

1966

Of Carolina Quiddites, Quillets and Cases

Robert M. Figg Jr.
University of South Carolina

Follow this and additional works at: <https://scholarcommons.sc.edu/sclr>



Part of the [Law Commons](#)

Recommended Citation

Robert McC. Figg Jr., *Of Carolina Quiddites, Quillets and Cases*, 18 S. C. L. Rev. 719 (1966).

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact dillarda@mailbox.sc.edu.

OF CAROLINA QUIDDITIES, QUILLETS AND CASES *

ROBERT McC. FIGG, JR.†

In the churchyard scene in Act V, Hamlet, picking up a skull dislodged by the grave diggers, says: "There's another! Why may not that be the skull of a lawyer? Where be his quiddities now, his quillets, his cases, his tenures, and his tricks?"¹

I had no trouble with *cases*, and little more with *quillets* (connoting outright quibbles), but *quiddities* called for an unabridged dictionary. Webster's definition is: "The essence, nature, or distinctive peculiarity, of a thing; that answers the question, Quid es? or What is it?" One or more of these three words of Shakespeare seem to apply to the examples of early Carolina experience with the common and statutory law of the mother country which I want to discuss with you, and so I used them as the subject of my talk when Judge Wright wrote and asked me for it.

I am grateful for the opportunity to attend the annual meeting of such a distinguished group of members of the profession, and the very great compliment of being invited to speak on this occasion. In his 1945 inaugural address as President of the Association of the Bar of the City of New York Harrison Tweed said: "I have a high opinion of lawyers. They are better to work with or play with or fight with or drink with than most other varieties of mankind."

Before becoming attached to our School of Law, I engaged in general practice in Charleston for 37 years, during 12 years of which I labored as the lone public prosecutor in that area. Being something of an old fire horse myself, and from my own years in the cockpit, I understand perfectly the motivation which brought about the organization and perpetuation of a club of Old War Horses.

When asked to be the chief administrative officer of a law school, I thought about it for a very long time, and with mixed reactions. On the one hand, it made an appeal to a latent nostalgia for my own law school days; and the prospect of spare time in the immediate vicinity of a complete law library had

* Address to the Old War Horse Lawyers Club of Atlanta, Nov. 18, 1966.

† Dean, School of Law, University of South Carolina.

1. THE YALE SHAKESPEARE (10th printing, Dec. 1963).

some of the attraction of the happy hunting grounds for an old Indian. On the other hand, I wondered whether I would be able to take the inevitable confinement and cramping of institutional existence; whether it would be like putting Geronimo on an Indian reservation. As a single private practitioner, I had ridden the legal plains so long that this was a real concern to me.

Not the least of the reasons which entered into my decision to wind up my practice and embark upon a new life in the law was the thought that at a law school I would have the opportunity, seldom or never enjoyed in practice, of following up the tangent items and questions which tease the curiosity of the active practitioner when encountered in practice, but which the demands on his time will not permit him to pursue. Having had a lot of fun doing just this, I have thought you would be interested in some of the quiddities that I have had the chance to investigate. You may agree that they tend to bear out the conclusion of Justice Holmes that the life of the law has been experience not logic.

The first has to do with the origin of the crime of murder. The South Carolina Code of Laws contains a section which reads: "Murder is the killing of any person with malice aforethought, express or implied."² Our Supreme Court has held that this section did not create the crime of murder, but is merely declaratory of the common law.³

The word "any" was puzzling. This is not the usual language of a draftsman. Ordinarily one would expect "a person" or "a human being", but why "any"? I set out one day to find out whether "any" came out of the common law, invoking the help of Blackstone, the Queen's Bench, Hale, Hawkins, and the Latin text of Bracton.⁴

It seems that the punishment of a murderer in the dim and distant days of English history was left to the family of the victim, a sort of Hatfield-McCoy approach. The Queen's Bench in 1706 said that the word "murder", as a description of "homicide committed in the worst manner", was a word "framed by our Saxon ancestors in the reign of Canutus."⁵ The reference was

