dakota, general oath.[1]
Ohio, general oath.[1]

"4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the judges by an artifice or false statement of fact or law;

"5. To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client;

"6. To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party

[1] Similar to that administered to all State officers.

Oklahoma, the oath entire.
Oregon, 7.
Pennsylvania, 7, 1, 6.
Rhode Island, 7.
South Dakota, the oath entire.
Tennessee, 7.
Texas, 7.
Utah, 7.
Vermont, 1, 2, 3, 4, 5, 7.
Virginia, 7.
Washington.[1]
West Virginia, 7.
Wisconsin, 7.
Wyoming, 7.

It will be observed that number 7 of the analysis may be construed by the courts to include the other six divisions.

§ 165. Offenses Recognized by the Common Law as Causes for Disbarment.

It is a generally recognized common-law principle that the conviction of an attorney for a

or witness, unless required by the justice of the cause with which he is charged;

"7. Not to encourage either the commencement or the continuance of an action or proceeding from any motive of passion or interest;

"8. Never to reject for any consideration personal to himself the cause of the defenseless or oppressed." — Idaho Code, 1901, § 3094.

[1] The oath prescribed in the State of Washington is the same as in Idaho, with the omission of No. 7.

criminal offense that involves moral turpitude is a ground for disbarment. Embezzlement, larceny, maintenance, and champerty are perhaps the most common offenses leading to the disbarment of attorneys. Each of these offenses concerns the lawyer in his professional character, and shows him to be unfit for the high office of attorney at law. Each involves moral turpitude. But conviction for a crime that does not directly affect the lawyer's professional character would nevertheless justify disbarment, if it involved moral turpitude.

§ 166. Offenses especially Designated by Statute as Causes for Disbarment.

Many States of the Union make no reference in their statutes to the causes for disbarment of attorneys. A few jurisdictions that have made official declarations of causes for disbarment are quoted below.

ILLUSTRATIONS

New York: A lawyer who is proven guilty of deceit, malpractice, crime or misdemeanor, or of fraud or deceit in proceedings by which he was admitted to practice, may be suspended or disbarred by appellate division of the Supreme Court. Any lawyer convicted of a felony "shall, upon such conviction," cease to be a lawyer or to

practice law. Upon proof of such conviction the appellate division of the Supreme Court shall thereupon order the offender's name to be stricken from the roll of attorneys.[1]

Massachusetts: "An attorney may be removed by the Supreme Judicial Court or the Superior Court for deceit, malpractice, or other gross misconduct." [2]

California: "An attorney and counsellor may be removed or suspended by the Supreme Court, or any department thereof, or by any Superior Court of the State, for either of the following cases, arising after his admission to practice:

"1. His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction shall be conclusive evidence;

"2. Willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with, or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney and counselor;

"3. Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

"4. Lending his name to be used as an attorney and counselor by another person who is not an attorney and counselor;

[1] See New York Code of Civil Procedure, § 67.

[2] Massachusetts Revised Laws, chap. 165, § 44.

"In all cases where an attorney is removed or suspended by a Superior Court, the judgment or order of removal or suspension may be reviewed on appeal by the Supreme Court." [1]

Ohio: "The Supreme Court, the Circuit Court, or the Court of Common Pleas may suspend or remove any attorney-at-law from office, for either of the following causes: misconduct in office, conviction of crime involving moral turpitude, or unprofessional conduct involving moral turpitude." [2]

District of Columbia: "Any attorney receiving or collecting the money of his client and refusing unlawfully to pay the same when demanded may be proceeded against in a summary way on notice by said court [Supreme Court of District of Columbia], which may suspend him from practice or dismiss him from its bar.

"Each court in the said District may suspend or dismiss from its bar any attorney who shall be convicted of any offense involving moral turpitude." [3]

Illinois: "An attorney may be disbarred for refusal to pay over to his client or any person duly authorized to receive the same money collected on the client's account." [4]

A lawyer found guilty of barratry or maintenance "shall be fined not exceeding one hundred

[1] California Code of Civil Procedure, § 287.
[2] Revised Statutes of Ohio, Title IV, chap. 8, § 563.
[3] Civil Code for the District of Columbia, §§ 219 and 220.
[4] Illinois Revised Statutes, chap. 13, § 7, also chap. 38, § 79.

dollars, and suspended from practice for any time not exceeding six months." [1]

§ 167. Specific Examples of Causes for Disbarment.

Conviction of Crime. — Conviction of a felony is a ground for disbarment.[2]

Subornation of perjury is also a ground for disbarment.[3]

An attorney made a contract with a layman to pay him one-third of his fee for cases brought to him through the efforts of the layman. The court *held*, that the offense warranted the suspension or disbarment of the attorney, it being contrary to the statutes of the State.[4]

An attorney may be struck from the rolls for committing an indictable offense only where such offense is infamous.[5]

Embezzlement. — Generally. An attorney may be disbarred for misappropriating money received by him as tax collector.[6]

[1] Illinois Revised Statutes, chap. 38, §§ 26 and 27.

[2] *In re* McCarthy, 42 Michigan, 71, 51 Northwestern Reporter, 963; *In re* E., 65 H. & W. Prac., 171.

[3] State *v.* Holding, 1 McCord, 379.

[4] Alpers *v.* Hunt, 86 California, 78; 24 Pacific Reporter, 846; 21 American State Reports, 17, 9 Lawyers' Reports Annotated, 483.

[5] Bank of New York *v.* Stryker, 1 Wheeler's Criminal Cases, 330.

[6] Delano's Case, 58 New Hampshire, 5, 42 American Reports, 555.

