

# Fordham Law Review

---

Volume 4 | Issue 2

Article 1

---

1935

## John T. Loughran--An Appreciation: The Man

Aloysius J. Hogan, S.J.

James A. Delehanty

Ignatius M. Wilkinson

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

---

### Recommended Citation

Aloysius J. Hogan, S.J.; James A. Delehanty; and Ignatius M. Wilkinson, *John T. Loughran--An Appreciation: The Man*, 4 Fordham L. Rev. 167 (1935).

Available at: <https://ir.lawnet.fordham.edu/flr/vol4/iss2/1>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

---

## John T. Loughran—An Appreciation: The Man

### Cover Page Footnote

President, Fordham University.

# FORDHAM LAW REVIEW

---

VOL. IV

MAY, 1935

No. 2

---

## JOHN T. LOUGHRAN—AN APPRECIATION

*The Man*

VERY REVEREND ALOYSIUS J. HOGAN, S.J.†

A QUARTER of a century is assuredly a long span of years, and since the passage of years is very revealing of personal qualities, a quarter of a century is particularly revealing when the person concerned has maintained most intimate contact with one center of educational activity during that length of years. As honor student and devoted alumnus and beloved professor, one certainly does become an integral part of a University and does manifest in everyday life the ideals of *Alma Mater*.

More than twenty-five years ago a youthful graduate from old Kingston Academy, with a year of newspaper work as maturing experience, matriculated in the Fordham University School of Law. Although John Loughran had met with real difficulty in locating the actual site of the School on Vesey Street, having become lost in the mazes of New York's transportation system, he did not lose any valuable time in becoming a serious and successful student of the law.

That year, 1908, is memorable in the annals of our School for two very specific reasons—the first Graduating Class had gone forth in the previous June and the incomparable Father Terence Shealy, of the Society of Jesus, was both the Regent and the dynamic Professor of Jurisprudence. John Loughran himself assures us that it was Father Shealy who, in their first interview, presented to him in unforgettable details the highest ideal of the law and the highest ideals for the lawyer—so high in fact that John in his youthful anxiety was all but convinced that the law was not for him. Despite modern philosophies, however, there is a Divine Providence that shapes the destinies of men if men will only seek that guidance in true humility of mind and heart. And John Loughran has always been truly humble in the fulness of that fundamental virtue.

The brilliant success which characterized his years of law study and the crowning honor of his graduating year are too well known to require recording in these pages. Serious application to his studies did not, however, conceal those native qualities which have found their more

---

† President, Fordham University.

complete manifestation in later years. That fascinating charm and that naturalness of manner which have always been associated with John Loughran made him exceedingly popular even in those student days, with a popularity that was based on deep affection and admiration. Have you ever chatted intimately, or even casually, with him? If you have, then you can realize to the full what mere words are inadequate to express.

Thoroughness can scarcely be called a general attribute among modern Americans. We are entirely too impatient for results. A skyscraper must be built in the shortest possible time; a degree, particularly post-graduate and professional, must be obtained in the quickest possible way. The same is true with most features of our complex modern life in America. We rest content with things that seem to afford immediate results and we never give a real, serious thought to the future. And the result? Well, no one would have the temerity to call us a nation of scholars, nor of really educated men, though we do expend annually for education a sum far in excess of any other nation in the world's history. Nor does anyone expect or hope that even our most necessary and important modern buildings will survive for more than a century. Sad to confess, we lack, and woefully, that thoroughness in ideals and in execution which make for real scholarly results in things educational and that thoroughness which built the cathedrals of England and the continent in the Ages of Faith.

John Loughran was blessed with that rare quality of character, a thoroughness which could never be satisfied with a partial or superficial result of his endeavors. Diligence and assiduous effort are the handmaids of thoroughness, and these he has always possessed in a pre-eminent degree. These enabled him to train and develop and perfect those remarkable natural talents with which God has blessed him.

Added to all these qualities of character is an attractive modesty of manner which from his earliest days at Fordham John Loughran has always manifested instinctively and which serves to enhance the real character of his many gifts of mind and heart.

It has been said, and truly so, that this is an artificial age in which we are living. Quack remedies for all ills are offered, for ills of the human body, of the body politic and social. Quack philosophies are propounded by modern pseudo-philosophers with all the seriousness of the ancient Aristotle and Plato. Quack educational programs are formulated, and the long-suffering youth of our nation are experimented upon as if human character were naught better than some chemical substance. And saddest of all, no one seems to give serious thought to or to care about the subjects of these quack experiments, the youths ruined for life by these quack experimenters.

What we really need in America today in all fields of endeavor, individual and national, and need sorely, is real sincerity, more sincerity

and less hypocrisy. Sincerity may be defined as intellectual honesty which shuns artificiality and pretense and deceit. Unless we practice this all-important virtue we are living in a fool's paradise. We can never hope to build substantially for the future, either as individuals or as a nation, unless we acquire and foster and cherish as a veritable treasure that intellectual honesty which is sincerity.

If one quality more than all others radiates from John Loughran it is that deep-rooted, ever-present sincerity which has always characterized his every activity. That virtue of intellectual honesty is so strongly manifested in his ideals and in his practical life that all who have been privileged to know him have remarked its potent influence in his life and its power to impress others.

