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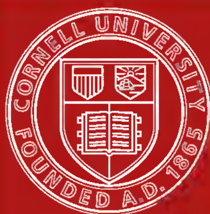

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EVERY-DAY ETHICS

ADDRESSES DELIVERED IN THE PAGE LECTURE SERIES, 1909, BEFORE THE SENIOR CLASS OF THE SHEFFIELD SCIENTIFIC SCHOOL, YALE UNIVERSITY

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JOURNALISM

BY NORMAN HAPGOOD

MEN have very different ways of approaching ethical questions. There is an absolute type of mind which fixes a standard of exactly what it thinks ought to be, and judges severely, according to that standard. Then there is the more relative or historical approach, which judges a thing good or bad, according as it surpasses or falls below what has gone before, or what is the general level of the time. In discussing the ethics of journalism, should we look upon a newspaper as fulfilling its duty if it is as accurate and conscientious as an individual whom we should deem a good man? Or should we say, "The public looks to the newspaper for the truth — for the trustworthy facts. If it does not give the facts it fails in its duty. It fails in its obligation. It deceives the people. It is untrue to a trust." If any of you hears a statement from one of your friends, or from a man in the street, or from me, or from a professor, you accept it with reservation. You know that we may be biassed, or inspired by malign motives, or carelessly repeating hearsay. The man who believes everything he is told is fit for nothing except food for

the classes that prey. My own opinion is that, in judging newspapers, we should bear in mind both of these standards. If a newspaper is at least more accurate than you or I, we should give it credit for that accuracy. If it is more unbiassed, more likely to give the facts on a side in a controversy, while supporting the other side itself, we should recognize this fairness, in so far as it makes for progress. Whatever we may find in it to condemn, we should at the same time realize that, without the newspapers as they are to-day, Democratic government would be an impossibility. Such concessions need in no way interfere with our holding at the same time a stricter standard before the press. If I hear that John Smith, of 111 Harlem Avenue, has been arrested for drunkenness, and repeat it, and the actual fact is that it was another John Smith, of 113 Harlem Avenue, I am certainly less blameworthy for speaking without absolute knowledge than a newspaper would be. This is the kind of inaccuracy for which a newspaper is constantly forced to atone in money, although, usually, not in adequate publicity. There is a vaguer sort of inaccuracy — the unjust criticism, the inadequate quotation, the unfair implication which the newspapers are constantly making, and never rectifying. I come to you fresh from an experience which has too much in it that is typical. I happen to believe in direct nominations, and spoke a few days ago in favor of them at Albany. I had written nothing

ahead, except a few hundred words of outline, all the points in which were taken up in the speech, with many others, and the sound of the speech was made more emphatic by the answers which I gave to questions from the members of the legislature before whom the hearing was given. The New York *Sun* opposes direct nominations. Its idea of journalistic ethics was to print, on two separate occasions, the statement that I wrote a long and violent speech which I was afterward afraid to deliver. This slight incident is an example of what goes on with discouraging frequency. In some instances interviews are forged entire. Not all the distortion or suppression of views, however, is so flagrantly wrong in motive. There are cases, fairly numerous, where the papers suppress news from a genuine, although mistaken, view of duty. When yellow fever existed in the South, certain newspapers thought it helpful and patriotic to lie about it; and the same position was taken by various Pacific coast papers at the time of the bubonic plague. Papers in New York and elsewhere have frequently misrepresented industrial conditions in order to give prosperity a boost. The mistake of these newspapers is in looking upon themselves as the protectors of limited business interests, instead of as trustees for the whole people. It is a safe rule to trust the truth when the danger that threatens is merely a money loss. Of course there are certain things which are true which ought not to be

exploited, but they are of an entirely different class; they are the ugly, demoralizing facts of life — crime, and vice, and dissipation, which are popular, but popular through their appeal, not to anything good in man, but to his most wide-spread weaknesses. There is also a suppression of the truth which is sometimes brought about by the very concrete appeal of individual large advertisers. This suppression can be accomplished more often by the big department stores than by any other interest, because of the very large amount of space they use. Generally, it has been private facts they have suppressed; but frequently, some needed investigation — let us say into the welfare of shop girls, or some light on the way the tariff regulations are enforced.

In the same group of inaccurate statements come a large number of pieces of gossip, which may not perhaps be injurious to the individual mentioned, but are lamentable because they encourage in the public carelessness about accuracy. We will suppose that a President's daughter is reported, in large type, to be engaged one day, and the next day the story is denied. Newspapers, from the temptation to make their columns interesting, too often play up mere rumors, even when they realize the probable untruthfulness, with the same emphasis they would play up the fact if it were really ascertained. One respect in which the ethics of journalism badly need improvement is in recognizing the proper

line between privacy and publicity. Most of them, even of the better class, print much gossip that has nothing of the proper quality of news. The yellow papers, with their vaunted Democracy, dote upon details in the private life of the conspicuous and rich, and most of the sober papers regularly maintain society columns. Any newspaper which should undertake to ignore all these private matters would accept a great obstacle to large circulation. This position is taken by a few newspapers already, but they are not papers of much popularity, and the reform, while it is one to work for, will undoubtedly be slow in accomplishment. We can work for greater accuracy with more hope than we can at present work for elimination of the private and the frivolous. The yellow papers are the greater although by no means the only sinners in this field. In matters of higher importance we come to a place where there is a sharper parting of the ways between the conservative and the yellow press. At the time of the Spanish War, a conspicuous New York paper published a statement that the Seventh Regiment of New York had taken Havana. A friend of mine asked the editor how he was led to believe this had been done. "We had no reason," he said, "to believe Havana had been taken by the Seventh Regiment, but our principal rival [he named the paper] had been pounding the Seventh Regiment, and we thought it good policy to give it a little credit."

This editor, and the owner of his paper, proceed upon the principle that you may tell as many lies as you like in the news columns, and print such other degrading material as you choose, provided your editorial columns carefully tell the people they must be good. There are degrees, of course, in this principle of throwing the blame on the public, of refusing to be responsible for anything so long as it is what the people want. Now, the people want cocaine; selling it to them is a profitable business. Many States, however, imprison the individuals who, in this way, give the people what they want. The people want to go to gambling houses and other places of dissipation more than they are allowed to. They willingly support lotteries, but lotteries are forbidden. They like quack doctors, fraudulent medicines, get-rich-quick devices, and many another quackery, yet more and more these things are regulated. The newspapers have no more right to do everything that is popular than a business man has, or a politician, or a clergyman.

At the same time we must sincerely recognize that no paper can be entirely independent of its environment. When I was speaking at the University of Missouri this season, somebody in the audience asked me how many papers there were in which the editorial policy was entirely independent of the business policy, and I answered none — none, that is, if you emphasize the word "entirely."

For instance, I happen to be of the opinion that a large number of the breakfast foods so much advertised are inferior to good old-fashioned oatmeal, or cornmeal mush, in the nourishment to be had for a given amount of money, or a given amount of labor by the stomach. I should be unwilling, however, to write an editorial, picking out all breakfast foods of which I disapproved, and advising people not to use them. The little good that might be done would be more than offset by the tremendous loss to any paper which might carry the editorial, a loss which would probably be inflicted on it immediately by a class of very large advertisers. On the other hand, no amount of money would make a conscientious journalist print an advertisement recommending what was actually wrong. The line is drawn between fraud and actual, indisputable harmfulness on the one hand, and on the other hand, the mere question of whether the buyer is buying wisely. The standard, fortunately, is constantly being raised. Only this year a certain publication, for the first time in its history, and, I think, for the first time in the history of journalism, sent back to its advertisers, voluntarily, a large amount of money because its circulation last year had fallen below the statement which it had given out. Only a few years ago the same publication threw out patent medicine advertising, from a new realization of the harm that patent medicines were doing, and of the fact that they depended

almost entirely on the press for existence. Doubtless, almost every succeeding year will find some similar advance in the general standards of reputable papers. Those publications which lead, ethically, to-day will, I hope, seem undeveloped as we look back upon them ten years hence. It is by no means always easy, however, with the best intentions, to form a clear, intellectual conception of what ought and what ought not to be admitted. Let us take as illustration the results of a furtive but important industry. There exist in the United States a number of agencies for the dissemination of special ideas under the guise of news. These news bureaus can be employed by a water company, for instance, or a gas company, or an oil company, or a private individual, to send out material to newspapers all over the country, in which the special points desired by these employers are mixed up with real news, and thus taken by the reader as impartial statements of fact, instead of as the special pleading of interested persons. This is wrong, no doubt, but is the corporation or special interest to have no hearing before the public! In attacking this "tainted news," as it is called, it has been suggested that the proper method for seeking a hearing from the public is for the corporation to state its own case over its own name, using if necessary the advertising columns. When this advice is followed, difficulties arise for the newspaper. To what extent will it allow in its advertising columns statements

which it believes to be erroneous and misleading? It seems to me that a Democratic paper ought certainly to be willing to publish an advertisement by the Republican party, provided it is clearly marked advertising; or by the Socialist party; or the Prohibition party. Also if a newspaper objected to the granting of a certain privilege to a certain gas company, it ought to allow the arguments of the gas company to appear in its advertising columns. When you come to the case of an insurance company offering a kind of policy which a newspaper has attacked, you approach the line of difficulty; and, of course, the general rule against anything fraudulent or immoral will account for a large part of the exclusions. It will never be entirely easy, however, to settle a considerable number of the cases, because it will not be perfectly obvious where the line is drawn between the honest contention, which ought to be given a hearing, and a statement which is so misleading and unfounded that a newspaper ought not to publish it. One criticism of this duty of a newspaper to allow its opponents to buy space and state their views is, that it is presenting for money a position that it refuses to allow free in its news or correspondence. This objection, however, although plausible, is unsound. We are dealing with a wide-spread method of reaching public opinion, and we are asking corporate and other interests to spend their money for honest statements of their position, rather than

for statements disguised and put out without their names. It would certainly be impractical to expect newspapers to print every side of every question at their own expense. They would soon have space for nothing else. They often do print both sides of a question when they think both sides ought to be considered by their readers, or are strongly desired by their readers. When some person says "We don't agree with you; we think our side ought to have further hearing," it is fair enough to refer that person, especially if he is one with a business interest to sustain, to the advertising columns.

In this connection may be considered the tendency of periodicals toward guaranteeing the truthfulness of their advertising. Most of the guarantees thus far have been mere baits, not put forward in good faith; but there are genuine guarantees, and will be more. Such guarantees, however, do not of course mean the publication agrees in all the estimates which the advertisers put on the value of their products. All the publisher does is to guarantee that nothing appears which can fairly be called fraudulent. Such a position eliminates a large element of the financial advertising which is everywhere so rife at present. This financial advertising is one of the departments in which the papers illegitimately make the largest amount of money. Patent medicines and quack doctors represent another part. There is a third, which is diminishing, but still flagrant in some papers, the so-called

"personal," which conceals appeals obviously vicious. A prominent paper was not long ago fined $25,000 for this sort of publication, and altogether lost indecent advertising estimated at $80,000 a year. Notable offenders at present are two newspapers owned by a man very conspicuous in political and social life; but I believe this man is about to yield to necessity and omit this advertising.

Certain kinds of advertising are being cut from many publications, not because of the conscience of the editors, but because of the opinions of the readers. Liquor advertising, for instance, has been thrown out in cases where the editors and publishers did not reach the conclusion that it was wrong for the various brands to advertise themselves. They were not convinced that such advertising increased the drinking habit, but their readers were indignant and the advertising *therefore* simply did not pay. A similar reason has excluded cigarettes from publications where the men responsible did not believe that any boys were led into the cigarette habit by what they read in newspapers and magazines. Sometimes a persistent class of readers will make an assault along such lines with energy but insufficient numbers. There are devotees of peace who object to advertising firearms. Firearms are necessary in the present state of the world, and the fighting habit is not to any degree at all appreciable kept up by advertisements. Sometimes, perhaps, people who carry their arguments to such a fine

point cause reactions through their unreasonableness.

A recent incident will illustrate the truth that a higher standard of ethics is becoming more dominant in the publishing field. One of the writers for a certain publication came to the proprietor recently and pointed out that a firm of advertisers was quoting from one of the articles printed in that publication, and quoting it in so mangled a way as to give an entirely false impression. The publisher's first intention was to punish the advertising firm at law, for forgery. He discovered, however, that the firm had since ceased to advertise in his paper, and he then realized that if he took any action it might be looked upon as an attempt to force back the business of the delinquent firm. He therefore refrained from this step, which he would have taken had it been open to no false interpretation. Such genuinely enlightened standards of action have increased materially in the fifteen years during which I have been more or less familiar with the newspaper and magazine field.

One of the ethical changes which have taken place of recent years bears on the attitude a journalist should take toward his own profession. There used to be an idea that all journalists should stand by all other journalists. A newspaper might expose anything it liked, so long as it did not expose another paper. Such criticism was called fouling one's own nest, with the obvious implication that it

would be better to foul the nest of some one else. An idea has started now, and is likely to grow, that there is on the newspapers no clearer duty at present than the duty of lessening their own faults, and the duty of raising their own standards, and these ends can be reached largely by tolerant but at the same time severe professional criticism of one another.

Another respect in which the ethics of journalism have in recent years markedly improved is in freedom of thought, as between political parties. Twenty years ago a paper was Republican or Democratic, and every measure before the public was judged from a partisan standpoint. These mere mouthpieces are becoming fewer every day. The average paper thinks for itself. The effect on the general intellectual competence of the people of this increase in open-mindedness would not easily be overestimated.

For this advance we must give considerable credit to "yellow journalism." The faults of these newspapers are obvious and serious. Their merits and accomplishments are not always so clearly seen by the "respectable" and property-owning classes. In the past, the masses had no newspaper organs. These papers, which set out to acquire vast circulations by appealing to the largest numbers in the community, have used many wrong methods of seeking popularity. They have abandoned truth, proportion, taste. Their tone is often one to poison the air, to pervert the minds of readers. The

picture they present of the world is ugly and demoralizing. They have, however, done good, in undermining class prejudices and narrow interests. They have been independent, not only of party, but of specially limited influences. They have largely destroyed the false conservatism which is merely the selfishness of property. They have forced conservative newspapers to be much more liberal and progressive. At the same time, the yellow papers are themselves becoming more responsible, and less loud and reckless, partly because the people are becoming educated, but largely because a one-cent newspaper cannot pay except through its advertising, and the best class of advertisers will not patronize a paper which does not have a class of readers who can afford to buy articles of some value. We therefore see, every day in the United States, the conservative papers becoming less hide-bound, and the yellow papers becoming less outrageous.

The standards of journalism have also been raised by the influx of educated men, and this statement may be made without forgetting the fact that Mr. Hearst comes from Harvard. Twenty years ago, college men were looked upon with suspicion. To-day it is difficult to secure a position on a metropolitan daily without a university education. This method of recruiting for all journalistic positions, from reporter to editor-in-chief, ought to have a decided influence toward checking the more reckless tendencies of newspapers, and toward giving

them a large outlook on matters of the moment. The American people are eager to be guided. They have an instinctive wish to see things from high aspects. Nothing, therefore, is required, except ability, for men who conduct newspapers to put into them their best ideals, and at the same time receive favorable hearing from the public.

ACCOUNTANCY

A Lecture Delivered before The Sheffield Scientific School of Yale University, May 6, 1909

BY J. E. STERRETT, C. P. A.

In considering the ethics of any particular business or profession the natural course would seem to be first to determine what special problems, arising in conducting it, are likely to give occasion to ethical questions not common to all business or to all walks of life. In the present imperfect state of commercial morality, however, there is a further inquiry as to what standard of ethics we may fairly apply to the profession as a whole when questions arise, and the answer depends upon how high are the aims of the profession and the qualifications of its members.

In an ideal state all useful labor would be equally honorable and the same ethical standards would be set for all men. To-day, however, we recognize that those worthily engaged in some occupations are necessarily endowed with greater mental gifts or greater responsibility than is called for in other occupations, and may therefore justly be held to a higher standard. We expect a judge or a physician

to aim higher in his ideals than a coal heaver or a street cleaner.

In discussing these questions in relation to the older professions much might be taken for granted, but of the new or business professions, which have developed as a result of the commercial growth during recent years, accountancy is perhaps the youngest and least understood. It seems necessary, therefore, in connection with the subject of the Ethics of Accountancy to discuss at some length the questions, What is accountancy? Is it a profession serving a real public purpose? Does its proper conduct call for a high order of ability and efficiency? and may we fairly impose a high standard of ethics upon its members?

The modern concept of business differs radically from that in the days when business was connected but loosely and consisted mainly of barter. In like manner the methods of business administration and control have changed. Once business was individual, every man for himself, now it is specialized and representative. The stockholders of many of our great corporations would, if brought together, form a large city, and like a city they are organized and governed upon a representative basis. Many of these stockholders seldom or perhaps never see the property in which their funds are invested, but their interests are none the less vital. In this age of specialization the welfare of the community and the happiness of the individual are enhanced by

this representative form of business administration which allows the chemist to pursue his chemistry and the financier his finance, each man following the course indicated by his peculiar talents and each secure in the thought that his other important though collateral interests are in the care of men specially qualified for their various trusts. It is upon this principle of coöperation and specialization that our modern social structure is founded, and the successful outworking of this plan is mainly limited by two considerations — the knowledge necessary for effective control upon the part of administrators in whatever capacity, and dishonesty or that careless ignorance that is akin to dishonesty.

