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CHRISTOPHER COLUMBUS LANGDELL.

The fame of Professor Langdell rests mainly upon his work as a teacher of law. His most remarkable achievement as a teacher was the change which he introduced in the method of legal education, by substituting for lectures and text books the study of cases in schools of law. This system, commonly spoken of as the Case System might well be called the Langdell System. In order to understand it and to form a judgment as to its merits and tendencies, some knowledge of the personality and intellectual characteristics of Professor Langdell will be useful, if not essential,

I first saw him as a teacher in the fall of 1880, at the opening of the Harvard Law School, in the course on Contracts. He was then fifty-four years of age and seemed to be in his physical and mental prime. He was of middle height, somewhat stout in build. His head was large and well formed and firmly set upon his shoulders. His hair was dark, with no trace of baldness, and he wore a full beard. Neither his hair nor his beard had begun to turn gray. His forehead was large and square, and suggested logical power. His eyes were

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brown, but not especially noticeable except for the fact that they looked at you from behind old-fashioned spectacles with a keen but kindly glance. His voice was low and mild. Sallust in describing Catiline takes note of his uneven walk (*citus modo, modo tardus*). Professor Langdell's step was regular, but heavy and slow. There was no suggestion in it of nervousness, or of turning backward. His whole aspect was that of a modest, learned, but strong and kindly man.

He ascended the platform on the second floor of the old Dane Hall, and opened the course with a brief statement of the nature of a contract. Then he called upon some student to state the case of *Payne* v *Cave*, the first case in his collection of cases. Lawyers of the old school, who began their legal studies with Coke upon Littleton have complained bitterly of their early trials. Story actually cried over the book.[1] Webster stormed at it in his later years. He says:

"A boy of twenty, with no previous knowledge of such subjects, cannot understand Coke. It is folly to set him upon such an author. There are propositions in Coke so abstract, and distinctions so nice, and doctrines embracing so many distinctions and qualifications, that it requires an effort not only of a mature mind but of a mind both strong and mature, to understand him. Why disgust and discourage a young man by telling him he must break into his profession through such a wall as this?"[2]

It would be interesting to read a description by Daniel Webster of his feelings if he had been called upon to state the case of *Payne* v *Cave* in the presence of a class of seventy or eighty students under the eyes of a learned professor as his introduction to the study of the common law. To a young man with no previous knowledge of the art of pleading, or of the successive steps in an action, or of the principles of contract, this is an ordeal probably as trying as reading the first pages of Coke in the solitude of a lawyer's office. After the case had been stated a discussion followed of the point decided. This fairly broke the ice, and the students

[1] Story's Miscellaneous Writings, 20.
[2] Webster's Works (Everett's ed) Vol. I., p. XXVIII.

soon learned what was expected of them under the Langdell System.

The mental characteristics of Professor Langdell were displayed prominently from the start. His dominant purpose seemed to be to bring out not only the decision of each case, but the reason for the decision. Students soon learned that any position they might advance was pretty soon to be followed by the question, "Could you suggest a reason?" This came with such frequent iteration that it was something of a by-word. To this day the question "Could you suggest a reason," will probably produce a smile among old pupils of Professor Langdell.

Another point upon which he laid stress was the correct use of terms. We were constantly speaking of "offer," "acceptance," "consent," "consideration." Occasionally Professor Langdell would rap impatiently upon the desk and say, "Gentlemen, I should like a little more precision in the use of terms." He was thoroughly fair and impartial in the discussions. If a student in explanation of a case made a point that was unusually good, Professor Langdell would remember it, and sometimes give credit to the student afterwards by name when he mentioned it,—a distinction of great importance in the law school world.

It can hardly be said that Professor Langdell was a popular instructor. If compared with Judge Story in this particular he would suffer much. Professor Langdell was always intent upon the matter in hand, and nothing could divert him from it. Judge Story on the other hand, overflowing with good nature, and gifted with a marvelous memory,[3] stored with knowledge which he loved to communicate, was often led away from the subject of his lecture and was bountiful in giving compliments to the young men. If a student answered correctly a question which suggested the answer, the Judge would say, "You are right; Lord Mansfield himself

[3]Story's Life and Letters, 221, 565.

could not have answered more correctly."[4] To the serious mind of Professor Langdell this would seem like trifling. With him the reasoning powers were constantly in use to the neglect of the other faculties. Although he had collected a number of volumes of cases he never displayed any facility in recalling their names or in remembering the points decided in them or the facts. He seemed to take up each case in the class as if he had never seen it before. He went over all the steps in the reasoning as new work without any aid from or reliance upon memory. His method was a daily object lesson to students in thoroughness and accuracy. Under his guidance discussions which would otherwise have been listless and unprofitable became stimulating and fruitful. His students soon began to feel that they were not only acquiring knowledge but developing new powers.