Someone has written, rather cynically, that today "gratitude is found only in the dictionary". While this may smack of cynical exaggeration it is true, nevertheless, that appreciative gratitude and the thoughtful expression or manifestation thereof are not exceedingly common among moderns. Today, by a strange twist of the human mind, men seem to take for granted, as a sort of natural right, the generosity and kindness and helpfulness of others. No expression or manifestation of grateful appreciation is ever vouchsafed to those who act in kindly fashion or who give generously of themselves. In many instances this lack or failure assumes the proportions of crass crudity, and sometimes almost of injustice.

Thoughtful kindness and kindly thoughtfulness are constant companions which always accompany John Loughran, and render his friendship and his presence doubly welcome. Despite his busy days as student and his busier days as professor and practicing lawyer and his most busy days as judge of the highest Courts, John has always managed, somehow or other, to express most sincerely on every occasion his deep gratitude and appreciation, even for the slightest kindness shown to him. Time and again people have remarked his never-failing appreciative gratitude.

One little incident illustrates very pleasantly this delightful quality in John's character. He has always been wonderfully devoted and loyal to his *Alma Mater*, and this loyal devotion is ever revealing itself. On May 21, 1934, John Loughran was appointed to the Court of Appeals of the State of New York. Immediately after receiving this splendid news from the Governor, he first thought of the Reverend President of his University and the following telephone conversation ensued between Albany and New York:

"Father, you are now talking to a Judge of the Court of Appeals."

"Glorious, John! Our heartiest congratulations! For how long?"

"For the last ten minutes!"

Corporations are said to be quite impersonal things. John, however,

had found at Fordham something which made the University very personal and very dear to him, and his grateful appreciation suggested *Alma Mater* as the first sharer in the abundant joy of his success. Quite a natural thought for John Loughran!

These few notes on John Loughran touch merely the more noteworthy qualities of character which are ever manifesting themselves in his every activity, and surely they are most refreshing in this workaday world. As student, professor, lawyer, jurist, son of Fordham *Alma Mater*, friend, counsellor and guide, he has always exercised an inspirational influence upon all with whom he has come in contact.

Admired and beloved by all, you must really meet and know him. Then only can you appreciate John Loughran, The Man.

### *The Lawyer*

JAMES A. DELEHANTY†

AFTER graduating with high honors from the Fordham University School of Law, John T. Loughran was admitted to the bar on November 23, 1911 at a term of the Appellate Division, Third Department. He resided then in Kingston, N. Y., a city of some 27,000 inhabitants in which were to be found only the industries and the businesses normal to a city of that size so close to much larger communities. Kingston is the county seat of Ulster County. Young Loughran set himself up in a law office consisting of only one room. He was his own office boy and typist. A partition separated his consultation room from the outer space in which clients when they came were invited to wait. There was little waiting because in the city there were older lawyers, in number more than the needs of the city and its environs required.

Until 1918 this solo practice continued. Meantime Mr. Loughran had become Professor Loughran of the Fordham Law School. His growing reputation as a teacher and the impression which his legal attainments had made upon his fellow practitioners in and about Kingston resulted in the formation in 1918 of a partnership between him and Joseph M. Fowler, then County Judge of Ulster County. The firm was known as Fowler & Loughran and it had an active and growing practice which bade fair to develop into a very substantial one as rated by the standard of Ulster County. The practice of the firm was varied. In most instances the subject matter involved was not of large value, though to the clients interested the cases were important. Mr. Loughran tried cases before local justices of the peace, in the City Court of the City of Kingston, in the County Court and in the Supreme Court. His advocacy

---

† Surrogate, New York County.

included issues from the most trivial to the defense of a man accused of murder. He has often spoken of a case which he tried before a shoemaker J. P. It involved the charge of larceny of house shutters. After a trial lasting most of the day Mr. Loughran elicited the fact that the complainant had not yet closed title to the house (or the shutters) and so the attorney for complainant, lest the J. P. decide in his favor and cause his client to respond in damages for malicious prosecution, acknowledged the validity of Mr. Loughran's defense and withdrew the complaint. Both Mr. Loughran and his opponent had been interested in the J. P.'s intentness in keeping, as they thought, a record of the trial. A series of dots was placed by him upon a sheet of paper otherwise blank. From these dots the learned justice drew lines sometimes to the right and sometimes to the left. Counsel indulged the hope that these indicated the respective points which they had made in the course of trial. When the case ended they ventured to ask the justice to interpret his records. They were crestfallen to learn that their technical and oratorical skill had not occupied the thoughts of the jurist but that while they struggled he was engaged in counting the automobiles which passed his window. The marks to the left meant autos going south. Those to the right meant autos going north. He announced with some pride that on a busy Decoration Day he had counted 1200 cars.

