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THE SUPREME COURT OF CANADA

CEREMONIAL REMARKS

Upon the Occasion
of the

HONOURABLE JOHN ROBERT CARTWRIGHT

PRIVY COUNCILLOR

first presiding as

CHIEF JUSTICE OF CANADA

3rd October, 1967

Remarks of the Honourable Mr. Justice Fauteux
upon Chief Justice John Robert Cartwright first
presiding as Chief Justice, October 3rd, 1967

My Lord Chief Justice,

My Brothers of the Bench,

Members of the Bar.

Today, for the first time, the Honourable Mr. Justice John Cartwright takes his seat as Chief Justice of Canada. It is my privilege to say, publicly, a few words of welcome on behalf of my colleagues and myself.

Like former Chief Justice Robert Taschereau who, after twenty-seven years of distinguished service, recently retired on account of ill-health, Mr. Justice Cartwright comes from a line of ancestors prominent in the field of law. A great grandfather, Honourable Richard Cartwright, was a member of Governor John Graves Simcoe's Legislative Council; his grandfather, John Solomon Cartwright, was a noted lawyer and a Member of Parliament; his father, James Strachan Cartwright, was a Master of Osgoode Hall.

Pursuing that tradition, our colleague chose the legal profession and was called to the Bar with honours and Silver Medal in 1920. He had a long and distinguished professional career. When he abandoned his practice in 1949, to accept an appointment to the Bench, one remarked, with accuracy, that it was rare, in any profession, to find so much intellectual quality, power of application and true modesty united in a charming personality.

For the last seventeen years, Mr. Justice Cartwright has been a member of the Court over which he now presides. In this gathering, it is unnecessary to speak of his record as a jurist.

In a book entitled The Nature of the Judicial Process, the late Mr. Justice Benjamin N. Cardozo of the Supreme Court of the United States, said:

There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognize and cannot name, have

been tugging at them - inherited instincts, traditional beliefs, acquired convictions; and the resultant is an outlook on life, a conception of social needs, a sense in James's phrase of "the total push and pressure of the cosmos," which, when reasons are nicely balanced must determine where choice shall fall. In this mental background every problem finds its setting. We may try to see things as objectively as we please. None the less, we can never see them with any eyes except our own. To that test they are all brought - a form of pleading or an act of parliament, the wrongs of paupers or the rights of princes, a village ordinance or a nation's charter.

The scholarly and learned decisions of Chief Justice Cartwright speak highly of his own philosophy and one can say that the Canadian jurisprudence is enriched and the prestige of the national Court is enhanced by both his decisions and his personality.

We welcome him to this high office confident that he will uphold the traditions of devotion to duty, learning and courtesy established by his predecessors and of which he, himself, has proved to be a living example.

Il ne me paraît pas nécessaire de répéter en français ce que je viens de dire en anglais, car ceux qui sont ici présents sont familiers avec les deux langues officielles de cette Cour. Au surplus, je suis certain que les sentiments que je viens d'exprimer à l'endroit du nouveau Juge en chef du Canada, font fidèlement écho aux vôtres. Si j'avais à dire ma pensée en quelques mots seulement, j'emprunterais du Digeste cette élégante définition du droit: "Jus est ars boni et aequi", et dirais que dans l'exercice de cet art, Monsieur le Juge en chef Cartwright est un artisan des plus qualifiés.

Au nom de mes collègues et au mien, c'est avec joie et sincérité que je lui offre, avec l'assurance de notre loyauté, nos félicitations et nos vœux.

October 3rd, 1967.

Remarks of Brendan O'Brien, Esq., Q.C.,
of the Bar of Ontario

My Lords:

On this happy occasion I speak on behalf of the Bar of Ontario. It is a privilege and a pleasure to welcome Your Lordship as Chief Justice of Canada.

I think it can be safely said that no judicial appointment has ever given our profession greater joy or deeper satisfaction.

Your Lordship's career in the Law, culminating as it has, in the highest judicial office that our country can bestow, is unique in so many respects that one hardly knows which of your many outstanding accomplishments are the most worthy of note.

Your academic record at Osgoode Hall Law School is one which can only be fully appreciated when considered against the background of your outstanding war record which immediately preceded it. Your Lordship enlisted as a Private in 1914, was twice wounded in 1915, received the Military Cross in 1917 and was discharged at the end of the war with the rank of Captain.

To return to school after such a turbulent interruption must have been difficult indeed. Some evidence of the difficulty is found in the report of the Principal of the Law School, Dr. Hoyles, who, in his report to the Benchers for 1920, said, with the understatement that one usually finds in such reports, "The work of both lecturers and students was much hampered by the uncomfortably overcrowded state of the lecture rooms . . . notwithstanding the discomfort and overcrowding to which the students were exposed, I have pleasure in reporting that the discipline and attention were quite satisfactory." The defensive tone of the last few words would suggest that the Principal had some problems in 1920. Knowing some of Your Lordship's classmates, this is understandable.

Considering all these difficulties it is the more remarkable that Your Lordship graduated in 1920 with the Silver Medal, obtaining such marks as Commercial Law 95, Company Law 98, Real Property 91, Private International Law 92, together with such comparatively disappointing marks as 87 in Mortgages, 89 in Construction of Statutes and 89 in Municipal Law. In the light of after events, it seems ironic that the two lowest marks were in Evidence

and Criminal Procedure, in both of which Your Lordship received a mark of 78, a mark substantially higher than the highest mark that most students ever attain.

Those of us who were privileged to practise with and against Your Lordship remember with awe and admiration the way in which Your Lordship could make the most complicated case seem simple and the way in which you could, by lucid presentation and sheer mastery of your subject, subdue some of our most outspoken judges into respectful silence, if not always into complete agreement. No Counsel at the Bar of Ontario commanded greater respect. Words which come most frequently to mind when one thinks of Your Lordship as a lawyer practising at the Bar are: gentlemanliness, fairness, reasonableness, candour, magnanimity and complete integrity.

Your Lordship's kind of advocacy was quite different from that of most of your contemporaries and different in a way that most of the younger lawyers found most refreshing. The success which this kind of advocacy found at the Bar has undoubtedly had much to do with the adoption, in more recent years, of the quiet reasoned approach in place of the belligerent and fiery oratory that was so common 25 years ago.

Prompted no doubt by your memories of the difficulties that confronted lawyers returning to practice after the First World War, I note that Your Lordship was one of those who volunteered to give a refresher course at Osgoode Hall to lawyers returning from the Second World War, in October of 1945. Your Lordship delivered five lectures in that course on the Law of Divorce, lectures which still stand as a model text on that subject.

I have spoken of the esteem in which Your Lordship was held by his fellow lawyers. These are not merely polite words. We find the most striking proof of what I say in the Election for Benchers in Ontario that was held in 1946.

Your Lordship was a candidate that year for the first time. A Study of the results in Benchers elections in this century reveals that few lawyers have been elected Bencher on their first time out, and those who have succeeded, usually were among the last ten of the thirty elected. An understanding of this fact makes it all the more remarkable that on your first run as a candidate for election as Bencher you were not only elected, but headed the poll with 72% of all votes cast.

We can only speculate as to the percentage of the vote that you would have obtained if you had been eligible to run in the election of 1951.

In one way it was a great loss to the Benchers and the profession when in December of 1949 Your Lordship was appointed to this Court, but a loss that was more than compensated for. Your appointment came at a most critical time in our history. It was one of the first appointments made after appeals to the Privy Council had been abolished. Many had misgivings about the loss of the right to appeal to the Privy Council, but an appointment such as yours, coupled as it was with that of your brother judge, Mr. Justice Fauteux, did much to ease the concern of those who feared that this Court might not be as effective a Court of last resort as the Privy Council had been.

In the subsequent years Your Lordship has played a most significant part in helping to make this the great Court that it is today.