The profitable maintenance of business, and still more its development and expansion, are dependent upon effective control, and there is a fast growing recognition of the fact that control in the final analysis is largely a problem of good accounting. Again profits may be earned and yet those interested therein fail to share in equitable proportions. Through moral obliquity or through ignorance those in control may, and as we all know sometimes do, fail in their treatment of investors. It is the twofold function of accountancy to assist in the extension of business and the increase of profits and to ensure the full and fair statement of financial position and operating results.

It is the peculiar province of the accountant to act at once as a counselor and a judge. While he

can never assume a superiority to legally established judicial procedure, it is nevertheless true that he often acts in a judicial capacity in circumstances under which the law courts could provide no effective remedy, and even in matters before the courts, involving questions as to business facts and practice, the judgment of the accountant is often a determining factor.

As we study some of the problems that face the accountant in the practice of his profession we will find that more is required than mere skill. To properly discharge his duties he needs a cultivated mind and a well-developed sense of justice, as well as a fund of knowledge covering a wide range of business, economic, legal, and accounting subjects. Moreover, having all these, his success in his calling will depend upon the measure of his tact and common sense.

The relations sustained by a professional man toward his associates in the same calling are worthy of a careful study from an ethical standpoint, but as it is a topic of more especial interest to those in or about to engage in practice we will pause only to note that the good opinion of one's professional brethren is a most desirable possession and one worthy of careful cultivation. As a general rule the professional man who does not command the confidence of his colleagues does not deserve the confidence of the public. The jealousies engendered in an active practice, and rivalries for place and

power, occasionally becloud unjustly the reputation of a man, but if he is of sterling worth the consensus of opinion in his own profession will not long continue to run against him. Every accountant then should strive to acquire and retain in the largest measure the confidence and esteem of his fellow-accountants. Practices that estrange his associates are almost certain to be unworthy, and if they are unworthy, even though temporarily successful, they will not long deceive the public, and worse than all else will react upon the man's own character.

In considering next the relations between the accountant and his client emphasis must first be laid upon the utmost candor and good faith. These qualities are obviously essential to fair dealing in all relations of life, but it must be remembered that the degree of good faith required of a professional man is necessarily higher than that demanded in other occupations. For instance, I visit an oculist who examines my eyes and tells me that the glasses I am now wearing meet every requirement. Clearly his profit is less than it would be if he advised me to come again for further examination and a prescription for new glasses. Next I enter a clothing store. Does the salesman there advise against a purchase on the ground that the clothes I am wearing are in good condition? Not at all. He must not misrepresent the goods he has to sell, but his duty is to sell to those who are willing or who may be persuaded to buy. It is quite evident that the

same rule does not hold good in the case of the oculist. His duty is not to induce men to wear glasses or to change those they are wearing even though to do so is directly to his immediate personal advantage. On the contrary the oculist must sink all motives looking to present gain and content himself on the pecuniary side of the transaction with the hope of future income that may result from increased practice accruing to him through an established reputation for fair dealing.

In all professional work, and in none more than in accountancy, the client must rely upon the counsel that he seeks, and the safeguards upon which he must depend to protect him from the selfishness and even the cupidity of his adviser are the ethical standards of the profession and the personal character of the individual. The rule of conduct that requires us to maintain the same attitude toward the rights of others that we demand for our own, finds no broader application than is laid upon the members of the several professions. Nor must this requirement be met in any but the frankest and fullest manner. It is not a counsel of benevolence but one of justice, that requires not only an adequate consideration of others, but that this consideration be extended in courtesy and kindliness of manner.

In all his dealings with his clients the accountant must realize that he is for the moment at least the custodian of the client's interests, involving in many instances not only his goods but his honor

as well. This trusteeship is frequently a task of difficulty and of delicacy. The client may be actuated by unworthy motives, he may be swayed by prejudice or by fear and may wish to evade responsibility or avoid an issue, and to these the accountant must not lend himself, but must with candor and tact endeavor to persuade the client into a right course.

Industry and application are two qualities that every client has a right to expect. If the accountant has engagements that for any reason interfere he should frankly state that he is unable to accept instructions in the new matter, but once an engagement is accepted it must be prosecuted with all diligence and fidelity. In passing it may be well to pause for a moment to outline briefly the organization of an accountant's office in order to better understand the application of the rule of conduct now under discussion.

Accountancy belongs to that class of professions that require a somewhat extensive organization containing individuals of varying degrees of skill and experience. Other instances are found in the professions of engineering, architecture, and to some extent in law. In a relatively small practice the accountant's organization will usually be found to consist of one or two members of the firm who may be spoken of as principals, with a staff of say a dozen assistant accountants and one or two stenographers, while in the larger organizations there are

usually four and often more principals, with staffs containing some men of a very high order of ability, and others grading down to what are known as "junior assistants," and altogether numbering from fifty to two hundred or in some cases even more. Usually these large organizations are not maintained at any one point but are divided among several offices of the same firm in different cities. These complicated organizations are necessary for the conduct of a large practice, but they add many difficult problems to the burden of the principals of the firm.

There are of course many individual practitioners and many small firms in which the attention of a principal is given to all the details of every case coming into the office, but necessarily such cases must be small or at any rate exceptional. In a large office there is a danger that too much may be left to the judgment of an assistant who, while fully competent up to a certain point, is liable if left to himself beyond this point to jeopardize the interests of the client and the reputation of his firm.

The large staffs and extended organizations found in accountants' offices provide a means for a division of labor but not for a division of responsibility. There must be no abatement in the measure of individual responsibility resting upon the principals. They may use assistants, but for the work of these the principal is just as responsible to the client as he is for work personally performed. The client is

entitled to the accountant's utmost learning and ability and any use of assistants that interferes with this right must be avoided, while on the other hand work that can as well be performed by an assistant should not ordinarily be done by a principal because of the increased cost to the client. Whether the office is conducting a large practice or a small one, and whether the case is one requiring the use of many assistants or of none, the rule to be followed in all cases is one of full responsibility and entire fidelity.

In all professions there is constant danger of a failure to recognize the true significance of things appearing to be of little importance. The physician makes an examination and diagnoses a common cold and prescribes accordingly, failing to note the early symptoms of a virulent disease that may thus unchecked at the outset exact the patient's life as its toll. A lawyer or an accountant may accept a case, but because of its seeming lack of importance fail to give it careful attention. This is not honest, and whether the client suffers or not the reaction upon the professional man is certain; good work thereafter is less easy, and a tendency of this kind is soon observed by others. In this connection the experience of every successful man shows that connections arising through matters seemingly of little moment are often the most enduring and profitable. Our range of vision is too narrow to determine the ultimate results of any

action, but if all are performed in uniform good faith and with a nice regard for the interests committed to our keeping they will, like bread cast upon the waters, eventually bring their reward.

The confidences of the client must be held inviolable. The accountant is the repository of much knowledge that must be held in secrecy, not necessarily that it is discreditable to the client (as a matter of fact it seldom is), but it has been disclosed to the accountant in confidence and he has no right to divulge it to others without the full knowledge and consent of the client. This requirement of privacy is equally obligatory upon the part of the members of an accountant's staff, and to the credit of these men it may be said that ulterior communications relative to a client's affairs are practically unknown, although doubtless there have been many instances when a strong temptation has been insinuatingly offered to an accountant's assistant to induce him to disclose information in his possession or available to him.

In order to safeguard the affairs of his clients an accountant is under obligations to maintain a filing department in which to keep all working and other papers and reports, and to provide that access to these papers is limited to those who have a right to examine them.

A careful guard must be kept by both principal and assistant against questions of a leading nature relative to the affairs of any client that may be put

by those not entitled to information. Sometimes these questions emanate from another client in the same line of trade who wishes to know about his competitor. Whatever the ultimate purpose, the questions at first are usually of such a nature that there may seem to be no harm in answering them, but it is seldom safe to do so as an answer is likely to serve as an invitation to further questioning. A tactful changing of the subject will usually be a sufficient indication that the accountant declines to yield to importunity; but if this is not sufficient he should plainly state that he is not at liberty to discuss his client's affairs.

Another phase of this subject that is the cause of some concern to accountants is the position in which an accountant is placed when called to the witness stand by another than his client and asked to testify as to matters of fact coming within his knowledge through confidential professional relations. To some extent other professions are protected and can plead that any knowledge possessed by them was acquired in the form of "privileged communications." But as yet the right of protection to communications between a client and an accountant has not been granted in this country by statute, and while the courts would probably be loath to insist that a professional man should violate his obligation to guard the secrets of his client, it is altogether possible that in the near future some judge will give an accountant the

choice of testifying or going to jail in contempt of court.

Unless the orders of the court are explicit and the accountant is convinced that a proper sense of public duty requires him to testify, he should refuse to do so and take the consequences, however undesirable. An accountant's responsibility is always to be measured by the moral standard rather than the legal, and while he should adopt the first without any coercion arising through fear of the penalties of the latter, he should maintain it regardless of any consequences growing out of a temporary conflict of the two.

As in other professions the question of compensation is not altogether a simple matter. Obviously the interests of client and accountant are not here the same. Both are subject at least to motives of personal interest that do not obtain in their other relations. Fortunately both must be fully aware of this situation and thus the opportunity for the abuse of confidence by the accountant, were he so disposed, is to a large extent removed. As a rule the question of remuneration is settled in advance either by an agreement as to the rate or by naming a fixed fee. The matter would scarcely require discussion were it not that what are known as "contingent fees" — a subject of long-standing discussion among the members of the legal profession — are not unknown among accountants. And, like the lawyers, accountants are not fully agreed as to

the attitude to be adopted toward this form of compensation.

In some instances contingent fees would seem to be almost if not altogether free from reasonable objection, and sometimes it would appear that justice requires an arrangement of this sort. However, we are not discussing exceptional cases and the propriety of any course of conduct is to be determined upon the basis of the consequences arising from its general adoption. An agreement to accept a contingent fee at once changes the relations that ordinarily exist between the accountant and his client; the former no longer maintains an attitude of impartiality but becomes a partner with his client. Inasmuch as a judicial attitude is demanded of an accountant as a prime condition of his profession, he should not without grave reason adopt any practice that makes him an interested party to the question at issue. It is fair to consider that as a lawyer, who is professedly an advocate, is limited strictly in the acceptance of contingent fees, the lines must be drawn much more rigidly by the accountant because unlike the lawyer his view-point is judicial. Furthermore a contingent fee is frequently an unfair one. If the chances for success are remote the accountant throws away his time and his talent, while if success is reasonably sure the fee is likely to be in excess of the value of the services rendered. It is one thing for a professional man to abate his charge by reason of the

poverty of his client, and this is often done in all professions, but it is an altogether different thing to take advantage of a client's poverty or his ignorance to secure a compensation not warranted by the services rendered or the responsibility assumed.

An eminent judge in discussing from the bench the subject of contingent fees said: "It is not a practice to be generally commended, exposing honorable men not unfrequently to misapprehension and illiberal remark, and giving the apparent sanction of their example to conduct which they would be among the first to reprehend."

It would be an unhappy day for the business community that saw the acceptance of contingent fees generally adopted by any profession, and accountants in particular should be most circumspect in this matter. If they are asked to undertake a case upon the basis of a contingent fee they should never agree to it when by so doing their interests are brought in any degree in conflict with those of their client or of the public.

Another duty every accountant owes to his clients is that of constant study of the literature of his profession. Accounting is a progressive science and constant reading and study are required to keep abreast of it. Then again any man who does not study withers up. The springs of our knowledge must be replenished from without if our own experiences are to become the source of sound judgment. No one man can have a personal

experience so comprehensive that he can afford to disregard the views of other members of his profession, and to the last he should make an earnest effort to keep in close touch with the best thought of his profession. To the young accountant this thought should appeal with especial force, as by this means he can best equip himself for the task of dealing with the larger questions that he hopes will arise later in his career.

Incidentally it may be said that an accountant should not confine himself to the literature relating to his own profession, but should use every available opportunity to cultivate a taste for the best books in a much wider range of reading. No better means of rational enjoyment can be found, and the reading of good books not only stimulates the mind to a more able discharge of the duties of the present, but it helps to postpone the day when mental vigor becomes impaired through advancing years.

In perhaps no other profession do relations with clients become so closely intermingled with the interests of the general public, and any treatment of the ethics of accountancy is inadequate that fails to give a prominent place to the responsibilities of the accountant to the public in the discharge of his usual and ordinary duties. A glance at the nature of a few of the leading lines of an accountant's activity is perhaps necessary to show the full force of the responsibility resting upon him.

The practice of having an independent audit of the accounts of corporations made annually or more often is rapidly growing in this country and is obligatory under a statutory enactment in England. It is interesting to note the advanced position taken by the English law in respect to accounts and matters more or less closely related thereto, such as the form of prospectus that must be used in offering new issues of securities to the public; but as the requirements thereunder add only to the legal requirements laid upon the accountant and increase little if at all his moral obligations, a discussion of this subject is not within our present purpose. I would, however, commend the subject to your further consideration. Custom usually precedes legislative enactments, and what is now a growing practice in America will probably before long be made obligatory.

The appointment of the auditor with us is generally made by the officers or the board of directors. In like manner when an accountant is instructed to investigate the accounts of a company and report upon its earnings during a period of years, his instructions usually come from the banker who is bringing out the securities. In one case the accountant's report and certificate are addressed to the board of directors, while in the second instance these go to the banker. In both cases the accountant's real client is the public or that portion of it that is now, or may be in the future, interested in

the securities of the concern whose accounts are reported upon.

At this point I may be permitted to digress for the purpose of once more emphasizing the fact that a balance sheet, or other general statement of the accounts of any large enterprise, is necessarily to a large extent an expression of opinion. To those who have not given the subject any extended consideration a balance sheet is thought to be merely an expression of facts the ultimate truth of which can readily be determined upon investigation. Reflection, however, will show that values can be finally ascertained only upon liquidation, and liquidation in a going concern is as impossible as it is undesirable. If, then, an accountant's certificate to a balance sheet or a profit and loss account is not a certificate to a set of fully determined facts, but is rather a statement of his opinion as to a position of affairs that is not and for the present cannot be entirely disclosed, we see that the responsibility assumed is vastly increased, and to meet this responsibility he must bring to bear upon the problem a range of talent much more comprehensive than would be necessary if accounts were in themselves final statements of fact. Mere skill is not sufficient but must be coupled with a well-trained sense of justice. In fact, even at the risk of reiteration, it must be said that the culture of justice is the accountant's first duty and in it all others are comprehended.

In every audit and in every examination there are possible rights of some present or future stockholders, or other investors, that will be affected whether favorably or adversely by the accountant's certificate or report, and the rights of these perhaps unknown individuals should be his concern quite as much as the rights of those whom he may regard as his immediate clients. The adherence to this rule may result in a conflict of opinion between the accountant and the management of a company. In practice such differences in views frequently develop and the situation then ensuing is one that requires not only good judgment as to the accounting and financial questions involved, but also a display of due consideration for the opinions of those who have in charge the management of the business. Unless evidence to the contrary exists it is to be assumed that these men are honest in their views and in their intentions. To be sure they are not disinterested, but on the other hand they are likely to be well informed upon the business in question and the branch of trade to which it belongs, and moreover, as directors they are clothed with a large measure of discretionary power.

Under such circumstances it would seem that the right course to pursue is for both sides to calmly discuss the questions at issue with a view to finding a common ground upon which to meet. Such an effort can scarcely do harm, while on the other hand great harm to all the interests concerned may

be done by premature opinions expressed by the accountant. For the very reason that the accountant is supposed to be not only independent but intelligent as well, an injudicious statement made by him, or an unnecessary reservation or qualification in his certificate, may work an injury fully as great as the one he is seeking to avoid or prevent. At the same time he must not allow another to become the keeper of his conscience. His own judgment must be his final guide in writing his report or in framing his certificate. While giving due weight to the opinion of others he must never forget that it is his signature that is to be affixed, and in the event of criticism he cannot plead immunity on the ground that he relied upon someone else for knowledge that should have been his own.

If after thoughtful consideration of all the circumstances in the case and after he has patiently satisfied himself as to every essential fact, there still exists a conviction in the mind of the accountant that is opposed to the views of the management, the accountant must tactfully but none the less firmly maintain his ground even though the immediate result is the loss of a valued client. When the conditions of his engagement call for a full report upon the accounts of a company the accountant has an opportunity to state his views in full, giving his reasons therefor; but when, as more frequently happens, he is desired to give a certificate attesting to the accuracy of a balance sheet or a

profit and loss account, it is his duty either to decline to give any certificate where the accounts are in such a condition that he cannot honestly do so, or to make such qualifications in his certificate as will call the attention of the careful investor to the weakness the accountant sees in the accounts.

Certificates should always be framed in simple language and in like manner any qualifications therein should be straightforward and to the point. At the same time it is necessary to avoid overshooting the mark and the accountant should weigh his words most carefully with a view to the effect they are likely to produce upon the mind of the investing public. The public is likely to attach perhaps more meaning to a qualification in a certificate than it is the intention of the accountant to convey, and a careless use of words has more than once caused unnecessary alarm.

Qualifications in a certificate are scarcely ever necessary concerning minor matters, at least so long as these do not affect the substantial truthfulness of the accounts, and a condition or an amount that will impair the truthfulness of the accounts in a small business may have no practical effect upon the accounts of a large enterprise. The question of what is of sufficient importance to require a qualification in a certificate becomes, aside from any intrinsic significance in the item itself, purely a matter of relation between the amount in question and the total of the accounts.

So that an item that might in one case call for a distinct qualification might safely be passed in another without any question whatever. This whole matter of certificates is one that requires clear thinking and cool judgment, and a failure to observe ethical conduct as well as to correctly interpret the accounting and financial principles involved may result in a wide-spread wrong.

