

American Legal History – Russell

William Kent, MEMOIRS AND LETTERS OF JAMES KENT (1898).

"In February, 1798," * * * I was offered by Governor Jay, and accepted, the office of youngest judge of the Supreme Court. This was the summit of my ambition. My object was to retire back to Poughkeepsie and resume my studies and ride the circuits and inhale country air and enjoy *otium cum dignitate*. I never dreamed of volumes of reports and written opinions. Such things were not then thought of. I retired back to Poughkeepsie, in the spring of 1798, and in that summer rode all over the western wilderness and was delighted. I returned home and began my Greek, and Latin, and French, and English, and law classics as formerly, and made wonderful progress in books that year. In 1799 I was obliged to remove to Albany in order that I might not be too much from home, and there I remained stationary for twenty-four years.

"When I came to the Bench there were no reports or State precedents. The opinions from the Bench were delivered *ore tenus*. We had no law of our own, and nobody knew what it was. I first introduced a thorough examination of cases and written opinions. In January, 1799, the second case reported in first Johnson's cases, of Ludlow *v.* Dale, is a sample of the earliest. The judges, when we met, all assumed that foreign sentences were only good *prima facie*. I presented and read my written opinion that they were conclusive, and they all gave up to me, and so I read it in court as it stands. This was the commencement of a new plan, and then was laid the first stone in the subsequently erected temple of our jurisprudence.

"Between that time and 1804 I rode my share of circuits, attended all three terms, and was never absent, and was always ready in every case by the day. I read in that time Valin and Emerigon, and completely abridged the latter, and made copious digests of all the English law reports and treatises as they came out. I made much use of the *Corpus Juris*, and as the judges (Livingston excepted) knew nothing of French or civil law, I had immense advantage over them. I could generally put my brethren to rout and carry my point by my mysterious wand of French and civil law. The judges were Republicans and very kindly disposed to everything that was French, and this enabled me,

without exciting any alarm or jealousy, to make free use of such authorities and thereby enrich our commercial law.

"I gradually acquired preponderating influence with my brethren, and the volumes in Johnson, after I became Chief-Justice, in 1804, show it. The first practice was for each judge to give his portion of opinions, when we all agreed, but that gradually fell off, and, for the last two or three years before I left the Bench, I gave the most of them. I remember that in eighth Johnson all the opinions for one term are *per curiam*. The fact is I wrote them all and proposed that course to avoid exciting jealousy, and many a *per curiam* opinion was so inserted for that reason.

"Many of the cases decided during the sixteen years I was in the Supreme Court were labored by me most unmercifully, but it was necessary under the circumstances, in order to subdue opposition. We had but few American precedents. Our judges were democratic, and my brother Spencer particularly, of a bold, vigorous, dogmatic mind and overbearing manner. English authority did not stand very high in those early feverish times, and this led me a hundred times to attempt to bear down opposition, or shame it by exhaustive research and overwhelming authority. Our jurisprudence was, on the whole, improved by it. My mind certainly was roused, and was always kept ardent and inflamed by collision."

"In 1814 I was appointed Chancellor. The office I took with considerable reluctance. It had no charms. The person who left it was stupid, and it is a curious fact that for the nine years I was in that office there was not a single decision, opinion, or dictum of either of my two predecessors (Ch. Livingston and Ch. Lansing), from 1777 to 1814, cited to me or even suggested. I took the court as if it had been a new institution, and never before known in the United States. I had nothing to guide me, and was left at liberty to assume all such English Chancery powers and jurisdiction as I thought applicable under our Constitution. This gave me grand scope, and I was checked only by the revision of the Senate, or Court of Errors. I opened the gates of the court immediately, and admitted, almost gratuitously, the first year, eighty-five counsellors, though I found there had not been thirteen admitted for thirteen years before. Business flowed in with a rapid tide. The result appears in the seven volumes of Johnson's Chancery Reports.

"My course of study in equity jurisprudence was very much confined to the topics elicited by the cases. I had previously, of course, the modern equity

reports down to that time, and, of course, I read all the new ones as fast as I could procure them. I remember reading Peere Williams as early as 1792, and made a digest of the leading doctrines. The business of the Court of Chancery oppressed me very much, but I took my daily exercise and my delightful rides among the Catskill or the Vermont Mountains, with my wife, and kept up my health and spirits. I always took up the cases in their order, and never left one until I had finished it. This was only doing one thing at a time.

"My practice was, first, to make myself perfectly and accurately (mathematically accurately) master of the facts. It was done by abridging the bill, and then the answers, and then the depositions, and by the time I had done this slow and tedious process, I was master of the cause and ready to decide it. I saw where justice lay, and the moral sense decided the court half the time: and I then sat down to search the authorities until I had examined my books. I might once in a while be embarrassed by a technical rule, but I most always found principles suited to my views of the case; my object was so to discuss a point as never to be teased with it again, and to anticipate an angry and vexatious appeal to a popular tribunal by disappointed counsel.

"During these years at Albany I read a great deal of English literature, but not with the discipline of my former division of time. The avocations of business would not permit it. I had dropped the Greek, as it hurt my eyes; I persevered in Latin, and used to read Virgil, Horace, Juvenal, Lucian, Sallust, Tacitus, and Cicero's Offices, and some of them annually. I have read Juvenal, Horace, and Virgil eight or ten times. I read the Edinburgh and Quarterly Reviews and American Registers *ab initio* and thoroughly, and voyages and travels and the Waverley novels, etc., etc., as other folks do. I have always been excessively fond of voyages and travels."

EOD