Conversion of Funds of Client. — Converting money collected for his client is a ground for disbarment.[1]

An attorney may be disbarred for applying to his own use money collected for his client.[2]

If Crime is Condoned. — An attorney may be disbarred for embezzlement even though he has settled with the injured party.[3]

Dishonesty. — An attorney in accounting to his client charged, without an express contract to justify it, fifty per cent of the amount collected, and gave a false and deceitful account of the amount paid out by him in expenses, knowingly and willfully representing the amount to be at least three times as much as it was. *Held*, to be conduct justifying disbarment.[4]

Breach of Trust. — For an attorney who has been employed by one party in litigation to go to the other after such employment has terminated, and offer to disclose important information, is such a breach of trust as to be subject to punishment by disbarment.[5]

An attorney agreed to collect a judgment against

[1] *In re* Treadwell, 67 California, 353, 7 Pacific Law Reporter, 724; *In re* Burris, 101 California, 624, 36 Pacific Law Reporter, 101; People *v.* Ryalls, 8 Colorado, 332, 7 Pacific Law Reporter, 290.

[2] State *v.* Hand, 9 Ohio (9 Hammond), 42.

[3] *In re* Davies, 93 Pennsylvania State Reports, 116, 39 American Reports, 729.

[4] Baker *v.* State, 90 Georgia, 153, 13 Southeastern Reporter, 788.

[5] United States *v.* Costen, 38 Federal Reporter, 24.

a debtor who was to his knowledge a former client. He procured another attorney to bring suit against the debtor and his wife, and then accepted a retainer from them to defend the action. He falsely represented to the wife, who was financially responsible, that she was liable on the judgment, and in pursuance of this advice she settled the claim, and the attorney obtained a portion of the fee for collection. *Held,* that a judgment of absolute disbarment was justified.[1]

Corruptly consenting to the entry of judgment against a client is a valid ground for disbarment.[2]

A, while district attorney, drew an indictment which the grand jury returned as a true bill. Seven years later A appeared as attorney for the defendant, who was being tried under the said indictment. *Held,* that he was thus guilty of a "violation of his duty as an attorney," but since there was no wrong apparently intended, A was suspended from practice for the brief period of three months.[3]

Obstructing Justice. — Advising a witness for the prosecution in a murder trial to conceal himself so that his evidence could not be procured is a ground for disbarment.[4]

[1] Fairfield County Bar *v.* Taylor, 60 Connecticut, 11, 22 Atlantic Reporter, 441, 13 Lawyers' Reports Annotated, 767.

[2] People *v.* Lamborn, 2 Illinois (1 Scammon), 123.

[3] People *v.* Spencer, 61 California, 128.

[4] *Ex parte* Burr, Federal Cases, No. 2, 186, 2 Cranch Circuit Court Reports, 379.

An attorney may be disbarred for advising his client to attempt to influence the action of the court by newspaper articles intended to intimidate the judge.[1]

Abusing the Judge. — An attorney may be disbarred for making a personal attack on the judge for his action as such.[2]

Abusive language to a judge on the street concerning a case that is pending before him is a ground for disbarment.[3]

Falsely and maliciously charging a county judge with falsifying the records of his court is a ground for disbarment.[4]

Slandering Fellow Attorney. — Slandering another attorney to his client and endeavoring to induce the client to forsake the lawyer is a ground for disbarment.[5]

Divorce Advertising. — Disbarment proceedings were instituted against an attorney for the repeated publication of the following advertisement: "Divorces legally obtained very quietly; good everywhere. Box 2344, Denver." The court held this to be an offense against good

[1] *Ex parte* Cole, Federal Cases, No. 2, 973.

[2] Beene *v.* State, 22 Arkansas, 149.

[3] People *v.* Green, 7 Colorado, 237, 3 Pacific Reporter, 65, 49 American Reports, 351.

[4] People *v.* Brown, 17 Colorado, 431, 30 Pacific Reporter, 338.

[5] Baker *v.* State, 90 Georgia, 153, 15 Southeastern Reporter, 788.

morals, a false representation, and a libel on courts of justice, justifying the Supreme Court in striking the name of the offending attorney from the roll of attorneys.[1]

Bringing Unauthorized Suit. — A husband applied to an attorney to bring a suit for divorce and was told that he had no right of action although the wife had. Later the attorney started suit for divorce in the name of the wife without her knowledge or consent. This was held to justify the attorney's disbarment.[2]

§ 168. Summary of Chapter.

Disbarment and suspension are alternative punishments for misconduct of lawyers. To inflict either is discretionary with the court before which the charges are proven. A lawyer who has been disbarred or suspended may be reinstated for cause shown or at the expiration of the period. The causes for disbarment are commonly violation of oath of office, commission of offenses recognized by the common law as causes for disbarment, and offenses especially designated by statute.

[1] People *v.* MacCabe, 18 Colorado, 186, 32 Pacific Reporter, 280, 36 American State Reports, 270; People *v.* Goodrich, 79 Illinois, 148.

[2] Dillon *v.* State, 6 Texas, 55.

APPENDIX

1. American Bar Association Canons of Ethics
2. Hoffman's Fifty Resolutions in Regard to Professional Deportment
3. A Schedule of Legal Fees

AMERICAN BAR ASSOCIATION CANONS OF ETHICS

This Code of Professional Ethics was adopted by the American Bar Association at Seattle, Washington, August 27, 1908. The Association also adopted the recommendation of the Special Committee having charge of drafting the Code to the effect that the subject of Professional Ethics be taught in all law schools, and that all candidates for admission to the bar be examined thereon.

I. — Preamble

In America, where the stability of courts and of all departments of government rest upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing justice be developed to a high point of efficiency, and so maintained that the public shall have

absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

II. — The Canons of Ethics

No code or set of rules can be framed which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned:

1. *The Duty of the Lawyer to the Courts.* — It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the

right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.[1]

2. *The Selection of Judges.* — It is the duty of the bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political, or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office, and not by a desire for the distinction the position may bring to themselves.