In conducting his reasoning processes he was very hospitable to suggestions, but independent in his conclusions. The greatest names compelled no allegiance from him, unless their opinions were based upon sound reasons. In the first weeks of the term, when the class was engaged upon the subject of contract by letter, involved in the case of *Adams* v *Lindsell*, a student showed Professor Langdell a passage in Guthrie's translation of Savigny's Conflict of Laws, which seemed to bear on the point. Mr. Langdell took the book, read the passage carefully, and then said, "That's not up to Savigny's reputation." He held the book, however, as I recollect the matter, for further examination.[4a]

Professor Langdell was always willing to reconsider a conclusion in the light of new suggestions. Not infrequently in new courses with which he had not become thoroughly familiar, he would recant propositions which he had advanced as sound. A student recently informed me of a course in which Professor Langdell changed his

[4] Recollections of Judge Story, in Hours with Men and Books, by William Mathews, at page 99.

[4a] The student is now Mr. Justice Swayze, of the New Jersey Court of Errors.

opinion in regard to a case three times in the course of one week, each time advancing with positiveness a new doctrine. That he could do this without losing the respect or confidence of his students shows the esteem in which he was held. They well knew that he was a teacher of originality and great industry, with no object but to discover and state truly the principles of the law. To lose confidence in him for changing his position upon a legal proposition would be as absurd as to lose confidence in Charles Darwin if he withdrew a tentative conclusion found to be false after more extended investigation. Professor Langdell studied the law as contained in the reports in the same spirit in which the great scientists study the phenomena of nature.

It must not be inferred, however, from the emphasis here given to Professor Langdell's logical tendencies that he was wholly given up to reasoning. He was a man of deep and strong feelings. He relished the vigorous expressions sometimes found in the reports, such as "blowing hot and cold." In referring to Sir Ralph Bovy's Case, where the plaintiff put into a declaration an averment which should have been held back for a replication, he quoted Lord Hale's expression, "It is like leaping before one comes to the stile," with a twinkle of merriment which showed that he was unmistakably pleased. It should be mentioned too that he was interested in the welfare and success of the students. Many acts of kindness to individuals might be mentioned, and at the end of the course he was always glad to learn that any of the young men had found a good opening in an office or elsewhere.

Professor Langdell's sight was somewhat defective as early as 1880. This defect increased with advancing age, and as it increased he gradually changed his method of instruction. He finally abandoned the Socratic method and stated and analyzed the cases himself. He occasionally did this in dealing with complicated cases long before he adopted it as a practice. For example, the case of *Lancaster* v *Evors* in his course on Equity

Pleading was thus considered. On such occasions Professor Langdell's students were treated to unrivalled exhibitions of analytical power. Everything pertaining to the case was laid bare, and all collateral and allied topics were fully discussed. This method of teaching by the Langdell System has advantages over the Socratic method. It enables the instructor to expound the whole case, even though it may involve principles drawn from widely different titles of the law, and review all the work of the judge. On the other hand, in a course conducted by oral discussion in which the students take part it is practically necessary to limit the consideration of each case to the point which is the subject of the particular course. When Professor Langdell adopted the method of personal exposition of cases, which was his sole method in his later years, he wrote his lectures. His teaching in the class room then exhibited mainly those characteristics which appear in all his written works.

Thus far we have been considering Professor Langdell's method of teaching. Let us now consider the collections of cases from which he taught. He was appointed Dane Professor of Law in 1870, and was made Dean of the Law Faculty, a new office then first created which made him the administrative head of the school. As Dane Professor he was fourth in the line of succession from Judge Story. Story was appointed in 1829, and held the chair until his death in 1845. The intervening incumbents were Professor Greenleaf and Professor Parsons. Professor Langdell, at the date of his appointment, was forty-four years of age. He had then formed, as he himself states,

"A settled conviction that law could only be taught or learned effectively by means of cases in some form. I had entertained such an opinion ever since I knew anything of the nature of law or of legal study; but it was chiefly through my experience as a learner that it was first formed, as well as subsequently strengthened and confirmed."

Although without previous experience as a teacher, he had a definite idea of the object to be attained by

instruction, "Only one mode occurred to me," he says, "which seemed to hold out any reasonable prospect of success; and that was, to make a series of cases, carefully selected from the books of reports, the subject alike of study and instruction." He set about preparing such a series of cases, and explains in a few sentences of admirable clearness the principles upon which the selection of cases was made.

"Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth; extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied. But the cases which are useful and necessary for this purpose at the present day bear an exceedingly small proportion to all that have been reported. The vast majority are useless, and worse than useless, for any purpose of systematic study. Moreover, the number of fundamental legal doctrines is much less than is commonly supposed; the many different guises in which the same doctrine is constantly making its appearance, and the great extent to which legal treatises are a repetition of each other, being the cause of much misapprehension. If these doctrines could be so classified and arranged that each should be found in its proper place, and nowhere else, they would cease to be formidable from their number." [5]

In execution of his plan he published in 1871 a volume of "Cases on Contracts," which was followed later by a second volume, the whole being published in a second edition in 1879. In 1872 he published a volume upon "Sales of Personal Property," followed in 1878 by "Cases in Equity Pleading." He also printed "Cases in Equity Jurisdiction," in a pamphlet edition of four parts, which appeared from time to time. He also selected a series of cases for use in his course on Suretyship and Mortgage but these were never printed. The collection of "Cases on Contracts" is believed to be the first instance in the world of the use of a series of cases for the purpose of instruction in a school of law.

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[5] Preface to Cases on Contract (1st. ed.) 1871.

As a method of study the use of cases was not a discovery, nor even a novelty. English lawyers had been studying law in the cases for centuries. Sir Edward Coke, the greatest of all common law lawyers, recommended this method in passages which Professor Langdell prints on the fly-leaf of his "Cases on Contracts." Lord Campbell and his fellow students in the chambers of the famous Mr. Tidd, the author of "Tidd's Practice," apparently used this method. He states a case discussed at a meeting of a society of students, consisting of present and former pupils of Mr. Tidd, formed to discuss points of the law, which reads surprisingly like a question from an examination paper under the Langdell System.[6] The excellence of the discipline of Mr. Tidd's office is shown by the fact, often cited, that in the society above mentioned there were at the same time three future lord chancellors (Lyndhurst, Cottenham and Campbell) and a lord chief justice (Denman). Professor Langdell, as he states in the passages above quoted, used the case system for his own study. The real novelty of Professor Langdell's action as Dane Professor was that he adopted the case system as a method of instruction. Sir Edward Coke said, "Seek the fountains" (*melius est petere fontes*). Professor Langdell drove the young men to the fountains and made them drink. Professor James B. Thayer, the admired and lamented colleague of Professor Langdell, has stated the whole truth upon this matter in language of singular felicity and accuracy in the preface to his "Cases on Constitutional Law."

The real character of Professor Langdell's achievement will appear more clearly if we inquire why was not the case system of instruction introduced before his time. The true answer seems to be that the time was not ripe for such a change. In other words, just as the law itself is a growth, so the art of teaching law is a growth. When Judge Story assumed the chair of the Dane Professor in 1829 he at once perceived the need

[6]Life of Lord Campbell, (London, 1881) 138, 140.

of books for the instruction of students, and he began immediately to write and publish treatises. The idea of collecting cases or of teaching law from the cases never occurred to him. Neither is that surprising, nor does it cast any shadow upon the fame of that great man. Law schools were then a novelty, and even the name of Story would not have been sufficient to induce young men to use cases instead of text books in 1829. Furthermore, the books of reports were not then so rich in illustrations that collections of cases could have been readily made. The nineteenth century has witnessed a surprising development of case law. Between the time of Judge Story and that of Professor Langdell, the number of decisions had multiplied enormously. In the meantime work had been done which tended to impress upon lawyers the practical value of cases as the proper method of study. In 1837 John William Smith, a man of remarkable attainments,[7] had published his "Leading Cases," which had become favorably known to the profession. In the preface he refers to one of the passages from Coke printed by Professor Langdell. In 1849 White and Tudor published "Leading Cases in Equity," avowedly following the plan of Mr. Smith. By means of the labors of Judge Story and his distinguished colleagues and successors the Harvard Law School had been placed on a firm foundation, and in 1870 the time was ripe for Professor Langdell. He was a man with an idea and a conviction. He had the patience, fortitude and sagacity necessary for his work, and he carried it through in spite of great obstacles to a successful issue.

In order to judge of Professor Langdell's success it is necessary to keep clearly in mind what was his aim. He asserted and believed that law is a science, but his vital proposition (for the purpose of weighing his work as a teacher) is not that law is a science, but that there is a scientific method of teaching and studying the law. His whole endeavor was to introduce and establish

[7] 53 Dict. National Biography, 92.

that scientific method. He could not communicate or teach his own genius, nor did he attempt as a part of his work to convince students that the law is a science. He did, however, aim to teach young men to adopt his method of study, and to use their faculties in the same manner in which he used his.

