

Why Business Called in the Lawyer:

"When American business began to develop from local enterprises to large national and international units, it suddenly found itself inextricably tangled not only in the legislation of the Federal Government, but in the laws of 48 separate states and of many foreign countries. What was worse, new laws were rolling in on it every day like an avalanche, until the man of business at the beginning of this century lost confidence in himself as a guide through this tangled maze. In the old days, the business man stated the facts to his counsel, the lawyer rendered an opinion on the law, and the business man then finally decided what he would do in view of the facts and the law. In these later days in the larger businesses that method became impracticable. Facts became more difficult both to find and to state. Laws became more complex and were many times contradictory. Plotting the wise course required the intuition of the man trained both in business and the law. In this evolution the lawyer was charged more and more with the fact finding, the law determination, and the orientation of the two. He was passing from the field of advice to that of ultimate decision. In a word, he was doing the thing which in fact made him the executive as distinguished from the counsellor.

And so we have Judge Gary, a Highly trained and skilled lawyer directing the affairs of the greatest business corporation, not

only in America, but in the world, - doing it acceptably too, to the great mass of stockholders and workers engaged in the enterprise, and to the satisfaction of the American people who have shown both individually and through their Government representatives, increasing interest, and even drastic inquiry into the way in which that business is run."

When in the latter part of the last century, the small units were suddenly merged into large ones, and when great new undertakings were created without merger, it was the day of the resistless enterpriser. The men who created our great concerns during that period had uncanny foresight, dauntless courage, tremendous energy, everything in fact entitling them to be called Captains of Industry. America had not since the pioneer days produced men with such vision, bravery and action. Some of them failed - some of them succeeded. Those who had brought their enterprises through these trying struggles naturally had for them great devotion and illimitable loyalty. This extended so far that there came to be a feeling that the institution demanded from its trustees any sacrifice, and if men were not willing to make it, there were others ready to step in their places and do the job. Naturally this very fine spirit of devotion was its own undoing. The lawyers who came into business in the second period of this development brought the notion of administrative trusteeship. They were clear that while the trustee must perform his obligation to his cestui, he must also perform his obligation to the community. No fanciful devotion to the first could lead him to betray the second. And so largely today, I think as a result of the lawyers' invasion, we have the notion that these great concerns of business are institutions, the heads of which are trustees for the groups who are interested in them; the

investigators who have their money in; the workers who put their lives and labor in, and the public whom the institution is designed to serve and must serve if it survives. The old notion that the heads of business are the paid attorneys of stockholders to exploit labor and the public in the stockholders' interest is gone - I hope forever.

There is another matter of which I desire to speak briefly, and that relates to the evolution of the law. There has always been, and in the nature of things there always will be, a lag between the evolution of business and the development of the law applicable to it. Business is constantly on the firing line, moving forward into new situations, adopting new methods, and exploring new areas. Its advance has been accelerated by researches in the physical sciences and quick adaptation of that research to practical human needs. Old methods disappear over night and new ones come in. Old areas of activity are enlarged and new ones, like the automobile, radio, flying machines, are discovered. I have a feeling from my own observation that while the advance of business is being rapidly accelerated the law is not going forward in its development proportionately. The lag between the advance line of business and the law is becoming greater. This widening gap and the consciousness of it is inviting our legislatures, both State and Federal, to adopt new laws, many times ill-considered, often ill-adapted, frequently harmful, even to the worthy objective which they have in mind. Then our courts are cluttered with these statutes. Our judges have by interpretation to bring them reasonably within the great body and principle of the law. In the meantime, our courts are over-crowded,

our justice is badly administered, and our economic growth and development made difficult and sometimes paralysed.

I commend to this meeting of the Bar, the thought that somehow it should accelerate the pace of the evolution of the law. It is your responsibility to see that the law has its normal growth quickly enough to meet the demands upon it. Nobody deprecates more than this body of lawyers, this great growth of unscientific and unwise statutes. Instead of condemning the legislatures, however, for the passage of these laws, I beg you to consider whether the Bar itself is not at least in some measure in fault. The Dean of the Harvard Law School in the last Harper's Magazine has reasonably called attention to the deplorable situation of our administrative law and calls his article "The Crisis in American Law." He recommends that in the law schools we should have such research groups as we have in the physical sciences to promote its correct growth. I join in that recommendation heartily and I commend it to your consideration."