Can English law be taught at the universities?: an inaugural lecture, pp. 2-31

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AT

THE UNIVERSITIES?

AN INAUGURAL LECTURE,

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BY

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essential part of legal education. Knowledge of law is still, as it has been for centuries, acquired by actual practice in the courts, or by the imitative practice miscalled "reading" in chambers. My purpose in this address is to set forth, to the best of my power, and with the utmost impartiality, the marked merits, and the no less patent defects, of the present system of legal study, and to show what is the field which this system leaves open for professorial and academical teaching.

The prevailing method of reading in chambers is so much a part of our customary life that, like many other English institutions, its peculiarity hardly strikes us; yet it is certainly a method of instruction which would strike a foreigner as strange, not to say as unaccountable. Its essential features are exactly hit off by the account which (it is said) an eminent lawyer has left on record of the training which ultimately led him to the woolsack. "The first day I went into chambers I drew a set of pleadings; they were returned to me every word of them altered except the names of the plaintiff and the defendant, with a request from my pleader that I would in future leave a wider space between the lines of my drafts. This injunction was all the teaching in law which I ever received." His lordship of course did not mean to imply that he learned nothing in chambers; what he did mean is, that his instruction consisted solely in seeing how the pleader with whom he read actually pleaded or gave

opinions. His lordship's experience was by no means singular. When a student "reading for the bar" enters the chambers of a barrister, the arrangement entered into between the so-called pupil and his so-called tutor is rather singular. The pupil does not undertake to learn, the tutor does not in any way undertake to teach. Our student pays a hundred guineas, and the barrister undertakes that his pupil shall see all the work that goes on in chambers, and have an opportunity of trying his own hand at doing it. This is the real and most valuable advantage gained by the student. What teaching (if any) he may obtain is a matter of chance. Many excellent lawyers have no talent as teachers. Many barristers who would make admirable professors have their hands so full of business that they have not the time, even if they had the inclination, to instruct their pupils. Our young man reading for the bar may get, and often does get, immense indirect help from the tutor in whose chambers he works, or from the fellow pupils with whom he talks, but all which he has a right to look to is the seeing and working at the papers which come in day by day. If he is to learn law, he must pick it up for himself. The task is not an easy one. The youth who has acquired the privilege of reading the papers which lie on the table of a pupil-room, finds himself at first engaged in a maze of perplexities. He may, or may not, have read some elementary law books. His reading may, or quite as likely may not, be appropriate to the

work which passes before his eyes. He is, in all probability, ignorant of the very terms of the legal questions which he has to consider. He reads papers, for example, about a charter-party, whilst hunting through *Maclachlan* to find out what a charter-party is. He attempts to settle whether Brown can sue Jones on a bill of exchange, whilst he tries to gather from *Byles* the difference between an acceptor and an indorser. He is immersed in the intricacies of marine insurance, whilst perplexed by a vague confusion between barratry and bottomry, and whilst attempting to master in *Arnould* the difference between "particular" and "general" average. Several circumstances add greatly to our beginner's perplexities. If he has had the fortune to get into "good chambers," the papers which he studies one day are gone out the next. The set which he begins reading on Monday refers to a bill of exchange; the lot which he takes up on Tuesday turns on covenants running with the land. On Wednesday he attempts to understand a contract of insurance; on Thursday he is immersed in the endeavour to fathom the liability of a railway company for the carriage of goods, to draft a statement of defence or an opinion upon evidence. He is daunted at one moment by difficulties which the slightest legal knowledge would at once remove; he is the next moment plunged over head and ears in a case destined to puzzle the House of Lords. He hardly knows what are the books to which he ought to look for guidance, and when he

finds the right book he has hardly the ability to use it. *Fisher's Digest*—a sort of legal dictionary—the inestimable friend of those who have learned how to consult the oracle, is about as useful to the beginner as would be *Liddell and Scott* to an undergraduate who was not quite at home in the Greek alphabet and knew nothing of Greek grammar. Add to all this, that a case sent in by an attorney looks a very different thing from the same case when divested of all irrelevant matter by a reporter, or when made the subject for comment in a text-book. To our student it is a puzzling and often an ill-digested narrative, of which he does not perceive the point and only half understands the terms. Before he can make up his mind on what may be the very simple question whether A. can sue B., he has to determine what are the facts relevant to the matter in hand, and he is all but certain to fall into one or both of two opposite errors—either he does not see that a lot of details highly interesting to the parties or to their attorneys, transactions which have taken place years before the dispute began, or letters written months after the writ was issued, the ingratitude of the plaintiff, the monstrous dishonesty of the defendant, and the like, have nothing to do with the question for decision, which may ultimately reduce itself to the inquiry whether a particular letter constitutes a proper memorandum of agreement; or our beginner, because he finds that nine-tenths of the circumstances forced on his attention are immaterial, omits to notice the

tenth circumstance, on which the whole matter turns. He is put, in short, to make bricks without straw, or rather without having ever been taught how bricks are to be made. The oddity of the thing is, that he after all gets in due time, mainly by the process of imitation, to make pretty tolerable bricks. For this rough, if not exactly ready, method of learning from contact with real business has some inestimable merits. There are at least three things of the highest value which can be learned, if at all, in court or in chambers, and can be learned nowhere else.

First.—The mechanism of legal practice, such as the drafting of deeds, the drawing of claims, the arguing of cases, and the like, must be learned in chambers or in court. Traditions were at one time current of a counsel, better known as a novelist than as a lawyer, who supplemented (it is said) the inadequacy of his practice by the fertility of his imagination. His pupils, it is told, drew sham declarations, answered by fictitious pleas, or giving rise to speculative demurrers. But this example of imaginative practice gained more notoriety than success, and does not commend itself for imitation. In the Law Schools of the United States, and at the Moot Courts, which have been with most happy results revived in one at least of the Inns of Court, a great deal is taught and learned by means of arguments carried on by students or young barristers in the presence of experienced lawyers, and with all the solemnity of proceedings in court. But for