JOHN SINGLETON COPLEY, LORD LYNDHURST*

By SIR WILLIAM HOLDSWORTH†

THE best account of John Singleton Copley, Lord Lyndhurst, is that by J. B. Atlay in his *The Victorian Chancellors*. Atlay had a genius for biography; and his life of Lyndhurst has done much to extract from Lord Campbell's maliciously inaccurate biography, from Theodore Martin's exposure of Campbell's malicious inaccuracies, and from other sources, the true story of his life. That story was long obscured by two facts: first, that Lyndhurst was the leader of the Tory or Conservative party in the House of Lords; secondly, that history has to a large extent been written from the Whig or Liberal standpoint. Bagehot thought that it was necessary to explain, what to him, as a convinced Liberal, was something of a problem — how it was that a man with Lyndhurst's great intellectual powers could be a Conservative leader? Indeed, if we look at his career from this party standpoint, it is somewhat mysterious. In his youth he was said (though he always denied it) to have been a Whig and something more than a Whig; and yet throughout his official life he was a Tory and Conservative leader. Moreover, though he was a Tory and a Conservative, he gave valuable help, during his period of office as Chancellor and later, in carrying many measures of law reform. It is only in these later years, when the party politics of the nineteenth century have ceased to influence, consciously or unconsciously, historians' estimates of the men and events of that century, that it is possible to see that this problem, like others, is the product of the fog created by these party politics. Since now, in 1941, this fog has cleared considerably, it is more possible than it was in 1863, when Bagehot wrote, to answer his question, "What Lord Lyndhurst really was?"

HIS LIFE

Copley¹ was born at Boston, May 21, 1772. His father was a distinguished painter who was making a tour of Italy when the War of

* But for the Royal Navy and the Royal Air Force, which are the first lines of defense both for Great Britain and the United States, the writing and transmission of this Article would have been impossible; for the savage German tribes which temporarily dominate Europe are as great a menace to the arts and learning of our modern civilization as their less savage ancestors were to the arts and learning of the Roman Empire.

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1. See MARTIN, *LIFE OF LORD LYNDHURST* (1883); 1 ATLAY, *THE VICTORIAN CHANCELLORS* (1906) 1-16; 9 FOSS, *THE JUDGES OF ENGLAND* (1864) 178-183; Hayward, *Book Review* (1869) 126 *QUART. REV.* 1; *Book Review* (1869) 129 *EDINBURGH REV.* 556; 8 CAMPBELL, *LIVES OF THE LORD CHANCELLORS* (1869) 1. Campbell's book is a posthumous volume which is notorious for inaccurate and malicious statements about both

Independence broke out. He was joined in England by his wife, whose family were loyalists, and his son and daughters. They made their home at 25 George Street, Hanover Square, which Copley continued to make his home throughout his long life. In Trinity College, Cambridge, whence he graduated as second wrangler in 1794, he studied, besides mathematics, both chemistry and the classics. He became a fellow of Trinity in 1795. Having been appointed Worts travelling bachelor by the university, he visited America in 1796-7.² He had become a member of Lincoln's Inn in 1794, and in 1797 he began his legal studies in Tidd's chambers.³ After practising as a special pleader from 1798 to 1804 with but indifferent success, he was called to the bar in 1804. He diligently attended court, and soon began to acquire some practice. In 1812 he brought himself to the notice of the public by his success in discovering a formal defect in the indictment of one of the Luddite rioters, and in getting the court to quash it on that ground.⁴ In the following year he became a serjeant-at-law. As a serjeant he had a steady practice, and in its conduct he showed the qualities which later made him a great judge. Hayward said of him that:

" . . . he was never a brilliant or showy advocate; his strength lay in his clear strong subtle intellect; his highest forensic qualities were of the judicial order; and his want of early popularity amongst the dispensers of briefs was in a great measure accounted for by the friend (Sir Samuel Shepherd, I believe), who remarked that he had no rubbish in his head."⁵

The case which made his name as a great lawyer and advocate, and influenced the whole future course of his life, was his successful defence of Watson, who was indicted in 1817 for high treason as a result of the Spa Fields riots.⁶ Campbell, who heard his speech, said that it was one of the most effective that he had ever heard.⁷ It is said that Queen

Brougham and Lyndhurst, especially Lyndhurst. Martin's book refutes these statements in detail. Some are refuted in ST. LEONARDS, MISREPRESENTATIONS IN CAMPBELL'S LIVES (1869). Both the Edinburgh and Quarterly Reviews condemn Campbell's work, but it is sometimes useful, especially when the author is constrained to praise, since it gives the impressions of a contemporary and an eye-witness. The works cited in this note will hereinafter be referred to simply by the name of the author.

2. The Latin letters describing his travels, which, as travelling fellow, he was obliged to send to the Vice-Chancellor, are set out in translation in BENNETT, BIOGRAPHICAL SKETCHES FROM THE NOTE BOOK OF A REPORTER 182-196.

3. Tidd was the author of the great book on practice which was studied by Uriah Heep. Many famous lawyers read in his chambers, including Lords Campbell, Denman and Cottenham. For an account of Tidd and his Chambers, see 1 CAMPBELL, LIFE OF LORD CAMPBELL (1881) 148, 158-160.

4. MARTIN 116-7.

5. Hayward 6.

6. 32 State Tr. 1 (1817).

7. 10 CAMPBELL 17.

Elizabeth, after hearing an argument by Egerton against the Crown, said that he should never plead against her again.⁸ The Government took the same view of Copley's abilities.⁹ Later in 1817 he was retained by the Crown in the case of Brandreth and other rioters;¹⁰ in 1818 the Government found him a seat in Parliament; and in 1819 he became solicitor general. We shall see that his act in joining the Government was made the foundation of baseless charges of apostasy and political cynicism which persisted during the greater part of his life and after his death.¹¹

As solicitor general he showed his ability as an advocate in his prosecution of Thistlewood and his gang.¹² But it was in the Queen's trial that he scored his greatest success.

"His handling of one of the Queen's witnesses, a certain Lieutenant Flynn, dealt a blow to her case from which it never fully recovered; and the speech in which he summed up the evidence for the Bill went a long way to destroy the effect produced by the furious cross-examinations of Brougham and his colleagues."¹³

As attorney general, which he became in 1824, he brought in an abortive bill to give effect to some of the recommendations of the Chancery Commission, and his speech in introducing it, though he had little knowledge of equity practice, won much applause.¹⁴ He opposed the Prisoners' Counsel Bill, which he afterwards supported.¹⁵ But, unlike Vicary Gibbs, he filed no informations for libel.¹⁶ In 1826 he became Master of the Rolls, and in that capacity reintroduced, in an amended form, his bill for the reform of the court of Chancery which, like its predecessor, never became law.¹⁷ In 1827 he was involved in a famous altercation with Canning in a debate on Catholic emancipation. But this quarrel was short lived, and later in the year Canning offered him the Great Seal. Copley accepted and became Lord Chancellor with the title of Lord Lyndhurst. The appointment was generally approved, for his qualities as a lawyer, as a judge, and as a member of Parliament were so pre-eminent that no one could question his fitness to hold the highest office

8. 6 Foss 138.

9. The fact that in the case of *Thorpe v. Governor of Upper Canada*, when Castle-reagh was present in court, Copley successfully prevented the disclosure in evidence of an official document, may have helped the government to make up its mind. See COLLIER, *CRITICISMS ON THE BAR* (1819) 189-190.

10. 32 State Tr. 755 (1817).

11. See pp. 426-428 *infra*.

12. 33 State Tr. 681 (1820).

13. 1 ATLAY 35.

14. 1 ATLAY 43.

