

BOOK REVIEWS.

JOHN MARSHALL. By J. B. THAYER. Boston and New York: Houghton, Mifflin & Co. 1901.

Although much has been recently written and spoken of John Marshall, what has been said of him has been largely of an ephemeral nature. Addresses to bar associations, law academies, and law schools, essays of all sorts, there are without number. But so far as we know, Professor Thayer's book is the first serious attempt to put in permanent form some account of the life and labors of the great Chief Justice. In this small book of 157 pages, our author has given us a brief account of Marshall as soldier, statesman and jurist, together with some mention of him as a man.

Of course it is as a great judge that one most often thinks of Marshall. Professor Thayer, however, justly says (page 56): "As regards most of the more familiar titles of the law, it would be too much to claim for him the very first rank. In that region he is in many respects equaled or surpassed by men more deeply versed in the learning and technicalities of the law. . . . But in the field of constitutional law, a region not open to an English lawyer,—and especially in one department of it, that relating to the nature and scope of the National Constitution, he was pre-eminent,—first with no one second."

From this thought with easy transition our author proceeds to consider the doctrine of the paramount nature of the Federal Constitution, which Marshall was chiefly instrumental in establishing. Professor Thayer then (Chapter V) discusses the practical operation of this principle. What he says on the subject is well worth the careful attention of every student of American politics. He remarks with great force (page 103 *et seq.*). "The people of the States, when making new constitutions, have long been adding more and more prohibitions and restraints upon their legislatures. The courts, meantime, in many places, enter into the harvest thus provided for them with a light heart, and too promptly and easily proceed to set aside legislative acts. The legislatures are growing accustomed to this distrust, and more and more readily incline to justify it, and to shed the consideration of constitutional restraints—certainly as concerning the exact extent of these restrictions,—turning that subject over to the courts; and what is worse, they insensibly fall into a habit of assuming that whatever they can constitutionally do they may do, as if honor and fair dealing and common honesty were not relevant to their inquiries.

"The people, all this while, become careless as to whom they send to the legislature; too often they cheerfully vote for men whom they would not trust with an important private affair, and when

these unfit persons are found to pass foolish and bad laws, and the courts step in and disregard them, the people are glad that these few wiser gentlemen on the bench are so ready to protect them against their more immediate representatives."

To remedy this unwholesome state of affairs our author wisely considers is the duty of the courts of last resort by refusing in many cases to protect the people from the effects of a bad law, when the people can protect themselves by electing responsible representatives and having the laws repealed. This thought seems to have influenced the Supreme Court of Pennsylvania in the recent so-called "Ripper" cases (not yet reported).

Little more need be said of the subject of this review. The remaining chapters of the book contain additional information as to Marshall's private life, but nothing which calls for extended mention.

The final word must now be said of the book we are considering: It is worthy of a place in any library, by reason of the nature of the subject, the excellent though summary treatment of it and the clear and pleasing style in which it is written.

E. B. S., Jr.

A TREATISE ON COMPANY LAW UNDER THE ACTS, 1862-1900.
By G. F. EMERY, LL. M., of the Inner Temple, Esquire, Barrister-at-law. London: Effingham Wilson, Royal Exchange, E. C. Sweet & Maxwell, Ltd., 3 Chancery Lane, W. C. 1901.

Though entitled "a treatise" on company law, this book is in fact a summary of English legislation on the subject of companies, with references to the judicial decisions rendered in interpretation of its provisions. The work is of value to the student of corporation or company law who desires accurate information respecting the legislative modifications of the common law which our English brethren have seen fit to make. The work will doubtless prove most useful to those who are engaged in the administration of companies formed under the English statutes and to those whose function it is to give professional advice to clients associated in company form.

Beyond these limits the book adds nothing to what may be found in existing works upon the various forms of association. There is no attempt to throw light upon the dark problem of the relation between the partnership and the company. The author is satisfied with the conventional statement that the company differs from the partnership in being entirely distinct from the persons who are its members from time to time. Whether the conventional statement is correct and, if so, what is the reason for it, are matters with which the author does not concern himself. "A corporation" says Mr. Emery, "can exist only by the act of the Legislature, it cannot be constituted by the acts of individuals." This proposition is, of course, sound for practical purposes connected with the Companies Acts; but if it is asserted as a general legal proposition, it should

be accompanied by some reference to the considerations which may be advanced in favor of holding a different view—as contained (for example) in Professor Maitland's recently published introduction to his translation of a part of Dr. Gierke's work.

Mr. Emery's preface is interesting as being a summary of the changes introduced into company law by the Act of 1900. Roughly speaking, these changes are in the direction of making it more difficult for frauds to be perpetrated on the public, whether by watered stock, secret debentures, overvaluation of property transferred, compensation paid to figure-head directors or secret profit to promoters. Such legislation is not likely to be more drastic than the experience of a community makes necessary; and a reasonable inference from it is that business conditions are much the same on both sides of the Atlantic, in spite of the statements of those who are fond of instituting comparisons to the disadvantage of America.

As a hand-book, Mr. Emery's work is to be commended without reservation. The arrangement is clear and satisfactory, the citation of authority is judicious and reasonably complete, much matter of practical value is collected in the appendices, while an excellent index points the reader to that for which he is searching.

G. W. P.