BOOK REVIEWS

Lemuel Shaw: Chief Justice of the Supreme Judicial Court of Massachusetts. By Frederic Hathaway Chase. Boston and New York, Houghton Mifflin Company. 1918. pp. 330.

Not only to the lawyers of Massachusetts but to all students of American legal history the figure of Chief Justice Shaw looms large; but to the present generation it has come to be rather a traditional figure, an impression of learning, solidity and power, but dim of outline and lacking in detail. For this impression, we have perhaps been equally indebted to his vigorous and illuminating legal opinions,—not only constantly read and cited, but so often the "leading case," which virtually settled the law on the point involved—and to the familiar portraits that show us his massive head, with its strong and rugged features, and its distinctly leonine aspect. It is strange that a man whose eminence in a great calling and whose title to lasting fame have been so long unquestioned should have waited nearly sixty years after his death for a biographer. We are of course the more indebted to Judge Chase for now supplying the lack; and it is rather a tribute to the success with which he has handled the materials which the lapse of time had left available, than a reflection on his work, to wish after reading the book that the task might have been undertaken earlier. The biographer has made his subject interesting; and has thereby whetted the appetite of the reader for still more intimate details of the life and personality of the great judge,—details which probably only the memories of his intimates and associates, now long since dead, could have furnished.

It is not to be inferred, however, that the book is disappointing. The author has evidently made patient and fruitful search of all records available, and has been remarkably successful in connecting and interpreting his materials, so as to give us a real picture of Shaw as a youth and as a man, as a practicing lawyer, as a citizen, and finally as a judge. If now and then, where definite information was especially meagre, he has drawn inferences in regard to Shaw's activities, thoughts and feelings on minor matters from rather slight evidence, this has been done with notable restraint. We are told the basis of these inferences, and are at liberty to agree or disagree; and a doubtful outline here or there nevertheless helps to complete a picture whose fidelity in its main features is convincing.

The chapters dealing with the Webster trial, with the cases which came before the Chief Justice involving religious controversies, and with those which arose during the height of the abolitionist agitation, are especially interesting and valuable, not only in the light they throw on Shaw's immovable quality as a fearless and dispassionate judge, concerned in the weighing of each case only with the "trepidations of the balance," but also in the lesson they teach. It seems so incongruous now as to be hardly credible that a New York newspaper could have described Lemuel Shaw as "the first of American judges associated in position and character with the band of cruel and corrupt English judges of whom Jeffries is foremost"; that Richard H. Dana characterized him as "a man of intense and doting biases" and "of no courage or pride"; and that Wendell Phillips accused him of betraying "the bench and the courts of the Commonwealth and the honor of a noble profession." Yet the ultimate public verdict is summed up in Senator Hoar's remark that Shaw was venerated as if he were a demi-god, and in his native county as a god; and there is ample

testimony from others to support almost as strong a statement. The significant lesson is that such universal veneration was not earned by any cautious avoidance of critical issues or by any fortunate immunity, but by a judicial courage that knew no evasion, and a high indifference to all personal considerations.

This indifference was not only a moral but a mental quality. Courage alone will not make a great judge. Shaw had not only the learning and intellectual capacity to fit him for his task, but also the rare gift of genuine mental detachment, apparently without effort, from all considerations that might move him as a man but did not concern him as a judge.

And yet this is far from meaning that "the Chief," as apparently the bar used to call him, viewed legal problems as something purely abstract and technical, to be solved by the study of books divorced from the study of men. Judge Chase rightly emphasizes Shaw's conception of the common law, not as a multitudinous patchwork of fixed precedents, one of which must be found if possible and fitted to every case, but as a living body of principles, based on fundamental conceptions of right and justice, requiring chiefly clear thinking and logical analysis to determine their application to new situations, and capable always of adaptation to the growing and changing needs of the community. It was in this adaptation that Justice Holmes, himself once Chief Justice of Massachusetts, thought the genius of his great predecessor stood out most prominently. Judge Chase quotes from *The Common Law* an interesting comment on one of Shaw's decisions, in which Holmes declared that "the strength of that great judge lay in accurate appreciation of the requirements of the community whose officer he was"; that "few have lived who were his equals in their understanding of the grounds of public policy to which all laws must ultimately be referred"; and that it was this which made him,—and here Holmes in turn was quoting Judge Curtis,—"the greatest *magistrate* which this country has produced."