15. See p. 430 *infra*.

16. 1 ATLAY 73-4; MARTIN 205-6.

17. See p. 428 *infra*.

in the law. "A discriminating observer would have said of him what Tallyrand said of Thiers, '*il n'est pas parvenu; il est arrivé.*'"¹⁸

Lyndhurst's first Chancellorship lasted till the fall of the Tory government in 1830. He soon acquired an influential position both in the cabinet and the House of Lords. One of his first acts as Chancellor was to remedy Eldon's reluctance to give silk to leading juniors by giving it to Campbell, Brougham, and Bickersteth.¹⁹ That these men were promoted shows that, in exercising his legal patronage, he was not guided by political considerations. The same absence of political bias is apparent in his appointment of Macaulay to a commissionership in bankruptcy, and Sydney Smith to a canonry at Bristol. His support of the Dissenters Marriage Bill²⁰ and the repeal of the Test and Corporation Acts²¹ showed that he had little sympathy with diehard Toryism of the Eldon type. He supported two other bills,²² which failed to become law, to reform the court of Chancery. In his speech on the second bill, he outlined further extensive measures of law reform in addition to the reforms which, as he pointed out, had already been made.²³ He made as skilful a defence as it was possible to make of the *volte face* of the government on the question of Catholic emancipation. As judge of the court of Chancery, he did the best he could with the as yet unreformed system of equity practice—efforts which won the approbation of the legal profession.²⁴

There were rumours that on the change of government in 1830 Lyndhurst "would keep the Seals";²⁵ and perhaps Grey would have liked him to keep them. But the Whig party did not approve,²⁶ and it became necessary to secure Brougham by making him Chancellor. It was felt, however, that something should be done to secure Lyndhurst's services as a judge. Grey offered him the post of Chief Baron of the Exchequer which, after consulting his political friends, he accepted. Campbell testifies to his capacity as a judge of this court and to his popularity with the bar.²⁷ In fact, he restored the reputation and efficiency of the Court of Exchequer²⁸ which had been so impaired by the paucity of cases heard

18. Hayward 12.

19. Afterwards Lord Langdale M. R.

20. 1 ATLAY 60.

21. 1 ATLAY 60-61.

22. 1 ATLAY 68-71.

23. 1 ATLAY 70.

24. (1835) 16 LAW MAGAZINE 15, cited 1 ATLAY 72, said that "his name, as a great Equity judge, may not undeservedly be associated with those of the brightest of our Chancellors"—though it added that in his early days "he brought more of ornament than of very powerful relief to the then oppressed Court."

25. 2 GREVILLE, MEMOIRS (1875) 65.

26. Hayward 26; see 2 GREVILLE, MEMOIRS (1875) 91.

27. 10 CAMPBELL 71.

28. MARTIN 277.

that the Commission on the Courts of Common Law reported that the position of Baron was almost a sinecure.

"Lyndhurst effected a rapid change, and with the assistance of such able puisnes as Bayley and Alderson brought back the flow of business until, in Brougham's language, he had founded anew the Exchequer 'with an *eclat* and a lustre which the Committee on the Courts could hardly have expected when they made their report.'"²⁹

It is said that when Lyndhurst was made Chief Baron it was understood that he was not to oppose the Government.³⁰ But the introduction of the Reform Bill changed the face of politics, and all understandings, if any such there were, disappeared. In the House of Lords, Lyndhurst was one of the leaders of the opposition against the successive Reform Bills. It was his amendment to the third bill, which proposed to postpone the disfranchising clauses, that caused the resignation of the government, and the unsuccessful attempt, in which Lyndhurst played a considerable part, to form a Tory government.

In the first reformed Parliament, Lyndhurst was the leader of the Opposition in the House of Lords. His stands were sometimes mistaken, as, for example, his opposition to Brougham's Local Courts Bill.³¹ In 1835, in Peel's shortlived ministry, he became Chancellor for the second time. It was in July of this year that Lyndhurst made the acquaintance of Disraeli whose genius he from the first recognized. As Atlay says, there were affinities between them:

"They were at one in their dislike for the 'Venetian Oligarchy' of the Whig families, both had a strong strain of the modern spirit of imperialism, neither of them, to put it mildly, had very pedantic scruples in political warfare; and, one of them a Hebrew by descent, the other a North American colonial by birth, they both looked at English party traditions and conventions with a detachment that finds no parallel amongst their contemporaries. Lyndhurst felt by intuition the extraordinary qualities which lay hidden beneath the bizarre and dandified exterior of his young friend; had Peel been possessed of equal discernment the history of the Conservative party would have been very different."³²

When Peel resigned, although Lyndhurst occasionally heard appeals in the House of Lords and in the Judicial Committee of the Privy Council, his chief occupation was political. He led the opposition to the Municipal Corporations Bill, which he regarded unjustly as a Whig job, and succeeded in making at least one amendment which has been recognized as

29. 1 ATLAY 82-3.

30. 2 GREVILLE, MEMOIRS (1875) 92.

31. See p. 429 *infra*. He later realized his mistake. See pp. 430-431 *infra*.

32. 1 ATLAY 112.

an improvement.³³ His conduct of the opposition to this bill increased his reputation, and it "exposed the vulnerable spot in the Government harness. They had no longer sufficient popular feeling behind them to browbeat the Peers."³⁴ The Government was still further weakened in the House of Lords by its quarrel with Brougham who joined forces with Lyndhurst and the Opposition. Lyndhurst did good service as a critic of crude legislative projects.³⁵ He opposed the Irish Municipal Corporations Bill on the ground that it was meant to be a stepping stone to a repeal of the Union;³⁶ and he did good service to his party by his surveys in 1836 and 1839 of the conduct of the Government, and his criticism of its failure to pass its principal measures.³⁷ But that he was by no means an indiscriminating opponent of reform can be seen from the fact that he now supported the Prisoners' Counsel Bill.³⁸ In 1841 Peel carried his vote of no confidence in the Government, Parliament was dissolved, the Conservatives got a majority, and Lyndhurst entered upon his third and last Chancellorship.

Several useful measures of law reform were passed during Lyndhurst's third Chancellorship.³⁹ "Any genuine measure for the amendment of the law received his support."⁴⁰ His conduct as judge of the court of Chancery during this period has been criticized. It has been said that "his heart was not in the business."⁴¹ We shall see that this is not wholly true. But it is true that in his court he was a judge for the parties rather than a judge for the lawyers.⁴² He was

" . . . an acute discerner of fact, an accurate weigher of testimony, a nice discriminator of argument. He was content to deal out justice in the particular matter in Court without laying down principles applicable to other disputes. . . . As Brougham concisely puts it,

33. "The retention of the aldermen has been found most beneficial in practice, and has been followed in the creation of the county councils." 1 ATLAY 124.

34. *Ibid.*

35. "He originated little, but he corrected, perfected, or improved much; and it is no slight praise to say that, without his controlling care, the statute book and the jurisprudence of England would be much more imperfect than they are." Hayward 16.

36. 1 ATLAY 127.

37. 1 ATLAY 132, 136.

38. 1 ATLAY 127.

39. See pp. 431-433 *infra*.

40. 1 ATLAY 140.

41. 2 SELBORNE, MEMOIRS, FAMILY AND PERSONAL 372, cited 1 ATLAY 142, says: "My knowledge of him in that character was only during his last Chancellorship from 1841 to 1846 when he took things very indolently and easily, affirming almost indiscriminately the judgements brought before him on appeal. It was depressing to argue before a Chancellor whose heart did not seem to be in the business, however famous he might be as an orator or statesman."