I cannot close without a mention of Your Lordship's attainments as a scholar. Your reputation in this connection is well known, most often expressed

in relation to Your Lordship's intimate knowledge of Gilbert Chesterton on whom Your Lordship is probably the outstanding authority. But I venture to say that it would be hard to name a writer of importance with whose works Your Lordship is not in some degree familiar.

In 1963 Osgoode Hall Law School conferred upon Your Lordship the Honorary Degree of Doctor of Laws in recognition of your contribution to scholarship and the Law. I refer to the citation that was read on that occasion. Speaking of Your Lordship as a Counsel, the Citation stated:

"He rapidly became a noted Counsel at trial and on appeal, with a special flair for the difficult point and a unique sympathy for the underdog."

Referring to Your Lordship as a Judge, it stated:

"His broad experience at the Bar, his keen understanding of human nature, his innate modesty, his unfailing courtesy to all Counsel, young and old, and his familiar zeal for essential justice, have gained him not only the respect of the public, but the deepest regard and affection of his colleagues and of the Bar."

Words which I most heartily echo today.

We of the Bar of Ontario are delighted indeed to share in today's proceedings and to make known, even in this inadequate way, how truly proud we are of Canada's new Chief Justice.

Remarks of Rodrigue Bédard, Esq., Q.C.,
Associate Deputy Minister of Justice

Allocution en hommage au Juge en chef du Canada,
l'honorable John Robert Cartwright

May it please the Court and you, my Lord
Chief Justice.

I should like, at this moment when my Lord,
The Chief Justice of Canada, presides for the first time
in this capacity at a sitting of the Supreme Court of
Canada, to express to him the sentiments, congratulations
and wishes of the members of the Bar of the Province of
Quebec. My Lord, on this occasion my "confrères" all
rejoice and concur in the decision of the Governor in
Council conferring upon you the highest honour that it
is in his power to confer on a judge and a lawyer.

Les avocats qui ont eu l'honneur de plaider
devant elle et ceux qui ont étudié et cité sa jurisprudence
tiennent la Cour Suprême du Canada en grande estime.

Cette estime la Cour se l'est méritée par la
science de ses juges et la sagesse de leurs décisions.

Parmi ceux qui ont contribué grandement au
prestige de la Cour, vous me permettez, Monsieur le
Juge en chef, de rappeler le souvenir de votre prédécesseur
l'honorable Robert Taschereau.

It was on the 29th of April, 1963, barely more than four years ago, that you, My Lord Chief Justice, on the occasion of the Honourable Mr. Taschereau taking his seat as Chief Justice of Canada, said a few words of welcome to him on behalf of your colleagues and yourself. In conclusion, you wished him "a long, happy and fruitful career".

J'avais pour ma part le grand honneur de faire écho à vos paroles et au nom de mes confrères du Barreau de la province de Québec, je m'inclinais avec respect devant sa vie toute de travail, de délicatesse et d'honneur et je demandais à la Providence de nous en continuer longtemps la bienfaisante leçon.

Nous ignorions à ce moment que la maladie mettrait trop tôt un terme à sa carrière. Je ne puis trouver pour atténuer les regrets qui nous étreignent, de mots plus appropriés que ceux que disait l'honorable Juge en chef lui-même, en terminant ses remerciements: "J'espère que quand viendra le terme de mon séjour sur ce Banc où je m'honore de siéger, j'aurai la satisfaction du devoir accompli". Cette satisfaction assurément il doit l'avoir, tandis qu'il cueille dans

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une retraite bien méritée les fruits d'une vie toute entière dévouée à l'avancement de la science du droit au Canada.

La Cour serait plus pauvre à cause de son départ n'était de la faculté qu'elle a de se continuer et de se renouveler par l'accession de l'un de ses membres à sa présidence. La nation y trouve son bénéfice et la Cour sa stabilité.

Pour de nombreuses années, Votre Seigneurie, vous avez été membre de cette Cour que maintenant vous présidez. Il serait vain de vouloir rappeler vos grandes qualités de juriste que tous ont présentes à l'esprit. Défenseur des libertés fondamentales, également à l'aise dans l'une et l'autre discipline juridique, vous savez joindre à votre connaissance des hommes et des choses, cette courtoisie délicate qui rend plus facile et plus plaisante la tâche des avocats et des plaideurs.

J'ai donc l'honneur, Monsieur le Juge en chef, de vous présenter les hommages de mes confrères du Barreau de la province de Québec auxquels je veux joindre les miens. Nous exprimons le voeu que vous continuiez longtemps encore - par delà même l'âge de la retraite - les éminents services que vous rendez au progrès de la règle de droit au Canada.

Response of the Honourable John Robert Cartwright,
Privy Councillor, Chief Justice of Canada

My brothers of the Court:

Members of the Bar -

I am deeply grateful for the kind words of my brother, Mr. Justice Fauteux, on behalf of my Colleagues and for those of Mr. O'Brien and Mr. Bédard on behalf of the members of the Bar. It will be a stern task to endeavour to deserve what they have been kind enough to say.

The knowledge that I will be supported by the co-operation of my colleagues and of the Bar enables me to enter on my new duties without undue trepidation. It is a truism that the Court cannot hope to do its work without the assistance of an able and independent Bar. The Bench and the Bar alike are engaged in the great task of administering justice according to law and each one of us is bound to the performance of that task to the best of our skill and knowledge by the terms not of a contract but of a vow.

I shall endeavour at all times to follow the example set by my predecessors in this office and I wish to take this opportunity of paying tribute to my




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immediate predecessor, the Honourable Robert Taschereau, whose long years of faithful and brilliant service to this Court and this country, first as judge and later as Chief Justice, are well known to us all. We regret that reasons of health compelled his retirement but hope he will enjoy many years of well earned leisure while his former colleagues continue to struggle with complex problems here.

I thank you all most sincerely.

Ce que je viens de dire en anglais, je voudrais le répéter en français, mais il n'est pas nécessaire que j'emploie de nouveau dans cette Cour bilingue des mots que je viens de dire dans l'autre de nos langues. Il suffit que j'y ajoute que j'apprécie hautement les paroles de M. le Juge Fauteux, de M. O'Brien et de M. Bédard.

Messieurs, je vous remercie sincèrement.



Toronto, March 22nd, 1968.

CONVOCATION OF THE LAW SOCIETY OF UPPER CANADA

Mr. Treasurer, Distinguished Guests, Ladies and Gentlemen and especially you who have just been called to the Bar:-

May I say how deeply I appreciate the honour of being asked to speak to you to-day. I hesitated to accept the invitation of the Treasurer because this is not the first time that I have been privileged to address Convocation on the occasion of a call to the Bar and I was apprehensive that what I might say would prove repetitious. However I was comforted by one of my colleagues who said, with that combination of caution and common sense which makes our discussions so useful: "Assuming that what you have said in the past was worth saying, what is the objection to repetition? The graduates will not have heard it before and the Benchers will have forgotten it." Fortified by the memory of this encouragement I will proceed.

To all of you who have received your call to-day I offer my heartiest congratulations and my good wishes for your success. Your course has been a long and arduous one necessitated by the nature of the responsibilities which the members of our profession must be fitted to assume. Now that the time has come for you to embark on its practice your clients will commit to you the safe-guarding of their property, their reputation, their liberty and it may be at times their lives. Such a relationship requires the most unreserved confidence on the one side and on the other not only the most complete devotion to the duty assumed, but adequate knowledge and skill.

When I speak of complete devotion to your clients' interests this is subject to one qualification. Your duty to your client never requires you to deviate from the path of honour. You say and do for your client all that he could honestly say and do for himself if he possessed the special skills in which you have been trained.

Each of you knows, better than anyone else, how much effort, how much self-denial and sacrifice on your own part and on the part of your families has been necessary to enable you to attain the goal of being called to the bar. I am sure that you will not regret these sacrifices. You have chosen one of the greatest of the professions. The life of the lawyer is a good life, although not an easy one.