The story of the professional life of John T. Loughran involves discussion of his association with the writer of this article and that fact must serve as excuse for the introduction into this narrative of matter otherwise unimportant. In 1916 while sitting by appointment as Judge of the Court of General Sessions in this County, I was invited by Mr. Dee—then the efficient and energetic pro-dean of Fordham Law School and its real head—to join the teaching staff of the law school. To my protest that lack of experience in such work and lack of time for preparation forbade acceptance, Mr. Dee replied that my status as judge would in the student mind gloss my defects in technique and that he probably could obtain for me the notes of Mr. Loughran who had been intending to teach the course in criminal law which would be assigned to me if I accepted. It developed that Mr. Loughran had attended a summer session at Columbia Law School for the sole purpose of listening to his friend Professor Gifford and noting his method of handling the material in Beale's case book. Through Mr. Dee I met Mr. Loughran and at a pleasant luncheon he gave up and I appropriated the fruits of his summer's labor without realizing that thereby I had put upon him the burden of preparing another course practically without notice. Those who know John Loughran know that it was characteristic of him to aid his dean in what seemed to be an emergency, even at the cost of additional work on his own part. For two years I made use of the material thus obtained. It was never even hinted that I ought to repay the debt which I thus incurred.

When later I became a principal in a case which involved title to a public office and there was need for skillful handling of the work on appeal, I sought the aid of Mr. Loughran. Then, as on so many other occasions, he did a brilliant piece of work. When his brief was submitted to distinguished appellate counsel—the now Chief Justice of the United States—the latter complimented Mr. Loughran and the cause he represented by saying promptly that he was convinced of the justice of the cause and that he would argue the appeal as a matter of public duty and without compensation. Out of that work grew other contacts with John Loughran which eventually ripened into a professional association. The hesitation with which I entered upon the work of law teaching was in the end justified by my realization that a trained teacher could render better service to the increasingly large numbers of students. So after two years this school contact with John Loughran ceased but thenceforth his aid was asked by me whenever particularly knotty problems arose in my practice. Even then I held the opinion, never thereafter changed, that Mr. Loughran possessed a mind second to none in the capacity to explore legal problems and to analyze them. When in 1922 the demands of my practice required additional professional assistance I offered him a partnership in my firm. Fortunately for that firm he accepted the offer and then began my intimate day-by-day association with him which continued without interruption until in 1930 he left the firm to become a Justice of the Supreme Court.

Our office was small enough so that each member of the organization could know of the work of every other. The work in the office was sufficiently diversified so that practically every sort of problem common to a general practice was presented at one time or another. It was characteristic of John Loughran in his office work that he insisted that all of the underlying facts be explored before any process was served and before any declaration was made by the client as to his legal position. Occasions arose, of course, when speed was so essential that complete investigation was impossible. In such crises his extraordinary background derived from his having taught, from time to time, so many law school courses became invaluable. His remarkable memory for case law and his knowledge of legal principles enabled him to formulate immediately, if necessary, a prescribed course of action both for client and counsel. In the ordinary case, however, it was his custom to gather the facts and only when they were fully known to begin to discuss their legal aspects.

In conference he was a keen analyst. While he insisted upon complete discussion of facts until each aspect of them had been illuminated he was impatient of further speculation concerning them when that point had been reached. He regarded it as idle to talk then about moot situations. He insisted on going to the books to find what the authorities



had to say about similar situations. There his photographic memory stood him in good stead. He could canvass the authorities on a given legal problem more speedily than any one I ever knew. His analysis was an accurate analysis. It took into account how the question arose, whether the court passing on it was limited in the questions which it might consider, whether the court was constrained to accept as settled certain phases of the controversy, whether the commentary in the opinion was on a point necessarily decided or was *obiter*. When, having started with knowledge of the facts, he had so studied the law of the case he was fully equipped to handle it. Then and then only did he undertake to set down a statement of the legal position of the client. The result of that method and of his skill in research was that no case handled by him was ever lost by reason of mistake in the legal theory pursued. Many a case was made a valid claim by reason of care in the selection of the theory of action. He became at once the court of appeal in the office. Whether the question was one of substantive law or one of practice he either knew the answer and could give it or could tell the inquirer where to look and find it. It was fortunate for the organization in which he played so large a part that it had learned in some measure to imitate his processes before his leaving deprived it of his nearly indispensable aid.

It was a matter only of learning that he was available for the work when other counsel began to bring him their problems and he soon became a consultant and adviser of other lawyers. They often sought his aid upon their appeals. In many a case where the spade work had been badly done and the litigant's position damaged by reason of it, his handling of the case on appeal retrieved the client's position.

In his work, whether as draftsman of pleadings or as brief writer, there was always to be found the most careful use of language both in stating facts and in asserting propositions of law. His early journalistic experience had sharpened a bent of mind which made precision in expression natural to him. A wide culture gathered in somewhat unorthodox ways in a long period of miscellaneous reading had given him a facility of thought and expression which was distinctive. While those who sat under him in the classroom remarked the fluency of his speech and the abundance of illustration accompanying his discussions with students in the classroom, it was characteristic of his work in the office that he edited and polished and deleted to the point where there was no embroidery and no useless verbiage. When his process of drawing a pleading or writing a brief was complete there was to be found in it everything that should be pleaded or everything that should be said, and nothing more. In his briefs there were to be found statements of the pertinent legal principles cogently phrased and supported by relevant authorities. The court which received one of his briefs could

find in it the leading authorities on the point in issue without searching further. He was not a shears-and-paste-pot brief-writer and was irked by the shears-and-paste-pot opinions which so notably contributed to the bulk of the law reports, especially in the lower courts. He had the unique experience of having had adopted as the opinion of an appellate court in a case not his the argument in a brief presented by him to the court in a wholly different case discussing the same topic.