42. See BAGEHOT, BIOGRAPHICAL STUDIES (1881) 67.

he possessed the faculty of splitting the nut, throwing away the husk and getting at the kernel."⁴³

But there is no doubt that he was a great lawyer. "When Lord Westbury, towards the close of his long life, was once asked at Jowett's table whose was the finest judicial intellect he had ever known, he replied 'Lord Lyndhurst's'; and Lord Grimthorpe was of the same opinion."⁴⁴ In the House of Lords he took part in some notable decisions: *Viscount Canterbury v. the Queen* — a rather unfortunate decision;⁴⁵ *Queen v. Millis* — in which he upheld the majority and probably incorrect view;⁴⁶ and *O'Connell's Case* — chiefly notable as the last attempt of lay peers to take part in a judicial decision of the House.⁴⁷ He was scrupulously just in his dispensation of patronage, and his judicial appointments were all excellent.⁴⁸ With the fall of Peel's ministry in 1846 his last Chancellorship came to an end.

He was glad to retire. He was growing old, and a cataract in one of his eyes threatened him with blindness. But in 1849 he returned to the House of Lords to support a motion to ask the Crown to refuse to assent to a bill passed by the Canadian Parliament, which compensated those who had suffered loss in the Canadian rebellion, on the ground that it applied to the rebels as well as to the loyalists. The cataract was removed; he was able again to resume his activities in Parliament; and his services were so valuable that in February, 1852, Derby offered him a seat in his cabinet without office. But Lyndhurst refused; cataract had appeared in the other eye, and it was not till July that it was successfully removed. In 1853 he took part in the decision of the famous *Bridgewater Case* — the leading case on the question of the avoidance of contracts and disposition of property on the ground that they are contrary to public policy.⁴⁹ To the end of his days he did good work, as even Campbell admitted,⁵⁰ in committees on bills for the reform of the law.

"Contrary to all experience his grasp and view seemed to broaden with the increase of years. Free from all party obligations, he was able to view men and measures on their merits alone. In the non-

43. 1 ATLAY 143.

44. 1 ATLAY 85.

45. 1 Phil. 306 (Ch. 1842); see 9 HOLDSWORTH, HISTORY OF ENGLISH LAW (6th ed. 1938) 43, n. 2.

46. 10 Cl. & Fin. 534, 831-893 (H. L. 1843); see 1 HOLDSWORTH, HISTORY OF ENGLISH LAW (6th ed. 1938) 622.

47. 5 State Tr. N. S. 1 (1844); see 1 HOLDSWORTH, HISTORY OF ENGLISH LAW (6th ed. 1938) 377.

48. Erle, Cresswell, Alderson, Bolland, Platt, Parke, Taunton, Patteson, Colridge. See 1 ATLAY 146.

49. *Egerton v. Brownlow*, 4 H. L. C. 1, 155-164 (1853); see 8 HOLDSWORTH, HISTORY OF ENGLISH LAW (6th ed. 1938) 54-56.

50. 8 CAMPBELL 182; see p. 434 *infra*.

contentious sense of a much abused term he had become a true 'Liberal', and the man who had been Solicitor-General to Sidmouth and Castlereagh was found, after a lapse of nearly forty years, joining heartily in the manifold reforms of the mid-Victorian epoch."⁵¹

In 1857 his opposition in a very witty speech to an ill-drawn bill of Campbell's for the suppression of obscene literature,⁵² in which he was supported by Brougham, Cranworth, and Wensleydale, produced a serious quarrel with Campbell, who had uttered some very offensive words in his reply. But the quarrel was made up, and it was chiefly due to Lyndhurst that Campbell was made Chancellor. To the end of his days he also maintained his interest in the classics and in mechanical and scientific inventions. His enthusiasm for inventions is illustrated both by one of his earliest cases in which he successfully defended his client in an action for the infringement of a patent,⁵³ and by the interest which he took in patent cases which, under an Act which he had promoted, came before the Judicial Committee of the Privy Council.⁵⁴ His interest in the classics is illustrated by a letter which he wrote to Gladstone on the latter's translation of the first book of the Iliad.⁵⁵

He kept his great mental powers to the end. Gladstone tells us that Brougham, having heard Lyndhurst, who was over eighty, explain a legal point to him (Gladstone), said, "I tell you what, Lyndhurst, I wish I could make an exchange with you. I would give you some of my walking power, and you should give me some of your brains."⁵⁶ Those mental powers were displayed in the speeches with which on great occasions he astonished and delighted the House of Lords. Of his speech on the Wensleydale peerage case in 1856, Campbell said that it was the most wonderful speech he had ever heard.⁵⁷ His great speeches on national defense in 1859 and 1860, in which he advocated a "two power standard" for the navy, were very necessary in the days when the influence of Cobden and Bright was at its height.⁵⁸ In the latter year he argued also for the constitutional right of the House of Lords to reject the bill repealing the paper duties.⁵⁹ This must have been the speech which Sir Edward Clarke heard him deliver, for he says that the date was May 21. Clarke says: "I remember little of the debate, but no one could forget the scene while he was speaking. He had reached eighty-eight years of

51. 1 ATLAY 158-9.

52. See p. 434 *infra*.

53. *Boville v. Moore*, 2 Coop. t. Cott. 56 (Ch. 1816); MARTIN 123-5.

54. MARTIN 395.

55. MARTIN 503-4.

56. MARTIN 505.

57. 8 CAMPBELL 192-193.

58. 1 ATLAY 159-161.

59. 1 ATLAY 159-161.

age that day; he could not stand unaided, so a rail had been built for him, and folding his arms across his chest he hung upon it while he spoke. But the voice was full and resonant, the argument was closely reasoned, and the perfectly turned sentences were rhythmical and pointed."⁶⁰ His last speech was delivered in 1861 in support of Lord Kingsdown's Act — "There was no sign of mental failure, but the physical weakness was sadly evident."⁶¹ He died October 12, 1863, in his ninety-second year.

CHARACTERISTICS

Lyndhurst's personal characteristics were striking. When he was a young man waiting for briefs he was described by an observer as

" . . . sitting in the old Court of Common Pleas, always occupying the same seat at the extremity of the second circle of the Bar, without paper or book before him, but looking intently — I had almost said savagely (for his look to me at this time bore somewhat the appearance of that of an eagle) — at the Bench before him, watching even the least movement of a witness or other party in a cause, or treasuring up the development of the legal arguments brought forward by the eminent men who then formed the inner circle of the Bar of learned serjeants."⁶²

When he was beginning to make his way at the bar the same observer said of him:

"In person he was eminently handsome — his voice strong and melodious — with an eye deeply set, and from which nothing escaped — with a dignified presence far in advance of his years; his intellect clear, his memory most tenacious, and his thirst for knowledge unbounded."⁶³

Throughout his life his handsome appearance, set off by his perfectly cut garments and the smart cabriolet which he drove about London made him a unique figure amongst the lawyers, and shocked the staid lawyers of Eldon's school. His own social gifts and those of his wife increased his popularity with his professional brethren,⁶⁴ and made his house a centre of fashionable society — literary, scientific and political — though some thought he would have been wiser if he had lived in a less extravagant style.⁶⁵

60. CLARKE, *STORY OF MY LIFE* (1923) 48; 158 *PARL. DEB.* (3d ser. 1860) 1463-1473.

61. 1 *ATLAY* 161.

62. BENNETT, *BIOGRAPHICAL SKETCHES FROM THE NOTE BOOKS OF A LAW REPORTER* 197.

63. *Id.* at 212.

64. 8 *CAMPBELL* 24; *Hayward* 9.