2. S. C. CODE ANN. § 16-51 (1962).

3. State v. Judge, 208 S.C. 497, 38 S.E.2d 715 (1946); State v. Coleman, 8 S.C. 237, 241 (1875).

4. Regina v. Mawgridge, Holt 484, Kelyng 119 (1706). 4 BLACKSTONE COMMENTARIES 194-95, 197-98; 1 HALE, PLEAS OF THE CROWN, (1st Amer. ed. 1847); 1 HAWKINS, PLEAS OF THE CROWN, 90 (8th ed. 1824).

5. Regina v. Mawgridge, Holt 484, 486, Kelyng 119, 121 (1706).

to that period of time when a part of England had been subjugated and occupied by the Danes under King Canute (famous in history for his command to the tide not to come in, which, as we all know, the tide ignored).

In Hawkins, *Pleas of the Crown*, we read:

But though the term "murder" is now the description of this crime of aggravated homicide, yet it anciently had another and very different meaning. *Murdrum* anciently signified the fine imposed upon the township where anyone was secretly assassinated and the slayer not forthcoming to answer the demand of justice. This fine is said to have originated in the policy of the Danish monarch Canute, who, after his victories over the Saxons in this country, seated himself upon the throne. But his countrymen, like all conquerors, were hated by the people whom they had subdued and oppressed. They were, therefore, frequently killed in private by the natives.⁶

The fine was 46 marks, and was collected unless the killer was produced or the victim was proved to be English.⁷

Although this law ceased when the Danes were expelled, it was revived by William the Conqueror to protect his Normans, who suffered in considerable numbers the same fate as the Danes, and Henry I enacted the presumption "that if a man be found slain, he should be taken to be a Frenchman if it was not proved that he was an Englishman." The coroner was required to conduct the inquisition on this issue, and if the town sustained the burden of proof and the jury found the victim to be an Englishman, the fine was not due. The defense by which the fine was avoided was called Englishry or Englishire. In other words, it was not a crime to kill an Englishman.⁸

More than two centuries later, the passage of time and a great deal of inter-marriage between Normans and the English having eliminated the original problem, the law of Englishire was abolished in 1341. Hawkins tells us that "the killing of an Englishman or foreigner through malice prepense, whether committed openly or secretly, was by degrees called murder," and murder thus became the killing of "any person", and was so defined by the common law judges.⁹

6. HAWKINS, *op. cit. supra* note 4.

7. *Regina v. Mawgridge*, Holt 484, 486-87, Kelyng 119, 121-22 (1706).

8. *Id.* at 122.

9. *Id.* at 124. HAWKINS, *op. cit. supra* note 4 at 91.

We see from this bit of history that, strange as it may sound, the word "any" in the statute historically and literally means that murder is the killing of *even an Englishman!*

There is more to the story than this.

The *murdrum* or fine imposed under the edicts of Canute and William was collected by the Exchequer. In the Exchequer's behalf, it was presumed that the deceased was French, unless the contrary was clearly proved by the town. Hence, the town had the burden of proving that it did not owe *murdrum*, that is, that the killing was not punishable. The historical consequence of this burden was the rule, charged to English juries by trial judges for centuries, that when the prosecution proved a death by homicide, it was presumed to be murder, and the prisoner had the burden of proving otherwise, that is, that on the issue of malice the prisoner had the burden of proof.¹⁰

The House of Lords in 1935 reversed a murder conviction in a case in which the trial judge had charged the jury in accordance with this ancient presumption and placed this ancient burden on the prisoner.¹¹ The House of Lords stated the law to be:

If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.

