

students and young members of the bar may resort for instruction in those branches for which professors, devoting their time to deep study, are especially needed; and it may be also said, as was said in the February article, that a law school may be conceived, which will fulfill all the requirements of legal education, where the professors will be like the ideal preceptor, where constant exercises upon law and about law will be engaged in by the students under judicious direction, where comparative jurisprudence, legal history, as well as the more practical branches, will be thoroughly taught, where the legal classics will be revealed in by the student, so that he will go out from the academic wall: a thoroughly equipped lawyer. Such a state of affairs may in time exist, but it does not exist at present; it cannot exist in a school wherein the course is *nominally* two years, *really* less. When the law schools of the country lengthen their courses to at least three years, we shall see and hail with delight such a step as an earnest of their desire to really elevate the standard of education of the bar and not merely cram a certain amount of teaching into the heads of young men, in the shortest practicable time.

HENRY BUDD.

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#### THE TEACHING OF LAW BY THE CASE SYSTEM.

I HAVE read with much interest, in the February number of *THE AMERICAN LAW REGISTER*, Mr. Henry Budd's able article on legal education, and as a cure for some of the evils that he mentions, I should like to say something on the teaching of law by what is called the case system. This method has been adopted or is in process of adoption, at several institutions in the country; but it originated, I believe, at the Harvard Law School. It consists in dispensing with the regular reading of text-books and that solemn imparting of information usually known as lectures. For example, a student in an office reads in some book, or, if he is in an ordinary law school, a professor tells him, that fixtures are chattels or articles of a personal nature attached in some way to the land, and which may or may not be removed, and so on. Under the case system, he is seldom favored with such direct information. The professor at the end of his hour with the class gives them a list of cases

which they are to study for their next appearance. If the subject of fixtures was part of their work, they would be given the case of *Elwes v. Mawe*, 3 East, 38, and a careful selection from the later decisions. At the next meeting they would be asked whether a carpet tacked to a floor was a fixture, or whether a chandelier in the ceiling, a pile of stones in a field, the manure on a farm or the machinery in a mill, could be called fixtures. This is a simple illustration of the method and will give a general idea of the principle. But the important part of the system, the part wherein the greatest merit lies, is the actual work and questioning done in the class-room; and it is well nigh impossible to explain this on paper; it must be seen to be fully appreciated. In some subjects, as in contracts, books are published, containing a selection of cases. The students are made to state each case, and what it is supposed to decide, and are then cross-examined on it; and the facts of the case are varied and their opinions asked. The object of the case system is to compel the mind to work out the principles from the cases. The instruction is almost entirely by problems and actual or supposed cases, beginning with the simplest and rising to the difficult and complicated, mingled, of course, with explanations by the professor. The class-room exercise is neither a recitation nor a lecture. It would more properly be called a conference or quiz.

The case system may be described as a natural and realistic method. The student is taken at once to the real sources of the law; he takes nothing second hand; he is accustomed from the start to the best evidence. He is accustomed, moreover, to the practical work of a lawyer, that is, the study and analysis of cases and the drawing therefrom a principle or doctrine. More important still, he is trained from the beginning in the application of principles to facts. Students who have read law only in text-books are often dreadfully taken aback, when for the first time they are given a set of facts and asked their opinion of the law. Their heads are full of knowledge, but they have had no practice in applying it. In this respect, the case system is a great saving of time. The ordinary way of studying law is a violent effort to memorize. The student reads over pages and pages of matter which has no particular bearing on elemen-

tary principles, which is simply reference matter, to be looked up for special occasions. By the case system, he is taken down to the vital organs of the science; the professor has complete control of him and leads him up and down among the pure fundamental principles, makes him argue about them, turn them over, handle and dissect them, until they are burnt into his mind.

The case system is simply part of the progress of the age in education. It is analogous to the progress in the study of medicine and in the study of chemistry. The old method of studying chemistry was to read about it in a text-book and have a professor tell you about it and perform experiments before you, just as law students still read about cases and have professors assure them that the cases exist and that they decide so and so. By the modern method, the student in chemistry goes into the laboratory, has his own work table and handles the substances for himself, makes actual analyses and solves practical problems. In old times, a candidate for the healing art was apprenticed to some reputable physician, read in his leisure moments, picked up hints from his master, saw some of his master's patients, occasionally had a chance to mangle the body of a pauper and after many years, if he had the patience of Job, got some little practical knowledge of medicine. If I understand the object of a medical college, it is to concentrate into a few years the practical experience the apprentice acquired in many years. Vast sums of money are expended on dissecting rooms, museums, and hospitals to enable students to spend their whole time in contact with the real subject-matter of their profession, the human body.

Now the subject-matter of the law consists of disputes about life, liberty, and property. These the student sees as they lie in court, just as the student of medicine examines, as they lie in hospitals, the bodies of diseased and wounded men. For the greater part, however, of their elementary education, the medical men rely not on these living instances, but on dead bodies, with which they can do what they please. So likewise, with the man of law; and for him the reported cases are the dead bodies of the law; and some of them are very dead indeed.

