

The Necessity of Law.

by

Frank A. Roman

The Necessity of Law.

The term law is not well chosen, because of its broad meaning, serving as it does alike the theologian, the physicist, the chemist, the economist or other natural philosopher as well as the compiler and interpreter of the rules of society. It is from the stand point of this latter class we shall consider the term in this thesis. Blackstone, whose opinion is quite universally accepted, refers to the law as the science which "distinguishes the criterion of right and wrong; which teaches to establish the one, prevent, punish, or redress the other; which employs in its theory the noblest faculties of the soul, and exerts in its practice the cardinal virtues of the heart; a science which is universal in extent, accommodated to each individual, yet comprehending the whole community; a science in which the greatest powers of understanding are applied to the largest number of facts; a science to which all mankind resort in their hours of trouble; which is the asylum of innocence accused, of confidence betrayed, of promises broken, of property invaded, of reputation slandered, of liberty assailed, or domestic relations violated, and of life its self endangered." Such is its wide reaching in-

fluence and power that its adherents command the public sway. The decrees and decisions of our judges are bound to be carried into execution, for they are supported by the whole state. They constitute the public force.

A knowledge of the general principles of the law is as essential to the requirements of a good and intelligent citizen as are the principles of the very profession by which he earns his livelihood. In order that he may cope with his adversary on a reform or political discussion without embarrassment or disadvantage as to the sensible trend of its legal or economic importance. Valuable discussions, and the mutual exchange of well grounded ideas would be the results, taking the place of the too often unadvantageous and disgraceful harangues which now pervade, in many instances, our great issues of state. Also that he may know when his legal rights which our constitution guarantees to him, have been assailed; that he may know the proper tribunal to which he should resort for a redress of his grievances, and the time at which he must have his cause presented; or that he may advise his neighbours on the proper course to pursue without violating the rules

of action. Not less important is this knowledge if he would be able to appear before judicial tribunals. If his friend or neighbour must go to trial he is bound to resort to the legal profession and acquaint himself with its principles and the sequence of its logical reasonings. No other science can offer a more pleasant, interesting, and intellectual pursuit. Aside from the benefit derived from correct thinking, sound reasoning, and in general of being a valuable counsellor which is peculiar to the legal fraternity, there is another benefit to be greatly desired by all classes and particularly by the laboring and trading classes. This is the proper understanding of the various sorts of commercial paper. Statistics show that ninety per cent of our business is carried on by means of what is termed commercial paper; i.e. notes, drafts, checks, and contracts in general. Those papers are so familiar to every one that they are accepted without hesitation. Contracts are entered into without the slightest knowledge of their legal import. It is not a rare thing to hear of a man having been swindled out of hundreds and even thousands of dollars by simply signing a written instrument which he did

not understand. Nearly every one thinks the indorsement of a promissory negotiable note is a very simple matter. They are master of the situation from "experience". True it is a simple matter, yet few people are able to make a selection from two indorsements which I will give as an illustration.

It might be well however to state that it is a well known principle of law that a note in the hands of an innocent third person who is a bona fide purchaser for value, is valid at law regardless of the consideration which moved from the original holder to the maker. (Metcalf on Contracts pp. 189.)

Yet in Kansas law the nature of the indorsement may make a vast difference. If on one of two notes, the payee B indorsed it thus

"Assigned without ~~out~~ recourse" "B"

and on a second note which is *a fac simile* of the one just indorsed, B indorses it thus

"Without recourse" "B".

The average citizen C will in all probability have ~~no~~ preference as to which form of indorsement to elect. The Supreme Court in the case of Hatch vs. Barnett et al. (pp 223 - 34 K.) held that the latter indorsement

cuts off all equity of the maker and he is barred from setting up any defence as to the manner in which the instrument was executed. In the former case where the payee used the word "assigned" the court held that the maker was not barred from setting up a defence just the same as tho the note had not been transferred into the hands of an innocent third person who was a bona fide purchaser for value.

Our public needs are so many and their supply is so generous that our society relations have necessarily become very complex. Each succeeding year with its new inventions, its extended discoveries, and modern ethical thought adds more and more to this complexity. So long has the process been going on that the average individual scarcely knows just what his sphere in life includes, or more at issue, perhaps, what it should exclude. A familiar illustration of one phase of this fact may be found in the short history of the bicycle. That the wheels had no right on the sidewalk or college foot paths was not at first generally known. No, not even to our professors, at that time, until a case was taken into

legal advisement. Thereby the whole country has become enlightened upon this subject. The relations which one man or woman holds to another and to the public, or of the public to the individual, are conditions which confront us every day. That so few people understand these relations is not because of a scarcity of legal literature, but rather because of its abundance.

Our nation has its positive laws and each state its municipal laws. These laws enacted by the chosen representatives of the people are technically termed statutes. They declare rights, provide for the enforcement of duties, and the prohibition of various acts. In early times there was little or no statute law. Gradually men began to keep a record of punishable acts or torts. Along with this record was interspersed the steps taken by the court which were applied as a remedy for the evil. Able writers have from time to time written out long discussions and explanations of these principles of law. These treatises as they are called served as a guide to the court in future cases. Thus the court and the lawyers are busy applying the same principles to

7
each new case as it arises. The higher tribunals as the Supreme Court and the appellate courts, make a report of these cases. We have reports of cases decided by hundreds of tribunals for the past six hundred years, aggregating several thousand volumes and increasing annually by the tens of scores. They are necessarily voluminous because the principles of law can only be applied as the story of the dramatic performance which gave rise to the cause is related in detail. Thus the law is embodied in reports, treatises, and statutes.

If some legal advisor could convert his head into some sort of a legal machine with which he could separate the law from the dramatic elements with which it is shrouded, his efforts would be heralded the world over.

But before this is accomplished, we should not become frightened at the voluminous appearance of the law. The criteria for rights and wrongs differ widely from generation to generation. The physiologist tells us our bodies are completely torn down and rebuilt in a certain period of years. So with a generation of Supreme Court reports; the whole law

may be restated in accordance with the thought of the time. All that which has gone before forms a history of the profession, a history of the moral development of the race.

Consider if you please the magnitude of the law. It is far in advance of every other profession, not only in its historic antiquity and interest but also in its paramount past, present, and future usefulness. This is more marked, perhaps, to day than at any former time. The drawing of new treaties with foreign countries, the difficult task of interpreting our international laws, and the final rendition of a true verdict which enables our government to act with promptitude, with cautiousness, and with positiveness — much depends upon the barristers. Only thru their patient industry, conscientious fidelity, and untiring efforts have the affairs of state and nation been so wholesomely promoted.