As we all know, the right to practise as either a barrister or a solicitor is restricted by law to those who have met the high standards set by the profession and who, having been duly admitted to practise, comply with the rules of professional conduct and ethics which the Society prescribes.

These restrictions are sometimes assailed by unthinking persons as monopolistic, but in truth they exist not primarily for the advantage of the members of the profession but for the protection of the public who must not be allowed to place their dearest interests in incompetent or untrustworthy hands.

Nevertheless these restrictions do confer very real benefits upon the members of our profession. The lawyer does, in a sense, belong to a privileged class. We must ever

remember that privilege entails responsibility, indeed most of us first learned this rule in familiar words of more ancient origin and of higher authority:- "Unto whomsoever much is given of him shall be much required."

Above all others, the professional man is bound to discharge his task to the very best of his skill and knowledge. No man can do more than this but your client is entitled to expect that you will do no less. You must be ready, as occasion demands, to sacrifice your leisure, your rest and your personal convenience to your client's need.

The members of our profession, Bench and Bar alike, are engaged in the great task of seeing that justice is done according to law and we are bound to its performance by the terms not of a contract but of a vow, a vow which you are about to take. It is not an easy task but it is filled with interest and stimulation, embracing as it does every human relationship.

Centuries of experiment and experience have failed to produce any better way of enabling the Courts to do justice than that which we have adopted, in which both sides of the case are put before an impartial tribunal by men trained in the law and in the art of advocacy.

To the work of the lawyer may truly be applied the words of Dorothy Sayers; that it is such as a man may do with his whole heart and do for the very ~~work~~'s sake; that it is not primarily the thing he does to live but the thing he lives to do; that it can and should be the full expression of the worker's faculties, the thing in which he finds spiritual, mental and bodily satisfaction and the medium in which he offers himself to God.

It is of lawyers, amongst others, that she writes that they fight for precious time in which to get on with the job, instead of fighting for precious hours saved from the job, and that they resent as a monstrous interference with the liberty of the subject any attempt to prevent them working as long and as well as the work and their enjoyment of it demands.

May I address the next thing I want to say not only to those who have to-day been called to the bar but to everyone here; especially to the Benchers ?

No one will question that liberty is our most prized possession. But there can be no liberty except such as is ordained and safeguarded by authority. Without such authority you have not liberty but anarchy. It is the law which at once defines and protects our freedom. The law, whether statutory or found in the principles of the common law, is interpreted and applied by the courts with the indispensable aid of a fearless and independent bar. Its ultimate enforcement is the responsibility of all members of our society.

It would be idle to pretend that there are not disquieting signs of a lack in many groups and persons of the necessary sense of that responsibility. We read in the press of the failure of citizens to come to the aid of sorely pressed police, of groups seeking to obtain fulfilment of their demands by acts of violence. There is evidence that in some quarters respect for the law has diminished almost to the vanishing point. One of the matters which I suggest contributes to this is destructive criticism of the administration of justice.

We are familiar with Lord Atkin's aphorism that "Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, though outspoken, comments of ordinary men." No one would wish to have it otherwise. Honest and constructive criticism is essential to the well being of any democratic institution. What I do deplore is merely destructive criticism, sometimes ill-informed and reckless, sometimes intentionally mischievous, which tends to cause members of the public to lose confidence in the courts. When such attacks are made the Courts have no right of reply. I invite you to consider in what ways the ill effects of such disparagement can be corrected.

Not long ago when a judgment of our Court had been the subject of misleading criticism, an anonymous well-wisher inquired why I did not "go on Television" to put the record straight. This, of course, we cannot do.

It is customary on such an occasion as this to offer words of advice and of welcome. But I must not trespass too long upon your time and so will not dwell upon the cardinal virtues the practice of which is indispensable for the members of the bar, honesty and fair play, loyalty, industry and courage, but will pause only to say a word for courtesy, good manners and good humour. These you should always practise with your fellow lawyers, the judges and especially with witnesses and those who are not familiar with the ways of the Court room. You will not find that this detracts from the effectiveness of your advocacy.

The law is a jealous mistress but she does leave some time for general reading. Use it well. Ours is a learned profession. Help to keep it so. Seek to familiarize yourselves with the best in English prose and poetry. It is a vast and varied treasure. No life is long enough to permit enjoyment of it all. Do not waste on rubbish the precious hours you have for general reading.

And now a word of welcome. Ours is an ancient and honourable profession. You will find it also a goodly fellowship. You will find its older members willing and glad to help you when you are confronted with some novel or difficult situation. You will find generosity and good comradeship, and - accompanying the hard and exacting but often exciting work - a good deal of fun.

I wish each of you happiness in the practice of your profession, success and good fortune, but above all that you may find joy in the doing of your chosen work.

Mr. Treasurer, may I thank you again for your kindness in inviting me to speak to this distinguished gathering.



THE SUPREME COURT OF CANADA

CEREMONIAL REMARKS

Upon the Occasion

of the

RIGHT HONOURABLE JOHN ROBERT CARTWRIGHT

PRIVY COUNCILLOR

last presiding as

CHIEF JUSTICE OF CANADA

20th March, 1970

Remarks of the Honourable Mr Justice Fauteux
upon Chief Justice John Robert Cartwright last
presiding as Chief Justice, March 20th, 1970

My Lord the Chief Justice,

My Brothers of the Bench,

The Honourable the Minister of Justice,

Members of the Bar.

The inaudible and noiseless pace of time, to borrow an expression from Shakespeare, acting in conjunction with the exigencies of a less poetic statutory provision, makes this day the last occasion upon which the Right Honourable John R. Cartwright presides at a sitting of this Court. It is only fitting that we, his colleagues, should not part without expressing to him publicly our esteem and affection.

Our colleague has had a long and distinguished career in the service of justice. To serve justice when justice was threatened in 1914 he interrupted his legal studies at Osgoode Hall law school to enlist as a private

and to defend it on the battlefield. He was twice wounded in 1915, and he was awarded the Military Cross in 1917. On being discharged at the end of the war, he returned to the law school, and graduated in 1920 with the silver medal.

He thereafter served justice as a member of the Bar and, since December, 1949, as a member of this Court, of which he was appointed Chief Justice in 1967.

In 1963 Osgoode Hall law school conferred upon him the honorary degree of Doctor of Laws. Speaking of the recipient as counsel, the citation read:

"He rapidly became a noted counsel at trial and on appeal, with a special flair for the difficult point and a unique sympathy for the under-dog." Referring to my Lord as a judge, the citation read:

"His broad experience at the Bar, his keen understanding of human nature, his innate modesty, his unfailing

courtesy to all counsel, young and old, and his familiar zeal for essential justice, have gained him not only the respect of the public but the deepest regard and affection of his colleagues and of the Bar."

The learned and scholarly decisions which our colleague has rendered in this Court have enriched the jurisprudence of this country. While, as Chief Justice Marshall said, judicial power is never exercised for the purpose of giving effect to the will of the judge, but for the purpose of giving effect to the will of the legislature - or, in other words, to the will of the law - yet in many of the decisions of my Lord one will find that mercy often shines with a degree of brilliance equal to that of justice.

Speaking for my colleagues and myself I wish to say that it has been a unique privilege to work with and under him. Our affection and best wishes go with him as he is about to lay

aside the duties of this high office which he so richly adorned.

Si je devais résumer ma pensée en quelques mots seulement, j'emprunterais de Caton l'Ancien la définition de l'orateur et, à l'exemple du Chancelier d'Aguesseau qui l'appliqua au magistrat idéal, je dirais que, pour nous, notre Juge en chef demeurera l'exemple du *vir bonus, dicendi peritus*.

Au nom de mes collègues et au mien, je lui offre, avec l'hommage de notre estime et de notre affection, tous les vœux de bonheur que nous faisons pour lui et sa gracieuse épouse.