In his association with my firm he appeared in the intermediate appellate courts scores of times and more than twenty times in the Court of Appeals. That the field which his work covered was a varied one will be indicated by some of the matters which he briefed.

Until 1928 there had never been formal declaration in this state of the principle that an unemancipated minor child could not maintain an action for negligence against his parent. On an occasion when an insured automobile owner was driving his car while accompanied by his young son the automobile overturned. The mother of the child was made his guardian *ad litem* and in the name of the child sued the father for injuries to the son, expecting no doubt to collect from the insurance company. On general principle and on authority found in other states John Loughran argued that such proceedings (amicable though they seemed to be in the instant case) were not consonant with sound concepts of domestic relations. In a decision of only three lines the Court of Appeals held that that kind of gainful occupation was not recognized in this state.<sup>1</sup>

In the days now happily past, when the American people suffered a temporary loss of their liberty through excessive political activity of some leaders of the evangelistic churches of the country, there were some puzzling problems arising out of the possession and handling of intoxicating liquors. It had been ruled in this state that contraband liquor was property within the meaning of the statute defining larceny. The United States Government had gone into partnership with the bootlegger to the extent of taking as much as it could of his nefarious profits in the guise of income taxes and penalties. Lawful possession of liquors was possible only in certain circumstances and one of the cases with which John Loughran had to deal involved the question whether the ownership of liquors in transit between Europe and Mexico, which were warehoused in the Port of New York awaiting trans-shipment and which had disappeared mysteriously, gave rise to a cause of action against the warehouseman for failure to exercise reasonable care as bailee. The owner of the whiskey (the word "owner"—as the event proved—was merely a convenient label to identify the party plaintiff) had recovered a verdict in the court below and had been successful in the appellate court. The Court of Appeals permitted an appeal to it notwithstanding

---

1. *Sorrentino v. Sorrentino*, 248 N. Y. 626, 162 N. E. 551 (1928).

unanimous affirmance below and eventually told the plaintiff that he had no property rights in the liquor and (quoting the court) that the liquor "was as worthless to plaintiff as a gem in the sea". No doubt the liquor had got into circulation and, despite the view of our highest court, connoisseurs had got more satisfaction from it than Cleopatra from her pearls. While the bootleggers had the profit plaintiff had the satisfaction of establishing the legal principle that no "legal damage . . . may be proven for deprivation of property" which may not be legally held, used or sold.<sup>2</sup>

In the same volume of the New York reports is to be found a case in which John Loughran had in the Appellate Division by unanimous decision succeeded in sustaining the position that it was *ultra vires* a banking institution to make a contract of suretyship for a depositor. In the Court of Appeals his viewpoint won the approval of Cardozo, Ch. J. and of Lehman, J., the latter of whom wrote an opinion dissenting from the reversal of the lower courts. The views of the majority of the court holding the bank liable notwithstanding the defense of *ultra vires* have not failed of criticism in the law reviews and probably the last word has not yet been written on the subject of liability for the sort of act there charged to the bank.<sup>3</sup>

In an interesting action in conversion involving only \$1,200, there were considered by the Court of Appeals a question of the application of the Sales Act and a question of evidence arising on an unusual state of facts. Defendant had sold some goods to a person in New York who re-sold them to the plaintiff in the Philippines. The goods were to be shipped by mail from this country to the purchaser in Manila. Pursuant to direction of the intermediate buyer defendant prepared the goods for shipment to the plaintiff in Manila and delivered to the intermediate buyer the shipping documents and the postal receipts on the credit of which the intermediate buyer obtained from plaintiff's bank here the price due from the plaintiff on the resale. The intermediate buyer failed to pay his seller and the latter overtook the goods while in the possession of the post office at Manila and caused them to be returned to this country. The plaintiff buyer had been charged the cost of the goods against his letter of credit with the New York bank and had not received the goods. The Court of Appeals brushed aside the question whether this was a sale for cash or sale on credit and said that since the defendant had put into the power of the intermediate buyer the documents enabling him to obtain plaintiff's money it, the defendant, must suffer the loss since it had made possible the fraud upon an innocent victim. Assuming liability, there was the further question whether any adequate

---

2. *Gonch v. Republic Storage Co.*, 245 N. Y. 272, 274, 157 N. E. 136, 137 (1927).

3. *American Surety Co. v. Philippine National Bank*, 245 N. Y. 116, 156 N. E. 634 (1927).

proof of damage had been made. Plaintiff had never seen the goods and had no information which enabled it to offer proof of value. Plaintiff was able to establish, however, that defendant when it retook the goods had credited the intermediate buyer on its books with the price paid for them. That entry was held to be a sufficient admission of value and so plaintiff recovered.<sup>4</sup>

In an action against a bank for money had and received the bank denied that any balance existed in plaintiff's favor because checks concededly signed in the name of plaintiff by its cashier had been charged to the account and had exhausted it. In *Phillips v. Bank*,<sup>5</sup> there had been made a decision, which has not escaped criticism, holding a bank liable for checks drawn by its own cashier, despite the fact that these checks were drawn solely in pursuance of a fraud by the cashier and never reached the persons whose names were entered as payees thereon, the endorsements being forged by the cashier. In our case John Loughran boldly attacked the authority of that case and asserted that in principle it was wrong and should in any event be limited to its own facts and should not be extended to similar frauds in the commercial field. The cited case was expressly relied upon by the defending bank. The trial court granted judgment for the full amount of the deposit excluding the checks as credits to the bank. The Appellate Division unanimously affirmed and the judgment of the latter court was affirmed by the Court of Appeals. The decision would seem definitely to limit the earlier case though no opinion on the subject was written.<sup>6</sup>