As I have already intimated the accountant must maintain an attitude of absolute impartiality. A contingent fee, for instance, should never be the basis of compensation to the accountant in a case where the successful flotation of an issue of securities is at stake. No matter how honest at heart a man may be he cannot avoid being swayed to some extent by his personal interests. If he is to receive a handsome fee when certain securities have been sold to the public, he at least exposes himself to the risk of giving a certificate to the accounts that is more favorable than it would be if his fee were not hanging in the balance. If the public is to rely upon the certificates of public accountants it must be because these certificates are signed by men whose eye is single and whose judgment is free from any taint of self-interest.

Even if the accountant's fee is not a contingent one, his judgment, in cases involving the flotation of securities, is open to attack in another direction. Quite often his professional relations secure for him an opportunity to buy securities for himself

upon a basis that is not open to the general public. But even such a practice as this, though perhaps entirely legitimate for another man, should not be accepted by the accountant. Neither should securities issued by a client be bought or sold by the accountant in anticipation of an immediate rise or fall in market value, and he should carefully refrain from buying securities of companies with which he may be professionally connected that are of a highly speculative character. By a rigid adherence to these rules the accountant will not endanger his impartiality and in the long run will be likely to fare as well financially as he would if he were to subject himself to the distractions of speculation.

Another field in which the public accountant has to some extent entered, and in which it is altogether probable he will in the future be an important factor, is in relation to municipal and other governmental accounts. Special investigations have been made by accountants of several of the departments of our national government, resulting in recommendations that have led to substantial reforms in the accounting systems and the methods of administration; while a considerable number of American cities have availed themselves of accountants' services to remodel their accounting methods and from time to time to audit the accounts and certify as to the correctness of the financial statements appearing in the annual reports. As we all know, the conditions existing in public offices are

distinctly different from those obtaining in corporation or other business offices; for instance, instead of centralized authority there is in most cases a division of authority and responsibility. It is true that the executive officers have certain powers, but generally these are hedged about with restrictions imposed by legislative or other bodies, and alterations and improvements that could speedily be effected in a business office are often the subject of lengthy discussion and uncertain action on the part of legislators, many of whom are quite unable to grasp accounting problems, while others are deterred from granting consent by reason of political cross currents.

In spite of its difficulties, however, this field of accounting affords opportunities for large public service, and as our citizens gradually awake to the importance of the business problems involved in governmental functions the accountant is almost certain to exercise a widening influence. Of those accountants who undertake government service either by way of special engagement or to fill appointive or elective offices the profession must ever demand that they maintain the highest standards of professional honor and integrity. Such men are subject to temptations that do not in the same way assail men in other walks of life, and they are surrounded by difficulties that call for the largest measure of patience and of firmness.

In order that accountancy as a profession may

assume the position of public usefulness that it should occupy, accountants must feel a responsibility resting upon them to act as leaders in public thought upon questions of honest finance and business morals. The accountant occupies a position that is at once intimate and independent from which he can view the questions of administration as well as the problems of finance. With a mind trained to observe and interpret significant factors in the course of business events, and trained also in the accurate expression of conclusions deduced, the accountant should, and I believe will, become increasingly a leading factor in the development of business morality and stability. But this result will come only through the acceptance of full personal responsibility and the constant cultivation of those habits of mind which lead unerringly to right conclusions. The accountant has no right to shirk his individual responsibility whether by hiding his identity under a corporate form of management as in the so-called Audit Company, or in any other manner, but he should stand forth as a professional man seeking the honors of his profession and accepting the burdens laid upon him.

Time has not permitted an extended discussion of the ethical requirements devolving upon the accountant in his intimate relations with his professional brethren, which in the last analysis furnish the surest index to the true character of any professional man, but emphasis has, however, been

laid in passing upon the value of the good opinion of the members of the profession, the possession of which can be attained only through the constant exercise of right principles of conduct. An effort has been made to speak of at least some of the relations of the accountant to his clients and to the public, and of the ethical considerations attached thereto. What I have said will, I hope, be suggestive to you, and may I also express the further hope that the picture I leave in your minds of this new profession of accountancy is that of a calling by no means free from problems that may discourage or defeat, but yet a life of noble possibilities. In the realization of these there is need of ability coupled with indomitable energy, tact, and courage, and the rewards are to be found in the respect and confidence of the community and in the consciousness of a life devoted to useful purposes and high ideals.

LAWYER AND CLIENT

In discussing the relation of attorney and client it is my aim to be practical rather than rhetorical. The subject has indeed its temptations. When we remember that it is one of the three sacredly confidential relations, classified under the phrases, priest and penitent, physician and patient, counsel and client, and note with what zealous care the law puts a seal upon the mouths of priest, physician, and counsel as to information which they gain from penitent, patient, and client in the course of their ministrations in respect of the souls, bodies, and rights of those who confide in them, it is not easy to forego an attempt at oratorical flight. We are told, however, to resist the devil and he will flee from us. So I shall confine myself to the prosaic task of setting before you various rules which pertain to the subject in hand. I want to send you out of this room, not with a hazy idea that the lecturer has made a fine speech, but with certain principles fixed in your minds so firmly that you will not forget them at a time when you may need to apply them in your own affairs. You are a body of young men, fitting yourselves for the serious business of life. This lectureship has been founded

for use, not ornament. A few of you may become lawyers, but the majority will be clients. Not necessarily in litigation. May Heaven spare you from the unsatisfactory fate of spending your time, your money, your nervous force upon a legal lottery. I have practised law for nearly forty years, and have had my triumphs as well as defeats, but it is my deliberate judgment, based upon observation of others as well as experience of my own, that litigation is more than ever a toss-up. It is an old-time proverb that no one can tell what twelve men in a box will do. In these latter days a corollary should be added: Still less, what one man, or three men, or five or seven or nine will do on a bench. There is more disagreement between judges as to questions of law than among juries over questions of fact. A discussion of the reasons would take us too far afield. I have often wondered how the system of enforced unanimity by means of temporary imprisonment and partial starvation would work if applied to appellate courts. You may be fortunate enough to be able to keep out of court, but you can hardly hope to be so lucky as not to be compelled to go into a law office. In a nation composed of some fifty different commonwealths, whose commerce is not, but whose jurisprudence is, bounded by state lines, in a nation whose citizens are applying the socialistic principle of associated activity as never before, the need for a lawyer at elbow is greater than ever before. Hence it is desirable

that you should be possessed of the rules of the game.

My problem is to put before you those rules in a way that will be interesting, and it has occurred to me that this may be done if we work them out together in the light of actual occurrences. History has been said to be philosophy teaching by example. That is the reason why to most persons history is of greater interest than philosophy.

These rules were not laid down in advance by enacting authority. At one time mankind was taught to believe that on a particular day at a particular place a particular man, by name Moses, received from the Creator of the universe certain tables of stone, on which had been engraved certain rules, called the Ten Commandments. This is not usual teaching now. In all probability no such occurrence ever actually took place except in spiritual vision. Like other rules of conduct, the ten commandments were the result of experience, which demonstrated their necessity long before the days of Moses. Morality is a matter of evolution. Our subject is a branch of the Science of Applied Morality.

Therefore, instead of my assuming the role of lecturer and speaking to you from the height of greater age and experience, let us get at the rules by imagining the various transactions which call for their application. This room shall serve as my office. I am at my desk; each of you is a client,

who has come for a consultation. This personal way of putting things may smack of the egotistical, but it is adopted as the best method of bringing the subject home to you.

Now, first of all, my dear sir, how did you come to me? Why to me, rather than someone else? The pertinency of this question may be illustrated by the following occurrence, which happened here in Connecticut. A farmer, served with a writ, went into town to employ a lawyer to defend him, and thinking one lawyer to be as good as another, dropped into the first office he saw and stated his errand. The lawyer looked at the writ and found his own name on it as attorney for the plaintiff and told the farmer he could not take the defence. The farmer then asked what he should do, and the lawyer replied that he would give him a letter of introduction to a friend. The letter was written, sealed and handed to the farmer, who departed. On his way to the second lawyer it occurred to him that it might be just as well to know what the one had written to the other. So he tore the letter open and read the following words: "Here are two fat geese, I will pluck one and you can pluck the other." One day a woman walked into my office, a stranger without any letter of introduction, and wanted me to defend her in a suit. I asked her how she had come to me? She replied to the effect that she had seen my name somewhere. I told her this was a very poor way to select a lawyer, that

she had no guarantee whatever that I would serve her either faithfully or well, and as she ought not to take me, I could not take her, without inquiry, and she must therefore bring me a letter of introduction.

If a man should not put himself in the position of seeking the advice of another, without inquiry as to his experience and integrity, it is obvious that the lawyer's employment should not be the result of his own solicitation. The business of advising another man is a delicate and responsible matter. If I volunteer my advice, if I proffer my services, if I push myself upon your attention, what guarantee have you that I am worthy of your confidence? Thus we get the rule which should govern the creation of the relation. Let it be called Rule I. *The lawyer should be sought by, and not a seeker of, the client.*

The next question is, what are the facts upon which an opinion is needed? Is it not clear that if you do not tell me the facts as they really are, I cannot give you the advice which I really should? Let me give you an illustration which happened in my own office recently. A client of mine, a non-resident, was lately sued on a stale claim, growing out of transactions when he had lived in New York fifteen years ago. The statute of limitations, as to the morality of which I shall have something to say later on, was only a doubtful defense, in view of his removal from the State. He told me, however,

that he did not owe the money, and knew nothing about the claim. Relying on this, I put in an answer not only alleging the statute of limitations as a defense, but pleading a denial of the indebtedness. When it came to the trial, the plaintiff produced letters from my client written at the time, acknowledging the justice of the claim and promising to pay if time were given. The result was that the plaintiff got judgment for the full amount. Had my client told me the truth, my advice would have been to settle rather than fight. He thought that by deceiving his lawyer he might be able the better to deceive a jury. His untruthfulness to me cost him several hundred dollars, which might have been saved for him on a settlement.

Thus we arrive at Rule II. *The client should tell his lawyer the truth, the whole truth, and nothing but the truth.*

That is what the client swears to do when he takes the witness stand. If it is his duty to tell the truth to the jury in public, how can it serve his interests not to tell it in private to his lawyer?

There is, however, a qualification to be made at this point. If a client is charged with crime, and is guilty, it is not to his interest to confess it even to his lawyer, and under the principle that no man is bound to criminate himself, he is not under a duty to do so. His defense will, however, be embarrassed if his lawyer is in doubt as to his innocence. A guilty man must be defended by technicalities,

and technicalities are the ruination of an innocent man. One of the most important responsibilities resting on a lawyer in a criminal case is in advising his client as to going on the witness stand. Once I had that responsibility in a murder case. The prisoner stoutly denied his guilt, and I had no positive belief about it, one way or the other. The moment came when I had to advise him as to being a witness in his own behalf. I was puzzled what to do, and finally told him that I did not know whether he was guilty or not, but he knew, and my advice was, that if he was innocent to take the stand, and if guilty to keep off.

We need not spend time on this, for that none of you will ever be in such a predicament.

The last rule requires another. It is the very foundation of such a relation, that whatever you say to me is confidential and under no set of circumstances can I be allowed to reveal it. No argument is needed in favor of such a proposition. I cannot give you good advice unless you tell me truly the facts. You cannot tell me truly the facts, unless you know that your confidence will be respected.

Thus, out of the necessities of the situation arises Rule III. *A lawyer can neither be compelled nor allowed to disclose the communications, which his client makes to him in the course of a professional employment.* This does not mean that all inquiry of a lawyer is barred, when he chooses to utter the

magical phrase "attorney and client." There is a difference between transactions of the client in the past, which under the seal of secrecy he tells his lawyer in order to obtain advice as to his conduct in the future, and present transactions carried on by both. The principle that no man can be compelled to criminate himself may protect each for himself, but it does not protect either against the other, as to doings of both, except in so far as that neither can be forced to tell anything against the other that would involve himself. The protection being personal, either may waive it, and if so, the whole affair be divulged. One of the best safeguards against joint wrong-doing is that none of the wrong-doers have any guarantee that some one of them will not confess. Now it would be a queer sort of jurisprudence which would permit a man determined to perpetrate a wrong, and unable to do so without confederates, to hire lawyers as confederates, and then be protected against their evidence by the rule that communications between lawyer and client are sacred.

There is such misconception on this subject, both in and out of the profession, that I am going into it a little farther. It is especially important, in view of the increasing employment of lawyers on boards of directorates. In a case some years ago, which attracted much public attention, a man who was both lawyer and director of a certain corporation actually urged the professional relation of

attorney and client between him and a co-director as a bar to all inquiry as to their joint doings. Strange to say, he was upheld by the court. An incident in my own practice will illustrate the point, and show how a lawyer lost a case for a client through misconception of this rule. A couple of horses had been sent by their owner to New York for sale and placed at a certain livery stable. They were not sold for a year or more. The bill for their keep had mounted up, and when the livery man sold them he claimed that the proceeds of sale were not enough to pay his bill, and brought suit for the difference. His lawyer fell ill and I was brought into the case. The defendant's attorney served on me a demand for a bill of items, showing how much each horse had been sold for, the date of sales, and the names and addresses of the purchasers. My client asked me if he was required to give the information. I advised him that when one man sells another man's property, he must always tell, when asked, to whom, when, and how much. He then gave me names, addresses, dates and amounts, which I gave to the defendant's counsel in a formal letter. At a consultation on the eve of the trial, my client informed me that he had not given me the true names of the purchasers. I asked him why not. He replied that he did not want the defendant to go to them. I told him that that was the very reason why the law required an agent to give such information to his principal,

that he had put me in the position of having lied to the other side, and I would not have anything more to do with his case. So I gave him his papers and a consent for substitution, and sent him away. I had no right to volunteer to the other side the information that my client had been guilty of this deceit, but I supposed as a matter of course that the defendant, having ascertained that the information was false, would, on learning that I had withdrawn, put two and two together and infer my reason, and would subpœna me as a witness, to prove that the lie was my client's and not mine. I considered the question, and reached the conclusion that my client's statement to me not having been given to me as a secret in order to enable me to advise him, but for me to communicate it to the other party, it was not privileged. The trial came off. I was not called. Meeting the other lawyer a few days after, I asked him the result, and he replied that a verdict had been given for the plaintiff. On my saying that I had supposed he would subpœna me to prove that it was my client who had given me the names, which I had transmitted, he replied that he thought that it was privileged. Of course I could not be allowed to testify to my client's second communication to me that his first was false. But to say that a communication, made to a lawyer in order to be told to someone else is privileged, is absurd. No client has any right to have his lawyer lie for him. Neither has a client

any right to engage a lawyer to join him in a criminal transaction, with the expectation that the law will seal the lawyer's mouth.

You can see how important it is to have right notions about the scope of this rule. It is known that members of legislative bodies are often bribed by emissaries of corporations. It seems to be generally forgotten, but years ago, a certain lawyer, now a distinguished man, was the lobbyist for a certain great railroad company, and his experiences as a go-between would throw a flood of light upon the way in which legislation is obtained or thwarted. He could not be compelled to criminate himself in respect of those transactions, but if he were willing to turn state's evidence, the rules which we are considering could not be invoked to stop him from criminating his clients. As testators who have their lawyers witness their wills thereby break the seal of secrecy, so likewise do corporations who make their lawyers directors. A lawyer cannot be a confidential adviser of a corporation and its director at one and the same time, for the purpose of shielding his client behind this rule.

Having found your lawyer by a careful process of selection, having told him the truth as to the facts concerning which you wish his advice, having done so with the knowledge that he can never reveal them to anyone else, what is it that you ask from him? Do you want his real opinion, or do you want him to say something to please you?

You may want him to say a smooth thing, but what is it that you need? Let me illustrate. A client once consulted me as to his course in respect of his wife, from whom he had separated. My opinion as to what he should do was not what he wanted to do, and he grew angry at me. I asked him what he had come to me for, my opinion or his opinion from my lips; that as I understood it, he was paying for my opinion, and it was my duty to give what he paid for. He was not bound to take it, but I could not consent to let him pay for his opinion from my lips as if it were mine. He saw the point and his good humor returned.

Thus we reach Rule IV. *As the client must be sincere with the lawyer as to the facts, so the lawyer must be sincere with the client as to his opinion.*

But is the client to be bound by what his lawyer says? Not at all. His lawyer is not the court; he has no right to dictate what course the client shall pursue. He is simply the adviser. His client comes to get his advice, pays for it, and having obtained it can do with it as he can with anything else of his own. Now just as it is human nature for a client to get angry if his lawyer's advice is unpalatable, so a lawyer does not relish his advice being rejected. A moment's reflection will convince us that anger on his part is equally out of place.

Thus we get Rule V. *If a client does not act in accordance with his lawyer's advice, the latter has no right to be displeased.*

This in turn involves a correlative rule, which I can best bring out by giving you an actual case. Last year a lady called on me to take up a case for her which had been in the hands of several lawyers, one after another. She had grown dissatisfied with each of them and had made a change. I soon found that my advice to her was as likely to be distasteful as that of my predecessors. So I told her at the outset that unless she was willing to be guided by it, I should have to ask to be relieved from the responsibility of conducting her case. I told her that it was in a sad tangle and I could not undertake the responsibility of piloting the ship unless my directions were to be followed, and if she intended to order the pilot, she would have to employ one who was willing to be commanded. So we parted on good terms.