The House of Lords said further:

It is not the law of England to say, as was said in the summing up in the present case: "if the Crown satisfy you that this woman died at the prisoner's hands then he has to show that there are circumstances to be found in the evidence which has been given from the witness-box in this case which alleviate the crime so that it is only manslaughter or which excuse the homicide altogether by showing it was a pure accident."

10. *Some Points on the Law Against Murder*, 67 *Just. Peace* 519-20 (1903).

11. *Woolmington v. DPP*, 1935 A.C. 462, 25 *Cr. App. R.* 72 (1935).

The presumption of murder from proof of a homicide alone has not been generally applied in this country, and in a 1905 case the South Carolina Court stated the rule to be that "when all of the circumstances of the case are fully proved there is no room for presumption. The question becomes one of fact for the jury, under the general principle that he who affirms must prove, and that every man is presumed innocent until the contrary appears."¹²

Of interest, however, is a 1906 case in which the Supreme Court of Georgia, after considering at length the English authorities up to that time, sustained as correct the following charge to the jury:

When the killing is proved to be the act of the defendant, the presumption of innocence with which he enters upon the trial is removed from him, and the burden is then upon him to justify or mitigate the homicide; but, as before charged, the evidence to do this may be found in the evidence offered by the State to prove the killing as well as by the evidence offered by the defendant."¹³

Is not this instruction a direct descendant of, and indistinguishable in principle from, the presumption in favor of the Exchequer which influenced the English courts in murder cases for the better part of nine centuries until the House of Lords disapproved it in 1935?

Turning to another area, Volume II of the South Carolina Statutes at Large includes the large body of legislation enacted by the provincial legislature in 1712. In this year "all and every part of the common law of England" was adopted by statute.¹⁴ Also adopted was the Magna Carta and 167 other English statutes. These statutes are set out in full,¹⁵ and this volume is a vast compendium of five centuries of English legislation.

A notable instance of non-adoption was the omission of the Statute De Donis Conditionalibus, whereby the English parliament restricted the free sale of entailed lands, resulting in the vast entailed estates of England.¹⁶ South Carolina today recog-

12. *State v. Rochester*, 72 S.C. 194, 51 S.E. 685 (1905).

13. *Mann v. State*, 124 Ga. 760, 53 S.E. 324 (1906).

14. 2 S.C. *Stats. at Large* 413 (1838).

15. 2 S.C. *Stats. at Large* 403-12, 417-583 (1838).

16. Statute of Westminster, 1285, 13 Edw. 1, c. 8; *Blume v. Percy*, 204 S.C. 409, 412, 29 S.E.2d 673 (1944). See 1 S.C.L.Q. 216 (1949).

nizes, almost alone in Anglo-American jurisdictions, the estate known as fee simple conditional which was abolished by this English statute 430 years ago. Under this estate, if land is willed or deeded to a man and the heirs of his body, he can sell the land in fee simple as soon as he has a child; under the statute the land was held intact and passed to his heir.

Among the adopted statutes were several recognizing what to us is the curious privilege of benefit of clergy, under which clergymen originally, and later clerks connected with the church, and still later all who could read and write, might claim exemption from punishment of death, whether ecclesiastics or laymen. This plea was limited from time to time by statutes providing that some crimes should thenceforth be without benefit of clergy, and was finally abolished in England in 1827.

One was a 1490 statute¹⁷ which recited that “upon trust of the Privilege of the Church, divers persons lettered have been the more bold to commit murder, rape, robbery, theft, and all other mischievous deeds, because they have been continually admitted to the benefit of the clergy as oft as they did offend in any of the premises.” Such persons were limited to one plea, and every person thereafter convicted for murder was to be branded with an M upon the brawn of the left thumb, and with a T in the same place of the thumb if convicted for any other felony. These marks were required to be made by the gaoler openly in the court before the judge before delivery of the defendant to the Ordinary.¹⁸ Carolina’s need for this statute was not elaborated upon.

