FOR RELEASE 10 A. M.
THURSDAY, JUNE 6, 1935.

IMPORTANT NOTICE TO CORRESPONDENTS: The text of the Attorney General's Asheville address has been amended to read as attached. Kindly substitute this copy for the text issued earlier in the week, which has been killed.

PLEASE NOTICE also that the Honorable William Stanley, The Assistant to the Attorney General, will read the speech which the Attorney General will be unable to deliver in person on account of his enforced cancellation of the engagement.

ADDRESS

of

ATTORNEY GENERAL HOMER CUMMINGS

Read by

THE HONORABLE WILLIAM STANLEY

THE ASSISTANT TO THE ATTORNEY GENERAL

At a Conference

of the

Fourth Judicial Circuit of the United States

Asheville, North Carolina

June 6, 1935,

10 A.M.

On a previous occasion I made the statement that: "Courts exist to vindicate and enforce substantive rights. Procedure is merely the machinery designed to secure an orderly presentation of legal controversies. If that machinery is so complicated that it serves to delay justice or to entrap the unwary, it is not functioning properly and should be overhauled". This should be a measure of the task upon which we are engaged. It may very well be that because of our familiarity with certain procedural rules and devices it is more convenient for us as lawyers and judges to continue their use. That, however, is not the test which we must apply. The weird old rituals of primitive peoples were convenient for the medicine men of those early days; but no one would justify them today. An interesting story is told of Chief Justice Taft, when as Governor General of the Philippines, he went to visit one of the islands in the Archipelago, where headhunting was practiced by the natives. He was informed that it was impossible to uproot the custom without exterminating the tribe. He requested, however, that he be taken to see the Chief and he inquired in his kindly way about the unwholesome custom. The Chief informed him that it was a tradition of the tribe that before a boy could become a man and enter into the rights, powers and privileges of manhood, he must kill an enemy and bring his head to the tribal council to prove his worth. Mr. Taft suggested to the Chief that there were two ways of making laws; one by custom and one by legislation. He proposed that he as Governor General and the Chief as tribal commander, should convene a legislative session of the tribal councilors for a reconsideration of the law. The Chief was much intrigued by the idea; the legisla-

tive session was held with due dignity and appropriate ceremonial and a new law adopted, prescribing ways and means of proving that nature continued to function in its usual and normal way in the development of boys into men. Thus the practice of headhunting on that particular island was abandoned.

Far be it from me to suggest that some of our hoary old rules of procedure savor of the character of headhunting, though students of comparative law have made remarks almost as disparaging. Let us use the story, rather, as an extreme illustration of the fact that something which we have long done and have become used to doing may not necessarily be the best way of accomplishing the desired objective. I have frequently observed, in the contacts which I have made with procedural rules in various states, that on one side of an imaginary boundary line there may be in practice a cumbersome complicated rule, while on the other side of the line a most simple convenient one obtains. Apparently it does not occur to the lawyers of the first state that it may be possible to avail themselves of the simpler method.

The very history of the securing of the legislation which made our present effort possible provides a good example of the stultifying effect of inertia and indifference in approaching these problems.

The important thing is to observe that it was accomplished in the face of prophecy of certain failure. The first, great difficult step was taken. The only problem now remaining is whether we are willing and able to carry out the clear mandate of the law. Granting a period of difficulty, while the new rules are being fitted to the judicial machinery, we should look ahead to a time two or three decades from now, when the lawyers and judges of that day will pay tribute to our work, as one of the beneficent contributions of our

profession to the social structure and to the orderly functioning of government.

Lawyers as a group are looked upon as a conservative lot. We have certainly lagged behind other countries in the matter of purging our ranks of the misfits and incompetents, and in removing technical procedures which delay, often for years at a time, the trial of issues on their merits.

For many years the primacy of the lawyers was an outstanding feature of American life. The lawyer's role in the foundation of the Republic was a great one, and almost half of the signers of the Declaration of Independence and a large percentage of the members of the Constitutional Convention were lawyers. All but a few of our Presidents, and a majority of the members of their cabinets, have belonged to the legal profession. In legislative bodies lawyers have predominated. During the early part of the 19th century the lawyer was the great advocate; the great political leader; and often a great scholar. But in this generation we have entered into another era in which the business lawyer tends, in some jurisdictions, to predominate. He often has lost the old-time lawyer's interest in the public questions of the day, and has little or no concern with law as a science, or as a means of satisfying human wants. He rarely concerns himself with the great mass of human problems that press upon the courts of law for recognition and solution.

Whatever objection there may be to the great movement which we are assembled here to discuss, and in most quarters there will be none, comes largely, I think, from the inertia of some members of our modern bar -- a disinclination to devote time to the more important problems which face us as a profession -- together with a feeling of local pride on the part of some which resists any change in procedural customs.

This is the sort of project in which we must have whole-hearted cooperation between the bar and the court. I cannot help but view it as an enterprise which will test whether the bar is really entering upon the period of decadence that some critics, particularly among the laymen, have seen fit to forecast, a period in which the lawyer is no longer a leader of men but a mere caretaker of clients. To build and maintain this new system of procedure there must be an esprit de corps among members of the bar. The general public will watch with interest to see whether the lawyers of this country will stand united in the common effort to formulate and preserve a system which will guarantee simplicity and speed in the settlement of civil disputes.

Now, it is my pleasure to be able to report to you, Mr. Chief Justice, that from all ten Circuits of the Federal Judicial system, there has come the most hearty and willing response to your request for cooperation in this great task. Your suggestion, made at the last Judicial Conference, that each Senior Circuit Judge should request the District Judges to appoint, in each District, a Committee of representative lawyers, or that he should, himself, appoint such a Committee for the Circuit, has been complied with in every instance. The Committee so appointed have in turn called to their aid members of the teaching branch of the profession. You will be pleased to know that in the ten judicial circuits, more than one hundred federal judges, five hundred practicing lawyers and many law teachers and research scholars are participating in this great project. All this has gotten under way in less than a year since the law was passed. A large mass of valuable material has been assembled which will be placed at the disposal of the Advisory

Committee recently designated by you to carry forward the details of this important work.

The Chief Justice in a recent address stated succinctly our objective in the task which we have undertaken, namely, to secure:

> "A simplified practice which will strip procedure of unnecessary forms, technicalities and distinctions, and permit the advance of causes to the decision of their merits with a minimum of procedural encumbrances."

Generally speaking, the attainment of that objective requires that the rules to be prescribed should deal with broad general provisions. The curse of procedural systems set up by legislative enactment has been the effort to prescribe minute details, which, while appropriate in each case to some situation, were entirely inappropriate to another.

We shall do well to remember that minute procedural variations which occur from state to state will tempt us to satisfy all states by writing in details. We shall do well to hew rigorously to the line of broad general principles, avoiding the morass of detail. Some of our procedural monstrosities, are of such long standing that many of us first became acquainted with them as students, when, without discrimination, we attempted to encompass the whole body of law. Later, becoming ardent protagonists, we justified its idosyncracies to the skeptics and now find ourselves in the position of looking objectively at the whole conglomerate structure.

Moreover, we should remember that though our immediate task is the setting up of rules of Federal procedure, our success in establishing

simple, broad and effective procedural devices for that jurisdiction, should be but a beginning in establishing similar rules for uniform adoption throughout the states. Is it too much to hope for such a consummation? Our experience during the last two years and the enthusiastic, nationwide response to this present call assures us that we are entering into an era of splendid cooperation and high intelligence in the science of jurisprudence and the practice of law. May we measure up fully to our opportunity and our responsibility!