It is not, however, always necessary for a lawyer to take this position. It sometimes happens that it is quite compatible with his self-respect, and also with his responsibilities, if he continues in his client's employ, even though his client may not take his advice on all points. Every man must determine such a question for himself. Yielding to a client does not always mean subservience. The question is whether in the lawyer's opinion it will imperil his client's interests if he does not take the course advised, and whether the lawyer must stand responsible for the course the client persists in taking against his advice.

Hence Rule VI. *The lawyer, though not always bound to decline to act for his client against his own judgment, has the right to do so, and the client has no right to be displeased at his lawyer if he takes the position that the client must follow his advice or get another adviser.*

At this point an interesting question arises. What part has morality to play in the advice which a lawyer gives? Take the case, to which I referred a moment ago, of the client who was sued on a stale claim. Have I any moral right to advise my client, who is sued on a just claim, that he can get out of it by pleading the statute of limitations, as it is called? That statute prescribes the time within which suits must be brought. To answer this question we must see what it is concerning which the client asks the advice. Suppose you come to me and say you have been sued on a promissory note, to which you have no defense, but which was given more than six years ago, and you say that you are not able to pay the debt, but that it will injure you very much to have a judgment against you, and you ask me whether there is any law which will enable you to prevent the judgment from being obtained. There is a law to the effect that a person, who is not sued on a debt within six years of its being contracted, may set up that delay as a valid defense. Is it not clear that I would be derelict in my duty to you if I failed to inform you of such a law? I should not be telling the truth. You have

asked my opinion on a question of law, and I am bound to give you a truthful answer.

Hence Rule VII. *A lawyer is bound to give his opinion on a question of law without regard to any question of morality.*

It would, however, be superficial to dismiss the subject of morality without anything further. You do not pay me merely for an opinion on an abstract question of law; you have been sued; you want to know what to do; the information which you seek from me is an opinion, by which your conduct is to be regulated. The moment we get into the realm of conduct, we encounter a moral atmosphere. How far it is right for a man to take advantage of the technicalities of the law is a moral question. His legal adviser is bound to take this into account. In some cases it is not immoral, in others it is, for a man to avail himself of a technicality. Why is not a lawyer bound to advise on that question also? How can he be said to discharge his duty if he refrains? It is at this point, as it seems to me, the ethics of my profession stand in need of improvement. It may well be that if you only ask me as to the law, I have no standing to give you my opinion on the morality of its application to your case. But if you ask my advice as to what you shall do, or my assistance in doing it, then I hold that I am under a duty as a man, as a citizen, and as your counsel, to give you my opinion as to the morality of your proposed conduct, to dissuade you from

doing an immoral thing, however legal it may be, and to refuse you my assistance, if you persist. I cannot say that this is well settled, or even generally accepted, but I shall venture to lay down as Rule VIII one which ought to be the rule, if it is not. *If legal advice is for the purpose of regulating a client's future conduct, it is the duty of the lawyer to express his opinion on the morality of a proposed line of conduct.*

Whether a lawyer should refuse to act for a client, where he does not share in the moral responsibility, is a difficult question. Take the defense of the statute of limitations. Its purpose is not to enable dishonest debtors to take advantage of their creditor's leniency, and evade the payment of a just debt. Far from it. Its real object is to protect honest men from the prosecution of unjust claims, where the lapse of years has resulted in loss of the evidence on which their defense rests. The law must, however, be general in its terms. It cannot say that honest men shall not be, and dishonest men may be, sued after six years. It can only say that neglect to sue shall be a defense for all men. Whether a particular man shall plead it, is left for each man to determine for himself. It is an immoral thing for a man not to pay his debts, if he is able, and it is his duty to do all in his power, so that he may be able, whether it be in one year or ten. There are, however, circumstances which morally justify a debtor in putting in the defense that the

suit was not brought in time. There is no doubt as to the justifiability, where he does not owe the amount as claimed. But even if he does, it may be justifiable for him to claim the protection of the statute. Each case is like a tub, and must stand on its own bottom. The lawyer should have sufficient moral perception to discern what is the right thing to do, the courage to advise his client to do it, and the ability to help him do it in a way to bring peace to his client without loss of honor. The right-minded client will in the end thank him, and for the wrong-minded he should not care. I am free to admit that this gets very close to what is called a counsel of perfection.

This again brings us to another rule. I have no right to take you by the throat and compel you to follow my advice. Suppose the client refuses to take it and insists upon the lawyer putting in a defense which is legal, even though it may be immoral, must the lawyer refuse to do so? Do you not see how it would break up the whole system, if the moral responsibility for an action is taken from the shoulders of the client and transferred to those of the lawyer? The latter has enough load to carry already. He must know the law. To do which he must have studied it for years and must keep abreast of the decisions by which it has been and is being developed. Otherwise he is not competent to undertake the responsibility of advising another man. To saddle him with the moral

responsibility for the client's action would be unfair to him and highly inexpedient in our scheme of government.

And so we have Rule IX. *The moral responsibility for conduct as the result of legal advice rests upon the client and not upon the lawyer except as the latter participates therein, in which event the lawyer cannot divest himself of responsibility for what he himself does.*

This brings us to the most important of all the questions which arise between lawyer and client. How far may a lawyer go in the prosecution or defense of a client's rights? It is often popularly put after this fashion: Is it justifiable for a lawyer to defend a client whom he knows to be in the wrong? When thus put there can be but one answer. A client has a right by law to defend himself against any charge. He is not bound to criminate himself by confession. A plea of guilty is a confession. Hence he has a legal right to plead not guilty. He has a legal right to put in that plea through a lawyer, and when he does, he has a legal right to remain unconvicted except upon evidence that is admissible under the law, and his lawyer has a moral right to guard him against a conviction which is not according to law. This answer is, however, unsatisfactory to many good persons. It smacks of technicality. It has ennabled many scoundrels to go unwhipped of justice.

There were two famous cases in the last century

which will serve to illustrate certain phases of this matter. About 1840, a leading barrister in London, Charles Phillips, was defending a Frenchman, one La Voisier, on a charge of murder. During the trial the prisoner informed his counsel that he was guilty, and thereupon the counsel privately informed the judge and submitted the question as to whether he should withdraw from the case. The judge ruled, and in my opinion rightly, that he could not honorably leave the prisoner in the lurch, but should carefully abstain from asserting any belief in his innocence. I have never been able to see what right the counsel had to inform the judge as to his client's confession. Nor had he any right to cast upon the judge the responsibility of deciding as to his continuance in the case. It was for himself to determine, and his determination should have been to keep silent as to the confession and go on with the defense. The law does not permit a man to plead guilty of murder in the first degree, for the law does not countenance suicide, and to countenance a plea of guilty is to allow a man to do indirectly what he may not do directly. In case of crime of lesser degree, I hold that if a man confesses his guilt to his counsel, it is the latter's plain duty to advise him to plead guilty, when sure that the confession is true. If, however, the prisoner refuses, then it seems to me that it is the counsel's duty to withdraw from the defense, or at least only remain to see that his client is not convicted

upon inadmissible evidence. How can an honorable lawyer honorably urge any other plea in behalf of a guilty man?

The other case is more famous still. When that miserable King George IV was on the throne, he tried to get through Parliament a bill of divorce against his wife Queen Caroline. He had in fact been married to another woman, Mrs. Fitzherbert, before he ascended the throne, and as she was a Roman Catholic he had by the law of England forfeited his title to the throne. The fact of his prior marriage was a secret known to but few, and had been faithfully kept by them, and the rascally husband had been allowed to ascend the throne and marry Caroline in the belief that a marriage, which under oath he denied, would never be proved against him. He was thus a bigamist and a perjurer. During the trial in Parliament Queen Caroline's counsel, Brougham and Denman, were given the proofs of his first marriage, and thus fortified they caused it to be intimated to the King's counsel, that if the trial were proceeded with, they would prove the bigamy and dispute his title. For a while it was supposed that they would not have the courage to carry out their threat. Brougham dissipated that hope by an immortal utterance, during one of his speeches in his client's defense. After the use of language which, to them who knew the secret, showed that he was referring to it, he stated that he would conceive himself bound not

to make it public, if the bill were not pressed, otherwise he would. Then came this statement of a counsel's duty in words that will remain imperishable, words which have nerved many a counsel to do his duty in face of adverse public opinion:

"And let it not be thought, my lords, that if either now I did conceive, or if hereafter I should so far be disappointed in my expectation that the case against me will fail, as to feel it necessary to exercise that right — let no man vainly suppose, that not only I, but that any, the youngest, member of the profession would hesitate one moment in the fearless discharge of his paramount duty. I once took leave to remind your lordships — which was unnecessary, but there are many whom it may be needful to remind — that an advocate, by the sacred duty which he owes his client, knows, in the discharge of that office, but one person in the world, *that client and none other*. To save that client by all expedient means — to protect that client at all hazards and costs to all others, and among others to himself — is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction, which he may bring upon any other. Nay, separating even the duties of a patriot from those of an advocate, and casting them, if need be, to the wind, he must go on reckless of the consequences, if his fate should unhappily be, to involve his country in confusion for his client's protection!"

This deliverance has sometimes been claimed to mean that in the service of his client a lawyer should not hesitate to commit any wrong. If that were so, then the utterance would be infamous. Nothing of the sort was in Brougham's mind, as anyone will discover on reading his own account of the circumstances under which it was made. The suggestion is an insult to his memory. An honorable man will not take dishonorable means to win a client's case, whether criminal or civil. I confess that in the latter it is often a difficult thing to decide whether to have anything to do with a case after one has reached the opinion that the client is in the wrong. Lawyers should be very careful in making up an opinion adverse to their client. They should remember that judgment is not their role in the drama of a lawsuit, and that if actors interfere with each other's parts, the play will be marred. There are five roles in a lawsuit, that of the witness to testify as to the facts, that of the lawyer to develop the testimony and argue questions of law to the court and questions of fact to the jury, of the judge to decide those of law, of the jury to pass on those of fact, and lastly, of the sheriff to execute the judgment on the verdict. As a scheme for the administration of justice and the settlement of quarrels in court, which the parties have not been able to settle out of court, it is the best ever devised by the wit of man. It only fails to work perfectly because the man on the stand, at the bar, in the

box, and on the bench, are fallible human beings, like the clients whose controversies they are trying to end. As the witnesses must not become advocates, nor the judge invade the province of the jury, nor the jury refuse to take the law from the judge, so the advocate must not act as a witness, or a judge, or jury. Hence no lawyer can properly decide whether the story of his client or of the opponent is in accord with the facts. But there is a preliminary question which the lawyer does have to decide, and that is as to the merits upon his client's own statement. If on that statement his client has no cause of action, or defense, it is his duty to say so and advise against bringing suit or making defense. Whether it is right for him to go on, after giving his client advice not to do so, is a mooted point on which I cannot say that the ethics of my profession are settled. I can only state Rule X, as I think it ought to be. *A lawyer may properly defend a person against a criminal or civil complaint, even though he believes the client to be in the wrong, but should not have anything to do with the prosecution of a plaintiff's cause if he is satisfied that it is devoid of merit, or has any good reason to believe that the client, in stating his case, does not tell the truth.* Under that rule, a custom which is growing up of bringing cases for no other reason than to induce a settlement is most reprehensible. So also is the custom, in which some lawyers too often indulge, of criticising in public an adverse decision of judge or jury. This

very morning's papers contain a vulgar diatribe by the counsel for a murderer against the jury which convicted him. Criticism of a judge or a jury is right enough when made in the proper place and at the proper time. No lawyer of good standing will ever permit his zeal for his client, or his own self-love, to betray him into a public railing at judge or jury because of his defeat.

I have alluded to confidence as the foundation stone of the relation between lawyer and client. I have suggested that the moment that stone is removed, the edifice tumbles. What then is to be said about the right to terminate the relation? You have come into my office freely, are you free to leave? Is my office a web? Am I a spider? Are you a fly? When you enter my door, are you bound to me forever? Am I bound to you? To ask such questions is to answer them. It is against public policy to allow either lawyer or client to hold the other against his will.

So sacred is this right, in both, that it cannot be overcome by contract. Public policy stands in the way. It may well be that where the services of a lawyer are of a clerical nature, and he has been engaged on a salary for a specified time, he may not be discharged before the time without liability for his salary in full, as in the case of any employee. But in respect of services as an adviser or in the conduct of a litigation, either may terminate the relation without bringing himself under any lia-

bility for payment, or for unperformed service. Ignorance of this rule cost a certain suitor in New York not long ago twenty-five thousand dollars. He had employed a lawyer to prosecute a claim of $500,000 for five per cent of the recovery. Before the suit was started he concluded to change his lawyer, and employed another. When the latter collected the claim, the discarded lawyer brought suit for the five per cent, on the theory that his client had broken a contract and by reason thereof he had sustained damages in the loss of the five per cent. Marvelous to relate, he succeeded. The defendant's counsel omitted to call the attention of the court to the right of a client to change his lawyer at any moment on the sole condition of paying him the reasonable value of his services to the time of the discharge, and the court overlooked it, as also the point that no contract by a lawyer for a share of the recovery is rated except as a measure for payment of services actually rendered. The suit was defended on the ground that no agreement of employment had been consummated, the jury found it had, and the lawyer obtained twenty-five thousand dollars as compensation for services which he had never rendered. Although the judgment was affirmed on appeal, — the points as to public policy being again overlooked, — and although the lawyer-plaintiff was an eminent man, I do not hesitate to assert that his suit was without any justification either in law or morals. The reason will more fully

appear under the last rule which I shall give you. Meantime Rule XI may be stated. *The relation of lawyer and client may be terminated by either upon reasonable notice, without giving any reason.*

The next and last rule concerns compensation. Here again the best ethics on the subject can be found by observing the interests at stake. You come to me for advice, you want my real opinion, you have told me the truth, knowing that I will respect your confidence, you expect me to advise you sincerely, you then purpose to weigh my advice, and if it pleases you to follow it, and if it involves conduct on my part, you wish me to act, and if I am to do so I must do it with the sole eye for your interests, but in doing so must act honorably, to the court, to my opponents, to every one concerned. Now, the very fact that a man, not being a good judge in his own cause, goes to an adviser in order to have a disinterested man at the helm, presents a controlling reason why a lawyer should not have any pecuniary interest in the controversy. His mind should be kept clear of fogs, for that he is to steer the course. Self-interest does affect us, as iron affects the magnetic needle. So it has been held from very early times that lawyers should not be allowed to contract for an interest in the controversy, whether as compensation for their services, or as an investment, or as a speculation.

Fifty years ago in our State and in most other States this salutary rule was departed from, and

because that departure was not properly safeguarded, the scandals now known as the abuses of the contingent fee have sprung up, and our profession is grappling with their deteriorating influences, from which we must rescue ourselves or we shall become a perfect byword and scorn in the nation.

This is not to say that contingent fees should be abolished. They are a necessity. The subject is, however, too large to go into here, and I shall content myself with stating Rule XII. *The lawyer is entitled to reasonable compensation for his services, and should refrain wherever possible from agreeing that his compensation should be by way of a share in the recovery.*

Stress should be laid upon the phrase, "reasonable compensation." It is still the law, whatever may be the practice, that the compensation must be reasonable. There is much ground for complaint of late years that amounts demanded for legal services are too often unreasonably large. The vulgar commercialism of the times has affected the law as much as medicine. Neither of the two professions has any standing to taunt the other for demanding exorbitant sums for ordinary service. Only the other day I knew of a doctor who, after rendering a reasonable bill to a wealthy man for one thousand dollars for six months' services, and his patient dying two months afterward, sent in a bill to the executor for services of the same kind for the two months and put the amount at nine

thousand dollars. It was a case where the doctor knew that the family would not contest his bill, and he took advantage of the fact. There is no standard by which unusual service, involving a high quality of brain work, can be measured, and in such a case an eminent counsel or physician can charge what he pleases. Being in general demand, he may refuse employment, and the client or patient knows in advance that his services will be costly. But the average lawyer or doctor, who renders what may be called routine service, has no moral right to demand exorbitant sums for his work, even though he may achieve as good results as his more distinguished brother. The reason is obvious. When a leader of the bar is retained, the client has a guarantee that he is getting the best service possible. He has no such guarantee if he employs an humbler man. Why then should he pay as much? Reasonable compensation in every case means the amount which is fair for a man of given standing in the profession. The ordinary man is too apt to think more highly of himself than he ought to think, and should be careful to abstain from making charges, which are entirely proper for a man of higher standing.

And now a word in conclusion, as to the necessity of moral perceptions on the part of a lawyer. The less keen are the moral perceptions of a client, the more should be those of his legal adviser. The aim of the latter should be not only to get his client out

of trouble, but to keep him out. In the long run this can only be done if morality is brought into the business. No doubt there have been lawyers called great, who put morality aside in attending to their client's affairs, but they were not truly great. The honorable practice of the law tends to make a man's moral perceptions more keen, rather than to dull them. Law is, as I have said, applied morality, and if one is to be a useful professor in that science, he must himself have a knowledge of good morals and ability and courage to apply them in a given case. No wise lawyer will ever advise a client to pursue a morally wrong course, nor countenance him in so doing. No client in whose service an upright adviser can continue with self-respect will ever be other than thankful for sound advice. No advice can in the long run prove sound that has not a moral basis.

Such are the ethics of my profession according to an ideal standard; and no man, who does not mightily strive to hold fast to his ideals, can hope to lead a life, which shall satisfy his soul. In no other way can the hungry soul be filled.

TRANSPORTATION

CHARLES A. PROUTY

I AM asked to speak for an hour upon the Ethics of Transportation. Since the only transportation of which I have any special knowledge is by railroad, I shall confine myself to that.