65. 2 *GREVILLE, MEMOIRS* (1875) 110, speaking of his appointment as Chief Baron, says that "Lyndhurst talked of himself" as standing on neutral ground, disconnected with

His mental characteristics were no less striking. However complicated the facts of a case, he could analyse them, arrange them in his mind, and expound them, in such a way that the legal consequences for which he was arguing seemed natural and inevitable. This power was due to the fact that he had not only a clear logical intellect which could see straight to the heart of a problem, but also a most wonderful memory. When he was at the bar it was said of him, as it was said of Mansfield, that his opening statement was worth any other man's argument;⁶⁶ and when he was on the bench the way in which in his summings up to the jury he presented a reasoned analysis of the effect of the evidence was unique.⁶⁷ These mental gifts made him somewhat intolerant of shams — like Disraeli he saw through the shallowness of many of the theories of the philosophic radicals; and they made him ready to criticize persons and policies in a way which gave him a reputation for holding radical views, or for a cynical skepticism on political questions.⁶⁸ His appearance and some of his utterances on these questions led men to call him Mephistopheles — though in fact "he presented the rather uncommon contrast of a sneering propensity combined with a singularly genial character."⁶⁹ With these mental gifts he was, as might be expected, a good judge of men. We have seen that he from the first recognized Disraeli's genius, and that his appointments to the bench were all good. These personal and mental characteristics have been felicitously summed up by Bagehot, who says:

"The characteristic of his intellect was the combination of great force and great lucidity. Every sentence from him was full of light and energy. His face and brow were, perhaps, unrivalled in our time for the expression of pure intellect, and he preserved the physical aptitude for public oratory to an old age when most men are scarcely fit for mere conversation."⁷⁰

politics. He adds "It is certainly understood that he is not to fight the battles of the present Government, but of course, he is not to be against them. His example is a lesson to statesmen to be frugal, for if he had been rich he would have had a better game before him."

66. Hayward 11; MARTIN 203; 1 ATLAY 30-31.

67. "When at the Bar he had frequently observed that the prevailing practice of the presiding judge reading over his notes of the evidence to the jury, when making his charge, instead of clearing and assisting their minds, more commonly, especially in long cases, tended to deaden and confuse them. He therefore resolved, if he were ever raised to the bench, that he should not follow the practice, but should endeavour to present the evidence in a condensed form, and so classified and arranged that the jury might more readily appreciate its bearings upon the points at issue . . . Only with a judge of the highest order of judicial intellect would such a process be possible, for only such could escape the hazard of losing in the advocate the function of the judge." MARTIN 281-2; cf. 1 ATLAY 85.

68. (1869) 129 EDINBURGH REV. 567-568.

69. *Id.* at 564.

70. BAGEHOT, BIOGRAPHICAL STUDIES (1881) 324 (a short sketch written just after Lyndhurst's death in 1863).

It was because his intellect was a "disciplined" intellect that his style of oratory — clear, cogent, logical, unornamented — was as unique as his personal and mental characteristics. Those who turn to his speeches will find, says Bagehot:

" . . . some of the best, if not the very best, specimens in English, of the best manner in which a man of great intellect can address and influence the intellects of others. Their art, we might almost say their merit, is of the highest kind, for it is concealed. The words seem the simplest, clearest, and most natural that a man could use. It is only the instructed man who knows that he could not himself have used them, and that few men could."⁷¹

And it could suit itself to its environment. His legal arguments delighted the lawyers, he could interest the House of Commons, and in the House of Lords his sway was almost absolute. He was able to expound lucidly or to criticize in committee the details of a proposed legal reform, to argue clearly, forcibly and learnedly a complicated constitutional case such as the Wensleydale peerage case, to expound eloquently a political or a legal principle, to deal trenchantly with those who attacked him, or to kill with ridicule proposals which he considered to lead to absurd results. He has left his mark on English legal history both as a statesman and a lawyer.

CHARGES OF APOSTASY

Lyndhurst's reputation as a statesman was long under a cloud. For a long time the prevailing opinion was that he was a political apostate, in spite of his repeated assertions that till he came into Parliament in 1818 he was connected with no political party — rumors bolstered up by Campbell's many inaccurate and malicious statements. It is quite true that, while at the University and perhaps later, he may have exercised his powers of debate in upholding some of the Jacobin tenets, and in criticizing the Government. His keen critical mind and powers of exposition may well have been employed, at a time when he belonged to no political party, in exposing the errors of politicians of all parties. To a man with his social gifts, sense of humour, and critical powers "there must have been many temptations to shock a literal minded Scot [like Campbell] and 'go one better' than the enthusiastic Denman."⁷² At all periods of his life he had a keen eye for the mistakes of politicians — it is said that in 1830 he condemned the Duke of Wellington's impolitic declaration against all reform, though he was Chancellor in his Government⁷³ — and this characteristic was made the basis of a charge of politi-

71. *Id.* at 328-9.

72. 1 ATLAY 25.

73. (1869) 129 EDINBURGH REV. 568; 1 ATLAY 77, 79.

cal cynicism. But many men in that age of changing conditions saw reason to alter their political views — Peel, for instance, and Gladstone amongst statesmen, and Southey, Wordsworth, and Coleridge amongst men of letters. But Peel and Gladstone never acquired the reputation for political apostasy or for political cynicism which Lyndhurst held in the opinion of many. That neither of these charges can be substantiated against him is, I think, clear from the record of his life. Southey once said that he was no more ashamed of having been a republican than of having been eighteen;⁷⁴ and if the fact that the youthful Gladstone was by conviction “a stern and unbending Tory” is not remembered against him, still less should it be remembered against Lyndhurst that, when an undergraduate or a young barrister, he expressed sympathy with Jacobins or radicals or Whigs, for it is clear that “no one who knew him after his entrance into public life could discern a trace, a sign, or feature of the democrat.”⁷⁵ Atlay states that in political life the general rule is to judge a man by his public utterances only, and that “it would be hard to find an instance, save in the case of Copley, where this rule has been violated.”⁷⁶ Why was this exception made in his case?

The explanation of the fact that the treatment meted out to Lyndhurst was different from that given to other statesmen, such as Peel or Gladstone, is, I think, this: the modification of the opinions of other statesmen, such as Peel and Gladstone, was from Tory to Liberal. This was therefore treated by Whig historians or sympathizers, who regarded their opponents as fools, as a sign of grace and enlightenment. But, if it be true that Lyndhurst's early sympathies were radical or Whig, the modification of his beliefs was in the opposite direction. His abilities could not be denied, and therefore his change of view was ascribed to a political apostasy or cynicism, which induced him to desert his principles for office. This was the line taken by so acute a critic as Bagehot. He says:

“We do not mean to charge him with acting contrary to his principles — that charge was made years ago, but was the exaggerated charge of political opponents, who saw that there was something to blame, but who in their eagerness and haste overdid their accusation. The true charge is that he had no principles, that he did not care to have opinions. If he had applied his splendid judicial faculties to the arguments for free trade or for Catholic emancipation, he would soon enough have discovered the truth.”⁷⁷

It was this refusal of the Liberals to acknowledge that anything could be said against the articles of their creed which led them to brand those

74. MARTIN 147, n. 1.

75. HAYWARD 8.

76. 1 ATLAY 25.

77. BAGEHOT, *BIOGRAPHICAL STUDIES* (1881) 326-327.

who refused to subscribe to them as fools, cynics, or adventurers. But the historian should remember that, of the policy of Catholic emancipation, Melbourne said that all the fools were opposed to it, and the worst of it was that the fools were right; and that some of the evil results of adhering too long to the rigid creed of the free traders have been only too painfully brought home to our generation. If it be said that his opposition to some legal reforms — *e.g.*, Brougham's Local Courts Bill of 1833 — was factious, the same charge can equally be made against his Whig opponents. Campbell admits that the Whig opposition to Lyndhurst's Charitable Trusts Bill of 1845 was quite as factious, if not more so.⁷⁸ In my opinion, Lyndhurst was a consistent conservative statesman, ready like Peel to reform when convinced that reform was necessary, who, from the time that he entered Parliament to the end of his life, served both his party and the state well and faithfully. At any rate, his services to the cause of law reform were considerable. Those services were both positive and negative: sometimes he originated and supported reforms; more often he criticized and helped to put into workable shape reforms proposed by others.

