

(August 23rd, 1937)

The Administration of Justice in England

By NORMAN BIRKETT, K.C.

T. D'ARCY LEONARD, CHAIRMAN: — Your Honor, Gentlemen. It is a particularly happy occasion for me that at the first meeting of the Canadian Club over which I have the honor to preside there is so excellent an attendance, and I must pay tribute to you for having turned out in such numbers notwithstanding the fact that it is the middle of summer and our regular season has not yet commenced.

It is also a happy occasion in that we have so distinguished a head table, and I think that I should mention that in addition to our own Lieutenant-Governor, Dr. Bruce, we have also with us, and I was not aware of this till within the last few minutes, the Honorable Tupper, Lieutenant-Governor of Manitoba. I understand that in his usual modest way he has been travelling incognito as a private citizen, and it was on that account that I was not aware of his presence here today. Had I known we would have been glad to have welcomed him in a more formal way.

It is rather unusual also that in addition to two Lieutenant-Governors, we have also two former Prime Ministers and two former Finance Ministers of Canada at our head table today.

There is one other guest whom I think you would wish me to mention. We have another distinguished visitor from England, Lord Eustace Percy. Lord Eustace is a very noted Educationist in England. He was Minister of Education in the second Baldwin Cabinet, and Minister without portfolio in the first National Government. He is in Canada for the meetings of the Institute of Politics and Economics.

But above all it is a happy circumstance that the occasion for this excellent gathering is the presence of our honored Guest, Norman Birkett, K.C., one of the most eminent of English Counsel. It is the happy result of Mr. Birkett's visit to Canada as representative of the English Bar at the conference of the Canadian Bar Association that he is with us today, notwithstanding that he is in the midst of a very busy career.

We have had with us in the past a number of great leaders of the English Bar, among them Sir John Simon, Sir Herbert Samuel, and Lord Birkenhead. Mr. Birkett is a very worthy successor. During the past week he has won the admiration of those who heard him, not only for his eloquence, but for the very lovely personality with which he has charmed them. He has made my task as chairman somewhat easy. His subject is "The Administration of Justice in England," and I need say nothing further as to his ability to deal with that subject for you are about to hear him, and witness for yourselves the qualities which have made him so justly famous.

MR. BIRKETT: — Mr. President, Your Honor, Mr. Mayor and Gentlemen: I must begin, as I am sure all my predecessors have begun, by acknowledging the sense of honor and pride and privilege I experienced in being invited to speak here today.

Your hospitality, your ideals, your spirit of service all combine to make a visitor sure of a cordial welcome. And when there is added to this, sir, those too kind words of welcome you have been good enough to give, all I can say is that I speak with great pride and considerable humility. Thank you, sir, for your words of introduction, and may I say that I congratulate the Club on the fact that its deliberations are to be presided over by a president of such gifts and charm.

Mr. President, I have been but a short time in Canada, a very short time. I will say too short a time, but I have already experienced the truth of certain words spoken to this club by General Smuts: "You may travel the continents of the Earth, and you will find that under the British Flag the dominant note is Friendship. Wherever you go you will find many friends, and you are in the family circle." That

has been my experience, and so far from any sense of exile I have felt the most wonderful sense of kinship.

May I confess that I am a great believer in democracy, knowing that you will understand my transports of delight when on one of your highways, coming from Niagara Falls as the guest of your president, I saw displayed on a placard the words:

DUCHESSES
15 CENTS.

and being unable to conceal my delight, I received the information that the duchesses in question were merely apples that ripened in this lovely month of August, and that the words were not the open expression of somebody's contempt for the Peerage in general and Duchesses in particular.

My experiences in Canada at the moment from a somewhat blurred picture, but sometime in the future there will come a free moment when I can get a little leisure, and when I shall be able to sort out and classify my impressions. And then, I know, I shall find at the head of them, my joy in that placard:

DUCHESSSES
15 CENTS.

This is not an occasion when I should try to speak about my impressions of Canada, but I cannot refrain from speaking of that wonderful moment when the height of Quebec came into view after a night of fog on the St. Lawrence. I suppose I did then what every other visitor has done when I quoted, with Wolfe, as he gazed upon the Heights of Abraham before the battle with Montcalm's troops:

"The boast of heraldry, the pomp of power,
And all that beauty, all that wealth e'er gave,
Await alike the inevitable hour;
The paths of glory lead but to the grave."

Nor, perhaps, should I speak of my growing conception of the immensity of this country as I found that many of my professional brethren had travelled thousands of miles to attend the Bar Association Conference. Nor of the lovely

drive to Murray Bay through hills that looked like home. Nor of the majesty of Niagara seen yesterday. Nor of the smiling countryside of Ontario.

All these things crowd themselves on my mind, and to them is added the feeling that though Canada may be large and have immense resources, it is not so large as the Canadian heart. The hospitality of the Canadian people has been so memorable that you can understand the pride with which I accepted this invitation today.