Remarks of the Honourable John N. Turner, Q.C.,
M.P., Minister of Justice and Attorney General
of Canada

My Lord the Chief Justice,

My Lords:

We are assembled at the Bar of this Court this morning to express publicly our thanks, and to extend our very best wishes for the future, to a man who has been, and is, very much respected and - I hope I am allowed to say - beloved as a lawyer, a member of the Bar and as a distinguished jurist.

To you my Lord the Chief Justice, as Attorney General of Canada I am presenting this brief this morning not only on behalf of the Government - the Prime Minister and my colleagues in the cabinet - but also generally on behalf of the people of Canada, in whose interest, and the interest of the administration of justice of this country, I have the privilege of being the temporary custodian of this office.

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I have with me the Deputy Attorney General, Mr Maxwell, who represents the officers and counsel of the Department of Justice, some of whom are also in Court with me, who appear, as your Lordships know, more than frequently before you at the Bar of this Court.

Mes amis, M. Pattillo et M. Robinette, à ma gauche, MM. Gagnon, Sedgwick et Burke-Robertson à ma droite, prendront également la parole. Dès lors, je tiens à limiter mes remarques à un ou deux points qui me semblent particulièrement dignes de mention.

Monsieur le Juge Fauteux a déjà mentionné qu'au moment de prendre votre retraite, vous pouvez estimer à juste titre avoir bien servi, au cours de votre brillante carrière, votre pays, vos concitoyens et votre profession.

En effet, vous avez interrompu vos études afin de vous faire volontaire durant la première guerre mondiale; vous avez été blessé deux fois au service de votre pays et vous avez mérité la Croix Militaire.

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Upon your return to civilian life you completed your studies, and were called to the Bar of Ontario in 1920. You then began a career as a lawyer that saw you rise to become a leader of our profession, and a counsel of exceptional ability, charm, and rare good humour. You did not win all your cases, my Lord the Chief Justice, and I know that the members of the Bar who are here with me are grateful that the winning of cases is not a prerequisite for elevation to the Bench. But you did practise the law in the best traditions of the Bar, and in the belief that a doubtful case was as deserving of the assistance of counsel as one that might be looked upon as a winner. I know that Maître Gagnon will recall with me that old expression, "Il n'y a pas de petites causes, seulement de petits avocats."

You accepted the briefs that came your way, and after twenty-nine years of successful practice in the City of Toronto you gave it all up to accept judicial appointment to the highest court in Canada, where you have served with

distinction as a judge for many years, and latterly as the senior magistrate of the country.

I do not want to recite all your judgments to you by way of recalling to your mind on this last day some of the legal travails through which you have proceeded. You were a frequent dissenter, particularly in criminal appeals, such as *Sanders v. The Queen* and *Klippert v. The Queen*. Your judgments always reflected that independence of mind and depth of spirit that marked your career as a lawyer.

Chief Justice Warren told me just prior to his retirement, when I was in Washington, that a chief justice has to carry his court with him from time to time. You have written the judgment of this Court on many, many occasions, but what I believe to be more important, sir, is that you have succeeded in bringing to the Court a degree of sensitivity to, and an understanding of, the law and its application that few others in this country have been able to bring. As Chief Justice of Canada, and as the presiding officer of this Court, you

have fostered efficiency in its operations, and you have exhibited a judicial temper and grace that will not soon be forgotten by the Bar of this country.

Mr Justice Fauteux mentioned your courtesy to counsel, and especially to younger counsel. I think the atmosphere of justice that pervaded this Court under your presidency is something that will mark your term as Chief Justice of Canada.

So, gallant in war and learned and gracious in peace, you take leave of the Court and the public service Monday next. On behalf of the Government and people of Canada I extend to you our thanks for the many years of selfless service you have given in high judicial office. In so doing I express the hope that your example will prompt other men of stature in our profession to do likewise.

Although you will soon cease to hold judicial office, my Lord, I know you will continue to maintain your interest in the law and in the

administration of justice in this country. Perhaps you will even have time to write your memoirs. I would urge you to do so because there have been so few distinguished Canadian lawyers and jurists who have written their memoirs. A judge is a silent man, so far as public affairs are concerned, when he is on the Bench. I am not suggesting that your memoirs will be a best seller; they will be too factual for that.

My Lord the Chief Justice and Mrs Cartwright, you have our sincere best wishes for the many happy and productive years that lie ahead of you.

Remarks of Mr Arthur S. Pattillo, Q.C.,
President of the Canadian Bar Association

My Lords:

I am appearing on behalf of the Canadian Bar Association. I am also pleased to say that I have been asked to represent the Bar of my native province, Nova Scotia.

My Lords, this is the first time I have risen in this Court with the certain knowledge that my remarks will meet with the approval of your Lordships. Notwithstanding that, I find I am just as nervous as I was on my first appearance here many years ago.

When I first met the Chief Justice he was at the height of his career as an advocate. Although he had attained this high pinnacle, he was gracious and humble to all, and kind and considerate to those less fortunate than himself and to those who were in trouble. I was fortunate to hear him on many occasions in the four years

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during which he continued to practise before the Courts while I was in Ontario. All of us in this room will recall his Lordship's giving up his lucrative practice at the height of his career, and coming to this Court when it was expanded and made the Court of last resort in Canada.

Those of us who have had the good fortune to appear in the intervening years before his Lordship appreciate how well he assumed his new role, and the courtesy and graciousness which he extended to all of us on this side of the salt. It was not long before he gained the respect and affection of the Bar of the whole of this country. No one who has been told by him, in his inimitable manner, that he could not accept his argument will ever forget it.

And as the yesterdays rolled into the todays, his Lordship became our first Chief Justice to be given the Canadian title of "Right Honourable", and he has been honoured by many throughout this land, including the Bar of his native province and the Canadian Bar Association.

Before I turn to the tomorrows, may I reflect a moment on the contribution that his Lordship, the Chief Justice, has made to this Court in the years since 1949. When he came to this Court it was just beginning as the court of last resort, and many practising today have known no other situation. However, those of us who were at the Bar before that time realized how important it was to persuade the public of this country and the profession that the change was worth while, and in the interests of the country. One has only to read the judgments handed down in the intervening years, and to note the language used and the role that the learned Chief Justice played for a number of years as the great dissenter, to appreciate the contribution he has made towards instilling in the minds of the public the virtues of this Honourable Court.

And what of the tomorrows? No one can foretell the future, but based on past experience I submit it is reasonable to assume that the New York Times will rapidly become a better paper

with greater attention paid to accuracy of quotations and facts, and we can all hope - and we sincerely do - that his Lordship will have many years of happiness and good health.

May I conclude my remarks by reading to the Court a resolution passed at the Mid-winter Meeting of the Canadian Bar Association, which in some small measure expresses the thoughts and wishes of that body.

The following resolution was moved by E.C. Leslie, S.M., Q.C., LL.D., D.C.L., and seconded by W.L.N. Somerville, Q.C., and unanimously passed by the Mid-winter Meeting of Council on Monday, March 9, 1970:

"BE IT RESOLVED that the President of The Canadian Bar Association be authorized and directed to include in the address which he will deliver on Friday, March 20th, 1970 on the occasion of the last appearance on the Bench of The Right Honourable John R. Cartwright, P.C., M.C., LL.D., Chief Justice of Canada, who reaches the

statutory retirement age of 75 on Monday, March 23, 1970, the statement which is attached hereto and to state to the Chief Justice that the sentiments therein expressed have been approved and endorsed on behalf of all the members of The Canadian Bar Association speaking through the Council of the Association meeting in Jamaica this 9th day of March 1970."

This is the statement that I have to read:

"After serving with bravery and distinction during the war of 1914-1918 your Lordship embarked upon a career at the Bar and soon won for yourself the recognition and respect of your fellow members of the profession as one of this country's leading counsel. Your great sense of duty and responsibility was never more clearly demonstrated than when, in 1949, you willingly gave up a highly successful practice to accept an

appointment to this, the highest court in the land. The announcement of your appointment as Chief Justice of Canada in 1967 was enthusiastically received by all members of our profession.