With that point of view established, it is proposed to consider a few criticisms which have been made upon his collections of cases. An experienced eye in looking over them will see at a glance that in a certain sense they are all incomplete. No one recognized this more clearly than Professor Langdell. As he points out, the "Cases on Contracts" deal with only a part, although an important part, of the whole subject of Contracts. So the "Cases on Sales of Personal Property" deal with only a small portion of the whole subject of Sales. In order to determine what weight should be given to this point it is necessary to keep steadily in mind the main object he had in view. It was not primarily to impart knowledge, but to teach young men to discover accurately the principle involved in a case, and to reason soundly from it to new cases. The formation of a habit is the essential thing. When once formed by a student he will apply it in all his work. That such is the fact can be readily illustrated by the case of Professor Langdell himself. He is the best possible example of the effect and value of the discipline obtained by the close study of cases. To put the matter in a more striking form, Professor Langdell is the greatest pupil of the Langdell System. He used it from his youth.

In his old age he surprised his former pupils by appearing as an author in new fields. He wrote articles upon subjects which he certainly had never taught, and to which it was not generally known he had given any attention. The first was the article on "The Status of Our New Territories,"[8] published in 1899. Here he appeared in Constitutional Law. If his name had not been affixed to the article those who knew his hand

[8] 12 H. L. R., 124.

would certainly have suspected his authorship. There are displayed all the qualities of his work on Contracts, or Equity Pleading, or Sales,—originality in the method of approach, minute and exhaustive investigation, and close reasoning. It also shows the breadth of view essential to the right discussion of questions of public law. This article was followed in January, 1906, only a few months before his death, by the remarkable article upon Professor Dicey's book, "The Relations between Law and Public Opinion in England."[9] Upon the first page he challenges the accuracy of the title selected by the learned author to describe his book, and then subjects it to a process of dissection and vigorous analysis, which will certainly remind some readers of the old teacher who in the course on Contracts used to rap on the desk and call for more precision in the use of terms. Then he presents an analysis of the work, and discusses currents of opinion, counter-currents and cross-currents with a thoroughness and clearness developed by long study of cases, and with the same vigor and acuteness with which he pursued dependent and independent covenants and promises in the Law of Contracts. His short article of sixteen pages is a key to Professor Dicey's book. It derives additional value and charm from the fine courtesy with which he takes leave of the learned author, the Vinerian Professor, by commending him to the reader, as a worthy successor of Blackstone. Most important, however, in illustration of my present point, is the article on the Northern Securities Case,[10] published in June, 1903. Here we see a master of equity, dealing with the essential elements involved in a great case, with brevity and thoroughness. Although the article is but fifteen pages in length, it covers the entire subject. While many may dissent from his conclusion, few, if any, will complain of the quality of the work. Completeness is one of its most striking characteristics. The habit of analysis which should result from the study

[9] 19 H. L. R., 151.
[10] 16 H. L. R., 539.

of cases can be acquired from a collection covering but a small portion of a given subject, as well as from a collection covering the whole field. Incompleteness in such collections is not to be desired or commended, but relatively it is a matter of small moment. From Socrates to Agassiz the characteristic mark of a great teacher is that he makes his pupils use their own powers, and do original work. Tried by this test, Professor Langdell is fairly entitled to be called a great teacher.

Another criticism made upon his collections of cases is that they are confined too exclusively to English cases and deal with obsolete subjects. The collection most exposed to this objection is that on Equity Pleading. Upon the title page Professor Langdell states that these cases are selected with special reference to the subject of Discovery. There is not an American case in the book. In his treatise on "Equity Pleading" Professor Langdell states that his object was to present the principles of the science of equity pleading *as such*, as it was at the end of the chancellorship of Lord Eldon."[11]

In considering the force of this objection, attention should be directed to three points. In the first place, the objection assumes too readily that legal cases cease to be worthy of study when they are no longer binding as law. In truth they may remain of great value not only historically but practically. Bills for discovery, as formerly used, are unknown in many jurisdictions. There is, however, a statutory process for discovery in many states. For example in Massachusetts, there is a statute permitting the filing of interrogatories by one party to the opposing party "to discover facts and documents material to the prosecution or defense of the action." When skilfully used this process may be of great value to a client. To use it skilfully, indeed to understand the statute by which the remedy is created, some knowledge of the old law of discovery is essential.

Again, one of the great merits of the Langdell System is that it presents vividly the process of growth in the

[11]Summary of Equity Pleading (2nd ed.) 52, note 1.

Common Law. A collection of cases upon any topic, if made by a skilful hand and arranged in chronological order, will exhibit the origin and growth of the principles involved with almost photographic vividness and accuracy. For example, in the Law of Torts, the most remarkable development of the last fifty years is that of the principle of *Lumley* v *Gye*, 2 E. & B. 216 (1853) giving a right of action to a contracting party against a third person who procured a breach of the contract. From that point the conflict has spread to other related topics, and is still raging. If the reader will turn to the fifth chapter of Professor Ames's "Cases on Torts," he will see in a small space a record of the origin and development of the whole struggle down to the time of publication of the book. We are keenly interested in this topic, because it presents questions upon which great interests in our time are in conflict. It must not be forgotten, however, that the law as a whole is a vast growth, and that each stage in its development contributes something to enable us to understand how it came to be as it is. So the old law of discovery, as presented by Professor Langdell, invented by the chancellors before parties were competent to testify as witnesses in their own cause, is an interesting example of the practical working of equity, and a worthy subject of study in any stage of the law. If there were nothing else to be said upon the question, thoughtful men will surely agree in this, that in a great law school aiming to send out young men qualified to do the work of the legal profession in a high spirit, something must be pardoned to mere scientific and historical investigation.