In an 1850 South Carolina case¹⁹ the defendant, who had been convicted of the crime of burning a house and sentenced to death, was successful in saving his life by the plea of benefit of clergy. The case turned on the fact that the indictment alleged only that he burned a “house” and not a “dwelling house,” for benefit of clergy was not allowed in England where a dwelling house was burned by the accused. Consulting the Latin form used at common law, the court held that benefit of clergy was to be denied only where the burned building was alleged in the indictment to be “domus mansionalis” and not where “domus” alone was alleged. The death sentence was reduced to fine and

17. 4 H. 7, c. 13 (1490).

18. 2 S.C. *Stats. at Large* 455 (1838).

19. *State v. Sutcliffe*, 4 Strob. 372 (S.C. 1850); *cf.*, *State v. Bosse*, 8 Rich. 276 (S.C. 1855).

imprisonment, there being no system of ecclesiastical courts to which the defendant could be delivered for trial as would have been done at common law. The report does not show that he was branded with the letter T, as apparently he should have been under the benefit of clergy legislation on which he relied.

In the following year²⁰ the legislature enacted a statute providing that "benefit of clergy allowed to one who has been convicted of felony" shall not bar conviction of any other felony or "operate for the relief of the person convicted, beyond the felony on which it has been prayed and allowed." Not being in the Code this statute would not be in force, but what happened to the common law plea? I have found nothing showing its demise.

A branding case is reported in 1791.²¹ One Frink was convicted of manslaughter, but the jury recommended mercy. On the last day of the term of court Frink was brought up to receive sentence of burning in the hand, usually inflicted instanter in open court. Because of the recommendation to mercy, he was sentenced to be burned in the hand on the first day of the next term, to give him a chance to petition the Governor for clemency, for clemency would have done him little good after a sentence of that type had been carried out.

In the same year the great John Rutledge, as Chief Justice, pronounced sentence of death upon one Thomas Washington, late of the State of Georgia, who had been convicted of the crime of forgery.²² Washington had forged a state bond and also a receipt for the interest on the back of the bond. Although the forging of the bond itself was not a capital offense by South Carolina law, the forging of the interest receipt was a felony without benefit of clergy under an English statute which had been made of force in Carolina in 1712. Before passing the death sentence, the Chief Justice made "an affecting address," says the report. He told Washington that as a citizen he had grossly infringed the public rights; as a man, he had broken through the obligations of honor and integrity; and as a Christian, he had violated the most wholesome precepts of religion. He did not explain why these strictures applied to the forgery of the interest receipt but perhaps not to the forgery of the bond

20. 12 S.C. *Stats. at Large* 74 (1850).

21. *State v. Frink*, 1 Bay 168 (S.C. 1791).

22. *State v. Washington*, 1 Bay 120 (S.C. 1791). See *Geo. II*, c. 25.

itself. A note to the case states that Washington was executed according to the sentence, but not on the day set, as the court granted him a stay of one week to settle his private affairs, which were "in a great state of derangement."

Two well known South Carolina deviations from the common law were connected with the Revolution.

South Carolina is perhaps the only Anglo-American jurisdiction in which juries are permitted to apportion actual damages between or among joint tortfeasors in their verdicts.²³

McNeily, a Tory, joined the British army in 1780 and later with a party of marauders, plundered the house of White, a patriot, burned it, and carried away his horses. After the Revolution in 1784, White sued McNeily and two others of the marauders for the trespass. The jury rendered a verdict of 400 pounds against McNeily, 200 against another defendant, and 100 against a third. While the court thought the verdict a possible deviation from the old common law rule that joint trespassers were equally guilty in the eye of the law, the verdict was upheld on the theory that the apportionment reflected the jury's view as to their relative guilt and ability to pay.²⁴ The result became a part of the state's common law, and although later South Carolina judges have from time to time deplored this rule,²⁵ it still stands.²⁶ Yet I have no doubt that if the Revolution had gone the other way, or if the suit had involved a Tory plaintiff and patriot defendants, the outcome would surely have been different, and South Carolina's law today would be the same as that in every other jurisdiction.