Throughout your professional career your Lordship has manifested those qualities of mind and character of which greatness is made. You have been truly 'learned in the law' in the fullest sense yet at the same time you have shown an awareness of and deep concern for social justice. You have performed your judicial duties and responsibilities with great dignity tempered by a warm human understanding. You have invariably treated counsel appearing before you with patience and courtesy. Your judgments add lustre and learning to Canadian jurisprudence.

Therefore, we, the members of the Council of The Canadian Bar Association,

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hereby record our deep appreciation to your Lordship for the outstanding contribution which your Lordship has made to the legal profession, to Canadian jurisprudence, and to the administration of justice in Canada, and we extend to your Lordship our warmest wishes for many years of happy retirement."



Remarks of Mr John J. Robinette, Q.C.,
Representing the Treasurer of the Law
Society of Upper Canada and the Bar of
the Province of Ontario

May it please your Lordships, Mr Howland, the Treasurer of the Law Society of Upper Canada, deeply regrets that he cannot be here today, and he has kindly conferred upon me the honour of paying tribute to the Chief Justice on behalf of the Bar of Ontario.

My Lords, no member of the Ontario Bar in its long history has ever enjoyed more affection and respect from the Bar than my Lord, the Chief Justice.

At a very young age his Lordship enlisted in 1914 as a private in the Toronto Regiment. He had a valiant career in France, and was wounded twice. Fortunately, like the wounds sustained in the American civil war by Mr Justice Oliver Wendell Holmes, they were not serious enough to impair his health permanently, but were sufficient to give him time to reflect and to formulate a gentle

and rational philosophy of life, and to concentrate on the reading of G.K. Chesterton.

Following the war the Chief Justice was called to the Bar of Ontario, and he became associated with the firm of Smith, Rae, Greer, later Smith, Rae, Greer & Cartwright. My Lords, this was an unusual and remarkable firm. One side of the office under the supervision of Goldwin Larratt Smith looked after the affairs of the Bank of Montreal and the wills and trusts of the descendants of the Family Compact, whereas the other side of the office had a most extensive, and somewhat rough and tumble, criminal practice when Colonel R.H. Greer was the leading criminal lawyer of his day in Ontario. Therefore, as a young junior, the Chief Justice was subjected not only to commercial and estate work, but also to the preparation of criminal defences for Colonel Greer.

His Lordship developed very quickly as a counsel, and the Ontario Reports up to 1949 are studded with his appearances. One day he would


be arguing a complicated commercial matter for one side of the office, and the next day you might find him arguing a criminal appeal for Colonel Greer who, although a great jury lawyer, was not particularly at home in the appellate courts.

Throughout his work as a counsel in Ontario his Lordship displayed the characteristics we all know - a natural courtesy and kindness to all, a thorough preparation of his case, and the presentation of an argument in quiet, lucid, and scholarly language.

His Lordship was elected a Bencher of the Law Society of Upper Canada in 1946. As an indication of the respect and popularity which he enjoyed, he headed the polls on the sole occasion he ran for the office of Bencher.

However, my Lords, it was during the last twenty-one years as a Judge and Chief Justice of this Court that his Lordship reached the full maturity of his beneficial influence. He has displayed, as we know, all the attributes of a great judge. He retained his characteristic

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courtesy and thoughtfulness, and he brought to his task on the Bench courage, imagination, and a profound knowledge of the law. His judgments have been written in the easy and persuasive prose so characteristic of him, and he has made a profound contribution to the development of our law in a changing social era. Probably above all else, the basic theme that has run through all his judicial thinking is the deep conviction that among the competing social interests which a judge must weigh the most important to be protected is the dignity, honour, and basic liberties of the individual man or woman.

My Lord, we shall miss you very much on the Court, but I should tell you that you are welcome back to the Law Society of Upper Canada. Although there are now some restrictions upon your practising as a barrister, you can always come back as a solicitor. You will be particularly welcome in the confines of Osgoode Hall and, in recognition of your great contribution to our profession, the Law Society of Upper Canada with

pride proposes at the Convocation in April to make you an Honorary Bencher of the Society. When this is done I think you will be the first person to have been a Bencher by election, and a Bencher *honoris causa*.

My Lord, on behalf of the Ontario Bar, I extend to you and Mrs Cartwright our best wishes, and the hope that you both will have many years of happiness and good health ahead.



Remarques de Maître Claude Gagnon, c.r.,
Bâtonnier de la province de Québec

Qu'il plaise à cette Cour, - Monsieur
le Juge en chef du Canada, l'honneur de représenter
le Barreau du Québec en cette mémorable occasion
n'a d'égal que le plaisir personnel qui m'est
donné de vous offrir nos remerciements et nos
voeux.

Le rôle éminent que vous avez joué à
la tête du plus haut tribunal de notre pays ne
nous a pas fait oublier votre carrière
exceptionnelle au Barreau. Nous sommes tous
débiteurs de notre province soeur d'Ontario
qui vous avait trop longtemps accaparé, de vous
avoir prêté à toute la nation. Nous avons pu,
de cette façon, bénéficier de vos connaissances
juridiques et de votre sens profond de la justice,
comme aussi en maintes occasions, de votre
patience et de votre compréhension. Tous ceux
qui ont comparu devant vous se rappelleront la

grande courtoisie avec laquelle vous les avez toujours reçus.

The role of the judge is not an easy one and it has been in recent years the object of much criticism. The public does not always realize that the Courts are the servants of the law. As Benjamin Cardozo puts it, they have only the right to legislate within the gaps. They are more often blamed for the law as it exists, than for the way in which they fill the gaps. The judge cannot fight back and must weather the storm.

There is surely one thing of which we should all be proud and this is the high standard of competence and fairness set by this Court. It has no voice in the controversies to which it is exposed with its mother, the Constitution, and it must do its duty in good conscience. That it has done fully under your able leadership.

You have served the law well, Mr Chief Justice, and we are here the privileged spokesmen

of a grateful nation. We wish you many pleasant and fruitful years and, since the statute denies to the country your services in your present office, the Bar of Quebec, for one, is ready to welcome you as one of its members and I can assure you that we have no restrictions as to practice in the Province of Quebec. I know you will remember kindly those of us who must continue our work in the courts and who must uphold the tradition of public service of the Bench and Bar. As we think of your precious contribution to the administration of justice and of the many tasks ahead, we cannot do better but to borrow King Harry's words:

"And since this business so fair is done
let us not leave till all our own is won."

Je vous apporte, Monsieur le Juge en chef, le témoignage le plus chaleureux d'estime, d'amitié et de gratitude du Barreau du Québec.



Remarks of Mr Joseph Sedgwick, Q.C.

My Lord the Chief Justice,

My Lords,

Unlike those learned gentlemen who have preceded me on this occasion, I represent no one but myself. I do not even have a client, and your Lordship is familiar with the old saying about the man who is his own lawyer. However, I do want to add the word of an old friend to the encomiums that have already so eloquently been expressed.

My Lord, one cannot describe as sad the ending of so illustrious a career, although all endings are tinged with memories, and memories bring sadness. My memories of this tribunal, over which your Lordship presides today for the last time, go back, as do yours, to the days when it was a seven-man court, presided over by Chief Justice Anglin, and sitting in the dowdy old

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edifice which was originally the stables of the Parliament Buildings - and it smelled like it at times. How different from this splendid chamber where at last the Court has found quarters fitting its dignity and prestige.

And memory recalls also that day, now more than twenty-five years past, when you and your brother Fauteux were sworn in as Judges of the newly constituted nine-judge court which became, with the abolition of appeals to the Privy Council, for the first time in name and in fact the Supreme Court of Canada.