PROCEDURAL REFORMS

If we look at Lyndhurst's attitude toward law reform, it would be true to say that the contemporary view that his political opinions moved from the advanced Whig or radical creed to the Tory creed is almost the reverse of the truth. In fact, he moved from a Tory to a liberal attitude; and, as he became more and more converted to this attitude in the fourth decade of the nineteenth century, his influence upon this type of legislation became more marked and more beneficial. Lyndhurst was never a Tory of the Eldon school. We have seen that before 1832 he supported the Dissenters' Marriage Bill and the repeal of the Corporation and Test Acts. As attorney-general, as Master of the Rolls, and as Lord Chancellor he supported bills to give effect to the recommendations made by the Chancery Commission in 1826.⁷⁹ But, since these recommendations dealt most inadequately with the causes of the defects in the procedure of the court,⁸⁰ it could not be expected that these bills would do much to cure them. It was suggested in 1827, for instance, that the recommendations made by the Commissioners should be enacted, and that the Chancellor, the Master of the Rolls, and the Vice-Chancellor should have power to alter them.⁸¹ But these suggestions did not, as Brougham and M. A. Taylor pointed out, touch two of the main causes

78. 8 CAMPBELL 160.

79. See p. 418 *supra*.

80. See 1 HOLDSWORTH, HISTORY OF ENGLISH LAW (6th ed. 1938) 442-443.

81. 16 PARL. DEB. (2d ser. 1827) 703-704.

of the delays of the court—the procedure of the Masters' offices, and the addition of the jurisdiction in bankruptcy to the equitable jurisdiction.⁸² The bill proposed in 1829 was also defective in these respects. Its main purpose was to expedite the hearing of the case after it had been set down,⁸³ and with that object it proposed to take away the equity jurisdiction of the Exchequer, to appoint an additional Vice-Chancellor, and to provide that the Master of the Rolls sit in the mornings like the other judges.⁸⁴ This bill did not reach the Commons before the close of the session; but in 1830 Lyndhurst introduced another bill which contained similar proposals, and outlined further measures for the reform of the judicial system.⁸⁵ But the dissolution of Parliament which followed the death of the King occasioned the loss of this bill.

After 1832 Lyndhurst's hostility to the Reform Act led him to oppose salutary measures of law reform. His opposition in 1833 to Brougham's Local Courts Bill, though it was in fact to a large extent inspired by the legal profession's fear that their profits would suffer,⁸⁶ was based on the theoretically tenable ground—a ground which, as Lyndhurst pointed out, had the approval of Hale and Blackstone⁸⁷—that, since the good quality of English justice was owing to the centralization of the judicial system, a system of local courts would impair it. He said:

"Twelve or fifteen judges educated in the same manner, sitting together at one time and in one place, consulting each other daily and, if need be hourly, subject to the criticism of their compeers, subject also to the competition of an acute and vigilant Bar, kept constantly alive to the justice of the decision of the judges and their own credit—ensure for suitors a certainty, a precision, a purity, and even a freedom from the suspicion of corruption, such as no other country in the world would ever boast of."⁸⁸

Lyndhurst thought mistakenly that the establishment of local courts would degrade the bar.⁸⁹ On the other hand, he was right when he foretold:

" . . . the break-up of the Circuit system and the calling into existence of those local Bars which, in spite of the ability and integrity that characterize the majority of their members, have not, and never can, replace that old united corporate Bar of England which was the pride of Copley and his compeers."⁹⁰

82. *Id.* at 712-714, 730, 734.

83. 21 *PARL. DEB.* (2d ser. 1829) 1289.

84. *Id.* at 1281-1285.

85. 23 *PARL. DEB.* (2d ser. 1830) 674-693.

86. 1 *ATLAY* 103.

87. 18 *PARL. DEB.* (3d ser. 1833) 872, 873; *HALE, HISTORY OF THE COMMON LAW* (6th ed. 1820) 340-41; 3 *BL. COMM.** 355-356.

88. 18 *PARL. DEB.* (3d ser. 1833) 871, cited 1 *ATLAY* 104.

89. 19 *PARL. DEB.* (3d ser. 1833) 320-321.

90. 1 *ATLAY* 107.

But such considerations as these were altogether outweighed by Brougham's undoubted point that the result of this centralization was a denial of justice to the poor man.⁹¹ As Atlay says,⁹² Lyndhurst's abilities were on this occasion misdirected. In fact, it is probable that a similar bill had the approval of Peel in 1830,⁹³ and though the bill of 1833 was badly drawn, it could have been amended.

His abilities were equally misdirected when he opposed the Municipal Corporations Bill. Here again, although the main principle of the Bill was approved by Peel,⁹⁴ Lyndhurst persisted in regarding it as a Whig job. Fortunately his opposition was not successful. In fact he almost admitted that in those years his opposition had been factious.⁹⁵ However that may be, he acted very differently after the fourth decade of the nineteenth century. In fact, he applied to questions of law reform the principles set out by Peel in his Tamworth manifesto, with the result that he exercised a very considerable influence upon the legislation of the middle years of the century.

LYNDHURST'S INFLUENCE ON REFORMS AFTER 1840

The extent of his influence was due to four main causes. First, he judged proposals on their merits and was not afraid to change his former opinions. Thus in 1836 he actively supported the Prisoners' Counsel Bill which he had formerly opposed.⁹⁶ Though in 1833 he had opposed Brougham's Local Courts Bill, in 1842 and 1845 he supported bills for the establishment of the new county courts. In 1842 there were three bills to establish these courts before the House—one sponsored by Brougham, the second by Cottenham, and the third by Lyndhurst.⁹⁷ Lyndhurst explained that his former objections were to a large extent removed by the establishment of a circuit system for the new county court judges, which diminished their number and prevented them from

91. 19 *PARL. DEB.* (3d ser. 1833) 367-370; (1940) 56 *L. Q. REV.* 344; 1 *HOLDSWORTH, HISTORY OF ENGLISH LAW* (6th ed. 1938) 188-191.

92. 1 *ATLAY* 106.

93. *SNAGGE, THE EVOLUTION OF THE COUNTY COURT*, cited 1 *ATLAY* 102.

94. "The Whig historians have made the most of Peel's conduct in 'throwing over Lyndhurst,' as they term it, and Campbell glows with indignation when relating how he told the ex-Chancellor that Peel had approved of certain clauses which the Lords had struck out, and got for answer, 'Peel, d—n Peel! What is Peel to me?' The true inwardness of the remark, as Mr. Keibel suggests, was, 'd—n Jack Campbell!'" 1 *ATLAY* 124.

95. 3 *GREVILLE, MEMOIRS* (1875) 386 states that Lyndhurst said to Greville on January 19, 1837, "I am sure I shall not go on in the House of Lords this year as I did last."

96. 1 *ATLAY* 127.