I will try to speak to you of the administration of Justice in England. It is, of course, a commonplace that the administration of Justice in any country is the most important phase of the activity of the government of that country. Most of us accept it unconsciously, but, in sober truth it covers practically every instant and phase of all our activities. If I were asked to say what was its chiefest characteristic in England, I would answer that it was the sense of fair play, the public desire to see equal and even-handed justice between man and man. If, in England, there is any suggestion of tampering with justice or a hint that fair play is outraged the public can be quick to think and quick to act.

A few years ago, in England, there was a suggestion that in a certain case a young girl had been severely cross-examined in order to get evidence that might be used against her. The English mind revolted. There were debates in Parliament. The whole country was aroused. A special tribunal was set up. All the papers were called for. Every available witness was produced, and the cost ran into thousands of pounds. And all this was just to satisfy the public mind that the administration of justice was to be conducted as heretofore.

Deep in the public mind is the conception that the administration of even-handed justice is a vital part of our natural life, and to that is added an immense pride in the administration of justice in England. It is not perfect. In almost every field and aspect of it there is room for improvement and reform, and already in the minds of those who control these matters there is growing a desire to see that the administration of justice is freed from those defects, and carried out in the spirit of the past.

But the important matter, the all important matter which touches the English mind most closely is the spirit in which the law is administered, the spirit in which justice is done. And particularly is that the case where criminal justice is concerned.

We have police courts covering the whole country presided over for the most part by lay magistrates, assisted by a trained lawyer as clerk, where all cases which ultimately reach the higher courts begin.

Then comes the Quarter Sessions, which tries certain forms of criminal charges and is presided over for the most part by lay Justices whose president has had legal training. In the larger cities the court is presided over by a Recorder who is a member of the Bar.

Above these are the Courts of Assize, covering the whole country. Judges travel the length and breadth of the land carrying with them the outward signs of the might and majesty of the law. The greatest of the Assize Courts is the Central Criminal Court, better known perhaps as the Old Bailey.

At the head of all is the Court of Criminal Appeal, which is accessible to every criminal, no matter how poor and friendless he may be. So far as all these courts are concerned, the citizen may be sure that in form of trial accused persons are adequately protected.

I am not the man, nor is this the place to offer any criticism of the manner in which justice is administered in other countries, nor of the forms of government in those countries, but after a growing experience of the administration of justice in some lands, I have to say that I am proud of the way it is administered in England.

Now, first of all, with regard to the procedure under Criminal law. A prisoner is arrested by the police, and even before he is brought to trial all the true interests of that prisoner are properly safeguarded. Police, in interrogating prisoners or witnesses are strictly bound by what are known as Judges' Rules. These have no force of law, but let one of them be infringed and no judge would admit as evidence one word that had been obtained in a manner contrary to the spirit of those rules.

It is a commonplace to hear in some countries of an officer saying to a prisoner: "It would be much better for you to tell the truth." In England that alone would be sufficient to exclude from the evidence any voluntary confession that the prisoner might have made, as the result of following that advice.

There was a case a little time ago that came before a wise and humane Judge where a letter had been written by a poor distracted wife, accused of murdering her child, to her husband, in which she admitted having committed the murder. This letter was put in evidence in the Police Court, but at the Assizes Counsel for the prisoner submitted that it was inadmissible, being a privileged communication between spouses. The Judge agreed, and though the letter lay before him on his desk throughout the trial, it was never mentioned. The woman was acquitted, and she was acquitted because the Judge was very scrupulous in observing all the rules of evidence, and in holding that the Crown must prove its case.

That is the second great matter on which we pride ourselves in England. It is the absolute and invariable rule that the Crown must prove its case beyond all reasonable doubt. It is held to be better that a hundred guilty men should go free than that one innocent man should be convicted. In every Court, therefore the rule is rigid. There are no exceptions to it.

There was a case a couple of years ago where a farm laborer was convicted of murder. On submission to the House of Lords that the rule of the onus of proof had been infringed the conviction was quashed and the man went free.

May I say, in a sort of aside, that the proper appreciation of that rule by the general public, would do a great deal to remove a serious misapprehension as to the functions of an advocate.

One is often asked: "How can you as an honest advocate defend a man you know to be guilty?"

The true function of an advocate is not to try to prove his client innocent, but to see to it that Justice is properly administered, and the Crown required to prove its case beyond any reasonable doubt. This is a vital part of the

administration of Justice and it is equally vital that there should be a body of men trained for the purpose of seeing to it that in the courts the rights of citizens are maintained, and that for every wrong there is a suitable redress.

Erskine, in the defence of Tom Payne, declared "When the moment comes that an advocate's mouth is closed a great deal of the liberties of this land are in danger of being lost." Therefore I think we may be proud of the second matter I spoke of in the administration of Justice—the scrupulous way in which the doctrine that the Crown must always prove its case is always insisted upon.

I very well remember a gentleman who has now, I trust, gone to his rest. He was, I should think, the most skilful pick-pocket in England, and yet from time to time he appeared in court in almost every County in England charged with larceny from the person. After fifty years of convictions he finally appeared at the Assizes for the County of Warwick, and was there charged with larceny from the person. He was acquitted on this charge, but the Jury found, in a second count, that he was guilty of feloniously receiving the stolen money, well knowing it to have been stolen.