Fixed as this tribunal is with so great a responsibility because it is the final one, you, sir, have made, as puisne Judge and as Chief Justice, a most notable contribution to our jurisprudence, and, if I may say so with the greatest respect, to the good manners of both Bench and Bar. You have been learned, kindly, and, above all, patient. Regardless of the result, it has always been a pleasure to appear before your Lordship, and no words of mine can do justice

to the esteem in which you are held by your brethren of the law.

In thinking of you, sir, I recall two school mottos. The first is of Winchester School, William of Wykeham's foundation, and his precept, "Manners Maketh Man". You, sir, have exhibited always those good manners which have made you the man you are. And then, and closer to home, the motto of your old school, Upper Canada College, borrowed, I believe, from Lord Nelson's arms, "*Palmas qui meruit ferat*". My Lord, you have brought honour to that old school, and, like that greatest of sailors, you bear the palm that your merit has earned.

Tomorrow is the vernal equinox, according to the calendar - the first day of Spring. I think it a happy omen that your Lordship should be sitting here for the last time just as winter ends, and "light leaved Spring comes on", with its promise and hope. May there be for you, my old friend, a long and happy Springtime of the heart in which to enjoy that of which you had so

little - leisure - and that of which you have had so much - the company of those minds which have shaped and adorned our literature and our lives.

May I end, my Lord, with words that I shall not again address to you, the customary closing phrase: Those are my submissions.



Remarks of Mr W.G. Burke-Robertson, Q.C.,
on behalf of the western provinces

My Lord the Chief Justice,

My Lords,

I have been given the signal honour of appearing before the Court today on behalf of the members of the Bars of the provinces of western Canada.

Like other counsel who have addressed the Court, I welcome the opportunity of expressing sentiments of admiration and gratitude which members of the Bar, through lack of appropriate opportunity under ordinary circumstances, may not previously have made known to your Lordship.

For over twenty years, as has been said, your Lordship's judgments have commanded the regard and respect of all members of the Bar, and will remain as a monument for all time in the jurisprudence of Canada. But we are conscious this morning not so much of the intellectual

attainments of a great judge, as we are of the qualities of mind and heart which bind us to your Lordship in admiration and, if I may say so, in affection. I shall mention only a few of these qualities, which have been so apparent in this courtroom for over two decades, and which have been an inspiration and an example to us all.

Firstly, the modesty, sympathy, and humility which characterize your Lordship's approach to the law.

Secondly, a very evident and anxious concern that those convicted of crime shall have suffered no curtailment of their rights before the law.

Finally, the courtesy, encouragement, and understanding which your Lordship has shown to counsel, and particularly to younger members of the Bar when appearing in this Court for the first time. I know this to be the feeling of the younger lawyers from British Columbia especially, because they have told me so on many occasions.

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These then, my Lord the Chief Justice, in very brief form are some of the reasons why we are so happy today to celebrate your achievements and distinctions as Chief Justice of Canada, and to assure your Lordship that our warmest good wishes go with you as you lay aside the duties of the high office which you have so nobly performed.



Response of the Right Honourable John Robert
Cartwright, Privy Councillor, Chief Justice
of Canada

My brother Fauteux,

My colleagues on the Bench,

Honourable Mr Minister and other members of
the Bar who have spoken,

Ladies and gentlemen:

It would be idle for me to pretend that I am not deeply moved by the kind words that have been addressed to me, and at seeing so many friends of the Bench and of the Bar assembled here to wish me well. I wish that I could feel that I deserved all this.

It is hard for me to find words to express my gratitude to my brothers of the Court, not only those who are here today but also their predecessors during the period of just over twenty years since my twin brother Fauteux and I were sworn together as members of the Court. Throughout that time I can bear witness that every member of

this court has pulled his weight in the boat. There have often been vigorous differences of opinion among us, but never a lack of cooperation, and never an unwillingness to discuss and reconsider. I have found it good to be a member of such a company.

May I say how deeply I appreciate the work of all those members of the Bar who have appeared before us. The work of the Court could not be done without the aid of a dedicated, fearless, and independent Bar. Bench and Bar alike are all engaged in the great work of administering justice according to law, and we must ever bear in mind that each one of us is bound to the performance of that task to the best of our skill and knowledge by the terms, not of a contract, but of a vow. I have striven not to forget this.

I can say without exaggeration that I have loved the work of the Court, and I face retirement without dismay, sustained and encouraged by the expressions of confidence and goodwill

which I have heard this morning. With a full heart I thank all of you who have spoken so generously.

Judges come and go, but the Court remains. I leave the work of the Court with perfect confidence in the hands of my colleagues.

Ce que j'ai dit en anglais, je voudrais le répéter en français, mais il n'est pas nécessaire que j'emploie de nouveau, dans cette Cour bilingue, les paroles que je viens de prononcer dans l'autre langue.

Messieurs, je vous remercie sincèrement.

The Court will now adjourn *sine die*.



RT. HON. JOHN R. CARTWRIGHT

AN ADDRESS TO THE

ONTARIO COUNTY COURT JUDGES' ASSN

TORONTO, APRIL 9, 1970

Chief Judge and Mrs. Bennett,
Your Honour the Lieutenant-Governor,
Honourable Mr. Minister,
My Lords,
Your Honours,
Ladies and Gentlemen:-

May I first thank you on behalf of my wife and myself for inviting us to this delightful dinner and for the great honour done us.

I speak this evening with diffidence for in the period of almost thirty years that I have spent at the Bar I have never appeared before so many judges and it is unlikely that I will ever do so again.

Then, too, I am in a state of transition -- no longer a member of the court, because by the combined effect of the calendar, The Supreme Court Act and The Interpretation Act, I ceased to hold office at the last moment of March 22nd, the eve of my birthday and, on the other hand, still under obligation to take part in giving judgment in a dozen appeals in which I presided, it seems that I am not yet freed from the restraints which inhibit a judge from expressing publicly his opinion on controversial subjects, except in the course of delivering a judgment.

When I was appointed to the Bench, among the many good wishes I received was one from John Aylesworth -- "May you find it as blessed to catch as you did to pitch". I can no longer catch and a wise rule of the Law Society prevents the possibility of my resuming the role of pitcher. something which, quite apart from the rule, I would not think of doing. Perhaps I could find a place in the out-field. But I shall abandon the vocabulary of the baseball diamond. It was Lord Mansfield who said: "Nothing is so apt to mislead in the law as is a metaphor".

There is, however, nothing in my anomalous position of the moment to prevent me saying a few words about the judicial office. The difficulty in so doing is to find anything new to say. It is some thousands of years since King Solomon said, "There is nothing new under the sun", and more recently my colleague Wilfred Judson, who is not enthusiastic about making speeches, put it this way: "Not only is there nothing new to say: there isn't even a new way of saying the old things".

But perhaps there is no harm in reminding ourselves of some old truths. All of our professional activities are governed by the oaths which we have taken -- first on our call to the Bar, later on our appointment to the Bench. These bind us to high standards but in all of them an allowance is made for human frailty. We vow to perform the duties which we have undertaken not infallibly but "to the best of our skill and knowledge" or "to the best of our knowledge and ability". The words of the oaths which we have taken are not identical but there is no difference in meaning. We are pledged to do our best; and from this it results that we are bound to no easy task.

It was not of over-worked judges but of the four great archangels that Kipling wrote the lines:-

".....but, laboring, saw

Each in his fellows' countenance confessed,

The doubt that sickens: 'Have I done my best?'"

and so it is that, while in every walk of life failure to strive to the uttermost may be attended by consequences more or less unpleasant, if we so fail we are foresworn.

This is a sobering thought but it is balanced by the knowledge that if we have indeed done our best we have no need to reproach ourselves for failure, or to make ourselves a prey to worry or remorse, should it later appear that we have erred, however grievously and with consequences however grave.

