The Necessity of Law.

by

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The term law is not well chosen, because of its broad meaning, serving as it does alike the theologian, the physician, the chemist, the economist or other natural philosophers, as well as the compiler and interpreter of the rules of society. It is from the standpoint 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, employed in its theory, the noblest faculties of the soul; and excels 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 accursed, of confidence betrayed, of promises broken, of property invaded, of reputation slandered, of liberty secured, or domestic relations violated, and of life itself 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 unwarrantable and disgraceful outrages 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 neighbors 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 neighbor 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 from 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. Statistical 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. These papers are so familiar to everyone 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 everyone thinks the indorsement of a promissory
negotiable note is a very simple matter. They are master of the situation from "ex pericane.
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. (Metcalfe 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 indorses it thus: "Assigned without recourse" "B"

and on a second note which is after similar to 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. Barrett et al. (pp 323-324 R.) 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 include. 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 side walk 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. Hereby the whole country has become enlightened upon this subject. The relations which once 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
each new case as it arises. The higher
tribunals as the Supreme Court and the appellate
courts, make a report of these case. 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 causes is related in detail. Thus
the law is embodied in reports, treaties, and
statutes.

If some legal adviser 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 ap-
pearance of the law. The criteria for right
and wrong do 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 caution, 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.