The steam locomotive was first developed and steam railroads were first built in England. The original idea was to provide a way upon which the public might operate its own carriages. The railroad was to be like the turnpike or the canal, and just as any individual may haul his barges along the canal or drive his wagons over the turnpike upon the payment of an established toll, so members of the public were to be allowed to operate their engines and cars upon the railroad, paying to the owners due compensation therefor.

It early became apparent, however, that this was not feasible. From the very nature of the service it is necessary that the operation of a railroad shall be exclusive, and from this it has come to pass that the same company is usually the owner and operator. My subject therefore reduces itself to this, The Ethics of Building and Operating a Railroad.

At the threshold of every discussion of this kind, differentiating this business from most other kinds

of business, lies the fact that the railroad is a public servant. The government gives to the railway company the right to appropriate your land against your will. This is because the public requires the service which the railroad is to perform, and hence your interest and desire must give way to the common necessity. A railroad is a monopoly. You must use it for the purpose of travel and of transportation, and you must pay whatever sum is required for that service. The public may, in self-defense, protect itself against this monopoly of universal use. Just as the highway is a necessity to the public, so the railroad, under modern commercial and industrial conditions, is equally a necessity. Many countries build and operate their own railroads. The United States might do so, but has elected to delegate that duty to private individuals.

Whatever the reason, of the fact there can be no doubt. The Supreme Court of the United States long ago decided, and has often reaffirmed the doctrine, that the building and operating of a railroad is a public function, and that the railroad when built, even by private capital, is an agent of the government in discharging its duty to provide this public way.

At the same time the property employed in this business is private. Next to agriculture the amount invested in railroads exceeds that in any other kind of business. The last statistical report of the Interstate Commerce Commission shows the capitaliza-

tion of our railroads to be over sixteen billions of dollars. Some donations have been made from time to time by individuals and municipalities. The national government has contributed very con-considerable sums mainly in the way of land grants; but still practically all of this enormous amount has come from private sources and has been invested in the hope of earning a return from the prosecution of the business.

This dual relation, the fact that the service is public while the capital is private, makes the so-called railroad problem difficult and even perilous.

In England the public character of the railway has been recognized from the first. As early as 1850 the act permitting the organization of railroad corporations provided that they should treat without discrimination all members of the public. In the United States it has been otherwise. The country was new and in process of development. Railroads were an absolute necessity. Attempts by the states to build and operate railroads had proved disastrous. Hence, if the railroad was actually built and operated, there was little inquiry at first as to the method or even as to the charge made for the service.

Olcott *v.* The Supervisors, 16 Wallace 678, in which the Supreme Court of the United States laid down the doctrine that the railroad was the agent of the government in the performance of this public service, was decided in 1873. In 1876

came the Granger Cases, affirming the right of the state to establish the charges which a railroad might exact for its transportation services. Nevertheless, this idea continued to be economic and legal rather than practical. Until comparatively recent times our railroads have been not servants, but masters. Only when the abuses became so glaring and their effects so important that they could no longer be overlooked, did the public give practical effect to this principle. To-day both the several states and the United States do in fact exercise a considerable measure of control over the charges and operations of railroads.

This public character of the railroad must be thoroughly apprehended. There can be no comprehension of the right and wrong of these matters otherwise. The railroad magnate, potent as he is, must acknowledge in the government of the United States a master. The railroad employee, while his first allegiance is to the company which pays him, should also understand that he owes a certain duty to the public. Even more important is it that the people themselves should realize that these railways are their servants; that as such they should not be impeded and oppressed, but fostered and assisted.

Keeping, then, always in mind the character of the service, let us consider the building and equipping of the railroad, including the getting of the money therefor.

It is probably true that at no time in the world's

history has the mere possession of great wealth given to its possessor the relative distinction which it does to-day. Isaac of York was an individual of great consequence in his generation; but he moved in a different sphere and was accorded a different sort of consideration from that which his lineal descendants in Wall Street to-day receive. If one had undertaken 50 years ago to name our famous men he would have designated the orator, the statesman, the author, the man of science; seldom the man of riches. To-day our millionaires are the notable and influential members of society. It is their movements in which the people take interest and which the newspapers record.

And for this there is a very substantial reason. The wealthy men of to-day have, as a rule, acquired their riches by various kinds of industrial and commercial activity. They have built railroads, constructed factories, opened mines, given employment to thousands. They have been the active factors in the wonderful material development of this nation in recent years. We are to-day the foremost power in the world because we are the richest and greatest wealth-producing country in the world. It is natural that the masses should deify those men whose operations have made us great.

There is inborn in most men a desire for fame and power. It is altogether natural that a young man standing as you do upon the threshold of life should inquire in what sphere of action he can

exercise the most potent influence, and that, so inquiring, his attention should be turned to those occupations in which great wealth has been accumulated.

In no other business have so many great fortunes been amassed as in the railroad world. In no other sphere have these enormous accumulations come into existence almost by magic as here. Those who have made the beginnings in other fields have multiplied their possessions by their operations in railroads and railroad securities, and by all this the young man is attracted to this sphere of activity.

Now, I would not by any word of mine discourage young men from embarking in railroad service. There is probably no better field. It is the most important of all commercial industries. The character of the service is such that a high grade of ability is required, for which a high compensation is paid. The calling is a most honorable one. The very fact that it is quasi-public in its character; that more than any other business it immediately concerns the lives and the property of the whole community, renders it an occupation of the highest grade. But the young man should thoroughly understand that the conditions of yesterday are not the conditions of to-day and will be still less those of to-morrow. He should not enter that service with the idea of duplicating the experiences of the past, if he is to square his conduct with any proper notion of right and wrong.

The railroad is a public servant. Its only income is derived from the charges which it imposes for the performance of its public duty, and those charges should be reasonable. If a railroad property pays an extravagant return, it is usually because its rates are unreasonably high. No young man, certainly, should embark in that occupation with the expectation of imposing upon the public unlawful and unjust charges and of accumulating by that means for himself or his stockholders great profits. He may properly expect a handsome compensation for his own services and a sure return upon the investment which he makes; he has not the same right to obtain here as in private business extravagant returns.

Still more to the point is this thought: Long ago when I was just entering upon the practice of my profession up in Vermont, I inquired of a legal friend whether his brother lawyer who had grown rich in the profession had made his money by his practice. My friend replied, "By his 'practices.'" The great fortunes which have been accumulated by our railroad magnates have generally come, not as the product of railroad building, but from the various practices which have been rife in the past. There has been the construction company, watered stock, consolidation, reorganization, the manipulation of the stock market, and so on. It is by such means that these enormous fortunes have been accumulated.

Consider those English captains of the sea who roved the main in the days of good Queen Bess. Sturdy men they were. They turned a stream of gold into the coffers of England; they made the name of English seamen respected in all quarters of the world; their own names are embalmed in history as the potent men of that generation. Were these same gentlemen conducting these same operations to-day they would be promptly hung as pirates.

So with our modern captains of industry. They have been energetic men; their work has been of great benefit to our country. It may be that in no other way, for instance, could our railroads have been built; but none the less many of them have been pirates upon the sea of finance, and the methods which they have practised will not be tolerated in time to come.

These changed conditions must be fully appreciated by the young man who embarks in railroad service of any character. Our railroads have, for the most part, been built. The work of the future lies in the enlarging and perfecting of our present systems. For that a different kind of ability is required. The railroad magnate of the half century to come should be more a railroad operator, less a stock manipulator. Bearing in mind these changed conditions, let me indicate some of the rules which in my opinion should determine the right and wrong of building and financing a railroad.

1. No railroad should be built which is not neces-

sary. In the past railways have been constructed for various purposes besides that of operating at a profit. They have sometimes been built for the profit to some construction company from the building. They have sometimes been built for the sole purpose of invading the territory of a rival, and thereby forcing down the value of the property of that competitor, so as to compel either a consolidation, a lease, or a sale upon terms unduly advantageous. In my opinion all operations of this sort are morally wrong.

We are not considering the ethics of competition. If an individual sees fit with his private capital to construct a factory which can be of no benefit to him except in so far as it works injury to his rival, that may be his moral right. Certainly, that possibility was an incident in view of which the investment was made, and, as a rule, only the private capital invested is interested.

With a railroad this is entirely different. Here is a public institution. The property invested in that enterprise is entitled to a fair return, and this return is derived from the charges which the public must pay. Generally, that particular road alone serves a given community and if the service be inadequate the whole community must suffer. It is a fundamental proposition that whatever tends to enhance the actual cost of performing this transportation service is detrimental to the public which is served.

Let us assume a railroad serving a certain territory. The business of that territory is sufficient so that this railway can be operated in an efficient manner at reasonable rates and with a suitable return to its owners. A second railroad is constructed parallel with the first. The advent of this second carrier does not increase the total business to be done; it simply divides that business between two competitors. Those expenses of operation, which may be termed the fixed expenses of a railroad, the maintenance of its way, payment of a certain part of its employees, have been increased twofold. Broadly stated, twice the capital is now invested in serving this territory which is actually needed.

One of three things must result. Either the service will degenerate, or the charges will be increased, or the owners of these properties will receive an inadequate return; generally all three of these things happen in a degree.

In private business competition with all its harsh features seems necessary. In no other way can the public be protected against the imposition of unreasonable prices; but with the railroad the government itself can fix the charge for its service, which is the price of this commodity, and can prescribe the character of the service, which is the quality of the commodity.

In the popular apprehension the more railroads the better. Such is not the fact. Every unneces-

sary mile of railroad is a damage to the public. Sound thinkers have long since recognized the truth of this principle, and even the popular mind is beginning to grasp it. In one state at least no railroad can be constructed until public authority after intelligent investigation has determined that the public necessity requires it. The time will come when positive law will generally so provide; but meanwhile, without the inhibition of the statute, the promoter of a railroad should recognize and apply this truth, and wilful failure to do so is, in my judgment, a breach of good faith.

2. Every railroad should be honestly built. By this I mean that the railroad when completed should not stand the company which owns it at more than the actual cost of its economical construction.

This would seem to be axiomatic, and is only referred to because of the very extensive prevalence of the contrary practice. Numbers of railroads have been built for the sole purpose of enriching a construction company. Even when the work is done by the railroad corporation itself there is too often graft in every direction: commissions to purchasing agents, purchases from concerns owned by railroad officials, numbers of devices all of which go to swell the cost of the property beyond what it should be.

Similar practices are prevalent in all kinds of private business; but find their fullest expression

in railway operations. The capital of a railroad corporation is usually larger, the stockholders are more numerous, there is not the same sense of direct responsibility upon the part of the official, and his act is not subject to the same scrutiny as in case of a strictly private enterprise.

I believe that we are working steadily to a higher plane in this respect; but even to-day there is altogether too much of this character. These things will cease when the public not only regards them as wrong, but treats as wrong-doers those who have grown rich by these means. When you brand a man as a malefactor in high place in the morning, invite him to luncheon at noon, and call him into counsel upon the state of the nation in the evening, the moral effect of the whole performance is weakened. With respect to all these operations to which I refer, when men are not only termed malefactors but treated as malefactors, the thing will stop.

3. The capital account of a railroad corporation should represent the amount of money actually invested. No dollar of stock or of bonds should be issued which does not stand for a dollar paid into the property. I do not mean that a bond may not be sold for less than its par value; for that may be unavoidable; but so far as possible the character of the security should be such and the rate of interest such that the bond will be handled substantially at par. The object should be to make the capital account of a railroad represent the money

which has been actually paid into that concern by outside individuals. All those devices by which railroad stocks and bonds are issued without a present money consideration are wrong.

This subject is too broad a one for discussion here; but I may say in a word that the reasons which support this proposition are of two classes. The first concerns the investing public. The capitalization of a corporation does not of course affect the value of the property of that corporation. The market price of the stock usually recognizes the difference between the real value and the capitalization. If the value were accurately known so that buyers and sellers of these securities might understand the relation between that value and the amount of the outstanding stock, there would be no objection from the standpoint of the investor to overcapitalization.

In fact, the value of a railroad is not known; the cost of constructing it is not known; even the earning power of the property is an uncertain quantity and has been, in the past, subject to much manipulation.

Nothing has contributed more to the improper and iniquitous operations upon the stock market than the ability to issue, ad libitum and without present money consideration, railroad stocks and securities. Nothing would do more to lend certainty to the value of railroad stocks, to take them out of the domain of the speculative security and make them an investment security, which they

properly are, than the inability to so manipulate them.

The second reason arises out of the public character of the corporation. We have already seen that the private property invested in the performance of this public duty is entitled to a fair return upon its fair value.

It is often said by railroad representatives that rates cannot be fixed according to the amount of capital stock of a railroad; and this is true. The rates of a particular railway are often determined by conditions which that railway does not control; but, upon the other hand, railway rates as a whole should be largely based upon the fair value of the property used. When, as to-day, there is a general assertion upon the part of railroads as a whole that their rates must be advanced in order to yield a suitable income upon the investment, it becomes material to know what is the fair value of this property. The amount of money actually and honestly put into the enterprise does not of necessity fix its value; but the highest judicial authority has declared that this is one of the important elements which should be taken into account. The one thing in this complex problem which can be known with absolute accuracy from now on is the amount which is actually invested in the enterprise; and that thing should be known.

It is urged that in fixing railway rates the innocent holder of these watered stocks must be con-

sidered; and the Interstate Commerce Commission has so decided. He has bought in good faith, without notice that his stock represents no actual consideration, and it would be an act of injustice to take from him the value which he has honestly purchased. If a railroad stock sells upon the market for $500 a share, that is in a measure notice to the purchaser that the charges of that corporation are excessive. They may not be. The railroad may be so situated that upon reasonable rates it can make earnings which justify this value; but, in a way, the man who pays that price does so with notice. The transaction is entirely different when he buys without knowledge a share of stock four parts of which are water and pays $100 for it. In time the origin of these railroad stocks is forgotten and the stock itself is dealt with as it stands.

I have been engaged for a dozen years in considering how railway rates can be fixed so as to do justice between the public and the railroad. If I were to name to-day that thing which in my opinion would be of the most consequence in time to come I should say absolute control over the capital account of this public servant. When no security can be issued by a railway company without government sanction; when all new stocks and bonds must be sold at the market price; when every dollar received from the sale of securities or from the operation of the property must be used in operating or improving the railroad itself, there has been

laid the foundation for a structure in time to come which will afford one reliable indication of the rate which the railway should be allowed to charge.

Mr. Harriman says, "You may regulate my charges if necessary; but you should let alone my financial operations." The most conclusive answer to this proposition is the history of some of the financial operations of Mr. Harriman as exhibited in testimony taken before the Interstate Commerce Commission.

We come now to the operation, and I need not say here, as I did in reference to the building, that the strictest honesty and economy should characterize every transaction. In the past the railroad has been the fair mark for any kind of plunder. People who would not be guilty of the slightest dishonesty in their dealings with private individuals will cheat a railroad; and this same notion is more or less prevalent among the officials and employees of the railroad itself.

That all this is radically dishonest; that the same rule should obtain in the treatment of this public service corporation which obtains in dealings between private individuals, needs no confirmation, and without spending time in commenting upon it I bring to your attention two matters in connection with the operation of the railroad.

It is, in the first place, the duty of a railroad manager to operate his railroad for transportation

purposes and to use his railroad funds and his railroad employees for no other purpose.

Owing to the public character of the service, railways are particularly interested in the acts of the government. The legislature may determine the appliances which the railroad shall use. It may fix the hours of service of its employees. It determines the kind and the amount of taxes which shall be imposed. It may even establish the rates which the railroad can charge. Plainly, therefore, it is of great importance that the railroad shall be able to control the action of the legislature.

For this it has efficient means. Its money resources are large. Its employees are numerous. In the past it has been able to afford free transportation, a most potent means of political influence, and by concessions in its rates to confer the most important advantages.

This combination of inducement and means has led the railroad to take an active interest in politics. It has enacted statutes, appointed judges, elected governors, and even presidents.

This political activity is justified by the railroad manager upon the theory that in no other way can his property be protected against unjust assaults. The private individual may undoubtedly contribute to legitimate political campaign expenses. It is possible that a private corporation whose property is private in its use and whose will is that of the majority of its stockholders may properly contribute

in like manner. It may conceive that its pecuniary interest is so far involved in the success of a political party or a political idea that it is justified in using its funds to assist the party or promote the measure. This is a matter the ethics of which I am not now discussing. The court of final resort in New York has held that it is not a criminal act for the officers of an insurance company to pay out of the funds of that company a contribution to one of the national political parties.

However that may be with a private corporation, a railroad company has no right to use its funds for such purposes. That corporation by reason of its public nature stands in a way as a trustee for the whole people. The funds themselves come from the people. The function of this public servant is transportation, not government.

Some time ago in the course of testimony taken before the Interstate Commerce Commission under resolution of Congress, in reference to the proceedings of the Standard Oil Company, it turned out that that corporation, among other practices, was accustomed to buy space in newspapers, for which it paid at advertising rates and which it was allowed to fill with news matter. Sometimes this paid matter found its way into the editorial columns. To my mind, among all the devious practices upon the part of that so-called trust which were revealed in that investigation, none was more dangerous than this. To permit a concern like that to fill

the columns of the public press with statements of fact and statements of opinion supposed to be from disinterested sources is to poison the very fountains themselves.

A railroad may properly state its case to the public, and, under many circumstances, should use its funds for that purpose; but let it be in the open over its own signature.

In the second place, the railroad manager should operate his property for the convenience of the public and with uniform consideration of the public.