At common law the familiar rule of *caveat emptor*, "Let the buyer beware," was applied in disputes between sellers and buyers of personal property.²⁷ Beginning in 1793 South Carolina Judges began to apply the opposite rule that a sound price required a sound commodity.²⁸ It is generally assumed, and latter day judges have rationalized, somewhat complacently at times, that our state's doctrine was the result of a deliberate adoption of the more benign civil law rule of *caveat venditor*, "Let the seller

23. 1 S.C.L.Q. 214 (1949); cf. *Atlantic Coast Line R. Co. v. Robertson*, 214 F.2d 746, 748 (4th Cir. 1954).

24. *White v. McNeily*, 1 Bay 11, 12 (S.C. 1784).

25. E.g., *Jenkins v. Southern Ry.*, 130 S.C. 180, 187, 125 S.E. 912, 919 (1924); *Smith v. Singleton*, 2 McMul. 184 (1842).

26. *Deese v. Williams*, 237 S.C. 560, 568, 118 S.E.2d 330, 338 (1961).

27. Cf. *Seixas v. Wood*, 2 Caines 48 (S.C. 1804).

28. *Timrod v. Shoobred*, 1 Bay 324 (S.C. 1793).

beware," and a rejection of the harsher common law rule.²⁹ Actually it seems to have been an historical accident. Judge Richardson, in a footnote to his opinion in an 1819 case, states that the judges who first established the doctrine apparently had no idea that they were departing from the common law. What happened, he tells us, was that Lord Mansfield's *caveat emptor* decision³⁰ was rendered in 1778 during the American Revolution, when communications with the mother country were then and for a time thereafter somewhat less than perfect, and, not having heard of the decision in England, our court took its own view of the subject, thinking that they were applying the common law rule.³¹

Perhaps the only decision in this country holding that the Christian religion was a part of the state's common law was rendered by the South Carolina court in an 1846 Sunday Law case.³² The court did not specify which version of Christianity it had in mind, nor was it concerned that there was no longer an established church, as there had been in colonial days. The union of the common law and established religion in England had resulted in such crimes as apostasy, heresy, non-conformity, absence from divine worship, Protestant dissenters, popery, witchcraft, religious imposters, and simony, for many of which the punishment was death—in some cases by burning at the stake.³³ However logical the implementation of some of these crimes might have been after the 1846 decision, our grand juries have fortunately never gotten around to indicting our people for any of these common law offenses.

Our Wills professor, Professor Coleman Karesh, tells me that he makes a point every year to read the 1827 wills case involving the capacity of one Mason Lee to make a will.³⁴ Disliking his relatives, Lee left his property to the states of South Carolina and Tennessee and directed his executor to enforce the will by employing the best Charleston lawyers at the expense of his estate. In the inevitable will contest which followed his death, his kin offered a wealth of testimony of Lee's many and varied eccentricities. It was shown among other things that he thought

29. *E.g.*, *Barnard v. Yates*, 1 N. & McC. 142, 147 (S.C. 1818). *But cf.* *Vanderhorst & Co. v. M'Taggart*, 2 Bay 498 (S.C. 1803).

30. *Stuart v. Wilkins*, Doug. 18 (S.C. 1778).

31. *Missroon v. Waldo*, 2 N. & McC. 76, 79 note (b) (1819).

32. *City Council of Charleston v. Benjamin*, 2 Strob. 508 (S.C. 1846); *cf.* 15 C.J.S. *Common Law* § 6 (1955).

33. 4 BLACKSTONE, COMMENTARIES 43-65.