97. 60 *PARL. DEB.* (3d ser. 1842) 719, 1172, 1175; Cottenham had produced three bills—one dealing with the common law jurisdiction, the second with the bankruptcy jurisdiction, and the third with the equitable jurisdiction of these courts.

being tied to a particular locality, and by provisions for an appeal from their decisions.⁹⁸ But it was unfortunate that in 1845 Brougham's or Cottenham's bills, which would have given a jurisdiction in equity and bankruptcy to these courts, were not preferred to Lyndhurst's bill, which, in effect, confined their jurisdiction to actions for breach of contract and tort when the amount at stake was £20 or less.⁹⁹ On another occasion, a year after he had opposed a bill introduced by Campbell to allow persons convicted of a misdemeanor to be admitted to bail pending a writ of error, he introduced and carried a similar bill.¹⁰⁰

Secondly, Lyndhurst was willing to promote all reforms which could be proved to be reasonable. The best evidence of this fact is the number of reforming statutes passed between 1841 and 1846—the period of his last chancellorship. Important reforms were made in the land law: the mode of conveyancing was improved, feoffments ceased to have a tortious operation,¹⁰¹ the enfranchisement of copyholds was facilitated.¹⁰² The law of copyright was reformed.¹⁰³ The incapacity of witnesses on account of the commission of crime or on account of interest was abolished.¹⁰⁴ The factors' Act was extended,¹⁰⁵ and the formation of joint stock companies was facilitated and regulated by Acts which in effect began the modern history of company law.¹⁰⁶ Extensive reforms were made in the judicial machinery of the state. The offices of many of the courts were changed.¹⁰⁷ The equitable jurisdiction of the court of Exchequer was abolished,¹⁰⁸ and the practice and procedure of the Judicial

98. 65 PARL. DEB. (3d ser. 1842) 230-1, 235-6.

99. *Id.* at 631; 9 & 10 VICT., c. 95 (1846); 1 HOLDSWORTH, HISTORY OF ENGLISH LAW (6th ed. 1938) 191-192.

100. 8 CAMPBELL 153-5; 8 & 9 VICT., c. 68 (1845), amended 16 & 17 VICT., c. 32 (1853). Lyndhurst explained that his objection to Campbell's bill was founded on the fact that it was inexpedient to deal with the matter while *O'Connell's Case*, to which it might apply, was pending, and he said that he had later taken the matter up at Campbell's request. Brougham agreed with Lyndhurst, and Campbell was so irritated by this agreement that he compared them to the Siamese twins. 78 PARL. DEB. (3d ser. 1845) 131-137.

101. 7 & 8 VICT., c. 76 (1844); 8 & 9 VICT., c. 106 (1845).

* 102. 4 & 5 VICT., c. 35 (1841); 6 & 7 VICT., c. 23 (1843).

103. 5 & 6 VICT., c. 45 (1842).

104. 6 & 7 VICT., c. 85 (1843).

105. 5 & 6 VICT., c. 39 (1842).

106. 7 & 8 VICT., c. 110 (1844) (formation and regulation); 7 & 8 VICT., c. 111 (1844) (winding up); see FORMOV, HISTORICAL FOUNDATIONS OF MODERN COMPANY LAW (1923) 67-83.

107. 5 & 6 VICT., c. 86 (1842) (revenue side of the Exchequer); 5 & 6 VICT., c. 103 (1842) (Court of Chancery); 6 & 7 VICT., c. 20 (1843) (Crown side of the Court of Queen's Bench); 8 & 9 VICT., c. 34 (1845) (seal office of the Courts of Queen's Bench and Common Pleas).

108. 5 VICT., c. 5 (1842); 1 HOLDSWORTH, HISTORY OF ENGLISH LAW (6th ed. 1938) 242.

Committee were altered.¹⁰⁹ Lyndhurst supported Campbell's Act for the amendment of the criminal law of libel.¹¹⁰ He was always a friend of religious toleration. He supported Acts to remove the religious disabilities of the Roman Catholics and the Jews,¹¹¹ and he was a consistent supporter of measures to allow Jews to hold municipal offices¹¹² and to sit in Parliament.¹¹³ After he had ceased to be Chancellor he did not cease to promote the cause of law reform. He supported the Common Law Procedure Act¹¹⁴ and the Chancery Procedure Act of 1852.¹¹⁵ He supported the Act of 1857 which reformed the law of divorce,¹¹⁶ and was prepared to allow greater freedom of divorce than the Act ultimately permitted.¹¹⁷ In fact, in this matter he was one of the protagonists of reform, as Gladstone was the protagonist of opposition to reform.¹¹⁸ The last speech which he made in Parliament was, as we have seen, a cogent and learned argument in support of Lord Kingsdown's Act.¹¹⁹ Last, but not least, he was an advocate for the reform of legal education, and for a compulsory examination of students before they were called to the bar.¹²⁰

Thirdly, Lyndhurst was an effective advocate of the reforms of which he approved, and an effective critic both of the principles of reforms of which he did not approve, and of the details and draftsmanship of reforms of which he approved in substance. Lyndhurst's grasp of the principles of English law and his power to state them forcibly and lucidly enabled him to explain with equal force and clarity the reasons why they ought to be changed or amended. Two good instances of this power are his speech in support of his proposal to establish a body of Charity Commissioners to deal quickly and cheaply with the administration of small charities, and his speech in support of Lord Kingsdown's Act. In the former instance he summed up the reasons for his proposals as follows:

"The principle of the Bill is this — at present there is practically no judicial control over charities of the description to which I have

109. 6 & 7 VICT., c. 38 (1843).

110. 6 & 7 VICT., c. 96 (1843); 8 CAMPBELL 150.

111. 7 & 8 VICT., c. 102 (1844) (repeal of twenty-four Acts against Roman Catholics); 9 & 10 VICT., c. 59 (1846) (repeal of twenty-five Acts against Roman Catholics); 9 & 10 VICT., c. 59, § 2 (1846) (Jews assimilated to Protestant dissenters with respect to schools, places of worship, and charitable trusts).

112. 8 & 9 VICT., c. 52 (1845).

113. 8 CAMPBELL 192, 196, 199-200, 204-6.

114. 15 & 16 VICT., c. 76 (1852).

115. 15 & 16 VICT., c. 86 (1852); 9 HOLDSWORTH, HISTORY OF ENGLISH LAW (6th ed. 1938) 325-326, 406-407.

116. 20 & 21 VICT., c. 85 (1857).

117. 8 CAMPBELL 194-6, 197, 199.

118. 1 HOLDSWORTH, HISTORY OF ENGLISH LAW (6th ed. 1938) 624.

119. 24 & 25 VICT., c. 114 (1861).

120. 122 PARL. DEB. (3d ser. 1852) 1278.

referred. It is in my opinion a scandal that such a state of things should any longer exist. The object of my Bill is to establish another tribunal, constituted in the way I have described, with a power to administer the funds, and to protect the administration of these charities, and to avoid the heavy expenses of the present system, which is altogether inconsistent with the objects of these charities. This is the main foundation and principle of the measure. I have, however, grafted on it the power of making an enquiry; but an enquiry only into the amount and application of the funds of all charities; and, in addition to that, in consequence of the great expense attending the present mode of appointing the trustees of municipal charities, I propose that these Commissioners shall, in the first instance, exercise that power of appointment, and thereby avoid that course which involves an enormous expense on those charities, and a continual expense, by the necessity that exists of renewing the trustees from time to time."¹²¹

In his speech supporting Lord Kingsdown's Act, he explained the very doubtful state in which the law as to the form requisite for the execution of a will by a British subject living abroad had been left by the case of *Bremer v. Freeman*,¹²² and pointed out that both continental and Scotch law allowed such a testator a choice as to the forms which he might use.¹²³

At the same time, he could foresee the difficulties which might arise from the legislative changes which he supported. Thus, in the discussion on Campbell's Act for compensating the families of persons killed by accidents, he foresaw the difficulty which oppresses the courts of estimating compensation for the expectancy of life in particular cases. Campbell said that it had been objected to his Bill that, if the Lord Chancellor were killed by an accident, it would be difficult for a jury to estimate the loss to his family. How could they estimate the value of the tenure of his office? To this Lyndhurst, ever ready for a gibe at Campbell, replied:

"There is a much more difficult case to estimate for compensation than the one which my noble and learned friend has had the kindness to suggest. If my noble and learned friend should unfortunately fall a sacrifice, how would any jury be able to estimate the value of his hopes."¹²⁴

We have seen that, in Hayward's opinion, Lyndhurst was an effective critic of the substance and draftsmanship of the bills in which suggested

121. 80 PARL. DEB. (3d ser. 1845) 778-779.