In the Court of Claims, Mr. Loughran tried and briefed a case in which the state was charged with liability for the act of a state guardsman, who was engaged in a practice ride with his troop and who, having fallen behind through some accident to his gear, had urged his horse to a point where it got completely out of his control and then ran into and killed and injured citizens lawfully on the highway. The question involved was whether it was reasonable or negligent conduct for a trooper, desirous merely of catching up with his troop, to urge his horse so as to lose the management of it. John Loughran argued that the trooper's state of mind in wanting to join his troop and in hurrying for that purpose was not the test of liability because negligence was not a state of mind but was any conduct which involved unreasonable risk to others. The Appellate Division had divided three to two on the question whether the horse had bolted of his own volition or had become out of control only by reason of the trooper's urging him. There being some support for the first view, review in the Court of Appeals at that date (*ante* 1926) was too limited to be of any value.<sup>7</sup>

---

4. *Island Trading Co. v. Berg Bros., Inc.*, 239 N. Y. 229, 146 N. E. 345 (1924).

5. 140 N. Y. 556, 35 N. E. 982 (1894).

6. *Bell Fireproofing Co. v. Manufacturers Trust Co.*, 240 N. Y. 706, 148 N. E. 767 (1925).

7. *Weinstock v. State*, 250 N. Y. 602, 166 N. E. 340 (1929).

It is said that a will has no brother and the saying is pertinent to trust deeds as well. A grantor had created a trust and had given the income only to his wife for her life. He directed that upon her death the capital of the trust be paid to his issue or, failing such issue, to such descendants of the grantor's ancestor from whom the property was derived as were appointed to receive it by the wife. Then the trust deed provided that if no issue of the grantor survived and if no valid appointment were made the trust capital should go to those entitled thereto had the grantor "died possessed thereof". There were no issue. No valid appointment was made. If determination of the grantor's next-of-kin was to be made as of the date of his death then his wife would inherit and her blood would take the property. If the ascertainment of the grantor's next-of-kin was to be made as if he had died after his wife, then his own blood would take it. The Appellate Division had held, as did the lower court, that the only way by which the claimants of the grantor's blood could take the property was by interpolating the word "then" into the deed of trust in that phrase which referred to the death of the grantor. Neither the trial court nor the Appellate Division felt that the interpolation could be made and so decreed that the property pass to the wife's family. In the Court of Appeals it was held that the overmastering purpose and intent in this deed of trust was to keep the property in the line of the grantor's blood and that artificial canons of construction could not be applied when the result would be to defeat the grantor's purpose, so declared.<sup>8</sup>

A lender who had made a usurious loan was convicted in the Court of Special Sessions of violating Section 2400 of the Penal Law. It is a misdemeanor to take security for such a loan on "tools or implements of trade". Defendant was facing imprisonment on his conviction when the case came to John Loughran. He found that the collateral consisted of motor driven machinery used in the operation of a printing establishment and it seemed to him that the statute was not intended to apply to such articles but rather that its purpose was to protect the manual tools of the artisan. The Appellate Division disagreed with his contention and affirmed unanimously. There was left no hope for the defendant unless leave to appeal could be obtained from a judge of the Court of Appeals. The distinguished Chief Judge of that court granted leave and eventually a unanimous Court of Appeals held that the conviction in the Special Sessions and the affirmance of it in the Appellate Division were erroneous and that the information did not state a crime. The decision held, as John Loughran had argued, that the class of tools forbidden as collateral for such loan "is narrowly limited to implements of minor value".<sup>9</sup>

The always troublesome question of the application of Section 347

---

8. *Farmers Loan & Trust Co. v. Callan*, 246 N. Y. 481, 159 N. E. 405 (1927).

9. *People v. Shakun*, 251 N. Y. 107, 113, 167 N. E. 187, 189 (1929).

of the Civil Practice Act engaged John Loughran's attention in a case which went to the Court of Appeals and which cleared up the last doubt existing in the cases that the words "personal transaction or communication" must receive the broadest interpretation. In the case referred to there are reviewed all the cases which were deemed to support argument for limitation of the application of these words.<sup>10</sup>

In a case in which were involved difficult questions of liability under a letter of credit and difficult questions of jurisdiction of our courts over a plaintiff Philippine Island bank and a defendant Italian bank, John Loughran successfully defended the judgment in favor of his client through all the New York courts and eventually moved to dismiss an appeal taken to the United States Supreme Court by the losing Italian bank. He had the satisfaction of having the Supreme Court dismiss the appeal "on authorities cited".<sup>11</sup>

These comments reveal in some degree the breadth of the field covered in John Loughran's work in our highest court. Many other interesting cases might be cited from the records in the lower courts of appeal. The briefs prepared and filed by him constitute a permanent record of his skill in argumentation and in presentation of law questions in an appellate court.