Finally, in passing judgment upon the collections of cases made by Professor Langdell, it should always be remembered. that he was a pioneer in this field. Later compilers will have the benefit of his labors, and will be able to select from ever-richer materials. A better collection of Cases on the Law of Contracts, for example, can easily be made in 1907 than was possible in 1871. It is not unlikely that all the collections of

cases made by Professor Langdell will soon be displaced, supplanted by more modern and better collections made by men who are his worthy disciples and successors; but in every class room where such collections of cases may be studied, the influence and genius of Professor Langdell will survive in their most potent form, even though his name should never be mentioned.

One of the most striking facts in the life of Professor Langdell is the deep silence which surrounds his work. He accomplished a revolution without getting into a controversy. As Professor Ames has pointed out,[12] he never wrote anything in explanation or defence of his system after the brief statement made in the preface to his collection of Cases on Contracts. Nothing is there stated in regard to the need of written treatises to accompany the collections of cases which he was contemplating. Indeed, it is not obvious from the principles there stated, that written treatises could properly have any place in his scheme of instruction. Whatever may have been the reason for his action it is certainly a fact that he did begin to write treatises either in connection with his work of selecting the cases, or soon after publishing them. These treatises fill out and complete his scheme, although in the beginning he may not have foreseen the neccessity for them. The treatises written by him are the "Summary of the Law of Contracts," printed with the second edition of his "Cases on Contracts," and also as a separate volume; "Summary of Equity Pleading" (much enlarged and improved in the second edition, published in 1883); and "Brief Survey of Equity Jurisdiction," printed in the form of articles in the Harvard Law Review, beginning in 1891, and continuing down to the time of his death if the seven articles on Equitable Conversion may properly be referred to that general subject.[12a]

[12] Harvard Graduates Magazine, 213 (December, 1906).

[12a] He also wrote an "Index to the Cases," printed with his collection of "Cases on Sales." This cannot properly be classed as a treatise, but is a model of brevity and accuracy in the statement of legal points.

In order to appreciate more thoroughly the value of these treatises it will be well to compare them with similar work done before his time. Forty years earlier Judge Story when appointed Dane Professor at Harvard, set out to prepare a series of text books for use in the law school. In the preface of his first book, the treatise on Bailments, he describes his aim. He sought to combine the methods of the modern Civilian and of English and American lawyers, to produce a reasoned statement of the principles of each subject combined with a reference to adjudged cases in which the principles were applied. Judge Story said that the treatises of the Common Law lawyers were mere digests. If his criticism is applied to some of the best modern text-books such as Leake's Digest of Land Law or Leake's Digest of Contracts, it will be found to be correct. They consist of sentences heaped together like cannon balls, each accurately stating the point of a decided case, but leaving interstices between which the author makes no attempt to fill. Professor Langdell has never referred to the plan of Judge Story so far as I know, but his treatises on Contracts and on Equity Pleading execute that plan more perfectly than those of Judge Story himself. He states and develops the principles of each subject in continuous logical sequence, and constantly illustrates the application of them by reference to cases in his collection of cases selected to exhibit the historical development of each subject in the courts. The books of Judge Story satisfied a great legal want of his time, and carried the fame of their author into all lands. When read in comparison with those of Professor Langdell the characteristics of the two men appear in very marked opposition. Judge Story seems to do his work easily, and makes the work of his reader easy, but often stops his inquiry *in limine*. Professor Langdell does his work hard, and makes his reader work hard, but he always goes to the essence of his subject.