3. *Attempts to Exert Personal Influence on the Court.* — Marked attention and unusual hospitality on the part of a lawyer to a judge, uncalled for by the personal relations of the parties, subject both the judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately

[1] See § 83.

with the judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the judge's station, is the only proper foundation for cordial personal and official relations between bench and bar.[1]

4. *When Counsel for an Indigent Prisoner.* — A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

5. *The Defense of Prosecution of those Accused of Crime.* — It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that

[1] See § 104.

justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.[1]

6. *Adverse Influences and Conflicting Interests.* — It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interest, except by express consent of all concerned, given after a full disclosure of the facts. Within the meaning of this canon a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.[2]

7. *Professional Colleagues and Conflicts of Opinion.* — A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A lawyer should decline association as colleague if it is ob-

[1] See § 25. [2] See § 20.

jectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case.

When lawyers jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to cooperate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another lawyer are unworthy of those who should be brethren at the bar; but, nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made.[1]

8. *Advising upon the Merits of a Client's Cause.* — A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which justice is subject, by reason of surprises and disappointments in evidence and witnesses, and through

[1] See §§ 68, 72.

mistakes of juries and errors of courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.[1]

9. *Negotiations with Opposite Party.* — A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.[2]

10. *Acquiring Interest in Litigation.* — The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.[3]

11. *Dealing with Trust Property.* — Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be commingled with his private property or be used by him.[4]

[1] See § 30.
[2] See §§ 58, 59, 71.
[3] See §§ 5, 94.
[4] See § 52.

12. *Fixing the Amount of the Fee.* — In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations

in itself is controlling. They are mere guides in ascertaining the real value of the service.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.[1]

13. *Contingent Fees.* — Contingent fees lead to many abuses, and where sanctioned by law should be under the supervision of the court.

14. *Suing a Client for a Fee.* — Controversies with clients concerning compensation are to be avoided by the lawyer, so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition, or fraud.[2]

15. *How far a Lawyer may go in Supporting a Client's Cause.* — Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties, than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

[1] See § 50.

[2] See §§ 51, 120.

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.[1]

16. *Restraining Clients from Improprieties.* — A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards courts, judicial officers, jurors, witnesses, and suitors. If a client persist in such wrongdoing the lawyer should terminate their relation.[2]

[1] See 25. [2] See § 99.

17. *Ill Feeling and Personalities between Advocates.* — Clients, not lawyers, are the litigants. Whatever may be the ill feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel, which cause delay and promote unseemly wrangling, should also be carefully avoided.[1]

18. *Treatment of Witnesses and Litigants.* — A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.[2]

19. *Appearance of Lawyer as Witness for his Client.* — When a lawyer is a witness for his client, except as to merely formal matters, such as

[1] See § 78.

[2] See § 64.

the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client.[1]

20. *Newspaper Discussion of Pending Litigation.* — Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid any *ex parte* statement.[2]

21. *Punctuality and Expedition.* — It is the duty of the lawyer not only to his client, but also to the courts and to the public, to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.[3]

22. *Candor and Fairness.* — The conduct of the lawyer before the court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testi-

[1] See § 123. [2] See § 101. [3] See §§ 85, 96.

mony of a witness, the language or the argument of opposing counsel, or the language of a decision or a text-book; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved; or, in those jurisdictions where a side has the opening and closing arguments, to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence which he knows the court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.[1]

[1] See §§ 87, 89.

23. *Attitude toward Jury.* — All attempts to curry favor with juries by fawning, flattery, or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.[1]

24. *Right of Lawyer to Control the Incidents of the Trial.* — As to incidental matters pending the trial, not affecting the merits of the cause or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement, forcing the trial on a particular day, to the injury of the opposite lawyer, when no harm will result from a trial at a different time, agreeing to an extension of time for signing a bill of exceptions, cross-interrogatories, and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.[2]

25. *Taking Technical Advantage of Opposite*

[1] See § 103. [2] See § 74.

Counsel — Agreements with him. — A lawyer should not ignore known customs or practice of the bar or of a particular court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of court.[1]

26. *Professional Advocacy other than before Courts.* — A lawyer openly and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.

27. *Advertising, Direct or Indirect.* — The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the

[1] See § 77.

outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business, by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.[1]

28. *Stirring up Litigation, Directly or through Agents.* — It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship, or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indict-

[1] See § 127.

able at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action, in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital attachés, or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick, and the injured, the ignorant, or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.[1]

29. *Upholding the Honor of the Profession.* — Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been

[1] See § 57.

committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession, and to improve not only the law but the administration of justice.[1]

30. *Justifiable and Unjustifiable Litigations.* — The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. But otherwise it is his right, and, having accepted retainer, it becomes his duty, to insist upon the judgment of the court as to the legal merits of his client's claim. His appearance in court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.[2]

31. *Responsibility for Litigation.* — No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what business he will accept as counsel, what causes

[1] See § 72. [2] See § 93.

he will bring into court for plaintiffs, what cases he will contest in court for defendants. The responsibility for advising questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He cannot escape it by urging as an excuse that he is only following his client's instructions.[1]

32. *The Lawyer's Duty in its Last Analysis.* — No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law, whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to

[1] See §§ 18, 19, 41, 92.

advise as to its validity and as to what he cor scientiously believes to be its just meaning an extent. But above all a lawyer will find his higl est honor in a deserved reputation for fidelity t private trust and to public duty, as an honest ma and as a patriotic and loyal citizen.

HOFFMAN'S FIFTY RESOLUTIONS IN REGARD TO PROFESSIONAL DEPORTMENT [1]

This code of professional ethics was framed early in the nineteenth century by David Hoffman (born 1784, died 1854), of the Baltimore Bar, for adoption by his students on admission to the bar "as guides, never to be departed from, and to which they will ever be faithful." Hoffman remarked: "We have preferred to frame them in the manner of resolutions, rather than of didactic rules, hoping they may thereby prove more impressive, and be more likely to be remembered."