It was a source of real strength to our office that the clients who dealt with John Loughran realized always his genuine interest in their problems. They felt that—win or lose—he was giving them the best service they could hope to get. Their feeling of confidence in and respect for him ripened in almost every case into a personal liking which made them his friends as well as his clients. That the office staff was devoted to him goes without saying.

It was with a sense of personal loss that his partners and the staff saw him go to take his place upon the bench of the Supreme Court. But we had a feeling of pride too that we had had a part in the development of a professional career which was fructifying into the distinguished service he thereafter rendered to the people of the state. To all of us who had intimate knowledge of his extraordinary capacity the professional and judicial recognition of the quality of his judicial work was inevitable. He has before him a long and distinguished judicial career and his name will adorn the roll of the judges of the state who have contributed greatly to its jurisprudence.

---

10. *Matter of Terrence Kelly*, 238 N. Y. 71, 143 N. E. 795 (1924).

11. *Philippine National Bank v. Banco di Roma*, 239 N. Y. 505, 147 N. E. 171 (1924); 268 U. S. 679 (1925).

*The Student and the Teacher*

IGNATIUS M. WILKINSON†

IN THE middle of September, a little more than a quarter of a century ago, a young man in the last year of his 'teens came down to New York from the city of Kingston to enroll in the Law School of Fordham University. The little school of those days, just entering upon the fourth year of its existence, was very different from the great institution into which it developed in the years which have passed since that time. In the previous June it had just graduated its first class, consisting of six students, who were addressed on their commencement day, it may be interesting to note, by the present Chief Justice of the United States, Charles Evans Hughes, then Governor of the State of New York. The school was situated on Vesey Street, opposite old St. Paul's Church. Its total enrollment, less than one hundred and fifty students, was no larger than a single section of one of its classes at the present time.

The destinies of the infant institution were under the guidance of the late Dean Paul Fuller, a distinguished member of the New York bar, and of the late Professor Ralph W. Gifford, a pupil of Ames at Harvard, who acted as Pro-Dean. The eloquent Father Terence J. Shealy, S.J., of happy memory, was Professor of Jurisprudence, and had begun a year or two before his lectures on that subject with which he thrilled many generations of students at the school. In addition, he acted as Secretary of the Faculty.

The young man in question had graduated from the old Academy in Kingston, New York, a year or so previous. He did not go to college, and after having worked for a time as a newspaper reporter on one of the local newspapers, he determined that his calling in life was law. That young man, it is needless to say, was John T. Loughran, now Associate Judge of the Court of Appeals of the State of New York. He labored under all of the difficulties of a youngster from the country compelled to seek an education and residence in a great city.

To be sure, New York at the turn of the century was not the mighty metropolis which its citizens know today. It still retained many of the characteristics of the brownstone era of the elegant eighties and early nineties. The automobile was a new and not altogether reliable means of transportation, and horse-drawn vehicles and even street cars constituted the bulk of the traffic on the streets of the city. The Woolworth Building, which now houses the Fordham Law School, had not as yet taken shape in all its Gothic grace, even in the brain of the late Cass Gilbert, its architect, and the tallest structure in town was the old twenty-nine story Syndicate Building, adjacent to the school on Park Row. Nevertheless, the city must have seemed a seething maelstrom of humanity to

---

† Dean, Fordham University, School of Law.

this simple young man from upstate. The writer has heard him tell of his first adventure, when he sought to travel on the Sixth Avenue elevated railroad down to Vesey Street to enroll in the school, and how getting his compass bearings reversed, he landed at the Polo Grounds at the other end of the Borough of Manhattan. Finally, however, he found the object of his quest. But as he again tells the story, he was almost dissuaded from entering upon the study of law by the description given him by Father Shealy, of the work which was required and the standard of scholarship which was demanded to justify continuance in the school. Loughran, with that modesty which still is an outstanding characteristic of the man, almost decided that he did not have brains enough to make the grade in law.

But difficult as it had been for him to find his way to the school itself, and to make up his mind that he possessed perhaps sufficient mentality to last at least through the first year of the course, it did not take him long to develop the capacity to find his way around in the law. He was an excellent student from his first days at Fordham. Diligent, hard-working, possessing a genuine love for legal problems and a desire to master them, and endowed at the same time with great natural talents of mind, he well might be said to have represented the ideal of what a law student should be. It was inevitable in consequence that he should have attracted attention from the very beginning as one of the outstanding men of his class. His remarkable memory, which afterward became a by-word among his students when he was a teacher in the school, and which enabled him frequently to quote *verbatim* from the language of a casually read opinion, and always to cite cases by title and volume and page without reference to any note, even then was a characteristic commented upon by his classmates. Yet withal, because of his charm of manner and the personal magnetism which later endeared him to thousands of students and graduates of the school, he was exceedingly popular with his associates. He never was looked upon merely as a "grind," which too frequently is the fate of the student of high rank among his fellows at any school.

The writer, who was a classmate during the entire three years of his law course, never can recall Loughran being called upon for a case recitation or discussion, and answering unprepared. This fact brings to mind an amusing incident which occurred during Loughran's second year in the school. The late Professor Gifford among his many subjects taught Evidence during most of his years at Fordham. He was a dynamic and inspiring teacher and almost compelled his students by the very force of his personality to work diligently in the courses he conducted, even though there were about the same proportion of drones in law schools then as there are now.