34. *Lee v. Lee*, 4 McC. 183 (S.C. 1827).

his family had bewitched him; he believed that all women were witches; he thought some of his family were in his teeth, and had fourteen sound teeth extracted to dislodge them; he had quarters of his shoes cut off, saying that if the Devil got into his feet he could drive him out the easier; he had holes cut on each side of his hat, so that if the Devil came in one side, he could drive him out the other; he always shaved his head close, as he said that in the contest with witches they might not get hold of his hair; he fancied one time that he had the devil nailed up in a fireplace at one end of his house; he was remarkably filthy, not cleaning his clothes for months; and when he went to live in Darlington, his host built a house for him which was twelve feet square, but Lee said it was too large, and he pulled it down and rebuilt a kennel three feet wide, five feet long, and four feet high, where he ate, slept, and dozed away his time. There was much more, crowned with the testimony that his reason for not providing for one son was that although he was a twin brother of the other, Lee was the father of only one of them.

The trial judge observed to the jury that belief in witchcraft "had often been entertained by persons who were above all suspicion of insanity, and even by men who were distinguished for their wisdom." The jury found that the testator had testamentary capacity. The case is important in sustaining the right of anyone who is shown to have exercised deliberation and thought in making his will to dispose of his property as he wishes, however eccentric he may be.

Turning to the status of lawyers in common law times, we all know that the legal profession got off to an inauspicious start in the New World.³⁵ The first constitution of the Province of Carolina was prepared for Lord Ashley in 1669 by his secretary, the great John Locke.³⁶ Carrying out his patron's desire to discourage the migration of lawyers to the province, Locke provided in his Constitution that "it shall be a base and vile thing, to plead for money, or reward," and that no one except a relative would "be permitted to plead another man's cause" until he took an oath in open court that he "doth not plead for money or reward" and will not receive any.³⁷

35. Cf. CHROUST, *THE RISE OF THE LEGAL PROFESSION IN AMERICA* 297 (1965).

36. WALLACE, *SOUTH CAROLINA, A SHORT HISTORY* 25-26 (1961); CHROUST, *op. cit. supra* note 35 at 296-98.

37. 1 S.C. *Stats. at Large* 51.

This constitution,³⁸ distinguished by the fantastic feudal government which it undertook to set up with many grades of nobility as well as hereditary serfs bound to the soil, created a parliament and then provided that "all manner of comments or expositions on any part of the constitution or on the common or statute laws of Carolina are absolutely prohibited," since multiplicity of comments "serve only to obscure or perplex".³⁹ This body of laws never received the necessary assent and approbation of the freemen of the province and so was never constitutionally in force, but it did serve to delay the development of a bar for several decades.⁴⁰

A recent South Carolina case⁴¹ reminded us that at this same period in English history an accused was privileged to have a lawyer in misdemeanor cases only, but was not permitted to make his defense by counsel where the charge was a felony. This was in part the basis of the common law rule that a misdemeanor charge merged into a felony charge based upon the same occurrence. Why? Because by the merger the lawyer was eliminated and the judges could try the accused for the felony without the inconvenience of having to deal with counsel.⁴² And this is so despite the fact that at common law the punishment for felony was death!⁴³

The trial of Mary, Queen of Scots, has been given as an illustration of the harshness of the rule. Mary requested that she be permitted counsel.⁴⁴ The request was refused on the ground that "for as much as it was a matter *de facto*, and not *de jure*, and altogether concerned a criminal cause, she neither needed nor ought to be allowed counsel in the answering thereof." Thus she was forced to defend herself before her judges on a capital charge in what was to her a foreign tongue. Her trial was concluded in the Star Chamber, and she was condemned to death and decapitated in 1587.⁴⁵

By slow development over the period of centuries counsel were allowed to perform an increasing number of functions for the defense, but it was not until 1836 that English defendants

38. 1 S.C. *Stats. at Large* 43.

39. 1 S.C. *Stats. at Large* 52; WALLACE, *op. cit. supra* note 36 at 25-26.

40. CHROUST, *op. cit. supra* note 35 at 297.

41. *State v. Maxey*, 218 S.C. 106, 62 S.E.2d 100 (1950).