122. 10 Moore P. C. C. 306 (1857); CHESHIRE, PRIVATE INTERNATIONAL LAW (2d ed. 1938) 420.

123. 162 PARL. DEB. (3d ser. 1861) 1638-44.

124. 86 PARL. DEB. (3d ser. 1846) 174-175.

reforms in the law were embodied.¹²⁵ With this opinion Campbell concurs. Speaking of the year 1853 he says:

"During this session of Parliament there were several Select Committees on bills for the amendment of the law. . . . I almost always found Lyndhurst at his post, rendering valuable service. This was very laudable conduct; for here he had no party or personal bias to follow, and there was no *éclat* to be obtained, for we sat *foribus clausis*. . . . Lyndhurst always showed admirable good sense, as well as acuteness and logical discrimination."¹²⁶

He also said that Lyndhurst helped him to stop a bill for a partial codification of the criminal law, which if passed "would have thrown its administration into confusion"; and that he gave valuable help in improving a bill for the registration of deeds.¹²⁷

Fourthly, Lyndhurst's qualities as a statesman and as a lawyer enabled him to persuade Parliament to give effect to his views. He showed the same power as a statesman as he showed as a barrister and a judge: the ability to master all the facts and law of any given case or problem so completely that he could present its gist not only forcibly and clearly, but also tersely, and sometimes picturesquely. Arguments based on reasons, technical or non-technical, and on policy were skilfully blended. "In making an introductory statement of any measure," says Campbell, "he ever displayed powers unrivalled in either House of Parliament. Whatever the subject might be, no one could be within sound of his voice without earnestly listening, and warmly admiring, although he might remain unconvinced."¹²⁸ And since he was a master of the weapons of ridicule and sarcasm he was able on occasion to make skilful use of them. A good illustration is the manner in which he dealt with Campbell's ill drawn bill for the suppression of obscene literature. He said:

"My noble and learned Friend's aim is to put down the sale of obscene books and prints; but what is the interpretation which is to be put on the word 'obscene'? I can easily conceive that two men will come to entirely different conclusions as to its meaning. I have looked into *Johnson* to see what definition he gives of the word, and I find that he says that it is something 'immodest; not agreeable to chastity of mind; causing lewd ideas.' . . . Suppose now a man following the trade of an informer, or a policeman, sees in a window something which he conceives to be a licentious print. He goes to the magistrate and describes, according to his ideas, what he saw; the magistrate thereupon issues his warrant for the seizure of the disgusting print. The officer then goes to the shop, and says to the shopkeeper, 'Let me look at that picture of Jupiter and

125. See note 35 *supra*.

126. 8 CAMPBELL 182.

127. *Ibid*.

128. 8 *id.* at 155.

Antiope.' 'Jupiter and what?' says the shopkeeper. 'Jupiter and Antiope,' repeats the man. 'Oh! Jupiter and Antiope you mean,' says the shopkeeper; and hands him down the print. He sees the picture of a woman stark naked, lying down, and a satyr standing by her with an expression on his face which shows most distinctly what his feelings are and what is his object. The informer tells the man he is going to seize the print, and take him before a magistrate. 'Under what authority?' he asks; and he is told — 'Under the authority of Lord Campbell's Act.' 'But,' says the man, 'don't you know that it is a copy from a picture of one of the most celebrated masters in Europe?' That does not matter; the informer seizes it as an obscene print. . . . But this is not all. Our informant leaves the print shop and goes into the studio of some sculptor or some statuary and sees there figures of nymphs, fauns, and satyrs, all perfectly naked, some of them in attitudes which I do not choose to describe. According to this Bill they may every one be seized — *Nympharumque leves cum satyris chori*.

. . . The informant next proceeds to the circulating libraries . . . Under the Bill a circulating library may be searched from one end to another. In the same way the dramatists of the Restoration, Wycherley, Congreve, and the rest of them — there is not a page in any one of them which might not be seized under this Bill. . . . Dryden, too, is as bad as any of them. . . .

. . . Take, too, the whole flight of French novelists, from Crebillon, *filis*, down to Paul de Kock; nothing can be more unchaste, nothing more immodest, than they are; and when my noble and learned Friend's Bill is passed, every copy of them may be committed to the bonfire with as little mercy as Don Quixote's chivalry books were."¹²⁹

JUDICIAL ACHIEVEMENTS

These were the qualities which enabled Lyndhurst to leave a considerable mark upon the enacted law. The influence of his decisions as Chancellor and Chief Baron of the Exchequer is less considerable, though by no means negligible. He was, as Bagehot said, essentially a judge for the parties. He quickly mastered and clearly explained the essential facts, and then shortly stated the law applicable thereto — often without citing authorities. He was therefore an excellent judge of a case in which the facts were complicated. His gift of clear statement and his marvellous memory enabled him to try such cases in a way which aroused the admiration of lawyers and laymen alike. The best illustration of these powers is the case of *Small v. Attwood* of which Campbell gives the following account:

"It arose out of a contract for the sale of iron-mines in the county of Stafford; and the question was, whether the contract was not

129. 146 PARL. DEB. (3d ser. 1857) 330-332.

vitiated by certain alleged fraudulent representations of the vendor. . . . Many days were occupied in reading the depositions, and weeks in the comments upon them. The Chief Baron paid unwearied attention to the evidence and the arguments, and at last delivered (by all accounts) the most wonderful judgment ever heard in Westminster Hall. It was entirely oral, and, without even referring to any notes, he employed a long day in stating complicated facts, in entering into complex calculations, and in correcting the misrepresentations of counsel on both sides. Never once did he falter or hesitate, and never once was he mistaken in a name, a figure, or a date."¹³⁰

It is true that the House of Lords by a majority came to a different conclusion on the facts and reversed his decision. But,

"Lyndhurst adhered to his original opinion, and defended it in a speech which again astounded all who heard it, by the unexampled power of memory and lucidness of arrangement by which it was distinguished."¹³¹

But, though in ordinary cases his judgments were short, in important cases like *Egerton v. Brownlow*¹³² and *Queen v. Millis*¹³³ his discussion and criticism of the authorities showed his great qualities as a lawyer. And as Chancellor, especially in his last Chancellorship, he gave several important decisions.

During his first Chancellorship he decided important cases as to the circumstances in which a vendor of land retains a lien on it for unpaid purchase money,¹³⁴ the conditions under which a commission to review a decision of the Court of Delegates should be granted,¹³⁵ and the right of shareholders to compel their directors to refund money of the company which they had improperly applied to their own use.¹³⁶ The best known of his decisions during this period is the case of *Dimes v. Scott*,¹³⁷ which deals with the liability of trustees and the rights of tenants for life and remaindermen, where stock, bearing a high rate of interest, has, in breach of trust, been left unconverted.

During his last Chancellorship he decided several well known cases. The cases of *Allen v. Macpherson*¹³⁸ and *Barrs v. Jackson*¹³⁹ settled

130. 8 CAMPBELL 72-73.

131. *Ibid.*

132. 4 H. L. C. 1, 155-164 (1853).