Gifford one day called upon Loughran to state the facts and the



decision in a certain case. Loughran, as was his wont, did so accurately, succinctly, and well. "What do you think of that decision?" snapped Gifford, swinging to the other side of the class and pointing a menacing finger at the present writer. The writer averred that the decision was unsound and stated that the general weight of authority was the other way. About that time Gifford spied one of the lesser luminaries of the class, to describe him euphemistically, who was seated in the rear of the room and whose thoughts evidently were wandering far afield to things other than Evidence and law. "What do you say to that, Mr. —?" again queried Gifford. Whereupon Mr. —, whose lack of diligence at the moment was equalled only by his quickness of wit, replied, "It sounds plausible to me, Professor." Thereupon Gifford, in his most oracular manner, retorted, "Mr. —, it not only is *plausible*, it is the *law*."

Loughran's three years of study in due course of time passed by. In all of them he achieved very high rank in his class, and at the completion of the curriculum his degree of LL.B. was conferred on him *summa cum laude*, the highest honor which could be given him by the school, an honor, moreover, obtained by only fourteen out of more than five thousand graduates in the school's entire history. In addition he was selected to deliver one of the student addresses on commencement day, as then was the custom, taking for his subject "The 'Rule of Reason' in the Standard Oil Case."<sup>1</sup>

After graduation Loughran returned to his native city of Kingston, in due course took and passed his bar examinations, was admitted to the bar, and settled down to practice law. He was not to be allowed to remain long in this occupation, however.

In the spring of 1912 Professor Gifford received a call to the Yale Law School, where he taught for several years prior to becoming a member of the faculty of law at Columbia University. Gifford had been almost the backbone of the faculty of the young school at Fordham, and his departure taking effect the following fall, left a yawning gap to be filled. It was on his recommendation that John Loughran, then only twenty-three years old, received his appointment as a member of the faculty of the Law School. He became, with a fellow classmate appointed at the same time, the first of its graduates to be so honored.

Then began a career of eighteen years in the classroom, in which Loughran established his name as one of the great teachers of law, and played an important part in the education of several thousand present members of the bar of the State of New York and of neighboring states. To detail the subjects which he taught at various times over this long period is to name a large part of the standard law school curriculum. Agency, Carriers, Contracts, Criminal Law, Evidence, New York Prac-

---

1. Standard Oil Co. v. United States, 221 U. S. 1 (1910).

tice, Pleading, Quasi Contracts, Sales, Suretyship, and Torts at one time or another claimed his attention. He collaborated with Professor I. Maurice Wormser of the Fordham faculty in a revision of the casebook on Contracts edited originally by the late Professor William A. Keener, a former Dean of the Columbia Law School, and who at his death was a member of the law faculty at Fordham. Later, in association with Associate Professor John S. Roberts, of the Fordham faculty, he brought out his Cases on Evidence. It may be said safely that Evidence was his great course. Gifford had been his teacher in this subject, and Gifford himself was a pupil of the late Professor James Bradley Thayer of Harvard. When Loughran first taught this course during his early years in the school, he began a systematic examination of the Court of Appeals Reports in New York, and starting with Volume I, read every case on Evidence there reported. The results of this survey are embodied in his casebook on Evidence, which while it expounds the general law of Evidence rather than merely the law of a particular jurisdiction,<sup>2</sup> utilizes only decisions of the Court of Appeals of New York as its principal cases.

As a teacher, Loughran was a commanding figure on the platform. The acuity of his intellect manifested itself in the quickness of his speech, a certain distinctive fluidity of his diction and the clarity and simplicity with which he gave utterance to his thoughts. While he was in no sense ill at ease, his very presence radiated a nervous intensity. This, together with a certain high pitched, penetrating key in his voice, gave outward evidence of the concentration of his thought and the intensity of purpose which possessed him. It was indeed only the dolt who dozed under Loughran's instruction. Withal, his great charm of manner and his interest in the problems of his students, whether of the classroom or otherwise, made him revered and loved by everyone who sat in his classes and who came within his influence. In 1925 the University in recognition of his years of valuable service, conferred on him the degree of LL.D., and on this occasion also he delivered the commencement oration to the graduates of the School of Law.

He played a part in the early years of the FORDHAM LAW REVIEW. His articles,<sup>3</sup> written when he was still under thirty years of age, while not lengthy treatises, give evidence of the directness of his thought and the soundness of his conclusions on legal problems.

Teaching as many subjects as he did, he mastered their content as a matter of course; and mastering them, with that prodigious and phenomenal memory which all who know him intimately will appreciate, what he mastered he retained. It is not surprising therefore that when in the fall of 1930 he was nominated for, and subsequently elected to

---

2. See LOUGHRAN AND ROBERTS, CASES ON EVIDENCE, foreword.

3. *The True Presumption of Death in New York* (1915) 2 FORDHAM L. REV. 1; *The Common Carrier of Goods—Its Liability in New York* (1916) 2 FORDHAM L. REV. 131; *Pain Against Packard* (1917) 3 FORDHAM L. REV. 35.

the Supreme Court in the Third Judicial District, he rapidly established himself as a lawyer and a jurist who was soundly trained and broadly grounded in both substantive and adjective law. The writer is reliably informed that he was the speediest judge on his circuit in his rulings on Evidence, nor in his case was mere speed obtained at the expense of correctness of result. In addition, Loughran's offhand knowledge of the turns and *minutiae* of the New York Civil Practice Act also made a profound impression on the members of the bar who came before him in the motion terms of his court.