We come back always to the same proposition: the railway is a public servant, and while it is entitled to just earnings upon the capital employed, the manner of those earnings must be regulated in view of the public interest. The establishment of its regulations, the arrangement of its schedules, the operation of its trains, should all be in this view.

A railroad is a monopoly. The passenger must use its train, must pay for the time being the fare required, and must submit to the regulation imposed. He has no direct voice in determining any of these things. This circumstance leads him to view with suspicion and dissatisfaction the acts of the railway, and furnishes the strongest possible reason why the greatest care should be exercised in the first instance in establishing the rule and the rate, and why any criticism should be carefully considered.

The politic railway manager will satisfy many

unreasonable demands. He will remember that the public is ignorant and must be instructed; that it is unreasonable and must be patiently borne with. The railroad employee should observe uniform courtesy toward the public. Courtesy pays in private business, and is insisted upon by the private employer; in this public service it is a duty. This should be the rule among all railroad employees from the highest to the lowest. The millionaire traveling in his private car is entitled to no greater consideration than the poor woman with her bundles and her babies.

In the last dozen years my duties have taken me over all the great railway systems of this country and into every state and territory many times. I have been interested to observe the attitude of the railway employee to the public, and of the public to the railroad. While I have usually been able to commend the treatment accorded to the public, I have observed many striking examples to the contrary.

You may think that all this goes to the amenities rather than to the ethics of transportation; that matters of this sort are too trivial to occupy attention in this place. Not so. It can never be of little consequence in any walk of life to fail in that thing which good conduct and good conscience require. But here this relation of the railway to the public is a matter of paramount consequence.

The passenger upon the train may be for the

moment entirely subject to the dictation of the railway; but there comes a time when, standing at the polls or in the jury box, he is the master. I am convinced that nothing is more responsible for what injustice has been done railroads by juries and by legislatures than this public-be-damned attitude of too many railroad managers and railroad employees.

Not long ago the president of one of our great systems said to me that in his judgment railroads would be compelled to look for the protection of their properties to the constitution and the courts; that the people, if they were free to exercise their will, would virtually confiscate our railroads. Did this gentleman forget that courts and constitutions as well as legislatures are in this land of ours creatures of the people? The constitution was made and can be unmade. Courts may stand between the railroad and any temporary invasion of its right. They cannot defeat a settled purpose upon the part of the voters of this country.

There are times when the railway must appeal to the court for protection against the acts of the legislature and the commission. When that time comes the appeal should be made and the court should fearlessly discharge its duty in dealing with that appeal. But, as a matter of policy if not of ethics, this course should be taken only as a last resort. When a court of the United States sets aside a statute enacted by the supreme authority of a state, some temporary benefit may accrue to

the railway; but there remains a bitter taste in the mouth of the voter and a rankling in his heart which sooner or later are likely to find expression in ways against which no court can grant protection.

Railroads have protected themselves in times gone by by controlling courts and legislatures. One method of protection has seldom, if ever, been tried, and that is an honest appeal to the voters themselves. Some railways are beginning to resort to this expedient. I have in mind one railroad president operating extensively in a section of the country where legislation has been thought to be the most hostile, who loses no opportunity to lay before the communities which he serves the necessities of his road. I can but believe that this method if persisted in will win; and that no other method finally can.

Now in cultivating a proper spirit upon the part of the people toward the railway, nothing can be more important than the uniform consideration of the public in these relatively minor matters. If I were a railroad president I would insist, first of all, upon unvarying courtsey upon the part of my subordinates from the highest to the lowest; for no other failure of duty would I more severely discipline an employee. I would see that every complaint was promptly and effectively dealt with.

We come finally to the charges which may be imposed by the railroad for the service rendered to the public. Are there any ethical limitations upon these charges?

Its rates are a most vital thing to the railway. It is for the sole purpose of charging these rates that the railroad is built and operated. Whatever affects the amount of these charges touches in its tenderest point the welfare of the railroad corporation. From the standpoint of the railway itself this matter is of supreme consequence.

Of equal consequence is it to the public. Except what a man digs in his own garden, almost every article which he puts into his mouth or upon his back, which enters into the necessity or the comfort of his daily life, has been the subject of transportation by rail and has contributed its part of the railway charge.

These charges have sometimes been termed a transportation tax, and while the expression is not strictly accurate, the analogy is close. They are in essence a tax paid by every other species of property to that kind of property which is invested in the rendering of the transportation service. If too high, these charges are a most insidious means for taking unjustly from the masses and transferring to the few. One cent per ton upon the tons of freight handled for the year ending June 30, 1907, would amount to almost $18,000,000.

Equally important is the relation in rates. The railroad rate determines who shall do business and where it shall be done; where coal shall be mined; where flour shall be ground; where cities shall be built. Had I the time it would be profitable and

perhaps more entertaining than my present subject if I were to show you by actual illustration and in greater detail the truth of these statements. I must, however, ask you to accept my statement that in the rate is centered the interest, in the main, both of the public and of the railway.

Every one who has given even superficial consideration to the matter of railway charges knows that they present themselves in two aspects. There is, first, the inquiry whether the rates are too high for the service rendered, without reference to the charges made for other similar services; and there is, in the second place, the question whether the relation between the charges imposed for the performance of similar services with respect to different individuals or different commodities is just. We will consider first what may be termed the absolute rate; finally, the relative rate.

Those of you familiar with the De Officiis of Cicero will recollect that he suggests several instances in which the owner of property ought not to exact for its sale the highest price obtainable. Whatever may be your opinion of the cases propounded by this philosopher, certainly the general rule is quite otherwise. The private individual may ask for his property or his services whatever he lists. They belong to him and he may keep them or he may dispose of them, and to whomsoever and for whatever he sees fit.

Not so with the railroad, which must serve all

persons alike, whether it wills or not; and which must make for those services a reasonable charge. Plainly, therefore, it is opposed to good conscience to exact a rate which is unreasonable or discriminatory.

While this statement is unexceptionable in the abstract, it is extremely difficult of application in the concrete for the reason that it is most difficult to determine what is an unjust and an unreasonable railway rate. The government sometimes fixes the charge, and thus in that instance determines the matter; but formerly in all cases, and to-day with respect to the bulk of railroad transportation, the carrier is free to fix, in the first instance at least, its own rates. By what standard can the justice of those rates be measured?

If a railroad was constructed for the purpose of transporting a single commodity between two given points and was engaged in no other service, an answer to this question would be comparatively easy. It would be possible to determine the cost of the plant and the expense of the operation and in that way to arrive with reasonable satisfaction at a just rate. In actual practice this is in no wise the case. Railroads generally engage in the transportation of both passengers and property, and the property in particular is offered in every variety of form and under all conditions. It is sometimes heavy and other times light; sometimes of great and at other times of little value. In some instances the cost of transportation is of little conse-

quence in comparison with the value of the article, while in other cases the price of carriage may absolutely control all dealings in the commodity. The problem, therefore, of figuring out a reasonable rate becomes a well-nigh impossible one. Even were it possible to determine what the total receipts of a railway company ought to be, it would be impossible to distribute that amount among the various commodities actually handled.

Some years ago, in examining the traffic official of one of the great railroad systems of this country, I asked him to state the basis upon which the rates of his company were fixed. After mentioning one measure of reasonableness after another and finding that none of them would stand the test of an actual application to his various rates, he finally said, in despair: "To be perfectly honest, we get all we can, and even that is too little."

I think this gentleman pretty accurately stated, in this sentence, the manner in which the railroad rates of this country have been made in recent years. They are as high as they could be, and most railroad operators have honestly felt that even so they were too low. It was because the competitive conditions which had fixed rates in years gone by were fast disappearing under the influence of combination, that the country was aroused to the necessity of taking measures to protect itself against an unjust increase when these competitive conditions had disappeared.

The thoughtful traffic manager who gave honest expression to his belief would probably state that the rule of most universal application which governs him in the making of his rates is that expressed by the phrase, "what the traffic will bear." So long as business moves freely his rates are just. When the movement stops he begins to examine the propriety of his charges. This is the only ethical obligation which he acknowledges.

"What the traffic will bear" is an obnoxious phrase. There is about it an odor of extortion. For one who can charge anything he pleases, to take all he can get strikes the ordinary mind as outrageous, I am not certain, however, but that the rule as properly applied and understood is a valuable one, and that the traffic official may apply it without justly subjecting himself to the charge of wrong-doing. Let me illustrate just what the meaning of this phrase is in its general application.

I am the manager of a railroad extending 250 miles, from A to B. At C, a distance of 50 miles from A, is located a coal mine, at which the cost of placing the coal upon the cars is one dollar per ton. Coal of that grade sells in the open market at A for $2.25 per ton. I establish a rate of one dollar per ton for the handling of that coal for a distance of 50 miles.

This is certainly a liberal rate; but the earnings of my road as a whole are not excessive; nor can the rate itself, five cents per 100 pounds, be regarded

as extortionate. The owner of the mine is perfectly satisfied, for he is making a magnificent profit upon the operation of his property. A is a prosperous community buying its coal cheaper than most communities.

I resign as manager of this road and become the manager of another road extending in the opposite direction from A, 250 miles to X. The two roads are in all respects identical, the cost of construction, capitalization, business — everything is substantially the same.

At X is located a coal mine precisely similar to that at C. The cost of producing coal upon the cars is one dollar per ton, and the coal will sell in the market at A for $2.25 per ton. I establish a rate for the haul of 250 miles of $1.15 per ton.

Now, have I in these two cases been guilty of any wrong? In the first instance everybody is satisfied; everybody is prosperous. In the second case, the mine at X is not as prosperous as the one at C, for the profit of the miner at C is two and one-half times as great; but still the miner at X operates to advantage upon a profit of ten cents per ton. The return to my railroad is not satisfactory under the rate of $1.15; but that figure is better than nothing at all. In other words, the traffic will bear one dollar in one case and $1.15 in the other; therefore, I impose one dollar in the first case and $1.15 in the second case. Nor does it seem to me that the traffic manager can be accused either of inconsist-

ency or of moral dereliction who establishes rates as suggested in this illustration.

The case which I have put is an extreme one; but it illustrates the principles under which the railroad tariffs of this country have been developed. The study of the traffic manager has been to get business, and he has made such rates as were necessary to secure that business. The rates actually made in pursuance of this idea have been often inconsistent and have provoked severe criticism. It does not seem to me that the application of the principle is of necessity wrong. Upon the contrary, its application, within reasonable bounds, is healthy both for the railway and for the community.

I have said that the capitalization of a railway ought to represent the money actually invested. Ordinarily, the dividends paid upon the capital stock ought not to be extravagant. Mr. Hill said in giving testimony before the Commission that seven per cent was enough. I think he is right. Only in extreme cases would a larger dividend be justified.

So long as there is no overcapitalization, and so long as the rate of dividend is a reasonable one, I do not feel that there can be much danger of the rate being inherently too high under conditions as they actually exist and have existed in most parts of this country. If the earnings of the railroad are actually invested in the improvement of the property no great injustice has transpired. What-

ever has been taken from the public is still subject to the public control, and while a scale of rates which permits of the betterment of the property out of the earnings may impose upon the present generation a tax somewhat higher than is strictly just, still so long as we pay it without inconvenience no great harm is being done. Instances might of course be imagined where rates have been so extortionate as to justify censure of the person who imposed them; few cases of that kind have fallen under my observation; and I imagine them to be extremely rare.

There are many uncertainties in the management of a railway. The volume of business and the expense of operation vary. The demands of the public for improvements which do not produce increased business are ever growing. The evolution of new railroad methods renders useless the old. So long as the charges are paid without inconvenience by the public; so long as the traffic moves, there is not much danger that rates will become permanently too high, provided we can control the capital account and know, therefore, the return which is actually paid in cash upon the cash investment.

With the relative rate this is entirely different. Let me illustrate my meaning by an example here, taking for that purpose the railroad A B and assuming that two mines are located at C. From mine No. 1 coal can be put upon the cars for one dollar per ton, and it sells in A at $2.25 per ton. From

mine No. 2 the cost of producing coal is $1.25 upon the cars, and the quality of the coal being poorer it sells in the market for but two dollars per ton.

What may the railroad do under these circumstances? May it impose the rate of one dollar upon the coal from mine No. 1 and a rate of fifty cents upon the coal from mine No. 2, thereby equalizing the profits of the two mines?

I think not. The cost of transporting that coal is the same; the service which the company renders to these two individuals is the same. The value of that service may be somewhat less to the miner whose coal is worth but two dollars than to the miner whose coal is worth $2.25, and possibly this difference in value may properly find expression in some slight difference in the rate; but certainly the railway has no right to take up in its tariffs this difference in operating cost of the mine and quality of the coal.

To admit of any such right upon the part of the railway would be to concede that railways, by the establishment of their rates, may equalize, enhance, or utterly destroy all natural advantages. If the railroad can by its rate make the coal of mine No. 2 equal to the coal of mine No. 1 in the ground, then there is no such thing as a natural value. Everything depends upon the whim of a particular railway; or, if the rates are to be revised, upon the whim of the body which finally decides.

In my opinion the traffic official has little, if any,

latitude in case of the relative rate. It is his absolute duty to treat all shippers alike. Voluntary discrimination of any sort between his patrons is wrong. A railroad has a very wide latitude with the absolute rate in the development of its business; it has no such license with the relative rate.

I am aware that the contrary has been often affirmed in actual practice. I know that there are numbers of rates now in effect which utterly violate this rule, which could not with propriety be disturbed. It would be easy to suggest conditions and absurdities which might arise in the application of such a rule, and still I myself believe that there is no more essential principle in the administration of our railroads than this. So far as can be absolute equality must be done between competing individuals and competing commodities and localities.

I should fall short of my duty in presenting this subject if I did not spend a moment in suggesting to you what may be termed the obverse side of this question. None of you may be either railway magnates or railway employees; you will all be citizens of the United States and charged, as such, with the responsibility of dealing with this problem.

I have endeavored to impress upon you that the railway is a public servant, and that, as a public servant, it owes certain duties to its master; I would impress it upon you with equal force that the public as master owes certain duties to its servant.

It has already been observed that the railway is

apt to be considered a fair mark for plunder; and the same idea finds unconscious expression in the attitude of the public toward the railroad in many matters of governmental regulation. The people of this country as a whole have no desire to oppress its railways or to do injustice to that species of property. In the past the railroad has been the aggressor; it has by its own conduct compelled the public to assert itself; but there is to-day the very gravest apprehension that the pendulum may swing too far the other way.

The money investment in our railroads has been put there for the purpose of earning a return. Just as there is upon the part of the railway itself an implied promise to the people that its services shall be rendered for a reasonable charge, so there is, upon the part of the people, an implied promise that this property shall be allowed to make such charges as will yield to it fair compensation.

The form of this investment is such that it cannot be withdrawn. Private capital can usually be taken out of private enterprise. The property can be sold or removed to other fields of activity. Not so the railroad. It must be used where it is and for that purpose, or it is worthless. Whatever prevents it in that form from earning a fair return virtually confiscates the property.

It may be, and is true, that vast fortunes have been accumulated by improper manipulations of railroad properties and railroad securities; but the

men who have accumulated those fortunes for the most part no longer own the securities. The owners of our railway stocks to-day are mainly innocent purchasers who hold them for value paid. To impair the value of these stocks would not punish the persons who have improperly profited by these transactions in the past. Justice requires that we deal with this problem mainly as it is and that we do not impose upon railway capital such limitations as will prevent it from making a suitable return by reason of what has already happened.

The government might have built and operated its own railways, but instead of doing so it has invited private capital to discharge for it this public function, upon the assurance that such capital shall be allowed to exact a fair compensation for the service. Nothing can be more unjust than to deny to this capital that right.

Not only does a sense of justice require this; self-interest also dictates it. The railroads of this country must, in the immediate future, be very largely extended and improved; additional facilities must be provided to meet the increased demands which will be made. This will require the outlay of vast sums of capital; and this capital must come mainly, not from the earnings of the railroad, but from the investing public. We can provide by legislation the sort of cars which a railroad shall use and the rates which it shall impose; we cannot by legislation force one single dollar of

private capital into railroad investment against its will.

Capital will seek investment in this field for exactly the same reason that it will in any other; namely, upon the expectation of making a profit out of the investment. It is not necessary that the return should be large; but it is necessary that it should be certain; that the people who put their money into this form of investment shall feel confident of fair and honest treatment.

A want of adequate railway facilities would mean industrial paralysis. Unless they are provided when needed, the government will find itself confronted with a demand from all sources — from the merchant, the manufacturer, the farmer — which will force it to meet in some way the necessitites of the occasion; and this can only be by either furnishing the capital or providing the railroad itself. If we are ever brought face to face with the proposition of government ownership, it will not be by the imposition of excessive charges, for we can deal with that situation, but by the impossibility of obtaining adequate facilities. The possibility of such an emergency is by no means fanciful. We were upon the brink of it in the fall of 1906 and the winter of 1907, when crops were rotting upon the ground because they could not be carried to market and when people were freezing because coal could not be transported to keep them warm.

This phase of the matter is too little considered.

If this government hopes to continue its present system; if we are to look in the future as in the past to private capital for the providing of our railroad transportation, it is fundamentally necessary that confidence in the fair treatment of that capital shall be established.

It is often urged that the proper way in which to produce confidence is by stopping the regulation of railroads. It is urged that their attempted regulation has only resulted in confusion and disaster and that it never ought to have been undertaken.