42. *People v. Tavormina*, 257 N.Y. 84, 177 N.E. 317, 75 A.L.R. 1405 (1931).

43. 4 BLACKSTONE, COMMENTARIES 97-98.

44. EQUAL JUSTICE FOR THE ACCUSED 40 (1959).

45. *Ibid.*

accused of a felony were granted by legislation the right to make their full defense by counsel.⁴⁶

It is a matter of wonder and satisfaction that in the Province of Carolina the right to counsel was granted 105 years earlier. In 1731 an Act was passed which, perhaps with irony, recited that innocent persons may suffer for want of knowledge in the laws of how to make a just defense, and that the colonial judges, "who ought to assist the prisoner in matters of law, cannot be presumed to have so great knowledge and experience as the great judges and sages of the law, sitting in his Majesty's Courts at Westminster." The act provided that persons accused of treason, murder, felony, or other capital offense would have three days sight of the indictment before trial, the right to advise with and make their full defense by counsel learned in the law, and the right to have such and so many counsel, not exceeding two, assigned to them by the court upon request, "any law or usage to the contrary notwithstanding."⁴⁷

This statute has been in effect in South Carolina from that day to this and was an even greater step forward for that day than the recent *Gideon* decision⁴⁸ is in ours, especially on the right to have counsel appointed by the court.

The apprehensions of Lord Ashley which prompted him to discourage the growth of the legal profession in his province appear to have been prophetic. By 1775 Edmund Burke, in listing the causes of the "intractable Spirit of the colonists," said: "In no other country, perhaps, in the world is the law so general a study. The profession itself is numerous and powerful, and in most provinces it takes the lead. The greater number of the deputies sent to Congress are lawyers. * * * I hear that they have sold nearly as many of 'Blackstone's Commentaries' in America as in England."⁴⁹ The legal profession was in the forefront of the struggle for liberty in those days of our history.

The late John W. Davis in his own eloquent way thus articulated the dual functions of the bar.⁵⁰ As to our day to day professional activities he said:

46. *Id.* at 41; 6 & 7 Will. IV, c. 14, § 1 (1836).

47. 3 S.C. Stats. at Large 286 (1838).

48. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

49. BURKE, CONCILIATION WITH AMERICA 1775.

50. Address by John W. Davis, Special Meeting to Commemorate the 75th Anniversary of the New York City Bar Ass'n, March 16, 1946.

True, we build no bridges. We raise no towers. We construct no engines. We paint no pictures—unless as amateurs for our own principal amusement. There is little of all that we do which the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men's burdens and by our efforts we make possible the peaceful life of men in a peaceful state. We may not construct the levers, pistons and wheels of society, but we supply the lubrication that makes its even running possible. For "the true administration of Justice is the firmest pillar of the State."

As to our broader and more intangible professional responsibilities, Mr. Davis declared that "every would-be despot has found it necessary to silence the tongues of his country's lawyers," and concluded, "for this, brethren of the Bar, is our supreme function—to be sleepless sentinels on the ramparts of human liberty and there to sound the alarm whenever an enemy appears. What duty could be more transcendent and sublime? What cause more holy?"

Let me close with the closing words of Professor Emeritus Charles B. Elliott of our own School of Law in a recent address on legal history to a memorial meeting of the South Carolina Bar Association. "Law, like other callings, has its days of drudgery. But at times there are glimpses of something more. This little peep into the past makes us know that we are the passing instruments of Something that transcends our fleeting hour—the eternal quest for justice, the struggle for law, 'whose seat is the bosom of God, whose voice is the harmony of the World.'"⁵¹

51. Address by Charles B. Elliott, Professor Emeritus, South Carolina School of Law, "A Bit of History—The Genesis of the Legal Profession in South Carolina," Memorial Meeting of the South Carolina Bar Ass'n, December 15, 1961.