133. 10 Cl. & Fin. 534, 831-873 (H. L. 1842).

134. *Winter v. Lord Anson*, 3 Russ. 488 (Ch. 1827), cited with approval in *In re Brentwood Brick & Coal Co.*, 4 Ch. Div. 562, 565 (1876).

135. *Dew v. Clarke*, 5 Russ. 163 (Ch. 1828).

136. *Hichens v. Congreve*, 4 Russ. 562 (Ch. 1828).

137. 4 Russ. 195 (Ch. 1827).

138. 1 Phil. 133 (Ch. 1842).

139. 1 Phil. 582 (Ch. 1845).

important points as to the relation of the probate jurisdiction of the ecclesiastical courts to the jurisdiction of the Court of Chancery. The former case decided that probate was conclusive as to the validity of a will, so that it could not be impeached for fraud in the Court of Chancery. The *Barrs* case held that a decision of the ecclesiastical court as to who is next of kin to an intestate is conclusive. In the case of *Mitford v. Reynolds*¹⁴⁰ there is a clear and learned exposition of the law as to charitable trusts; and in the case of *Jones v. Smith* there is a discussion of the limits of the unsatisfactory doctrine of constructive notice.¹⁴¹ The case of *Meek v. Kettlewell* laid down the principle that no effect can be given by equity to the voluntary assignment of a mere expectancy.¹⁴² The case of *Foley v. Hill* elucidated the nature of the relation between banker and customer, and established the important rule that in the case of a purely legal demand courts of equity are bound by statutes of limitation.¹⁴³ The case of *Re Plummer* settled the rights of a creditor who had a claim against the separate estates of bankrupt partners and a security for his claim against the joint estate of the partnership.¹⁴⁴ The case of *Baggett v. Meux* decided that a restraint upon anticipation applies to real as well as to personal property, and to an estate in fee as well as to an estate for life.¹⁴⁵ "The power of a married woman," said Lyndhurst, "independent of the trust for separate use, may be different in real estate from what it is in personal: but a Court of Equity having created in both a new species of estate, may in both cases modify the incidents of that estate."¹⁴⁶ In his many decisions which turned upon the interpretation of wills and other documents, the opinions are remarkable for their common sense and clarity of reasoning.

Other decisions of Lord Lyndhurst show that he was a very considerable common lawyer. Cases like *Davies v. Lowndes*¹⁴⁷—the last reported case of a writ of right—and *Thomas v. Jones*,¹⁴⁸ show that he was well versed in the mysteries of the medieval land law; and his decision in *Viscount Canterbury v. The Queen*,¹⁴⁹ though from one point of view unfortunate,¹⁵⁰ shows that he had mastered the medieval learning as to

140. 1 Phil. 185 (Ch. 1841).

141. 1 Phil. 244 (Ch. 1843); see *Patman v. Harland*, 17 Ch. Div. 353, 357 (1881).

142. 1 Phil. 342 (Ch. 1843); cf. *In re Ellenborough* [1903] 1 Ch. 697.

143. 1 Phil. 399 (Ch. 1844).

144. 1 Phil. 56 (Ch. 1841).

145. 1 Phil. 627 (Ch. 1846).

146. 1 Phil. 627, 628 (Ch. 1846).

147. 1 Phil. 328 (Ch. 1843); see 1 HOLDSWORTH, HISTORY OF ENGLISH LAW (6th ed. 1938) 329.

148. 1 Cr. & J. 528 (Ex. 1831).

149. 4 State Tr. N. S. 767, 1 Phil. 306 (Ch. 1843).

150. See 9 HOLDSWORTH, HISTORY OF ENGLISH LAW (6th ed. 1938) 43-44; note 45 *supra*.

petitions of right. In the case of *Herring v. Cloberry* he settled the law as to what communications between solicitor and client are privileged in wider terms than Lord Tenterden; it is Lyndhurst's opinion which has been followed.¹⁵¹ The case of *Quarrier v. Colston* decided that money won at play or lent for the purpose of gambling in a country where gambling is legal can be recovered in this country¹⁵²—a decision followed by the Court of Appeal in 1909.¹⁵³ His judgment in *Balme v. Hutton*¹⁵⁴ that a sheriff was not liable for conversion when, by virtue of a writ of *feri facias*, he had sold goods of a debtor after the commission of an act of bankruptcy of which he had no notice, was, it is true, reversed.¹⁵⁵ But the opinion is both learned and clear. Lyndhurst also rendered important decisions on the law of evidence,¹⁵⁶ on common law liens,¹⁵⁷ on fixtures,¹⁵⁸ and on the question whether a person found guilty of a crime and fined, could recover compensation from a person who participated in the crime.¹⁵⁹ The law as to contempt of court was elucidated in the case of an attorney who, having been committed for a gross contempt of court, proceeded to sue the person who had got the order of commitment for false imprisonment.¹⁶⁰ International difficulties between France and Spain gave rise to proceedings by the King of Spain in which the right of a foreign sovereign to sue in an English court was established.¹⁶¹

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Lyndhurst was great both as a statesman and as a lawyer. As a statesman he was one of the foremost representatives of that school of Tory statesman which adopted the Conservative program of adapting the Tory creed to the new political conditions created by the Reform Act of 1832, and to the new social and economic conditions created by the industrial revolution. As a member of this school, he was one of the most distinguished of that group of legal statesmen who undertook the task of adapting old law to new needs, and enacting new law, without breaking the continuity of its development. This work was perhaps his most important contribution as a lawyer to the development of English law. As a judge of the courts of Exchequer and Chancery, as a member of

151. 1 Phil. 91 (Ch. 1842); cf. *Minet v. Morgan*, L. R. 8 Ch. App. 361, 367-369 (1873).

152. 1 Phil. 147 (Ch. 1842).

153. *Saxby v. Fulton* [1909] 2 K. B. 208, 221.

154. 2 Cr. & J. 19 (Ex. 1831).

155. 1 Cr. & M. 262 (Ex. 1833).

156. *Morgan v. Morgan*, 1 Cr. & M. 235 (Ex. 1832).

157. *Judson v. Etheridge*, 1 Cr. & M. 743 (Ex. 1833).

158. *Trappes v. Harter*, 2 Cr. & M. 152 (Ex. 1833).

159. *Colburn v. Patmore*, 1 Cr. M. & R. 72 (Ex. 1834).

160. *Ex parte Van Sandau*, 1 Phil. 445 (Ch. 1844), 1 Phil. 605 (Ch. 1845).

161. *King of Spain v. Machado*, 4 Russ. 225 (Ch. 1827); *Hullet v. King of Spain*, 1 Dow & Cl. 169 (H. L. 1828).

the Judicial Committee of the Privy Council, and in the House of Lords, he did good work both for the development of the common law and of equity. But though his grasp of principle and his quick mastery of the facts of a case made him an excellent judge, he was, as a rule, more intent on doing justice in each case according to law, than on the exposition of legal principles and the distinguishing of analogous cases, with the result that his work in these capacities, though not inconsiderable, is less important. Notwithstanding this fact, I think that his qualities as a statesman, and his work for the reform of the law, make him one of the great Chancellors of the nineteenth century. And he was more than that. As Bagehot said, he both looked and was a great man. The distinction of his appearance was a true index to the distinction of his moral and intellectual qualities—to his high mindedness, to his grasp of principle in the spheres of politics and law, to his critical powers, to his skill in exposition at the bar, on the bench and in the House of Lords, to his mastery of the weapons of sarcasm, epigram and ridicule. In these qualities which made him a great statesman, a great Chancellor, and a great man, he has not been surpassed by any succeeding Lord Chancellor.