In connection with these treatises it will be convenient to point out a few of Professor Langdell's mental traits

not before mentioned. He had a high regard for logical symmetry, but he recognized that the Common Law is made or declared by the courts, and he took the principles which he used as his premises from the books of reports. He vigorously insisted that the logical inference from correct premises was the rule of law. This fidelity to logical inference made him conservative, and an enemy to exceptions and innovations. It was this characteristic, as I conceive, which made him unwilling to accept the doctrine of the majority of the court in *Lumley* v *Gye*, although he did not expressly reject it. But this conservatism was accompanied with practical good sense, and if the courts took a step which he deemed unsound in principle, he would content himself with pointing out the error and the consequences of it without asserting that the law should be changed. An example of this method may be seen in his treatment of the case of *Payne* v *Cave*, upon the nature of a bid at an auction sale, viz.:

"It was decided in *Payne* v. *Cave* that a bid at an auction is in the nature of an offer, which is accepted by knocking down the hammer; and perhaps it is too late to question the correctness of the decision. On principle, however, it is open to much doubt. The true view seems rather to be, that the seller makes the offer when the article is put up, namely, to sell it to the highest bidder; and that, when a bid is made, there is an actual sale, subject to the condition that no one else shall bid higher." [13]

The reason, with him, was the vital question, and he has frequently pointed out the evil consequences resulting from wrong reasons, though given as the basis for right decisions.

His conservatism is best shown in those parts of the law which invite originality, especially in equity. In his view, equity is a science of remedies, and he never indulged in mere theories or original notions of something supposed to be natural justice. In *Dursley* v. *Fitzhardinge Berkeley*, Lord Eldon quotes a saying of Lord Chief Justice De Grey, that he never liked equity so well as when it was like law.

[13] Summary of Contracts, sect. 19.

"The day before I heard Lord Mansfield say, he never liked law so well as when it was like equity; remarkable sayings of those two great men, which made a strong impression on my memory." [14]

With his usual sagacity Lord Eldon did not then express his own view, but in a letter[15] to a gentleman upon a course of study for the bar, he uses language which shows that he would probably not dissent strongly from these weighty observations of Professor Langdell:

"1. As equity is in the nature of a supplement to the common law, no branch of equity can be thoroughly understood, unless its relation to the common law is understood. 2. When any branch of equity is founded upon or involves principles of law as well as principles of equity, every student should acquire a knowledge of the former before he attempts to master the latter," [16]

This conservatism of Professor Langdell is a striking fact, far more noteworthy in a teacher of law than it be in a judge. Judges are surrounded with safeguards which tend to make them conservative. A teacher of law is protected against empty theorizing only by the depth and soundness of his own mind.

Another characteristic of Professor Langdell, manifested both in the class room and in his books, is that he never attempted to exalt or magnify the importance of the subject which he was teaching or upon which he was writing.[17] Ordinary minds (and sometimes extraordinary minds)[18] engrossed in the study of any subject are prone to regard that subject as the most important branch of knowledge in the world. Professor Langdell

[14] 6 Vesey, 251, 260.

[15] "I know from long personal observation and experience, that the great defect of the chancery bar is its ignorance of common law and common law practice; and, strange as it should seem, yet almost without exception it is, that gentlemen go to a bar where they are to modify, qualify and soften the rigor of the common law, with very little notion of its doctrines or practice. Whilst you are with Abbott, find time to read Coke on Littleton again and again." 2 Twiss Life of Lord Eldon, ch. 25, (Am. ed) 301.

[16] 18 H. L. R., 104.

[17] My friend Professor Wambaugh, Langdell Professor of Law in the Harvard Law School, a chair named in honor of Professor Langdell, first called my attention to this point.

[18] "One of the hobbies of Judge Story was the great blessings conferred on society by courts of equity, in remedying the defects of the Common Law." Hours with Men and Books above cited, p. 115.

never fell into this error. He never lost his sense of proportion, or it may be that he was oblivious to proportion. He was so intent upon the work in hand, that it never occurred to him to consider whether the principles he was expounding were admirable or beautiful or of great importance to mankind. Like the farmers at Concord Bridge he was wholly absorbed in his work, and did not know that it was great.[19] One instance only do I recall where he indulged in a reflection suggesting the moral beauty of a legal principle. Speaking of the rights of a surety to Subrogation he said:

"Equity says one man is bound to do for another what he can do without injury to himself, and without which that other would suffer an injustice. This is coming pretty near to the Golden Rule."

As above stated Professor Langdell's treatises are an outgrowth of his collections of cases, and to a great extent incidental to them. The misfortune of this connection is that as a consequence of it the treatises are not likely to be so widely known or read as they deserve to be from their merits. The treatise on Equity Pleading, by reason of the introductory exposition of the system of pleading in the ecclesiastical courts, may have an independent career, but as a whole, one would expect the treatises not to have a much wider circulation or longer duration of life than the collections of cases which they accompany.[20]

The Langdell System of instruction, on the other hand, seems destined to endure. The fact that it is now used in a majority of the law schools of the United States, either as the sole system or as a part of the system of instruction in those schools is strong evidence that it supplies a want which was actually felt. With

[19] "Here English law and English thought
'Gainst the self-will of England fought;
And here were men (co-equal with their fate,)
Who did great things unconscious they were great."
Lowell, Ode Read at Concord, 19th April, 1875.