1. I will never permit professional zeal to carry me beyond the limits of sobriety and decorum, but bear in mind, with Sir Edward Coke, that "if a river swell beyond its banks, it loseth its own channel."

2. I will espouse no man's cause out of envy, hatred, or malice toward his antagonist.

3. To all judges, when in court, I will ever be respectful. They are the law's vicegerents; and whatever may be their character and deportment, the individual should be lost in the majesty of the office.

[1] Reprinted from the "American Law School Review," December, 1908.

4. Should judges, while on the bench, forget that, as an officer of their court, I have rights, and treat me even with disrespect, I shall value myself too highly to deal with them in like manner. A firm and temperate remonstrance is all that I will ever allow myself.

5. In all intercourse with my professional brethren I will always be courteous. No man's passion shall intimidate me from asserting fully my own or my client's rights; and no man's ignorance or folly shall induce me to take any advantage of him. I shall deal with them all as honorable men ministering at our common altar. But an act of unequivocal meanness or dishonesty, though it shall wholly sever any personal relation that may subsist between us, shall produce no change in my deportment when brought in professional connection with them. My client's rights, and not my own feelings, are then alone to be consulted.

6. To the various officers of the court I will be studiously respectful, and specially regardful of their rights and privileges.

7. As a general rule, I will not allow myself to be engaged in a cause to the exclusion of, or even in participation with, the counsel previously engaged, unless at his own special instance, in union with his client's wishes; and it must, indeed, be a strong case of gross neglect or of fatal inability in

the counsel that shall induce me to take the cause to myself.

8. If I have ever had any connection with a cause, I will never permit myself (when that connection is from any reason severed) to be engaged on the side of my former antagonist. Nor shall any change in the formal aspect of the cause induce me to regard it as a ground of exception. It is a poor apology for being found on the opposite side that the present is but the ghost of the former cause.

9. Any promise or pledge made by me to the adverse counsel shall be strictly adhered to by me; nor shall the subsequent instructions of my client induce me to depart from it, unless I am well satisfied it was made in error, or that the rights of my client would be materially impaired by its performance.

10. Should my client be disposed to insist on captious requisitions, or frivolous and vexatious defenses, they shall be neither enforced nor countenanced by me. And if still adhered to by him from a hope of pressing the other party into an unjust compromise, or with any other motive, he shall have the option to select other counsel.

11. If, after duly examining a case, I am persuaded that my client's claim or defense (as the case may be) cannot, or rather ought not to, be sustained, I will promptly advise him to abandon

it. To press it further in such a case, with th hope of gleaning some advantage by an extorte compromise, would be lending myself to a di honorable use of legal means in order to gain portion of that the whole of which I have reaso to believe would be denied to him both by la and justice.

12. I will never plead the Statute of Limitation when based on the mere efflux of time; for if m client is conscious he owes the debt, and has n other defense than the legal bar, he shall neve make me a partner in his knavery.

13. I will never plead or otherwise avail of th bar of infancy against an honest demand. If m client possesses the ability to pay, and has no othe legal or moral defense than that it was contracte by him when under the age of twenty-one years, h must seek for other counsel to sustain him in suc a defense. And although in this, as well as in tha of limitation, the law has given the defense, an contemplates in the one case to induce claimant to a timely prosecution of their rights, and in th other designs to protect a class of persons who b reason of tender age are peculiarly liable to be im posed on, yet in both cases I shall claim to be th sole judge (the pleas not being compulsory) of th occasions proper for their use.

14. My client's conscience and my own ar distinct entities; and though my vocation ma

sometimes justify my maintaining as facts or principles, in doubtful cases, what may be neither one nor the other, I shall ever claim the privilege of solely judging to what extent to go. In civil cases, if I am satisfied from the evidence that the fact is against my client, he must excuse me if I do not see as he does, and do not press it; and should the principle also be wholly at variance with sound law, it would be dishonorable folly in me to endeavor to incorporate it into the jurisprudence of the country, when, if successful, it would be a gangrene that might bring death to my cause of the succeeding day.

15. When employed to defend those charged with crimes of the deepest dye, and the evidence against them, whether legal or moral, be such as to leave no just doubt of their guilt, I shall not hold myself privileged, much less obliged, to use my endeavors to arrest or to impede the course of justice, by special resorts to ingenuity, to the artifices of eloquence, to appeals to the morbid and fleeting sympathies of weak juries, or of temporizing courts, to my own personal weight of character — nor, finally, to any of the overweening influences I may possess from popular manners, eminent talents, exalted learning, etc. Persons of atrocious character, who have violated the laws of God and man, are entitled to no such special exertions from any member of our

pure and honorable profession; and, indeed, to no intervention beyond securing to them a fair and dispassionate investigation of the facts of their cause, and the due application of the law. All that goes beyond this, either in manner or substance, is unprofessional, and proceeds, either from a mistaken view of the relation of client and counsel, or from some unworthy and selfish motive which sets a higher value on professional display and success than on truth and justice, and the substantial interests of the community. Such an inordinate ambition I shall ever regard as a most dangerous perversion of talents, and a shameful abuse of an exalted station. The parricide, the gratuitous murderer, or other perpetrator of like revolting crimes, has surely no such claim on the commanding talents of a profession whose object and pride should be the suppression of all vice by the vindication and enforcement of the laws. Those, therefore, who wrest their proud knowledge from its legitimate purposes to pollute the streams of justice and to screen such foul offenders from merited penalties should be regarded by all (and certainly shall by me) as ministers at a holy altar full of high pretension and apparent sanctity, but inwardly base, unworthy, and hypocritical — dangerous in the precise ratio of their commanding talents and exalted learning.

