

JUDGE SHARSWOOD.*

The name of this association perpetuates the memory of a man who, for nearly forty years, in a simple, undramatic manner, filled the office of judge in this Commonwealth, leaving a reputation of spotless integrity, sound learning and faithful public service. During eighteen years, from 1850 to 1868, in addition to the arduous labors of a judge of a court of first instance, he discharged the duties of a professor of law in the University of Pennsylvania. Although he resigned that chair when elected to the Supreme Court in 1867, his interest in legal education continued unabated, and almost to the day of his death he was regular in attendance at the moot courts of the Law Academy, and the judgments he delivered at the close of the arguments on those occasions were stimulating and enlightening to the young men who were so fortunate as to hear them. He died in 1883, at the age of 73. The following year this Club was founded. No more fitting name could have been chosen by an association of Pennsylvanians formed for the purpose of stimulating an interest in preparation for the Bar, and in the broader education of young lawyers desiring to be more than mere attorneys.

The story of Judge Sharswood's life and activities, aside from his judicial career, can be told in a few words. He annotated several standard text books, the most notable of which was Blackstone's Commentaries. He wrote a short treatise on Legal Ethics, which remains almost the only, and easily the best work on that subject. He published, in 1870, a small volume of his lectures before the Law School of the University of Pennsylvania,—lectures introductory to the study of the law. But the value of his life is not to be measured by these meagre evidences of his profound learning and his powers of exposition. It lies rather in the example it affords us of years of patient, untiring devotion to public duty; of a student and teacher who loved

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knowledge and sought wisdom; who laid fast hold upon instruction and taught the truth as he saw it; of a judge who never courted applause or bent his judgments to win popular favor; one who, during thirty-seven years, patiently, industriously and intelligently judged between man and man, and between the State and the citizen, "with malice towards none, with charity towards all, with firmness in the right" as God gave him to see the right.

It is good to dwell upon such a life in these days of noisy self-seeking, when so many men seem to have adopted as their own the motto, "He that bloweth not his own trumpet, verily his trumpet shall not be blown."

It is also good to reflect upon this life as typical of that of many other judges throughout this land, at a time when it is openly advocated that judges should be responsive, not to the law as it is written, but to what a momentarily popular demand claims the law ought to be.

But Judge Sharswood was no mere doctrinaire, and no reactionary. His judicial opinions deal with almost every vital question which arose during the period that began before our war with Mexico, and terminated at the threshold of the period of our greatest industrial expansion.

It is said that he delivered written opinions in more than five thousand cases while a judge of the District Court. His opinions in the Supreme Court are to be found in forty-four volumes of the Pennsylvania State Reports. It was the verdict of his contemporaries that he expounded and applied the law in no narrow spirit, but with broad vision and true comprehension.

As I have run hastily over the reports of his judgments, I have been struck by the fact that the legal questions discussed in them are of the same general character as those which may be found in the reports of decisions of any State court during a like period at any time after the adoption of the federal Constitution until about twenty years ago. Here and there, the construction of a statute, or of a constitutional provision is involved, but, in general the decisions turn upon principles of the common law.

The titles of the lectures "Introductory to the Study of Law," published by Judge Sharswood in 1870, are significant

of the topics he then considered of greatest interest to students of law and lawyers. Of course, there is a lecture on the profession of the law, and one on legal education. Then come lectures on the natural law, on civil law, the common law, the feudal law, the relation of the law to moral science, and on codification of the law. There is one lecture on commercial integrity. The subjects which occupied the minds of Judge Sharswood and the other able lawyers of his generation related to substantive law, to jurisprudence, rather than to government and economics.

Turning to the law magazines of the present year, we find that perhaps three-quarters of the articles deal with the reform of legal procedure, including the proper treatment of criminals, and the remainder relate to workmen's compensation laws, and other so-called "labor legislation," and laws for the promotion of "social welfare," and questions as to the limits of judicial power to pass upon the constitutionality of such laws; and to questions arising out of statutes regulating the conduct of public utilities corporations, and the statutes against unlawful restraints of trade and monopolies.