This is nonsense. Whoever controls the highways of a nation controls that nation. Regulation was inevitable, and without it a state of anarchy would have resulted. There must be regulation, and that regulation must be complete and effective; but it should be just and intelligent. The problem is how to secure the right kind of regulation. The naming of a railway rate or a railway rule which shall be followed for the future is a legislative function, but none the less it cannot properly be discharged by the legislature itself. In all its essentials the act partakes more of the judicial than of the legislative. The problem presented is a new one, requiring a new kind of machinery.

The only feasible way seems to be to create a tribunal in the nature possibly of the present commissions; to make that tribunal as able, as dispassionate, as honest, as is possible, and to leave with it the solution of these questions. Any such

tribunal will make errors on both sides; but in process of time it will become, so to speak, educated to its duties. Just as the courts of England, acting through a series of years, evolved our common law, so in time there will grow up a system of rules applicable to this subject which will be reasonably just to both parties.

There is grave probability that within the half century the United States must consider the question of taking over the operation of its railroads. No other complete solution of many questions which present themselves can be suggested. The tendency everywhere is that way. Other governments are continually moving in that direction, and never in the other direction.

Such an undertaking would, however, be a tremendous one. It is not certain that the result would be unfortunate; but the experiment would be hazardous. For one, I would be glad to see regulation fairly tried before ownership is resorted to. To this end there is necessary, upon the part of the public, intelligence honestly directed, upon the part of the railway honest coöperation, upon both sides patient forbearance.

SPECULATION

A CHAPTER on the ethics of speculation will probably seem to many people to take inevitably the form of the famous chapter on Snakes in Ireland, viz., that there are no ethics in speculation. And I fear that a lecturer on this subject who takes a different view will be thought to be in the position of a classmate of mine, who, on going into an examination in ethics, remarked that he "didn't know an ethic when he saw one." Nevertheless I feel convinced that one of the chief obstacles to the achievement of a higher moral tone in business is the indiscriminate denunciation of certain business practices, without any careful preliminary analysis of their real nature. When popular writers are constantly pouring out invective against things which practical men know to be necessary, there is grave danger that these same practical men will become callous to all criticism, and will refuse to see the moral iniquity of certain forms of business which are not necessary. In order to make moral condemnation most effective it is important to take pains that it shall not be misapplied, and it may consequently prove as beneficial to show the righteousness of conduct which was formerly held to

be evil, as to prove the iniquity of conduct formerly held to be righteous. Moral improvement does not necessarily consist in increasing the number of prescribed practices. In his penetrating book on Ibsenism, Mr. Bernard Shaw divides the pioneers of society into just these two classes, — the one made up of those who persuade the community that the practices which they had tolerated in the past are really vile; the other made up of those who persuade the community that the practices which they had tabooed in the past are really without taint. He shrewdly and wittily ascribes the greater weight attached to the teaching of the first order to the fact that society's guilty conscience is always more ready to believe in the evil of its own conduct.

I feel sure that observations such as these will not be understood by you to be meant in any flippant sense; nor to reveal any lack of sympathy with that very genuine improvement in the moral standards of the business world in this country which I sincerely believe to be the most important achievement of the first decade of this new century. A moral sense, however, which amounts to anything must be accompanied by an intelligent understanding, and the business of speculation more than any other business, I think, offers peculiar illustrations of two difficulties involved in the discussion of any ethical problem:

1. The necessity of knowing the facts regarding

the transactions in question, and not being caught by well-sounding phrases.

2. The necessity after the facts are ascertained of interpreting them broadly in relation to the whole social scheme, — that is, of judging any social practice, or arrangement, or institution in the light of its function.

As an illustration of my first point, I may take the very prevalent saying, that to "sell short," — that is, to sell that which one doesn't own at the time of sale, — is "clearly ethically wrong." This sounds reasonable to one not familiar with business because it carries the implication to the uninitiated that the seller has deceived the buyer, — that he was pretending to own something which he didn't own. As a matter of fact, of course, the transaction carries no implication of that kind at all. The seller simply agrees to deliver a certain article at a future date, the buyer knowing perfectly well that he hasn't the article at the time of sale but is in a position to get it before the time of contract delivery. The payment is made on delivery.

For example, I am at the present moment engaged in the fulfilment of a "short" contract. Director Chittenden some months ago offered me a certain price for one lecture on the Ethics of Speculation, to be delivered May 27, in this room. I had no such lecture and he probably knew it, but I made the contract with no moral qualms. He had confidence that I would make delivery according to

contract, and I had confidence that he would pay the price. In the same way a contractor agrees to deliver on a certain date a house built according to certain specifications. He of course owns no such house, but can build it in the meantime.

It may be urged that in these cases future deliveries are necessary, but that in the case of commodities the buyer, if he be engaged in legitimate business, can wait till he wants the goods and then purchase of the so-called "real holder" at that time. Here comes in the element of fluctuating prices which is at the basis of all speculation, but is also closely involved in all business. I shall explain this more fully later, but will simply suggest here in passing that no one would question the propriety of the contractor (for the house just mentioned) buying his stone, bricks, and lumber to be delivered at later dates; nor the propriety of the dealers in selling them for such future deliveries, even if they haven't them in stock at the moment. Manufacturers are regularly selling goods ahead which they haven't yet produced.

This explanation was perhaps unnecessary, but was introduced here to illustrate the first requirement in such a discussion, viz., that we should avoid subscribing merely to catch phrases without a more careful examination of their meaning.

The second requirement suggested was that every social practice that is brought up before the bar of moral judgment must be given a fair trial in the light

of the function which it performs. It was suggested at the outset that there is danger in making men callous to criticism when things which they know to be necessary are subjected to continuous condemnation. To this many people — especially, I think, young people — promptly reply that if a thing is wrong it is not necessary, — that to hint otherwise is to substitute a base standard of expediency for a high standard of righteousness. On the contrary it is the very desire to avoid the easy resort to expediency which makes this consideration important. When we are once convinced that for the welfare of society a certain institution *is* necessary for the performance of a certain function, we cannot then be heard to say that it is inherently wrong from the moral point of view. The thing to be desired is that we shall not afford the man of business the opportunity of identifying whatever is profitable with the things that are necessary; but this is exactly what we shall do if we do not recognize what things are necessary.

You will see what I mean by considering for a moment the institution on which our whole economic fabric rests, — private property. There are certain writers who believe the institution to be profoundly immoral. The Frenchman Proudhon answered the question "What is Property?" with the words "Property is Robbery." What effective answer is there to this criticism? Such an answer must of course rest on the necessity of private property to

stimulate that effort and accumulation on which the material welfare of society depends. We can all see certain evil features in a system based on the private pursuit of wealth by individual effort, but if we are convinced that the important function of feeding and clothing society is best performed by this institution we cannot morally condemn it.

Similarly we must examine the economic function of the Stock Exchange if we wish to understand its ethical nature. And, what is more, we must examine it in the light of the system of private property. That is why I referred to that fundamental institution at this point. One of the best accounts of the Stock Market was written by that very Proudhon who defined property as robbery. The book may be read in two ways, — *first*, that under a system of private property the stock exchange is a necessity and hence justified, — or, *second*, any system which makes the stock exchange necessary is vile, hence the system of private property is condemned.

The second of these is the socialistic position; but obviously it would take us way beyond our theme to discuss such a problem as that. For the purposes of this lecture we may assume that we believe in the morality of a business world in which men seek wealth by their own efforts, own this wealth, and exchange it in the hope of making profits thereby. This at once does away with the early problem of ethics which troubled so many

writers of the middle ages, namely, the problem of how far trading for gain is itself morally defensible. It was the generally recognized principle for centuries that any profits of a speculative nature were immoral gains. Thomas Aquinas expressed it as follows:

Negotiari propter res necessarias vitæ consequendas omnibus licet; propter lucrum vero, nisi id sit ordinatum ad aliquem honestum finem, negotiari ex se est turpe.

That is, trading in order to secure the necessaries of life is permissible; but trading for profit, unless this profit is for some nobler end, is wicked in its very essence.

The medieval theory, you see, was that for each article there is a "just price," and this price, on the whole, represents the necessary return to the producer to enable him to maintain the standard of life of the class among which he was born. Such a price might include all necessary costs, — including possibly an element of insurance for the physical danger to the commodity in case of distant transport, — but any compensation for commercial risk was rigidly excluded in theory.

With the growth of commerce and the change in the methods of production, the old ideas broke down. There was no such certain cost of production and no such certain and hereditary standard of life on which the idea of the just price could be based. All prices became uncertain and fluctuating

and all trade came to be for an uncertain gain. In other words, all trade came to be speculative. Traders took great risks and made up for their losses in some cases by high profits in another. The very maxim of trade came to be "to buy as cheaply and to sell as dearly as possible." To-day this is generally recognized. A man may not cheat by false statements, nor may he oppress the helpless and the ignorant, but no moral opprobrium attaches to the merchant or manufacturer who wisely foresees the demand of the public, secures the goods they want at the most favorable rates, and sells them for what the public will pay. We may fairly say that all business has become speculative in the sense that all business involves risk, — the risk of losing money, for which the compensation in the mind of the business man is the corresponding chance for profit.

The crux of the whole matter lies in this question of risk. In one sense every action of our lives involves a risk; and yet we find that the approval of the public rewards the conservative man who is said "not to take risks"; while it looks askance on the man who is reckless in this regard. Can we find any dividing line? If I rent a house, I take the risk that it may not be well built or easily heated; if I buy a horse, I take the risk that he may not be sound; if I buy a new brand of tobacco, I take the risk that I may not like it; if I buy a theater ticket I take the risk that the play may bore

me. To make the case personal again, Dr. Chittenden, in inviting me here, took the risk that this lecture would bore you without enlightening you. But you will at once see that risks of this kind, on the whole, are necessary risks, and that with due caution and adequate attention to the conditions they are perfectly moral and legitimate. The old adage "Nothing venture, nothing have" holds true, to some extent, in all affairs of life; but it does not follow from this that all venturing is therefore moral. The test would seem to lie in the two points of how far the risk is necessary, and how far it is well considered. This test probably could be applied to all the manifold risks of life. For our purposes, however, it is enough to restrict our attention to those risks which are properly financial in nature, — that is, where a man risks his money in the hope of increasing it. Indeed, it would savor of immorality for me to take the unnecessary risk of losing my path altogether in this lecture through wandering among the tangled byways of general ethics.

Coming back then to our topic, we have seen that all business involves risk, and so, in the broad sense, may be called speculative. If men are allowed to own property at all, a risk is involved in the ownership. The property may be destroyed, or deteriorate, or most important for our purposes, it may fall in value. The term speculative risk, strictly applied, refers to this last risk of changing values.

In proportion as a business is dependent on fluctuating values it is speculative business. Speculation pure and simple is the name applied to that kind of business which is solely concerned in securing a profit from uncertain price fluctuations over a period of time. Thus we can mark it off both from the trade of the merchant in the case of commodities, or from investment in the case of securities.

What is the difference between a wheat merchant and a wheat speculator? The wheat merchant is a man who buys wheat of the farmer or in the primary markets and sells it to the miller or for export. That is, he buys in one market and sells in another, just as the grocer who sells you a barrel of flour buys of the wholesaler and sells to you. There is a normal difference of price between these two markets and from that difference come what may be called strict mercantile profits. If the price of flour at the Minneapolis mills remained uniform for a year, there would still be reason for the activities of the grocers, both wholesale and retail. In the same way, if the price of wheat on the Chicago Board of Trade remained uniform there would still be occasion for the merchants to get the wheat of Dakota into the markets of England, and in both cases the regular profits of the middleman might be expected. There would be certain risks involved, but they would not be risks of wide-spread price fluctuation.

But, as a matter of fact, prices of wheat do not remain uniform for any length of time. They are

affected by the changing conditions of supply and demand over the whole world; and their fluctuations are entirely beyond control and, in large measure, even beyond prediction. Here, you see, entirely new risks arise. Large extra gains may be secured if the price goes up, or severe loss may be met if the price goes down. The merchant himself is largely helpless before the speculative risks of this kind. It is just here that the speculator comes in. He trades purely on these fluctuations which occur in a single market (or in all markets at the same time). If he is a speculator on the Chicago Board of Trade, he buys wheat in Chicago for delivery at some future time in Chicago, if he expects the price to rise, or he sells short for delivery at some future time if he expects the price to fall. It is not the difference between the price of wheat in Chicago and Liverpool that interests him, so much as the difference in price between May and September.

Now the question is whether this is a moral or justifiable thing for him to do. Does he do any good to anyone, or perform any service to the business world by such transactions; or is he merely a parasite who has arisen because of these dangerous fluctuations? To answer that, you must first recognize that he is at least a product of these conditions; that is, speculation of a professional kind is the result of very actual risks of price fluctuation in the markets of the world. Some people

think that speculation is the chief cause of fluctuation prices, but the fact is just the opposite. It is the fluctuation which causes the speculation. If this were not so, speculation could be started in any commodity at will. Such attempts to create speculation artificially have, however, always failed. When the price of any commodity is relatively stable over any considerable period of time speculation does not arise. You can see this at a glance by considering what commodities are dealt in on the speculative exchanges, — wheat, corn, coffee, cotton, — *i.e.*, the commodities in which the conditions of demand or supply, or both, are very uncertain, of a world-wide nature, and beyond the control of any single group of men.

The speculators, then, are, in the first place, taking real risks arising from real business. By doing so, are they relieving any one else of risk, or are they simply adding to risks already existing? If the latter is the case I could make no moral or economic argument in favor of speculation. But what happens is that through this assumption of risks the merchant and miller are in large part relieved of the risks which otherwise they would *have* to run. The risks are there; some one must take them. As they have increased through the widening of the market into a world market, — there has been a differentiation of dealers into two classes, merchants and speculators. Instead of all merchants being obliged to speculate to some extent,

a new class has arisen to speculate on a large scale.

Let me explain briefly how this special class of speculators is enabled to carry the risks which otherwise would have to be carried by regular merchants in the case of such a commodity as wheat. A merchant whose function consists in getting wheat from the hands of the producer into the hands of the consumer wishes to make a regular mercantile profit from the difference in prices between the two markets. If he is a conservative dealer, he wishes to avoid so far as possible the risks which arise from fluctuation in prices over a period of time. By the practice known as "hedging" he is now enabled to avoid these risks nearly altogether. Suppose a wheat merchant wishes to buy wheat in Dakota for export to Liverpool. Under the old practice he would have bought outright, shipped it to Liverpool, and have sold it there perhaps two or three months later. In the meantime the market might have changed so completely that the transaction would involve a great loss. On account of this possibility the wheat merchant was formerly obliged to buy of the farmer at five or ten cents a bushel under the regular market price. Now a merchant can buy wheat in Dakota and instantaneously sell on the Chicago Board of Trade an equivalent amount of wheat for future delivery. He does not intend to deliver his Dakota wheat in Chicago under this contract, but as before wishes to ship

it to Liverpool. This he can now do with a sense of security, and the moment he sells his actual wheat in Liverpool he covers his short contract on the Chicago Board of Trade. If, in the meantime, the price of wheat has fallen five cents a bushel, he will lose that much on his original transaction, but will make as much more to offset it through his deals in futures on the Board of Trade. So far as the merchant is concerned this is not speculation at all, although he uses the machinery of the speculative market; it is merely protection against loss. It also, of course, eliminates the possibility of speculative gain. In other words, the risks of fluctuating values are avoided by him and are thrown upon the shoulders of the Chicago speculators who make a business of carrying such risks and prefer speculation to ordinary mercantile pursuits. The risks were there in any case. By the old method the merchant was obliged to carry them. By the new method he gets the speculators to carry them for him.

A similar distinction may be drawn between the investor and the speculator in the case of capital. The investor uses his money to buy securities in the hope of an annual income. The speculator buys in the hope of making speculative profit from a rise in price. Does the investor gain anything from this body of speculators? Obviously his risks are reduced in much the same way. Modern business requires the investment of thousands of millions

of capital in great enterprises of which the average investor can never know much through any investigation of his own. In order to reduce the risk enough to entice capital into these fields, we have been obliged to introduce the principle of limited liability of stockholders. But even with this provision, it is hardly to be supposed that adequate capital would be forthcoming unless there were an open market for the securities of such companies, — or if it were, the hardship to investors would be great. The Stock Exchange of New York provides that open market. On its list are securities aggregating billions of dollars, held by more than a million investors. The prices which prevail there represent the opinion of the market as to the real values of these securities. They are the guide which the investor has and without them he would be very much in the dark. But this is not the main point. These are the prices at which he may buy or sell at any moment. The instant he wishes to shift his risk he can find a purchaser in the open market ready to take over his property at the market price.

I hope I have made clear the real function of the professional speculator. It is he who maintains an open market in which the merchant, the manufacturer, and the investor may find some one to carry his risks for him at any time. Without such speculative markets many lines of business and investment would be much more risky than they now are.

I think I have answered the question propounded as to whether the speculator performs a service to business or is merely a parasite upon it. Without the great speculative market the distribution of commodities and the investment of capital would be greatly hampered. I have devoted so much attention to the function of speculation because it happens to be about the only line of business of great size which is widely thought to be immoral in its very essence. One lecturing on the Ethics of Manufacturing or the Ethics of Publishing does not need to explain that these lines of business are in themselves necessary or legitimate.

But if I have succeeded in showing that speculation may be perfectly moral in some cases, the problem still remains of the moral evils which it incurs. In the first place it may be asked, are not the methods of speculation ethically indefensible? It is not possible to go into the details of the technical methods and rules of the exchanges, but a word may be said on three objections raised.