16. Whatever personal influence I may be so

fortunate as to possess shall be used by me only as the most valuable of my possessions, and not be cheapened or rendered questionable by a too frequent appeal to its influence. There is nothing more fatal to weight of character than its common use; and especially that unworthy one, often indulged in by eminent counsel, of solemn assurances to eke out a sickly and doubtful cause. If the case be a good one, it needs no such appliance; and if bad, the artifice ought to be too shallow to mislead any one. Whether one or the other, such personal pledges should be very sparingly used and only on occasions which obviously demand them; for if more liberally resorted to, they beget doubts where none may have existed or strengthen those which before were only feebly felt.

17. Should I attain that eminent standing at the bar which gives authority to my opinions, I shall endeavor, in my intercourse with my junior brethren, to avoid the least display of it to their prejudice. I will strive never to forget the days of my youth, when I too was feeble in the law, and without standing. I will remember my then ambitious aspirations (though timid and modest), nearly blighted by the inconsiderate or rude and arrogant deportment of some of my seniors; and I will further remember that the vital spark of my early ambition might have been wholly extin-

guished, and my hopes forever ruined, had nc my own resolutions, and a few generous acts (some others of my seniors, raised me from m depression. To my juniors, therefore, I shall eve be kind and encouraging; and never too prou to recognize distinctly that, on many occasion it is quite probable their knowledge may be mo accurate than my own, and that they, with the limited reading and experience, have seen th matter more soundly than I, with my much reac ing and long experience.

18. To my clients I will be faithful; and i their causes zealous and industrious. Those wh can afford to compensate me must do so; but shall never close my ear or heart because m client's means are low. Those who have none, an who have just causes, are of all others the bes entitled to sue or be defended; and they sha receive a due portion of my services, cheerfull given.

19. Should my client be disposed to compromise or to settle his claim or defense, and especiall if he be content with a verdict or judgment tha has been rendered, or, having no opinion of hi own, relies with confidence on mine, I will in a such cases greatly respect his wishes and rea interests. The further prosecution, therefore, c the claim or defense (as the case may be) will b recommended by me only when, after matur

deliberation, I am satisfied that the chances are decidedly in his favor; and I will never forget that the pride of professional opinion on my part, or the spirit of submission, or of controversy (as the case may be), on that of my client, may easily mislead the judgment of both, and cannot justify me in sanctioning, and certainly not in recommending, the further prosecution of what ought to be regarded as a hopeless cause. To keep up the ball (as the phrase goes) at my client's expense, and to my own profit, must be dishonorable; and however willing my client may be to pursue a phantom, and to rely implicitly on my opinion, I will terminate the controversy as conscientiously for him as I would were the cause my own.

20. Should I not understand my client's cause, after due means to comprehend it, I will retain it no longer, but honestly confess it, and advise him to consult others, whose knowledge of the particular case may probably be better than my own.

21. The wealthy and the powerful shall have no privilege against my client that does not equally appertain to others. None shall be so great as to rise, even for a moment, above the just requisitions of the law.

22. When my client's reputation is involved in the controversy, it shall be, if possible, judicially passed on. Such cases do not admit of compro-

mise; and no man's elevated standing shall induce me to consent to such a mode of settling the matter: the *amende* from the great and wealthy to the ignoble and poor should be free, full, and open.

23. In all small cases in which I may be engaged I will as conscientiously discharge my duty as in those of magnitude; always recollecting that "small" and "large" are to clients relative terms, the former being to a poor man what the latter is to a rich one; and, as a young practitioner, not forgetting that large ones, which we have not, will never come if the small ones, which we have, are neglected.

24. I will never be tempted by any pecuniary advantage, however great, nor be persuaded by any appeal to my feelings, however strong, to purchase, in whole or in part, my client's cause. Should his wants be pressing, it will be an act of humanity to relieve them myself, if I am able, and if I am not, then to induce others to do so. But in no case will I permit either my benevolence or avarice, his wants or his ignorance, to seduce me into any participation of his pending claim or defense. Cases may arise in which it would be mutually advantageous thus to bargain, but the experiment is too dangerous, and my rule too sacred, to admit of any exception, persuaded as I am that the relation of client and counsel, to be preserved in absolute purity, must admit of no such privi-

lege, however guarded it may be by circumstances; and should the special case alluded to arise, better would it be that my client should suffer, and I lose a great and honest advantage, than that any discretion should exist in a matter so extremely liable to abuse, and so dangerous in precedent.

And though I have thus strongly worded my resolution, I do not thereby mean to repudiate, as wholly inadmissible, the taking of contingent fees. On the contrary, they are sometimes perfectly proper, and are called for by public policy no less than by humanity. The distinction is very clear. A claim or defense may be perfectly good in law and in justice, and yet the expenses of litigation would be much beyond the means of the claimant or defendant; and equally so as to counsel, who, if not thus contingently compensated in the ratio of the risk, might not be compensated at all. A contingent fee looks to professional compensation only on the final result of the matter in favor of the client. None other is offered or is attainable. The claim or defense never can be made without such an arrangement. It is voluntarily tendered, and necessarily accepted or rejected, before the institution of any proceedings.

It flows not from the influence of counsel over client. Both parties have the option to be off. No expenses have been incurred. No moneys have been paid by the counsel to the client. The

relation of borrower and lender, of vendor and vendee, does not subsist between them; but it is an independent contract for the services of counsel to be rendered for the contingent avails of the matter to be litigated. Were this denied to the poor man, he could neither prosecute nor be defended. All of this differs essentially from the object of my resolution, which is against purchasing, in whole or in part, my client's rights, after the relation of client and counsel, in respect to it, has been fully established, after the strength of his case has become known to me, after his total pecuniary inability is equally known, after expenses have been incurred which he is unable to meet, after he stands to me in the relation of a debtor, and after he desires money from me in exchange for his pending rights. With this explanation I renew my resolution never so to purchase my client's cause, in whole or in part, but still reserve to myself, on proper occasions, and with proper guards, the professional privilege (denied by no law among us) of agreeing to receive a contingent compensation freely offered for services wholly to be rendered, and when it is the only means by which the matter can either be prosecuted or defended. Under all other circumstances I shall regard contingent fees as obnoxious to the present resolution.

