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Book Reviews

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BOOK REVIEWS

LEMUEL SHAW. By Frederic Hathaway Chase. Boston and New York: Houghton Mifflin Company, 1918; pp. viii, 330.

That a Boston lawyer should have been generally regarded as the most suitable candidate for the vacant Chief Justiceship of the Supreme Judicial Court of Massachusetts, in the day when the Boston bar included "Webster, Choate, Story, Benjamin R. Curtis, Jeremiah Mason, the Hoars, Dana, Otis, and Caleb Cushing", is sufficient tribute to the "grand proportions" of that man as a lawyer. Such was Lemuel Shaw in 1830, when he received his appointment. That, after 30 years of presiding upon this bench, upon his voluntary retirement in 1860 he was considered by many the greatest, by all one of the foremost, judges in this country shows that his qualities were even greater than they had been supposed to be. Fitly and moderately did the bar of the Commonwealth say to him on his retirement, "every tribunal in the country has felt the weight of your judgments, and jurists at home and abroad look to you as one of the great expositors of the law." This address may be read in 15 Gray 602.

And now after 60 years his position is so well assured that no lawyer could hesitate to set him down with such men as Gibson of Pennsylvania and Cooley of Michigan as one of the immortals, and in the front rank among jurists. All the other great leaders of that Boston bar of 1830 have found biographers. It is strange, indeed, that till now we have had only meager accounts of the life of Shaw. His work is imperishably preserved in his great opinions, in many of which it fell to his lot to settle new and perplexing questions by applying the fixed original principles of the Common Law to new usages and practices. Fortunate would it have been if more judges had had his insight and his belief that the Common Law could be thus enlarged and adapted. It would from many a foolish statute have saved us. Not that he was always right. To him is generally credited the general adoption in this country of the Fellow Servant rule which we are now busy getting rid of by decision and by legislation. His decision in *Farwell v. Boston & Worcester Railroad*, 4 Met. 49 was the first of a long line settling and approving that rule. But he decided an extraordinary number of leading cases on the law of public utilities, on religious controversies and on the social problems that were then coming to the front for the first time. As our author points out, when Shaw came to the bench the various Governments were new, most of the country had not yet been opened, railroads and steamboats were not yet common, towns were growing into cities, and commerce and business were taking great strides, with the development of corporate organizations, and the problems of the great factories, raising many new social problems and requiring the creation of public utilities to furnish transportation, water and light. To adapt the ancient fabric of the law to the new requirements was peculiarly Shaw's task, and he did it with a master hand. In this he reminds us more than any other of Chief Justice Mar-

shall, who so often took his way across uncharted seas, and fortified his opinions by principle and logic, without the citation of a single case. That Massachusetts did not succumb to the movement to an elective judiciary our author charges to the feeling that such a judge and such a judicial career could never have been secured otherwise than through an appointment for life. It is in point that the Michigan electorate retired from the supreme bench the great Cooley.

The book is a very human document, picturing the great Chief Justice in his childhood home in the Barnstable parsonage which his father tried to maintain on the Cape Cod salary of 80 pounds a year, always largely in arrears; in his college days at Harvard, where he made Phi Beta Kappa, of which he was later president in succession to Edward Everett and immediately before Judge Story; in his years as a teacher and then a lawyer. He did not attend a law school for the very good reason that the first law professorship at Harvard was not founded until 1815, eleven years after the records of the Court of Common Pleas held at Plymouth show that "Lemuel Shaw of Barnstable was admitted an Attorney of this Court." The major portion of the book, naturally, is devoted to his life as a lawyer and jurist, but the author dwells at some length on his family, social, religious and political life. He gives an interesting account of Judge Shaw's prominent part in numerous typical Boston Societies, including his work for many years as a Harvard Overseer. All in all the book is a very readable and valuable contribution, one that should have been made by some one long ago. Every lawyer will want to read it and every citizen may well do so. He was not merely a great lawyer and judge but also a man of fine character and inspiring example. One who had practiced before Taney, Story, Nelson and Curtis, among many judges, said of Shaw: "In all the qualities that make a great judicial magistrate,—in strength of intellect, in depth of mental vision, in comprehensive grasp of every question, however difficult, that ever came before him, in application to it of the appropriate learning, and in the unquestioned and unquestionable poise in which he held the scales of justice, until one or the other ought to predominate,—I have known no man who was his superior."

EDWIN C. GODDARD.

THE WAR AND HUMANITY. A Further Discussion of the Ethics of the World War and the Attitude and Duty of the United States. By James M. Beck, LL.D., Late Assistant Attorney-General of the United States, Author of "The Evidence in the Case," with a Foreword by Theodore Roosevelt. G. P. Putnam's Sons, New York and London: The Knickerbocker Press, 1917; pp. xxv, 397.

This is a good book to have read on October 14, 1918, when many citizens were fearful lest the President's famous interrogatories might lead us into a German snare and snatch from us the fruits of victory. Though such fear is now happily dispelled and shown to have been groundless, nevertheless the book is most interesting as a prevision of the proper course of conduct in the similar crisis that confronted the country when the President was still

hesitating as to whether the country had the will to war, as perhaps every democratic leader must always hesitate until he is sure whither the people wish to be led. The book is a good one for a lawyer to read at any time both as a comfort to his soul and as a defense against critics of the profession in these troublous times when there are threats that the "work or fight" provision is to be applied to advocates as well as to actors and athletes. The author is one of the foremost in that noble group of which the profession is justly proud, characterized by Ulpian as ministers of justice. In his earlier book "The Evidence in the Case," he turned away from the legalistic discussion with its logical but conscienceless discussion of the "proximate cause" of the war, in which the unspeakable Teuton was wallowing, to a consideration of the moral responsibility for the War as disclosed by diplomatic records of the various nations involved. The present book is a sequel to the earlier one. It has the same lofty ethical tone, the same keen vision as to the direction of the path of duty, which happily in this present crisis coincides with the course of political expediency and international destiny. The various chapters give in somewhat elaborated form the substance of various addresses delivered by the author in that critical period of our history just before the United States entered the war. They are masterpieces of literary eloquence resting on an irrefragable basis of reasoning and inspired by the loftiest ethical spirit. The next to the last chapter on "America and the Allies," delivered before the Pilgrims Society in London at a luncheon presided over by Viscount Bryce, in its graceful and gracious style equals the best efforts of the beloved author of our "The American Commonwealth" and the last chapter on "The Vision of France" reaches the high water mark of scholarly eloquence and sympathetic appreciation of our noble ally and defender of democracy. Its citation in closing of the song of the Revolution "Le jour de gloire est arrivé" has even more pertinence in these last days of October than on the date of Lafayette's birthday in September, 1916.

As it was a good thing to reread Madelin's "The First Battle of the Marne" on July 15, 1918, the day on which in Ludendorf's words "the enemy eluded us" and on the midnight of which—still quotation—"we suspended operations", so now we may reread these inspiring addresses which showed so clearly the proper course of national conduct in a crisis similar to the one now confronting us.

JOSEPH H. DRAKE.