1. Short-selling. I spoke of that at the outset and need only remind you again that it is not necessarily ethically wrong to sell goods for future delivery which you do not own at the moment. If speculation is permissible for the rise, it is permissible for the fall, and in fact, if there were no short-selling, there would be no speculative market. The hedging in the wheat market which I described before would be impossible without it. In fact, the short-

seller is a most valuable man in the market. It is he who checks the reckless plungers who would drive prices to the panic point, and who, if a crisis does come, supports the market by his covering purchases.

2. The method of delivery. It is thought by many that the speculative exchanges adopt immoral practices in this regard because they provide a method which makes settlement of contracts possible without specific delivery in each case. It is claimed that this is therefore not real business, but mere betting on prices. There is, however, so far as I can see, nothing inherently wrong in the method itself. It is no more than a system of clearing. Every contract requires actual delivery of the goods or securities, and no one can avoid making the delivery save by contracting with another party to do it for him. Neither can a man avoid receiving the property except by selling or lending it to another party. Such a series of contracts may go through a long line and all be settled by a delivery by the first man to the last, but that is not inherently wrong. It is nothing more than what takes place among the banks. I give my check to you for $100 for goods delivered. It requires the payment of cash by the bank. You prefer to deposit it with your bank and the two banks arrange an offset because of a similar claim which my bank holds against yours. No cash passes at all, and yet no one would venture to say that this is not actual

business. Cash is paid only on the necessary balances, and the same is true as to commodities or securities on the exchanges.

3. Margin speculation. Much evil arises from this, but in itself there is no moral taint to it. So far as the rules of the exchange for the brokers are concerned, they simply provide for the deposit of a certain guarantee against loss, which is common enough in all business. When he deals on margin he is dealing on borrowed capital, — *i.e.*, he supplies say ten per cent of the purchase price and hypothecates the stock for the other ninety per cent. This is dangerous, perhaps, but it is not necessarily ethically wrong. I may buy a piece of real estate for $10,000 and pay only $2000, giving a mortgage for the balance. This is not necessarily immoral, though it may be reckless, or not, according to the conditions. It is, however, the same principle as buying on a margin.

To conclude this very brief statement as to methods, it appears that a contract made by a broker in regular manner on a reputable exchange is a bona-fide contract, which cannot, because modern credit and clearing methods are used, be called immoral in itself.

It begins to look to you, I fancy, as if the opening remarks regarding the chapter on Snakes in Ireland were going to be reversed, and that instead of showing that there are no ethics in speculation, I was trying to prove that there is nothing in the whole

system contrary to ethics. Let us see where we have arrived. Speculation we have seen to be an inherent part of modern business. It is an inevitable result of the fluctuations in the prices of private property. Somebody must bear these risks. A class of speculators has arisen ready to assume them. Speculative markets with organized machinery are the result. The forms of contract and methods of settlement are in themselves not wrong, nor are they as a matter of fact different in their essence from the ordinary transactions of business. It is obvious then that the final ethical question is, — Who are these speculators and how far are they morally justified in their transactions? There are three types in the speculative market.

First there are the men who, possessed of large capital, devote themselves to it professionally. It is their function in the economic system to buy and sell solely with an eye to these fluctuating values. They assume the risks which other men do not care to assume. Such business seems to me entirely legitimate, provided it is carried on according to the ordinary rules of business honesty. The unfortunate thing is that the temptation to adopt devious methods is very strong. The point lies just here: It is profitable under the present conditions of business to use all the shrewdness one has in forecasting conditions and buying or selling on a large scale in anticipation of them. Indeed, a big speculative deal, if successful, is likely to be

beneficial, and if unsuccessful is likely to be harmful to the community.

But of course the profit comes in in being the only one to be right. This may be done honestly by superior intelligence and information. On the other hand it may be done by manufacturing false news, by bribing the financial columns of the press, by starting fake rumors and the like. The history of speculation is unquestionably rife with instances of this kind. It is questionable if anything has been learned in this regard in two hundred years. A curious book published in 1719, "The Anatomy of Exchange Alley," gives many illustrations of the practice. There is little to be said about it, save that it is wholesale deception, condemned by the moral sense of all honest men. It would be as needless to show its iniquity as to show the iniquity of lying and bribery in general. All business can show instances of evil methods, and just as there are dishonest merchants and manufacturers, so there are dishonest speculators. Unfortunately in both cases the dishonest sometimes rise to wealth and power.

It is, however, I think, customary to exaggerate this side of the picture, and though we are far from having risen to a state of perfection, I am confident that a higher standard prevails now than formerly. We see frequent scandals in these days, but many of them would have passed as normal episodes of business in earlier times.

The stock exchange, obviously, offers one source

of evil which is impossible on the produce exchanges. The extent of so-called manipulation is less than is commonly supposed in any case. This is not because of the wickedness of it but because of its difficulty. Some brokers will tell you that all prices are manipulated, but this is not true. If it were, the making of fortunes would be too easy to be amusing. As a matter of fact the record of failures far exceeds the record of successes, and many a great manipulator has gone down to ruin from the mistaken idea that he could do what he pleased with his rival speculators or with the public at large. A young and foolish speculator will tell you that the big men can do anything. An old and wise one will tell you that in nine cases out of ten the man who underrates the public will meet his Waterloo.

All this is especially true of the produce exchanges, because nobody can long control the price of any great staple. In the case of the stock exchange, however, a man may be at once the guiding manager of a corporation and a speculator in its securities. In this case he has a divided interest, — his duty to his stockholders and his desire to make stock-jobbing profits. His obvious duty is to manage the property as well as he knows how and to be scrupulous that the stockholders get the benefit of his management. He may choose instead to manage it in such a way as to make the price fluctuate wildly, and under his control, while making big personal profits on the exchange from his knowledge of what he

is going to do. There have been cases where a corporation president has wantonly wrecked a great enterprise, and thereby ruined or crippled thousands of stockholders because he was short of the stock of his own company. This is about the most dastardly form of dishonesty known to man. Compared with such a manipulator a safe-breaker is a respectable and courageous citizen. Such men are rare, and no one had a good word to say for them. But there are other great managers who, while building up the property they control, use the speculative market as a means of securing for their own pockets the gains that should go to the stockholders. Suppose a man keeps secret the results of his own management, covers up the increased earnings, and is thus enabled to secure at low prices the stock of many shareholders. Then when he is ready for the coup, he reveals the conditions, declares a big dividend, and on the great rise on price sells out again at high profits. He has not caused any positive loss; he has built up instead of tearing down; but he has none the less, by the devious use of the stock market, put into his own pocket the increased value, which morally belonged to the owners of the property. This may be high finance and some people admire it, but it is contrary not only to morals, but to the simplest legal principles of trusteeship. The moment a company director speculates in his own shares, he is in grave moral danger and legal danger as well. His business is to make money for

his stockholders and not for himself. To those of you who are destined to become industrial leaders of the future, I can give no more earnest injunction than on this point. The danger is all the greater because such conduct often wins the enthusiastic applause of the "speculative crowd" and of an unthinking public. Some of our greatest financial geniuses have been guilty of it.

Regarding inside speculation, I can only say again that I am optimistic enough to believe that the market to-day shows fewer and less flagrant cases than formerly and that a higher moral standard of the duties of directors is slowly but surely making itself felt. It is not conceivable that the scandals of the old Erie speculation should reappear to-day, and it is not too much to hope that some of the manipulation that has recently taken place in a great transcontinental line would be looked upon by our new generation, when they come to deal with business affairs, as beneath the standard of a thoroughly honorable operator.

You have read probably a good deal in the press about so-called "washed sales" which is one of the devices sometimes resorted to by manipulators to create a fictitious price for securities. The practice is thoroughly dishonorable and is absolutely contrary to the rules of the exchange. In fact, these rules state that any member found guilty of such conduct shall be expelled. The practice, however, is not so common as is sometimes supposed and can

only be successfully carried out in the case of inactive securities. It consists of employing one set of brokers to buy and one set of brokers to sell the same security. If the brokers on both sides are acting for the same principle, obviously it makes no difference what the terms of the transaction are, and orders can be so given that the price may be put either up or down for the time being before independent dealers come into the market. This may be done by entirely innocent brokers or may be done by actual collusion on the part of the brokers who understand what they are being used for. In the latter case of course the brokers are as guilty as the original operator.

A second class of speculators consists of men of some means and some judgment who, while regularly concerned with some other business or profession, are inclined to use a small part of their means in the attempt to make a good turn in the market. That is, they are not content with mere investment, but wish a speculative profit from changing values. The question of the morality of these is a question of circumstances, — that is, it is primarily a question of how far they act sanely and within their means, and how far they are hindered in doing their full duty to their major calling. Suppose, for instance, that a physician who has an extra $2000 at his disposal, which he does not especially need, and the loss of which would not be greatly felt, sees a railroad about to be built in his neighborhood and

thinks that the price of near-by timber land will surely rise. A tract is offered him for $8000, which he buys, paying $2000 down and giving a mortgage for the balance. He buys it purely for the speculative turn. The venture may prove to be successful or disastrous, but in itself can scarcely be called immoral conduct according to accepted business standards. Obviously what he is doing, however, is speculating in real estate on a margin, and it is not necessarily immoral for him to speculate in the same way in securities. The real question as to speculation by men of this class — and by men of this class I do not mean simply physicians, but business men or professional men who at times have surplus funds with which they can afford to take risks — is what are the ultimate effects of speculation by such people? If a man can afford some chance and prefers to put his money into risky undertakings with a chance of greater profit rather than invest in the most conservative securities, there is nothing inherently wrong in such individual action. The danger lies in his being led more and more into speculations of this kind which he cannot properly afford. As a rough test of the morality or immorality of such conduct, I suggest that you watch the effect of such a course on a man's attitude toward his regular occupation. If his mind is so much on his speculative ventures that he does not put his full time, energy, and devotion into doing the very best work in his chosen profession, he has

overstepped the limits both of wisdom and of the highest standard of right. If, when he comes into his home or into his office at the end of the day and is more concerned to get the market report to see whether stocks have closed up or down than he is to see what work there may be for him to attend to in his regular business, he is then in grave danger of falling into the third class of speculators, to whom I will briefly refer now.

This third class is made up of the men who have neither the character nor the means to take chances of this kind. It is the great class of small gamblers who are feverishly trying to get rich quick. In this class we find the most damnable indictment of the whole system. The very perfection of the machinery which has been adopted to facilitate trade also operates as a keen incentive to the gambling spirit. I have always contended that from the economic point of view there is a very sharp distinction to be made between speculation and gambling in the ordinary sense of the word; but when speculation is carried on by men who have not the means to afford the loss without serious injury to themselves and their families, and who have not the judgment which is necessary for this most dangerous of all business practices, such speculation becomes gambling from the moral point of view. Unfortunately, because it assumes the form of legitimate trade, it offers an opportunity under the cover of respectability for men who would be ashamed to

take such risks in any of the ordinary forms of betting. The evil is greatly intensified by the existence of the so-called bucket shops, where the transactions are gambling pure and simple. In bucket shops there is no buying and selling of actual property, such as takes place on the exchanges, but by holding out great inducements and accepting transactions on the smallest margins, these parasites on the legitimate stock exchange are responsible for untold evil. But even a large part of speculation on the stock exchange itself partakes in some measure of this character. The long list of ruined reputations, the long line of convictions for embezzlement, are a tragic witness to this fact.

Let me at this point give you a warning, which, although it may seem to you entirely unnecessary, is — I am convinced — one which every man should seriously consider. You, young gentlemen, whatever you may think of your abilities, are perfectly confident of your own honesty. You cannot imagine a case arising in which you would make a misappropriation of funds, and yet I have known men who started in life with chances equal to yours, with ambitions like your own, with the same confidence in their own integrity, who have been ruined and even been criminally convicted under this temptation. No man who occupies a position of trust should ever take the risk which comes from once yielding to the stock-gambling temptation. I have known cashiers and treasurers who started out with

perfect honesty, but thought that they were justified in "playing the market" with their own means. The terrible result has been that when all of their own means have been put up in margins, and the market for the moment had gone against them, they were so confident that, if they could tide over a few weeks more, everything would turn out favorably, that under the pressure they were tempted to "borrow" money that was not theirs, being sure that they could make it good (without any one being the wiser) the moment the market changed. At first, even in taking this step, they have convinced themselves that they were not stealing but simply making a temporary loan. The inevitable crash followed, and the men who had started out with such promise found themselves convicted criminals. You may laugh at the idea of my asking you to take such cases to heart, but I assure you in all seriousness that no young man who holds a position of trust of this kind and begins to speculate in stocks on margin is free from this terrible possibility.

I wish to recall to your minds at this point what I said at the outset regarding the relation between immoral practices and the necessary functions to be performed by the business world. You will see that speculation of this third class, apart from the moral opprobrium attaching to the individual, falls under the condemnation of this broader point of view, since it is destructive of standards of work and snaps the

very spirit of industry on which economic welfare depends.

Such are the three classes of speculators and the problems which each has to face. It would be hard to draw the line in any particular case in passing judgment upon another person, but I am sure if you keep these facts and principles in mind, that your own consciences will be able to tell when you individually overstep the danger line.

It is not possible within the limits of this lecture to go far into a somewhat different problem, namely, into the ethics of brokerage rather than the ethics of speculation. The brokers on the exchanges, although they may also speculate on their own accounts, are primarily agents acting for other people. A man may be an active broker and never indulge in speculation himself. One reason why the discussion of ethics of brokerage is less important is because in this case the law regulating the relation between broker and customer is on such a high moral plane that it may almost be said that a broker who obeys the law can feel pretty safe as to the morality of his conduct. The standard which the law requires of agents acting for principals is a higher standard than many self-appointed moralists are able to set for themselves. Let me, however, briefly suggest four points:

First. It is hardly necessary to tell you that the strictest obedience to the rules of the exchange and

to the rules of law on the part of the broker is the first essential from the ethical point of view. It may be well, however, to add to this injunction that a broker has the moral responsibility of keeping free from the slightest suspicion in his own mind even where he may seem to be technically correct. I have already referred, for instance, to the practice of washed sales. No honest broker would consciously engage in such a practice. On the other hand, it is possible that he may be an innocent party to it through not being informed by his principal as to what is in the wind. But it frequently happens that without knowing definitely that some such operation is being carried out, the very movement of the market is an indication that there is something suspicious in the situation. An honest broker, under these circumstances, cannot be satisfied in saying that he knows nothing about it and is simply there to carry out his orders. He cannot continue to do business when even the slightest suspicion of such an arrangement rests in his own mind.

Second. The law is perfectly clear on the point that where a broker deals for a customer he is to receive nothing but his commissions and interest on money advanced. Every bit of the risk of the transaction falls upon the customer and every jot of the profit is morally and legally his due. Some brokers think that it is entirely proper, when they have received an order to sell at a certain price, and

are able to carry out a transaction by which a higher price is secured, if they split this extra profit with the customer. It seems so reasonable for them to argue that when they might have satisfied the customer by simply fulfilling the letter of his instructions, and then by special intelligence or exertion have done better than the customer expected, that part of the profit is their due. Such an argument is equally fallacious in law and morals. The broker would never expect to share loss, if the case were reversed, and he is not entitled to a single penny of additional remuneration for having used his very best ability in the service of his client.

Third. Every broker should recognize the grave danger of engaging in speculation himself. I will not say that it is necessarily wrong for a broker to speculate on his own account, but I remind you again of what I have just said regarding the danger to any one in a position of financial trust. A broker is in such position. He is responsible for large sums of money put in his hands by his customers to carry out their business. Without doing anything strictly illegal for the time being, the broker may become so involved in his own speculations as to seriously endanger the clients who have trusted him. Sometimes this comes to a crisis which offers a very severe temptation. Suppose a brokerage concern finds itself in a position where it fears for its own solvency, and at this juncture large sums come in from customers, which the firm thinks may be

adequate to pull them through and establish them on a solid basis once more. It seems so desirable to take the money of the customers under these circumstances, and it is so easy to convince themselves that the customer is not being endangered thereby. The law is not as yet sufficiently stringent in the matter of prohibiting the receipt of further deposits by a concern which cannot at the moment make good its own obligations. But even an elementary sense of morality should make a broker prefer the disgrace of insolvency to the abuse of a customer's confidence.

Fourth. This suggests that, strict as the law is in these regards, there are certain matters where the only safeguard of the business public is the adoption of the strictest ethical standard on the part of the members of exchanges and their governing bodies. There are some things which cannot be regulated by law and there are some evils which never can be adequately reached by legal process. Most of these can be eliminated by the recognition of a duty toward the public on the part of all persons engaged in transactions of this kind. I think the one thing most needed at the present time, to lessen the evils of stock exchange gambling, is a resolve on the part of the brokerage fraternity that they will not simply take the business of any customer who comes, in order to swell their own commissions, but that they will recognize it to be immoral conduct to accept accounts from persons whom they well know to be

running serious danger by their indulgence in speculation. The evils of speculation on a small margin are such that I think the stock exchange might properly pass rules requiring a larger margin than is now given, and in any case the individual members should, so far as is possible, make themselves familiar with the condition of their customers, and even at the expense of losing some commissions themselves, refuse to be a party to the reckless gambling which in many cases leads to such utter disaster.

I hope that you young gentlemen will carefully consider the propositions which I have given you. If you become brokers yourselves, above all do not take upon your consciences the burden of having acted as an agent for men who were engaged in ruining themselves; and if you become speculators, keep always before your mind the awful spectacle of that third class which I have described, and the danger that would threaten each one of you that you may in turn become a member of its tragic ranks.

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