25. I will retain no client's funds beyond the

period in which I can, with safety and ease, put him in possession of them.

26. I will on no occasion blend with my own my client's money. If kept distinctly as his it will be less liable to be considered as my own.

27. I will charge for my services what my judgment and conscience inform me is my due, and nothing more. If that be withheld it will be no fit matter for arbitration; for no one but myself can adequately judge of such services, and after they are successfully rendered they are apt to be ungratefully forgotten. I will then receive what the client offers or the laws of the country may award; but in either case he must never hope to be again my client.

28. As a general rule I will carefully avoid what is called the "taking of half fees." And though no one can be so competent as myself to judge what may be a just compensation for my services, yet when the *quiddam honorarium* has been established by usage or law, I shall regard as eminently dishonorable all underbidding of my professional brethren. On such a subject, however, no inflexible rule can be given to myself, except to be invariably guided by a lively recollection that I belong to an honorable profession.

29. Having received a retainer for contemplated services, which circumstances have prevented me from rendering, I shall hold myself bound to refund

the same, as having been paid to me on a consideration which has failed, and, as such, subject to restitution on every principle of law and of good morals, and this shall be repaid not merely at the instance of my client, but *ex mero motu*.

30. After a cause is finally disposed of, and all relation of client and counsel seems to be forever closed, I will not forget that it once existed, and will not be inattentive to his just request that all of his papers may be carefully arranged by me and handed over to him. The execution of such demands, though sometimes troublesome, and inopportunely or too urgently made, still remains a part of my professional duty, for which I shall consider myself already compensated.

31. All opinions for clients, verbal or written, shall be my opinions, deliberately and sincerely given, and never venal and flattering offerings to their wishes or their vanity. And though clients sometimes have the folly to be better pleased with having their views confirmed by an erroneous opinion than their wishes or hopes thwarted by a sound one, yet such assentation is dishonest and unprofessional. Counsel, in giving opinions, whether they perceive this weakness in their clients or not, should act as judges, responsible to God and man, as also especially to their employers, to advise them soberly, discreetly, and honestly, to the best of their ability, though the certain

consequence be the loss of large prospective gains.

32. If my client consents to endeavors for a compromise of his claim or defense, and for that purpose I am to commune with opposing counsel or others, I will never permit myself to enter upon a system of tactics to ascertain who shall overreach the other by the most nicely balanced artifices of disingenuousness, by mystery, silence, obscurity, suspicion, vigilance to the letter, and all of the other machinery used by this class of tacticians, to the vulgar surprise of clients and the admiration of a few ill-judging lawyers. On the contrary, my resolution in such a case is to examine with great care, previously to the interview, the matter of compromise; to form a judgment as to what I will offer or accept; and promptly, frankly, and firmly to communicate my views to the adverse counsel. In so doing no lights shall be withheld that may terminate the matter as speedily and as nearly in accordance with the rights of my client as possible: although a more dilatory, exacting, and wary policy might finally extract something more than my own or even my client's hopes. Reputation gained for this species of skill is sure to be followed by more than an equivalent loss of character; shrewdness is too often allied to unfairness, caution to severity, silence to disingenuousness, wariness to exaction, to

make me covet a reputation based on such qualities.

33. What is wrong is not the less so from being common. And though few dare to be singular, even in a right cause, I am resolved to make my own, and not the conscience of others, my sole guide. What is morally wrong cannot be professionally right, however it may be sanctioned by time or custom. It is better to be right with a few, or even none, than wrong, though with a multitude. If, therefore, there be among my brethren any traditional moral errors of practice, they shall be studiously avoided by me, though in so doing I unhappily come in collision with what is (erroneously, I think) too often denominated the policy of the profession. Such cases, fortunately, occur but seldom; but, when they do, I shall trust to that moral firmness of purpose which shrinks from no consequences, and which can be intimidated by no authority, however ancient or respectable.

34. Law is a deep science. Its boundaries, like space, seem to recede as we advance; and though there be as much of certainty in it as in any other science, it is fit we should be modest in our opinions, and ever willing to be further instructed. Its acquisition is more than the labor of a life, and after all can be with none the subject of an unshaken confidence. In the language, then, of a late beautiful writer, I am resolved to "consider

my own acquired knowledge but as a torch flung into an abyss, making the darkness visible, and showing me the extent of my own ignorance." (Jameson.)

35. I will never be voluntarily called as a witness in any cause in which I am counsel. Should my testimony, however, be so material that without it my client's cause may be greatly prejudiced, he must at once use his option to cancel the tie between us in the cause, and dispense with my further services or with my evidence. Such a dilemma would be anxiously avoided by every delicate mind, the union of counsel and witness being usually resorted to only as a forlorn hope in the agonies of a cause, and becomes particularly offensive when its object be to prove an admission made to such counsel by the opposing litigant. Nor will I ever recognize any distinction in this respect between my knowledge of facts acquired before and since the institution of the suit, for in no case will I consent to sustain by my testimony any of the matters which my interest and professional duty render me anxious to support. This resolution, however, has no application whatever to facts contemporaneous with and relating merely to the prosecution or defense of the cause itself, such as evidence relating to the contents of a paper unfortunately lost by myself or others, and such like matters, which do not respect the original merits

of the controversy, and which, in truth, adds nothing to the once existing testimony, but relates merely to matters respecting the conduct of the suit, or to the recovery of lost evidence; nor does it apply to the case of gratuitous counsel — that is, to those who have expressly given their services voluntarily.