I do not know any passage in English literature in which this thought is better expressed than in "The Ring and the Book" by Robert Browning. You will remember that that great poem is the story of a murder told from several points of view including those of the murderer, Count Guido Franchisini, and of the victim Pompilia, his wife. G.K. Chesterton describes it in his essay on Browning as "The Epic of Free Speech". The passages to which I refer are in the part of the poem entitled "The Pope". Guido condemned to death by the temporal courts makes a final appeal to the Holy Father to which he is entitled by reason of having in his youth taken a first step towards Holy Orders. It is the year 1698. Innocent XII is past eighty years of age. He faces squarely the awful responsibility of his task. He seeks no comfort in "the easy speeches that comfort cruel men".

This is his approach:-

"Once more appeal is made
From man's assize to mine: I sit and see
Another poor weak trembling human wretch
Pushed by his fellows, who pretend the right,
Up to the gulf which, where I gaze, begins
From this world to the next, gives way and way.
Just on the edge over the awful dark:

With nothing to arrest him but my feet,
He catches at me with convulsive face,

Cries 'Leave to live the natural minute more!'"

Throughout the long day the Pope studies the record. He reaches the decision that he must send Guido to his death, well knowing that popular clamour asks for his release. How then does he face the possibility that his judgment may be faulty? Thus:-

".....Some surmise,

Perchance, that since man's wit is fallible,

Mine may fail here? Suppose it so, - what then?

Say, - Guido, I count guilty, there's no babe

So guiltless, for I misconceive the man!

What's in the chance should move me from my mind?"

and then after giving an illustration he continues:-

"So and not otherwise, in after-time,

If some acuter wit, fresh probing, sound

This multifarious mass of words and deeds

Deeper, and reach through guilt to innocence,

I shall face Guido's ghost nor blench a jot.

'God who sent me to judge thee, meted out

So much of judging faculty, no more:

Ask Him if I was slack in use thereof!'"

Earl Loreburn in his speech in Scott v. Scott, having dealt with a point which was sufficient to dispose of the appeal, said:- "Here I would prefer to take leave of this litigation altogether, for the function of a court is simply to do justice between the parties who come before it". That then is our primary task. In the course of performing it it is permissible and sometimes desirable to endeavour

to settle an important point of law, although not strictly necessary to the decision of the case; one is free to attempt the arts and graces of literary expression: but such matters are of minor importance. The supreme task is to do justice according to law.

What then are some of the difficulties that beset the path of a judge in seeking to perform that task?

There is the temptation to make up one's mind too soon and unconsciously to resist the argument which seeks to change it.

There is the temptation to be disinclined to retract an opinion which one has expressed, perhaps too hastily.

There is the danger of letting one's thinking be coloured by subconscious predilections. There used to be a story that a distinguished member of the Ontario Bar had a copy of the circuit guide annotated in a cipher which conveyed such useful information as:- which judges were most likely and which least likely to strike out a jury notice; which were "high damage" and which "low damage" judges; which, in a case involving the custody of infants, were the "mother judges" and which the "father judges" and so on. I have sometimes thought it a profitable self-discipline to speculate (in order to their removal) as to what ciphers would appear after one's own name if honoured by a place in that mythical guide.

Now that professors are putting the judges through computers we may all hope before long to have our subconscious tendencies made plain to us. My own analysis in part:- pro-defence in criminal cases; pro-taxpayer in

revenue cases; pro-the-injured in accident cases; pro-federal-power in constitutional cases. It is not for me to say if I am pro-computer.

There is the danger of becoming accustomed to the business of administering justice, and so forgetting the terrible importance to the parties of almost every lawsuit. It was in a civil case that Lord Colonsay's observation, that the case was of considerable importance to the litigants, was interrupted by Miss Shedden's cry "As one of life and death, my Lord". This danger is pointed out by G.K. Chesterton in his essay "The Twelve Men" written after he had served on a jury. If you are not already familiar with it, it is to be found in "Tremendous Trifles" and I recommend it especially to anyone who is assailed by doubts of the value of the jury system. He says:-

"Now, it is a terrible business to mark a man out for the vengeance of men. But it is a thing to which a man can grow accustomed, as he can to other terrible things; he can even grow accustomed to the sun. And the horrible thing about all legal officials, even the best, about all judges, magistrates, barristers, detectives, and policemen, is not that they are wicked (some of them are good), not that they are stupid (several of them are quite intelligent) it is simply that they have got used to it.

Strictly they do not see the prisoner in the dock: all they see is the usual man in the usual place. They do not see the awful court of judgment: they only see their own workshop. Therefore, the instinct of Christian civilization has most wisely

declared that into their judgments there shall upon every occasion be infused fresh blood and fresh thoughts from the streets."

There is the temptation to speak too often and too soon - to forget the words of Sir Francis Bacon:- "An over-speaking judge is no well-tuned cymbal and it is no grace to the Court to find out for itself what it would have learned from the Bar if it had waited".

There is the temptation to be influenced by one's personal knowledge, or supposed knowledge, of matters not proved in the case at bar and not of the sort of which, according to more or less well settled rules, the Court may take judicial notice.

May I stress the need of care not to say, either during the hearing or in a judgment, anything hurtful to counsel, a party or a witness unless it is not only just but also strictly necessary to do so. An unwarranted criticism or aspersion may do counsel incalculable harm. Remember how difficult it is for counsel or party to reply to such a criticism.

I am speaking today to members of the Bench, the great majority of whom are trial judges. It has always seemed to me that while the tasks of the appellate courts are, no doubt, of very great importance, those of the trial courts are of supreme importance.

I have not examined the statistics but only a very small percentage of decisions made at trial are taken to appeal and, speaking generally, findings of fact if there is evidence to support them are not altered. It is at the trial that in most cases, the liberties and fortunes of the litigants are finally disposed of.

In recent months, an added power with its corresponding responsibilities has been conferred on all judges in this country. You are all familiar with the recent decision of the Supreme Court of Canada, dealing with the Bill of Rights -- The Queen v. Joseph Drybones. As Time Magazine remarked:- "When Joseph Drybones passed out in the lounge of the Old Stope Hotel in Yellowknife he did not realize that he was passing into history".

As a result of his escapade and the decision which followed it, the courts must refuse to apply any law of Canada that infringes any of the freedoms declared in the Bill of Rights. To decide whether it does so in a particular case will be the responsibility of the trial judge. The dissenting view that the Bill merely prescribes a rule of construction has been decisively rejected.

There has never been a time when it was other than important that the judgments of our courts should be firm and prompt and that justice should not only be done but should plainly be seen to be done; but this is especially so today when there seem to be many who would supplant the rule of law by that of violence and would take by force that which they want although they have no lawful right to it.

Once more we hear the word

That sickened earth of old:-

"No law except the Sword

Unsheathed and uncontrolled".

In conclusion, may I thank you all for your patience and attention? Before sitting down it will perhaps not be out of place for me, who am quitting the judicial sphere with its unending war against anarchy, lawlessness and injustice, to seek in the past for some words of exhortation to you who are still in the thick of

the fight. Some four hundred years ago, Queen Elizabeth the first, speaking to the judges of that day and thinking of the case of the poor man at odds with the tyranny of the world, said:-

"Have a care over my people. You have my people - do you that which I ought to do. They are my people. Every man oppreseth them and spoileth them without mercy: they cannot revenge their quarrel nor help themselves. See unto them, see unto them for they are my charge. I charge you, even as God has charged me".

More recently Kipling had this to say:-

"Go to your work and be strong, halting not in your ways,
Baulking the end half-won for an instant dole of praise.
Stand to your work and be wise - certain of sword and pen,
Who are neither children nor Gods, but men in a world of men!".

A D D R E S S

delivered by J. R. Cartwright at the
Twentieth Annual Brotherhood Award
Dinner of the Beth Sholom Brotherhood
at the Beth Sholom Synagogue in Toronto,
on May 6, 1970.