Judge Chase's book, however, is mainly a biography, rather than a critical discussion of Shaw's judicial work or his contribution to American jurisprudence. The chapters devoted to a brief review of important decisions are illustrative rather than exhaustive. The book is compact and readable, and while naturally, since Shaw's life was almost wholly devoted to the law, it will be chiefly interesting to lawyers, both its style and at least a good part of its content are adapted to hold the attention of such lay readers as may have a taste for biography and be willing to venture on one judge's life of another.

H. W. D.

A Treatise on The Law and Practice of Receivers. By Ralph E. Clark. Cincinnati, The W. H. Anderson Company. 1918. 2 vols. pp. lxxxv, 2176.

These volumes deal with a branch of the law where there has been great need of further analysis and discussion. Receivership law concerns extremely important questions, such as those connected with the liquidation of insolvent corporations by receivers. Yet there has been no authoritative work upon the subject with the exception of High, even the last edition of which was published before much important litigation arose. The present work seems adequately to accomplish the writer's purpose. It is encyclopedic rather than analytic in form. As such it has many commendable features. Especially helpful are the forms collected in the second volume, being selections from actual cases, though a more careful editing of and exclusion of extraneous detail from the forms reproduced would have saved much valuable space without detracting from the usefulness of this portion of the work. The index is extraordinarily complete and is very conveniently arranged, far more so than is usual in law text books. The chapters on the Trading with the Enemy Act and the Alien Property Custodian are interesting, although it is rather hard to see how these subjects

elucidate the general subject of receivers. And the citation of cases seems to be as reasonably complete as could be expected. It is true there are some notable omissions. For instance the important decisions in New York in connection with the receiverships of the Metropolitan Surety Company and of the Empire State Surety Company, and in Connecticut in connection with the receivership of the Aetna Indemnity Company, are either only barely mentioned or else omitted altogether. It is a pleasure to see the opinion of Judge Noyes of the Circuit Court of Appeals for the Second District, in *The Pennsylvania Steel Co. v. New York City R. R.* (1912) 198 Fed. 721, 736, on the subject of provable claims against receivers, given the prominence it deserves, but in all fairness the opposing authority should have been fully stated.

Certain errors in proof reading crept in, as for instance the duplication of a phrase on page 33.

A reviewer is perhaps not justified in quarreling with an author because the reviewer feels that the author should have attempted a more ambitious production. Yet it may be questioned whether there is any need commensurate with the expense involved for works of this character, which so largely duplicate the work of the ordinary digest. "Says the Court in *Jones v. Brown*" is only helpful in that it gives a short cut to the place where *Jones v. Brown* may be located. On the other hand, in the field of law of this character there are very many branches which need analytical study. The profession and the bench would be very materially assisted by careful discussion of such questions as what claims may be proved against the receiver, how far the court of the receivership may direct the receiver to act without the state, and kindred topics. The author, in view of the extended acquaintance with the authorities which the present work has given him, is now in a position to make a more careful analysis of such topics than he has here attempted. We hope that he will find occasion to do so.

Story's Equity Jurisprudence. 14th edition, by W. H. Lyon, Jr. Boston, Little, Brown and Co. 1918. 3 vols. pp. cxcii, 541; vii, 683; vii, 682.

The appearance of a new and revised edition of Story's *Equity Jurisprudence* raises two questions: (1) was it worth while to issue a new edition; (2) if so, has the work of the editor—always a difficult one in such cases—been well done? Both these questions must, in the opinion of the present reviewer, be answered in the negative.

Only one who thinks of the modern decisions in equity—and, let us hasten to add, at law—as merely the application of fixed and unchanging principles and rules to new conditions of facts, can imagine that a work originally composed so long ago can without complete re-writing present a correct picture of the equity of to-day. With the realization that, disguise it how we will, our courts have, in the years which have passed since Story wrote his great work, re-stated a large portion of our law so as to meet the changing needs of society, comes the conviction that the work undertaken by the present editor was largely useless. As well, almost, might one re-publish a book nearly a hundred years old upon some branch of physical science, leaving the original text unaltered, but adding paragraphs and footnotes to set forth the modern developments of the subject, and expect it to present a clear picture of the science of to-day. Imagine a book upon chemistry, or physics, or biology, constructed upon such a plan! If one doubts the validity of the argument from analogy—and confessedly such arguments are full of pitfalls for the unwary—he may recall the following remarks of Jessel, M. R., in *Knatchbull v. Hallett* (1880) 13 Ch. D. 696, 710:

"It must not be forgotten that the rules of Courts of Equity are not, like the rules of the common law, supposed to have been established from time imme-

morial. It is perfectly well known that they have been established from time to time,—altered, improved, and refined from time to time. In many cases we know the names of the chancellors who invented them. No doubt they were invented for the purpose of securing the better administration of justice, but still they were invented. Take such things as these: the separate use of a married woman, the restraint on alienation, the modern rule against perpetuities, and the rules of equitable waste. We can name the chancellors who first invented them, and state the date when they were first introduced into Equity Jurisprudence; and therefore in cases of this kind the older precedents in equity are of very little value. The doctrines are progressive, refined, and improved; and if we want to know what the rules of equity are, we must look of course rather to the more modern than the more ancient cases."

If, however, we assume that a new edition was desirable, there remains the question of the skill with which the editorial work has been done. There was an opportunity by means of the added paragraphs and footnotes to indicate in this new edition at least the chief points of development which have taken place and the general trend of the more modern authorities. This opportunity has not been grasped. This treatment in the added paragraphs and in the footnotes impresses one as both incomplete and unscientific. The demonstration of this statement would require more space than is at command, and it must therefore be left for each reader to satisfy himself of its truth.

Upon the mechanical side, the new edition is on the whole an excellent piece of work. There are now three volumes instead of two, and the paragraphs have been re-numbered. It is regrettable that the old paragraph numbers are not also given, at least in a table, so that one who has a reference to the older editions may find in the new the passage referred to. The addition of a statement on the back of each volume of the sections included within it would add something to the convenience of users of the work.

WALTER WHEELER COOK

Spirit of the Courts. By Thomas W. Shelton. Baltimore, John Murphy Co. 1918. pp. xxx, 264. $1.50.

No matter how good a law, in the abstract, its force in life is limited strictly by the means of its enforcement; and the means of enforcement of the law in the United States to-day are in a precarious tangle. Some half of the points reviewed in our appellate courts are pure points of practice; and this equally under the code and the modified common-law procedure. Indeed, under a code, a lawyer is bound by his oath to enforce the provisions of the code; it is part of his duty as an officer of the court to stickle, to delay, to appeal on nothings, and generally hamper the getting of things done. It is legitimate and desirable for the legislature to regulate the substantive law, to say *what* the courts shall do; but legislators have neither the time nor the intimate experience, neither the freedom from political pressure nor the pride in cleancut professional workmanship, to regulate to anybody's satisfaction the detailed *how* of the administration of the courts. That should be left to the courts themselves, aided by the bar. "Let Congress set the Supreme Court free." Let all details of procedure be dealt with by rules of court. Not only will this make justice speedier—and slow justice is too often equivalent to none—but, once the Supreme Court has shown the way and proved the workability of the new system, it is a fair hope that the individual states will follow; and thus that the long-desired uniformity of civil procedure may be attained. The movement is already on foot; a bill is already before Congress; every man's interest is to help it on.

Such is Mr. Shelton's thesis. His book does not purport to be written for scholars; it is therefore no fair criticism to say that the scientific justification of his thesis is to be found in small part in its pages, but must be sought in past experience and study of the author with which he thought it better not to cumber the book. But his book does purport to be written for the general public. The language is vigorous; the style picturesque. "Federal Practice," says Mr. Shelton. "To the average lawyer it is Sanskrit; to the experienced Federal practitioner it is a monopoly. To the author it is a golden harvest." If there are occasional figures distinctly less happy, they are the exceptions, and can best go unquoted. One can well imagine General Public, tired business man though he may be, thinking in his innocence as he takes up the book, that he is about to be at once instructed and entertained. The reviewer may be pardoned for suggesting that it seems to him little less than brutal to turn on such a man, all unsuspecting, and smite him between the eyes with such asseverations as that under the old common law pleading *allegata* and *probata* had strictly to agree.

On the whole, we feel that the book has failed in its purpose, so far as it is intended for the layman; that it is too casual in its treatment to be of great service to an inquiring scholar; but that it will make fairly interesting, and perhaps stimulating leisure reading for the profession at large.

K. N. L.