36. Every letter or note that is addressed to me shall receive a suitable response, and in proper time. Nor shall it matter from whom it comes, what it seeks, or what may be the terms in which it is penned. Silence can be justified in no case; and though the information sought cannot or ought not to be given, still decorum would require from me a courteous recognition of the request, though accompanied with a firm withholding of what has been asked. There can be no surer indication of vulgar education than neglect of letters and notes. It manifests a total want of that tact and amenity which intercourse with good society never fails to confer. But that dogged silence (worse than a rude reply) in which some of our profession indulge on receiving letters offensive to their dignity, or when dictated by ignorant importunity, I am resolved never to imitate, but will answer every letter and note with as much civility as may be due, and in as good time as may be practicable.

37. Should a professional brother, by his in-

dustry, learning, and zeal, or even by some happy chance, become eminently successful in causes which give him large pecuniary emoluments, I will neither envy him the fruits of his toils or good fortune, nor endeavor by any indirection to lessen them, but rather strive to emulate his worth, than enviously to brood over his meritorious success and my own more tardy career.

38. Should it be my happy lot to rank with or take precedence of my seniors, who formerly endeavored to impede my onward course, I am firmly resolved to give them no cause to suppose that I remember the one, or am conscious of the other. When age and infirmities have overtaken them, my kindness will teach them the loveliness of forgiveness. Those, again, who aided me when young in the profession shall find my gratitude increase in proportion as I become the better able to sustain myself.

39. A forensic contest is often no very sure test of the comparative strength of the combatants, nor should defeat be regarded as a just cause of boast in the victor or of mortification in the vanquished. When the controversy has been judicially settled against me in all courts, I will not "fight the battle o'er again," *coram non judice;* nor endeavor to persuade others, as is too often done, that the courts were prejudiced, or the jury desperately ignorant, or the witnesses perjured, or

that the victorious counsel were unprofessional and disingenuous. In such cases, *Credat Judaeus Appella!*

40. Ardor in debate is often the soul of eloquence and the greatest charm of oratory. When spontaneous and suited to the occasion, it becomes powerful. A sure test of this is when it so alarms a cold, calculating, and disingenuous opponent as to induce him to resort to numerous vexatious means of neutralizing its force, when ridicule and sarcasm take the place of argument, when the poor device is resorted to of endeavoring to cast the speaker from his well-guarded pivot by repeated interruptions, or by impressing on the court and jury that his just and well-tempered zeal is but passion, and his earnestness but the exacerbation of constitutional infirmity, when the opponent assumes a patronizing air, and imparts lessons of wisdom and of instruction! Such opponents I am resolved to disappoint, and on no account will I ever imitate their example. The warm current of my feelings shall be permitted to flow on; the influences of my nature shall receive no check; the ardor and fullness of my words shall not be abated — for this would be to gratify the unjust wishes of my adversary, and would lessen my usefulness to my client's cause.

41. In reading to the court or to the jury authorities, records, documents, or other papers, I

shall always consider myself as executing a trust, and as such bound to execute it faithfully and honorably. I am resolved, therefore, carefully to abstain from all false or deceptious reading, and from all uncandid omissions of any qualifications of the doctrines maintained by me which may be contained in the text or in the notes; and I shall ever hold that the obligation extends not only to words, syllables, and letters, but also to the *modus legendi*. All intentional false emphasis and even intonations in any degree calculated to mislead are petty impositions on the confidence reposed; and, whilst avoided by myself, shall ever be regarded by me in others as feeble devices of an impoverished mind, or as pregnant evidenes of a disregard for truth, which justly subjects them to be closely watched in more important matters.

42. In the examination of witnesses I shall not forget that perhaps circumstances and not choice have placed them somewhat in my power. Whether so or not, I shall never esteem it my privilege to disregard their feelings, or to extort from their evidence what, in moments free from embarrassment, they would not testify. Nor will I conclude that they have no regard for truth and even the sanctity of an oath because they use the privilege accorded to others of changing their language and of explaining their previous declarations. Such captious dealing with the words and

syllables of a witness ought to produce in the mind of an intelligent jury only a reverse effect from that designed by those who practice such poor devices.

43. I will never enter into any conversation with my opponent's client relative to his claim or defense, except with the consent and in the presence of his counsel.

44. Should the party just mentioned have no counsel, and my client's interest demand that I should still commune with him, it shall be done in writing only, and no verbal response will be received. And if such person be unable to commune in writing, I will either delay the matter until he employs counsel, or take down in writing his reply in the presence of others; so that if occasion should make it essential to avail myself of his answer, it may be done through the testimony of others, and not by mine. Even such cases should be regarded as the result of unavoidable necessity, and are to be resorted to only to guard against great risk, the artifices of fraud, or with the hope of obviating litigation.

45. Success in any profession will be much promoted by good address. Even the most cautious and discriminating minds are not exempt from its influence; the wisest judges, the most dispassionate juries, and the most wary opponents being made thereby, at least, more willing auditors — and this, of itself, is a valuable end. But

whilst address is deservedly prized, and merits the highest cultivation, I fully concur in sentiment with a high authority, that we should be "respectful without meanness, easy without too much familiarity, genteel without affectation, and insinuating without any art or design."

46. Nothing is more unfriendly to the art of pleasing than morbid timidity (bashfulness — *mauvaise honte*).

All life teems with examples of its prejudicial influence, showing that the art of rising in life has no greater enemy than this nervous and senseless defect of education. Self-possession, calmness, steady assurance, intrepidity — are all perfectly consistent with the most amiable modesty, and none but vulgar and illiterate minds are prone to attribute to presumptuous assurance the apparently cool and unconcerned exertions of young men at the bar. A great connoisseur in such matters says that "what is done under concern and embarrassment is sure to be ill done"; and the judge (I have known some) who can scowl on the early endeavors of the youthful advocate who has fortified himself with resolution must be a man poor in the knowledge of human character, and, perhaps, still more so in good feelings. Whilst, therefore, I shall ever cherish these opinions, I hold myself bound to distinguish the arrogant, noisy, shallow, and dictatorial impudence of some,

from the gentle, though firm and manly, confidence of others — they who bear the white banner of modesty fringed with resolution.