It was equally natural, therefore, that when a vacancy occurred on the bench of the Court of Appeals in the spring of 1934 the attention of the Governor of the state should have been directed to a judge so well qualified for judicial work, and in whose jurisdiction the capitol city itself was embraced. He was appointed to the Court of Appeals by Governor Lehman on May 21, 1934. The day before, by a happy augury, Fordham University at the annual convocation of her faculties, had conferred on him *honoris causa*, the gold medal "*Bene Merenti*," ordinarily reserved as a distinction for members of her faculties who have served her in her scholastic pursuits for a score of years or more. In Loughran's case it was felt that his eighteen years of distinguished service, interrupted only because of his election to the Supreme Court of the state, brought him well within the spirit of the grant.

Nominated for a full term of fourteen years by the conventions of both major parties in the state, his election to the Court of Appeals in November, 1934 followed as a matter of course. A judge, and particularly an appellate judge, should be a man of deep learning in the law, diligent, industrious, with a passion for justice, of acute mentality, and with a clear and logical mind. In addition he should be a man endowed with a sound philosophy of life as well as of law. That Judge Loughran possesses these qualifications to a pre-eminent degree it is unnecessary to point out to anyone who knows him or to any student who ever sat in a class conducted by him. To these qualifications there is added in his case a charm and graciousness of manner, and a gentleness of character which would make the veriest neophyte in the law, arguing his first case of importance, perfectly at home in any court over which Loughran presided. Perhaps an account of two occurrences when Loughran was sitting on circuit in the Supreme Court will illustrate better his judicial qualifications in this respect as well as the ease and gentleness of his manner on the bench. On the occasion of the first, he was presiding at a Special Term in one of the rural counties which make up a large part of the Third Judicial District. A lawyer appearing before him used a local colloquialism in arguing a point. "I see," said Judge Loughran, "that you speak in the idiom of the vicinage." To this the lawyer responded, "I don't know what Your Honor means, or just what Your

Honor is talking about, but I have such complete confidence in Your Honor's learning and integrity that I am sure Your Honor is entirely right about the matter."

In the second instance, he had concluded a criminal trial for murder in the first degree and the jury had brought in a verdict of guilty as charged. The defendant was before Judge Loughran for the mandatory sentence of death. He was asked the usual question whether he had anything to say before the sentence of the court was pronounced upon him. To this the defendant is quoted as having replied, "Strange as it may seem, I am innocent, but I want to thank you Judge, just the same, for a very fair and impartial trial."

Endowed so richly with all of the talents which make for judicial ability of the highest order, and still in the full vigor of early middle life, one need not be possessed of the gift of prophecy to predict that the name of Loughran inevitably will be linked with the names of the many great jurists who have graced the bench of the Court of Appeals of the State of New York.

It is not equally simple to foretell what a judge's attitude on the bench will be toward the problems which will come before him in his judicial work. The discomfiture on the one hand of some of those who urged, and the surprise on the other of those who opposed confirmation by the Senate of the nomination of Charles Evans Hughes to be Chief Justice of the United States—because of his supposed rock-ribbed conservatism and his representation while at the bar of large corporate interests—when he turned out to be one of our great liberal and forward-looking jurists in his determination of the constitutional questions which have come before him,<sup>4</sup> illustrates well the difficulty of such a task. In Loughran's case, however, in view of his early training and the sanity of his approach to all problems, it seems to the writer that certain conclusions safely may be drawn. While he will give due weight to the facts in the cases which will come before him for decision, he will not be an exponent of the "realist" schools<sup>5</sup> of juristic thought which have captured the fancy of so many legal scholars at the present time. Neither will he "hunch"<sup>6</sup> his way to his decisions, unless it be that the rapidity of his thought operating against the broad background of his legal knowledge and seeing in a flash straight to the conclusion of a problem almost without conscious ratiocination or attention to the premises on which that conclusion is based, thus may be aptly described. The philosophical character of his mind, his grasp of fundamental principles of law acquired in his years

---

4. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U. S. 398 (1934); *Gold Clause Cases*, 55 Sup. Ct. 407 (1935).

5. Llewellyn, *Some Realism About Realism* (1931) 44 HARV. L. REV. 1222.

6. Hutcheson, *The Judgment Intuitive: The Function of the "Hunch" in Judicial Decisions* (1929) 14 CORN. L. Q. 274.

of teaching and the many courses he handled, his appreciation of the fact that while on the one hand our law must not be static, nevertheless on the other it must be certain, and that certainty cannot be had by the repudiation of rules and the rejection of the doctrine of "*stare decisis*," all serve inevitably to indicate that precedent and authority, properly used, and intelligently applied, will find as they should and must, equal place with the facts in all his judicial activities.

That his years of service to the state and its citizens may be many and that they will add to the distinction and the fame which even now are justly his, is the sincere hope and confident expectation of every graduate of the Fordham University School of Law.