The law, like medicine and chemistry, is a practical science,

or else it is nothing, and the advantage of the case system is that the student is put at once into as practical relations with his profession as is possible; it could not be more practical, unless he were given a case to argue in court, and paid a fee. He learns at once that the practice of the law is not simply a matter of information and knowledge, but a matter of reasoning. He learns that great lawyers are always great reasoners, that as a lawyer he must stand or fall by his reasoning power, and that his knowledge is valuable only as it gives material for his reason. This reliance on argument, this reliance on his ability to persuade the highest faculties of the mind, is the chief merit of a lawyer, and gives the profession its power and influence in the community. For this reason, I dislike the giving by law schools of the degrees of Bachelor of Laws and Master of Laws. Of course, it is a trifle after all; if it amuses any one to have a piece of parchment, let him have it. But it seems to me that it is not in accordance with the best traditions of the Bar. A certificate of admission to the Bar is all the diploma a lawyer wants. After that, his ability and reputation constitute his degree. Sheepskin degrees belong to theologians and scholars. A degree means that the holder of it is supposed to have a certain amount of knowledge; but the test of a lawyer is not knowledge, but what he can do in actual life. The story is told of Daniel Webster, whether true or false I know not, that after he received his academic degree at Dartmouth, he tore it up, saying, "My talents and industry may make me famous, but this thing never will." The degree of Doctor of Laws is time-honored; but it has become altogether complimentary, and is given to soldiers and millionaires who never opened a law book. It is valuable chiefly to the trustees of colleges, who fondly suppose that by its means they can attract to themselves the sinews of war. Still, however, the degree is in some respects allowable, for doctor means teacher, and it is possible for a man to teach law. But no young man can possibly be a Master of Laws, and as for a Bachelor of Laws, it is out of the question. No young man should be a bachelor to the law. The law is said to be a jealous mistress; and if that be so, the only safe way is to marry her.

But with degrees or without degrees, the case system, like

many other good things in this world, is rather expensive. A library is necessary, with seats and tables for the students; and though the library need not contain a very large assortment of text-books, yet the English reports, the United States reports, and the reports of every State, are absolutely essential. There should be two copies of every volume; and if the students were very numerous, there might have to be three copies. The expense of the system is always made a serious objection to it; and the only answer is that medical colleges, chemical laboratories, and other apparatus of good education are also expensive.

Mr. Budd's article seems to imply that the law schools are largely responsible for the inefficient legal education of the day. I partly agree with him. There are undoubtedly some good law schools in the country; but my impression is that many of our schools are very poor affairs. Some of them would probably claim that they taught by cases. But this teaching by cases consists in the professor's discussion of the cases and his recommendation to the students to read them. Doubtless many of the students read them, and acquire considerable practical experience in moot courts. But that is not the real case system; it is not the system in its entirety. Many law schools are nothing but information mills; they are conducted on the principle that if you bring a man in contact with a great quantity of knowledge some of it will soak through. They afford no discipline, no genuine legal training. In a great many of them the students, as a rule, do not take their own notes. Some few industrious members of the class take full notes, and these are type-written, or reproduced in some form and distributed, often sold, to the rest of the class, and sometimes passed on to the succeeding class. As I remember the case system, such slipshod methods were unknown; every man took his own notes and wanted no others; and he thought it a great inconvenience if through sickness or some other cause, he was absent from the class room, and had to rely on the notes taken by a friend. A man who habitually copied the notes of others, or who relied on notes taken in a previous year, would have been laughed out of the school, and, worse still, could not have passed the examinations.

The case system makes sincere, earnest students; they become

investigators, despisers of authority unsupported by a reasoning process, and obtain a mental training, invaluable as an education, even if not followed by the practice of the law. It is astonishing how the naturalness of the system deprives the subject of a great deal of its dullness. The students feel that they have something real and tangible, that they can accomplish something by their own exertions; they become interested and excited, need no encouragement or driving, and form their own moot courts and clubs for debate.

Mr. Budd complains, and doubtless many will agree with him, that the present superficial methods of education are filling the Bar with young men who are an injury to their clients. This is certainly true, and I might add that these same young men assist in starving one another.

I am afraid nothing can prevent the overcrowding of the professions; nothing, I am afraid, will ever prevent young men from becoming lawyers, as a polite amusement or in the hope of improving their social position. We find, from complaints in the *Spectator*, that even in Addison's day, the professions were all overcrowded. Certain it is that we cannot abolish the evil by enacting a law that only a limited number of persons shall become lawyers; that would be unrepublican. But there is a method which may perhaps check the evil, and is at the same time entirely republican. We are bound to give all men an equal chance to become lawyers; but it is in our power to make that equal chance so difficult that only the determined and able can come through it alive. I do not mean a return to the long siege of years of the olden time; that would put us out of sympathy with our age. Let the time be short, two or three years if you please; but let the requirements be thorough and severe; and for thoroughness and severity there is nothing equal to the case system. A fair field, no favor, and let the best man win, is the ideal of the Bar.

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