The prosecutor was an old farmer who had had his pocket picked before, and who believed in taking precautions. The only money found on the prisoner was a George V penny. As soon as the prosecutor saw it he said: "That is my penny. It has a little cross upon it by which I can identify the money."

As I said, the Jury, after a protracted trial, found the prisoner was not guilty of larceny from the person, but guilty of receiving.

Counsel for the defense submitted that this was a verdict of "Not Guilty" but the Judge looked over the long list of previous convictions and said. "You had better let another court say that." So leave to appeal was asked. One Judge refused. Two Judges refused. But finally a full court with great reluctance, granted leave and in due course quashed the conviction, saying: "We have not yet reached the stage, when a man can be convicted on that evidence."

You will perceive that right through the length and breadth of the criminal law there runs the spirit of absolute justice in dealing with an accused before and during trial.

A third thing: we have developed in England an extensive system of legal aid. It is true to say that no man or woman in England, charged with anything like a major criminal offence, is without adequate legal defence, no matter how poor he or she may be. We have a system of Dock Briefs. Under this a man can go into the dock charged with anything, and if he possesses the small sum of twenty-three shillings and sixpence he can look around the Court, select the most eminent Counsel present, and say: "I want you."

Mr. Augustime Birrell related that he was once accused of unprofessional conduct because he had defended a man for less than twenty-three shillings and sixpence. His defence was: "I took all the poor devil had, do you call that unprofessional?"

Under another arrangement, one that gives the struggling barrister many of his earlier briefs, a Judge can assign counsel to a prisoner. In this case the accused need have no money for fees at all. I well remember that at one Assize the Judge asking a prisoner: "Would you like me to give you Counsel?"

"No, My Lord," the prisoner replied, "But I could do with a couple of good witnesses."

I think it is a fine thing to be able to say that throughout the length and breadth of England a man, however poor he may be, however worthless his character, if he is charged with any crime, can have as complete and adequate defence as the wealthiest can afford.

Another thing in which we take great pride is the speed with which our criminals are brought to trial. Prisoners do not languish in jail for months before they come before a court. The speed with which Criminal business is cleared up is a very important matter. Justice cannot be delayed. Justice delayed is Justice denied. Justice is swift. Justice is speedy.

Another element of which we are proud is the dignity with which Justice is administered in England. We have no Judges and Counsel in shirt sleeves however hot the weather. It is very important that the forms of law should

be observed in all their phases. The Lord Chief Justice has declared, very properly: "It is important that justice should be done; it is even more important that justice should manifestly be seen to be done."

When an Assize Judge, in his scarlet and ermine, with escort of trumpeters, Sheriff, and Chaplain goes into the remote places of England, he inspires a confidence in the people, begotten of the impressive way in which justice is administered in all its parts. It is this spirit of which we can justly be proud. Wherever you go in the country there is to be found a pride in the administration of justice. The inspiration of this pride I regard as one of the most important functions of British Justice. Long may it be maintained.

May I add one word about Civil Justice, as contrasted with Criminal? In the first instance there are the County Courts. These cover the whole country, have a limited jurisdiction, and are known as the Courts of the poor man. To these Courts all citizens have easy access so that their claims may be adequately discussed and Justice done.

Then there are the several Courts presided over by Judges of the first instance—in the Royal Law Courts in the Strand and Civil Assize Courts held throughout the land to save time and expense for litigants and witnesses who, otherwise, would have to travel to London. There are, too, the Courts of Appeal in London, and above them all is the House of Lords. And it is true to say of Civil as of Criminal Justice that everybody has the freest access to legal assistance. Under the Poor Persons Act those who have no money can be sure of obtaining the most adequate legal protection.

I find that my time has about come to an end. There was much more that I desired to say, but you will, I hope allow me to conclude with this: We live, of course, in a very troubled world. Things which we have long cherished, liberties for which our forefathers fought and died are in some jeopardy. One cannot look abroad in the world today without seeing how swift change is, and how quickly right things may be brought to confusion. There have been great burdens laid on us in England and in Canada—great duties and responsibilities, chief of which is the duty and responsi-

bility of maintaining liberty, and that turns, in the final analysis on the maintenance of the supremacy of the law. Thus the wise and prudent administration of the law remains one of the most important activities of any State, and I am glad to have had this opportunity to say a few words on the way in which England seeks to maintain the supremacy of which I have spoken.

I cannot speak with any real knowledge of the true inwardness of Canadian affairs, but I have been privileged, during my short stay in Canada, to meet many of the judges who preside over your Courts; I have been privileged to meet hundreds of my professional brethren who practice in those Courts, and I shall not be wrong if I say that the spirit of Justice on which we pride ourselves in England has its counterpart here. There may be diversities of Government, but there is the same spirit, and in considering these world affairs which press upon us, it is splendid for a visitor to feel, as I have felt, that wonderful sense of kinship that exists, and to know that while Canada is quite naturally interested in her own development, she can and will make a great contribution to the settlement of the affairs of this troubled world.