May 6, 1970

Rabbi Monson, Mr. President, Mr. Chairman, Ladies and Gentlemen.

May I first thank you for inviting my wife and myself to this delightful reception and dinner and tell you how very sorry I am that my wife is not with me - a touch of flu having prevented her coming? She sends her deep regrets and her thanks and best wishes.

Then may I say how deeply I appreciate the great honour done to me to-night? In the days preceding and following my retirement, my friends have been very kind to me. Indeed I have been somewhat overwhelmed; but nothing that has been done for me has a greater value than the award which you have conferred on me this evening. My pleasure in receiving it is heightened by the knowledge of those to whom it has been given in the past. I have indeed become a member of a goodly fellowship and I thank you with all my heart. I thank those who have spoken so kindly and so generously. I only wish I deserved all that has been said.

I am sure you will be glad to hear that I have been told that a long speech is not expected of me this evening. I was told too that the choice of subject was left to me. It happens that in the last few weeks I have made too many speeches and I have had occasion to point out that because there still remain a few judgments to be

delivered in appeals in which I presided I am not yet freed from the restraints which inhibit a judge from expressing publicly his opinion on subjects which may be politically controversial, except, that is, in the course of delivering a judgment.

I propose to offer a few remarks on the present state of our world and what, if anything, we can do about it. No one, I think, will deny that "the times are out of joint." It may well be that times have often in the past been very much worse than they are now but never have we had all the bad news in the world thrust upon us so frequently and so clamorously - the morning and evening papers, the radio and the television throughout the day and evening, tell us of every disaster and trouble not only in our own country - which happily is, I think, the best place in the world in which to live - but throughout the world. It is difficult not to become depressed.

In his recent book "Time and Timeliness", Henri Marrou, the French theologian and historian, points out the perils which surround us. He does not minimize them. He says in part: "Keeping the peace, when at all possible, amounts to no more than maintaining a balance of terror with the threat of atomic destruction always hanging over us." He recalls how in the past, civilization

has seemed to collapse, as when the Visigoths sacked Rome, and says:

"There is a deeply felt need, all around us, to understand more about this mysterious process that bears us along so irresistibly. And this is also why there are so many diverse and often contradictory replies being formulated in the ideological Tower of Babel which is to-day's world."

How apt a phrase "the ideological Tower of Babel"! How difficult a task "to set things right"! There is no need to lengthen the list of problems - the pollution of air and water - the growing abuse of drugs - the desire of many to supplant the rule of law by that of violence.

When I said I wanted to say a few words about what, if anything, can be done about it, I did not mean that I have any answer. I have only a suggestion, which is developed in Dorothy Sayers' Essay "Begin Here", written during the Second World War; that suggestion is that it is the duty of each individual one of us to think out what can be done about these problems, to think out for ourselves what kind of society we want and to do everything, little though it may be, which each one of us can do to bring about solutions. She ends her essay

with these words:

"The task is urgent; we must not push it into the future; we must not leave it to others: we must do it ourselves and we must begin now and here."

I hope that what I have been saying does not sound gloomy. I am full of hope. A few weeks ago I had the honour of acting as Chairman of the Banquet in Ottawa held for brotherhood week by "the Council of Christians and Jews". There, and again here this evening, I felt how much is being done to foster that spirit of brotherhood which is one of the main hopes of the world, and I experienced that feeling of encouragement and strength which comes from being with those who believe that life has real meaning and purpose and that we are all in the hands of a just, reasonable, all-powerful and all-loving God.

It may be that it is part of the divine purpose that life in this world shall be a struggle. It is no secret that I am a devotee of G. K. Chesterton. At the end of his essay on "The Song of Roland" he has this to say of the ending of that great poem:-

"That high note of the forlorn hope, of a host at bay and a battle against odds without end is the note on which the great French epic ends. I know nothing more moving in poetry than that strange and unexpected end; that splendidly inconclusive conclusion. Charlemagne, the great Christian Emperor, has at last established his empire in quiet, has done justice almost in the manner of a day of judgment, and sleeps as it were upon his throne with a peace almost like that of Paradise. And there appears to him the angel of God crying aloud that his arms are needed in a new and distant land, and that he must take up again the endless march of his days . . .

The poem ends, as it were, with a vision and vista of wars against the barbarians; and the vision is true. For that war is never ended which defends the sanity of the world against all the stark anarchies and rending negations which rage against it forever. That war is never finished in this world."

If it be thought out of place that I should talk of perpetual struggle on so happy an occasion

may I remind you that the author from whom I have just quoted said of Robert Louis Stevenson:

"It was his whole business to preach that we can only have peace in this world if we accept it as a world of war."

How good it is to be surrounded by so many friends! I shall not attempt to name them individually, the list would be too long, but because he fills the vacancy on the Supreme Court of Canada left by my retirement, may I say how delighted all the members of the Court were when the Honourable Bora Laskin was appointed. I will not embarrass him by recounting the good things I have heard said of him except for one remark, with which I concur: "He will carry on in the best tradition of Ivan Cleveland Rand."

Thank you all for your patience and attention and once more for the high honour you have conferred upon me.

A CITATION
for
THE HONOURABLE JOHN ROBERT CARTWRIGHT

On the occasion of the Conferment
Upon him of the Degree of
Doctor of Civil Law (Honoris Causa)
On Saturday, June 30, 1970
At Bishop's University, Lennoxville, Quebec

Mr. Chancellor:

It is my great pleasure to present to you:

An infant born in Toronto the year that the German Kaiser
congratulated President Kruger of the Transvaal on his defeat of
Jameson's Raiders,

A young boy playing, growing and learning while the
Wright brothers experimented at Kitty Hawk,

A young man pursuing his studies at Upper Canada College
while the Manchu Emperor, Pu-yi, abdicated and the Kuomingtang
party emerged in China,

A twice wounded machine gunner with the Third Canadian
Infantry Battalion who was awarded the Military Cross for bravery,

A captain with the Third Canadian Division on the Western
Front while the Russian Revolution broke out far to the East,

A graduate of Osgoode Hall called to the Bar of Ontario
with Honours and the Silver Medal two years before Mussolini came
to power in Rome,

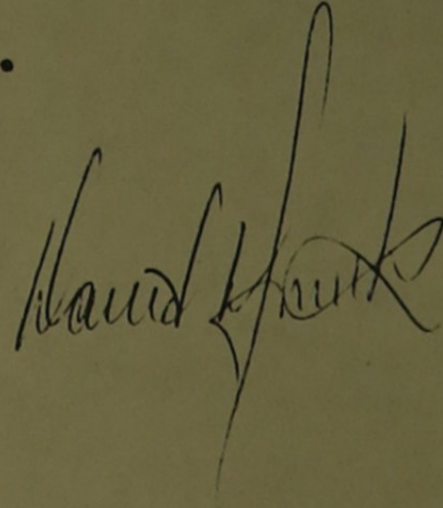
A lawyer with the firm which became Smith, Rae, Greer and Cartwright who was created a King's Counsel in the year that Hitler became Chancellor, a year before Stalin became a member of the Presidium,

An eminent lawyer made a Bencher of the Law Society of Upper Canada in the year that the Charter of the United Nations was formulated,

A Justice of the Supreme Court of Canada who joined that court in the year that the People's Republic of China emerged,

A retired Chief Justice of the Supreme Court of Canada, honoured by the University of Toronto, Queen's University and Osgoode Hall for a career devoted to the preservation and evolution of rational processes for resolving conflicts during a period too much characterized by irrationality and violence,

All these persons I present to you as one man, whom we admit with considerable pride to the company of our graduates because of the distinction he thereby confers on them, and us; the Honourable John Robert Cartwright.

A handwritten signature in dark ink, appearing to read "David Frank". The signature is fluid and cursive, with a large, sweeping initial "D" and a long, trailing flourish at the end.