In Judge Sharswood's day, the common law, but little altered by statute, was deemed sufficient for the protection of personal and property rights. Twenty-five years of industrial and commercial development, under a government of *laissez faire*, has resulted in a profound revolution in the popular conception of both personal and property rights, which has found expression in statutory provisions that thirty years ago few would have dreamed possible of enactment. Today, legislative bodies are kept actively at work endeavoring to meet the growing demands of associated wage-earners for a larger share in the country's wealth, and to give effect to the determination of the people that the methods by which in the past great wealth has been gathered into the hands of comparatively few, shall be changed, and the conduct of industry more closely regulated by law.

"The law of a country is the school of its morality," Judge Sharswood wrote in one of his lectures, and the efforts of the people to accomplish their idea of good through legislation, may

be read in the multitudinous laws that crowd the statute books of the States and the Nation. What impression of the morality of this age will the future student of our history derive from an examination of this record? If the true end of government is to secure to every man as much liberty as he can exercise without interference with the same right in others, it will not appear that this is a liberty loving period. Liberty, as our fathers conceived it, seems far from the restricted activities of the average man under these modern laws.

But, admittedly, the highest aim of government is the greatest good of the greatest number of those subject to it, and even though much modern legislation is inspired by the selfish desires of a class, yet this is a very large class, and even if it were possible to restrict the benefit of legislation entirely to that class, it would still probably do more good than harm to the community as a whole. The danger is, not that new laws and institutions shall benefit *only* associated wage workers, but that, although conceived and enacted with the intention of benefiting them, they may fail entirely in accomplishing that purpose. It is beyond controversy that the great powers of government should not be exerted for the benefit of a few men only, and it is right that the State should interpose to protect the lives of toiling thousands from the selfish greed of employers. But in a democracy, no one class can receive benefit to the unfair injury of another class without itself suffering injury.

I am a firm believer in the righteousness of laws requiring employers in factories, on railroads, steamboats and in other dangerous employments, to provide proper safety appliances to prevent, so far as practicable, injury to employees. I believe that the premiums required to maintain a State insurance against injury to or death of employees in dangerous employment constitute a legitimate item of expense of production. I am inclined to agree that the State should secure to all wage workers at least a living wage. That is better than taxing property owners to maintain almshouses. But, on the other hand, I should like to see the State require every man to work according to his ability and capacity. I dread the pauperizing influence of laws which

discourage thrift and independence, and which teach the great body of our countrymen to rely upon the power of the State to levy toll upon accumulated wealth in order to maintain them, no matter how shiftless and wasteful they may be.

One of the greatest problems before our people today is the determination of the limits of legitimate commercial co-operation. The numerical strength of the labor unions and federations, and the less strongly organized farmers alliances, is compelling for them exemption from many of the common law rules against conspiracies in restraint of trade. The abuse of the powers granted to co-operation under corporate forms has provoked such hostility to corporations as such, that it is often difficult for them to secure common justice. The failure of the National government to itself provide a means of incorporating under federal laws to conduct commerce among the States, leaving corporate organization entirely to the conflicting laws of forty-eight States, promotes confusion, facilitates chicanery and breeds evils which mere negative and restrictive legislation cannot effectively and satisfactorily remove or check.

Some of the abuses of corporate power undoubtedly may be prevented by legislative prohibition; but the problem will not be satisfactorily solved merely by multiplying restrictions on the ordinary conduct of business. Trade and commerce among the States has attained large proportions. To their successful conduct large capital is necessary—capital which can only be secured by offering investors the protection from unlimited liability which is the prime characteristic of corporate organization. The National government which has asserted its undoubted power over this subject, to say that shall *not* be done, must also say affirmatively what *may* be done, before a satisfactory adjustment of the problem can be reached. Moreover, the government must deal fairly and justly with both employers and employed. There can be no prosperous class of wage-earners without protection for the fruits of honest industry, the accumulation of thrift. That becomes capital, and demonstrates the fallacy of the idea

that one can exist without the other. Aesop's fable of the belly and the members may be read with profit. Domestic prosperity can only be attained by dealing equitably with all classes.

Two wrongs do not make a right, and while corporate powers often have been abused to the injury of the public, yet no government in the long run can profit by dealing unfairly with even a public service corporation, however much it may have offended.

The success of democracy depends upon maintaining just treatment of all by the State. To the accomplishment of that end a learned, upright and independent judiciary is indispensable. It is to such men as George Sharswood was that we must look to demonstrate the value, the immeasurable value of the judicial office in a self-governing community. For "the path of the just is as the shining light, that shineth more and more unto the perfect day."

George W. Wickersham.

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