[20] "As the Summary was written for the sake of the cases, and the two were designed to be companions, the Cases constitute the chief authority cited in the Summary." Preface to second edition, Summary of Contracts (1880)

the Langdell System there has come into existence another powerful influence, a new type of legal instructor. President Eliot says:[21]

"Professor Langdell early advocated the appointment as teachers of law of young men who had had no experience whatever in the active profession."

That experiment has been tried in many instances and with successful results, in a number of law schools. The effect of this has been as it were to set a new force at work upon the Common Law. As President Eliot said, in the Address already mentioned:

"In due course, and that in no long term of years, there will be produced in this country a body of men learned in the law, who have never been on the bench or at the bar, but who nevertheless hold positions of great weight and influence as teachers of the law, as expounders, systematizers, and historians."

That which was stated in 1895 as a prophecy is now a fact. For the first time in its history the Common Law is subjected to the searching study of trained men who have no connection with it except as a branch of science, the principles of which it is their business to know and to teach. From this new influence nothing but good can come to the Common Law. Learned Courts, charged with the duty of declaring the law and administering public justice as a branch of the government, will soon perceive that valuable aid can be obtained from the labors of the learned Law Faculties. Those labors will tend toward greater logical symmetry, a more thorough understanding, and more accurate statement of fundamental legal principles, and higher moral standards in the law. The true glory of Professor Langdell is that his life work tends at last to the improvement of the law, and the establishment of more perfect justice. Hitherto his system has been confined to our Case Law, but it is not risking much to assert that the spirit of free inquiry which is at the bottom of that system will in time extend to the Statute Law, and pervade and animate the whole mass of our jurisprudence.

[21] Address of President Eliot in Report of Ninth Annual Meeting of the Harvard Law School Association, 70 (1895)

Before closing it will be appropriate to state the salient facts in Professor Langdell's life. He was born in New Boston, N. H., May 23, 1826. His early life was one of struggle. "He entered Exeter Academy in the spring of 1845, hoping to receive one of the scholarships to be awarded in the following July. But this hope was not realized. His failure to win a scholarship, coming as it did after he had given a part of his hard-earned money to help his father, was a crushing disappointment. He sat down upon the steps of the Academy building and burst into tears."[22] This pathetic picture shows that Mr. Langdell felt and shared the great emotions of common humanity in his youth, and he remained democratic and sympathetic to the end of his days.

He entered Harvard in 1847, with the class of 1851, and left in December, 1849. In 1851 he entered the Law School, and remained there as librarian and student for three years. In 1854 he received the degree of A. M. from the college, *honoris causa*. From 1854 to 1870 he practiced law in New York City. Prior to 1870 he had done some work as a legal writer. He wrote notes for Parsons on Contracts, and contributed articles to the edition of 1867 of Bouvier's Law Dictionary.[23] After his appointment as Dane Professor he lived in Cambridge until his death on July 6, 1906. In September, 1880, he was married at Coldwater, Michigan, to Margaret Ellen Huson, who survives him. He died without issue.

His life was unusually secluded and free from show. During his whole career it may be said, he had but one splendid day. That was June 25, 1895, the occasion of the celebration by the Harvard Law School Association of the completion by Professor Langdell of a term of service extending through twenty-five years. His modest

[22] This passage is quoted from an article by Professor James Barr Ames, in the Harvard Graduates Magazine for December, 1906, which is commended to the reader as a brief and excellent sketch of Professor Langdell's life.

[23] See Rawle's edition of Bouvier, Partial List of writers who assisted in edition of 1867.

speech on that day throws a great light upon his character. He labored sincerely with all the acuteness for which he was famous, to demonstrate that the chief credit for the prosperity of the School in which he had labored so abundantly during a quarter of a century, was due to the Harvard Law School Association, formed nine years before. During the course of his address he said:

"This distinguished assembly has been convened to celebrate an event of so little importance as my twenty-fifth anniversary as Dane Professor of Law and as Dean of the Law Faculty. It is true that I happen to have been in office a little longer than any of my predecessors, but that is due entirely to the fact that I was appointed a little earlier in life. Twenty-five years is not likely to be regarded hereafter as a long term of service. Three of my associates have already served twenty years and upwards, and the prospect now is that each of them will have a longer term of service than I shall. It is also true that I am the first Dean of the School, and that I have held the office much longer than the office of dean has ever been held in this University by any other person. But the first of these facts is, of course, of no significance whatever; and the second is, as I conceive, rather a discredit to the other departments of the University than a credit either to the Law School or to myself personally. Lastly, it is true that my name is generally associated with what is regarded as a new method of teaching; but the only reason for that is that I happened to be the first to use that method, and hence I have furnished the chief target for the shafts of criticism with which it has been assailed. Others who have followed me have used the method with more success than I have. Besides, this method made its way very slowly and doubtfully, and was seldom mentioned except to be criticized, until it was taken up by your Association. Whatever reputation it now enjoys, therefore, is due chiefly to you." [24]