47. All reasoning should be regarded as a philosophical process — its object being conviction by certain known and legitimate means. No one ought to be expected to be convinced by loud words, dogmatic assertions, assumption of superior knowledge, sarcasm, invective; but by gentleness, sound ideas, cautiously expressed by sincerity, by ardor without extravasation. The minds and hearts of those we address are apt to be closed when the lungs are appealed to, instead of logic; when assertion is relied on more than proof; and when sarcasm and invective supply the place of deliberate reasoning. My resolution, therefore, is to respect courts, juries, and counsel as assailable only through the medium of logical and just reasoning, and by such appeals to the sympathies of our common nature as are worthy, legitimate, well-timed, and in good taste.

48. The ill success of many at the bar is owing to the fact that their business is not their pleasure. Nothing can be more unfortunate than this state of mind. The world is too full of penetration not to perceive it, and much of our discourteous manner to clients, to courts, to juries, and counsel has its source in this defect. I am, therefore, resolved to cultivate a passion for my profession, or, after

a reasonable exertion therein, without success, to abandon it. But I will previously bear in mind that he who abandons any profession will scarcely find another to suit him. The defect is in himself. He has not performed his duty, and has failed in resolutions, perhaps often made, to retrieve lost time. The want of firmness can give no promise of success in any vocation.

49. Avarice is one of the most dangerous and disgusting of vices. Fortunately its presence is oftener found in age than in youth; for if it be seen as an early feature in our character, it is sure in the course of a long life to work a great mass of oppression, and to end in both intellectual and moral desolation. Avarice gradually originates every species of indirection. Its offspring is meanness; and it contaminates every pure and honorable principle. It cannot consist with honesty scarce a moment without gaining the victory. Should the young practitioner, therefore, on the receipt of the first fruits of his exertions, perceive the slightest manifestations of this vice, let him view it as his most insidious and deadly enemy. Unless he can then heartily and thoroughly eradicate it, he will find himself, perhaps slowly, but surely, capable of unprofessional, mean, and, finally, dishonest acts which, as they cannot be long concealed, will render him conscious of the loss of character; make him callous to all the nicer

feelings; and ultimately so degrade him, that he consents to live upon arts, from which his talents, acquirements, and original integrity would certainly have rescued him, had he, at the very commencement, fortified himself with the resolution to reject all gains save those acquired by the most strictly honorable and professional means. I am, therefore, firmly resolved never to receive from any one a compensation not justly and honorably my due, and, if fairly received, to place on it no undue value, to entertain no affection for money further than as a means of obtaining the goods of life; the art of using money being quite as important for the avoidance of avarice and the preservation of a pure character as that of acquiring it.

With the aid of the foregoing resolutions and the faithful adherence to the following and last one I hope to attain eminence in my profession, and to leave this world with the merited reputation of having lived an honest lawyer.

50. Last resolution: I will read the foregoing forty-nine resolutions twice every year during my professional life.

A SCHEDULE OF LEGAL FEES

The following schedule of fees was adopted in 1906 by a prominent New England Bar Association. The figures given are minimum fees, and all attorneys practicing in the locality were "expected to abide by the same or be deemed guilty of unprofessional conduct."

For Superior Court writs where debt is not over three hundred dollars, not less than	$5.00
For Superior Court writs where debt is over three hundred dollars, not less than	10.00
For drawing bill or answer in equity, not less than	25.00
For drawing answer in Superior and Land Courts, not less than	10.00
For uncontested libel for divorce, including costs, exclusive of witness fees, not less than	50.00
For appearance and answer for libellee in proceedings for divorce, not less than	30.00
For retainer and services for debtor in bankruptcy or insolvency proceedings, in addition to all expenses, not less than	100.00
Except when assets are less than five hundred dollars, when in addition to all expenses, not less than	75.00
For retainer and services in matter of assignment for benefit of creditors where liabilities are less than five hundred dollars, not less than	50.00
For retainer and services in matter of assignment for benefit of creditors where liabilities are five hundred dollars or more, not less than	100.00
For taking out letters of administration or proving will, not less than	25.00

Except in cases where estate is less than two hundred dollars, in which case not less than	$10.00
For drawing will, not less than	10.00
Except wills of simplest form drawn at the office, for which not less than	5.00
For entering appearance and filing defendant's answer in District Court, not less than	5.00
For entering appearance and filing trustee's answer in District Court, not less than	2.00
For commencing suit, not less than	5.00
Except in collection cases to recover for necessaries in District Court when not less than actual disbursements.	
For trial of cause in District Court for either plaintiff or defendant, not less than	5.00
For defending in District Court where charge is felony or violation of the liquor law, not less than	15.00
For prosecuting or defending in District Court where charge is misdemeanor (other than violation of liquor law) not less than	5.00
For examination of title to real estate, in addition to expenses, except where the examination is made for the holder of existing mortgage, not less than	10.00
For drawing deed, mortgage, or other conveyance of real estate or for passing upon the same before record, when drawn by a person other than an attorney-at-law, not less than	2.00
For drawing bill of sale, chattel mortgage, or powers of attorney, not less than	2.00
For foreclosure of real estate mortgages, in addition to expenses, not less than	25.00
For assistance and direction to any person not an attorney-at-law as to conduct of foreclosure proceedings, not less than	25.00
For drawing discharge or an assignment of a mortgage, not less than	1.00
For organizing corporations, not including disbursements, not less than	50.00
For drawing partnership papers, not less than	10.00
Except when only the simplest form, in which case not less than	5.00

For ejectment proceedings: Lease and notice, not less than	$ 2.00
For ejectment proceedings: Writ, not less than	3.00
For drawing leases (short form), not less than	2.00
For drawing leases (long form), not less than	4.00
For the trial of any case in the Probate Court, not less than	25.00
For drawing an assignment of wages or an assignment of an account, not less than	1.00

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