If it be conceded in deference to the foregoing argument, that so much credit as is therein given was fairly due to the Harvard Law School Association, the vital fact remains that the formation of the Association was itself largely due to the genius and character of Professor Langdell, working silently, invisibly, but powerfully, for many years. Among the invited speakers on that day was Mr. Gustavus H. Wald of the Cincinnati Bar, one of the early pupils of Professor Langdell, and known to the profession as editor of Pollock on Contracts. He died a few years later. Pinned upon

[24] Report of Harvard Law School Association, 46, 57 (1895).

the wall of his private office was the following quotation from Stevenson, viz.:

"To be wholly devoted to some intellectual exercise is to have succeeded in life, and perhaps only in law and the higher mathematics may this devotion be maintained, suffice to itself without reaction, and find contirual rewards without excitement."[25]

This remarkable passage finds a striking proof and illustration in Professor Langdell. His career and manner of life are evidence of the dominion which the law exerts over those who have a real liking for it. The case of Mr. Wald shows that Professor Langdell's pupils as they came to the Law School were touched by the flame that consumed his soul for fifty years. There is one secret of the great celebration on the occasion of Professor Langdell's anniversary, and of the foundation of the Harvard Law Association.

Professor Langdell's life also illustrated in a remarkable manner the power of the law to give a career to those who follow it faithfully. While he was a practising lawyer in New York there can be little doubt that his abilities were observed and talked about by eminent lawyers his contemporaries at Harvard who were his associates at the bar. President Eliot knew of his genius, and had the courage and wisdom, sustained by the governing boards of the University, to place him in a position of influence, and to uphold him in carrying through a great measure of reform. Mr. Langdell's appointment as Dane Professor is one of many examples where men of character and talent, without other influence of any description, have risen to high station by means of their connection with the law. So it has always been in England, where men of humble origin by means of the Law have risen to be lord chancellors and judges, or, in the noble phrase of Bacon, "lions under the throne." The appointment of Professor Langdell was fully justified during his life. He died regretted by hundreds of lawyers who had been his pupils, respected and admired by some of the best and

[25]Reports American Bar Association, 788 (1902).

ablest men of his time. That his life was simple, all will agree. Was it not also a great and a fortunate life?

Finally, in taking leave of Professor Langdell let us inquire what message does his life convey? Or, since he devoted so large a portion of his life to students of the law, perhaps it will be better to inquire what message does his life convey to them? In the first place it demonstrates that self-seeking, self-advertising, are not essential to success. Neither Commercialism nor noisy Strenuosity had any place in his career, as student, lawyer, or teacher. He kept his eyes upon his work, upon the Common Law, towering over those cheap idols like the wise Minerva, a true goddess, with her spear in her hand and her shield at her side, ever ready to protect her votaries with all her power. The votaries of the Common Law are those who pursue it with loyal and unfaltering devotion. Such was Professor Langdell. Readers of Quentin Durward may remember the scene in the banquet hall, filled with the nobles of Burgundy and France, when Charles the Bold and Louis the Eleventh nearly came to blows. Above the din rose the voice of the French knight Dunois, bidding defiance to the Burgundians and calling to his friends, "Courage, my lord of Orleans! And you, gentlemen of France, form yourselves round Dunois and do as he does." If Professor Langdell could read this passage he surely would inquire, What possible reason can you suggest for connecting my life, or anything in it, with that exciting incident? My answer is this: Upon the authority of Sir Walter Scott, Dunois was the best knight in Europe. Like a true knight he stood up boldly for his king when the king was in a tight place. Professor Langdell was one of the foremost lawyers of this age. Sir Frederick Pollock says, that his genius for the pure logic of the Common Law was unique or almost unique in our time.[26] Professor Langdell served the Common Law his sovereign, with fidelity and courage for many years.

[26] 22 L. Q. R. 355.

Professor Wambaugh says: "To introduce a new system of study at the Harvard Law School in 1870 was an act of great bravery."[27] Professor Ames, his successor in the office of Dean of the Harvard Law School, and one of his first pupils, corroborates this testimony.[28] To all students of the Common Law, not only in the law School at Cambridge where he presided, and where his name will shine forever in the Harvard constellation, but all over the land, the example of Professor Langdell's faithful, laborious and successful life conveys a message as loud and clear as the knightly command of Dunois. If young gentlemen really want to know the Common Law to the bottom and not merely to glide over its surface they will form themselves around that patient but valiant spirit and do as he did.

William Schofield.

March, 1907.

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[27] 20 H. L. R. 1.

[28] 15 Harvard Graduates Magazine, 209; 20 H. L. R., 13.