

EDITOR'S NOTE-BOOK.

JOHN ST. LOE News of the death of John St. Loe Strachey on the STRACHEY. 26th of August in London filled me with a very real sense of loss. It was my privilege to know Mr. Strachey and to have discussed with him, both in person and by correspondence, certain matters of mutual interest in respect of which he could speak with high authority. Through him *The Spectator* is on the exchange list of the CANADIAN BAR REVIEW.

Of Mr. Strachey it may be said that if he did not see life whole he saw steadfastly an important part of it. He was called to the Bar in his youth, but I am not aware that he ever practised law. His real profession was that of journalist, he having entered upon that sphere at the age of twenty-four. There are many varieties of activity within the ambit of journalism, and he was in contact with most of them. He edited *The Spectator* in accordance with high Victorian tradition. Its pages reflected not only his mentality but his uncompromising code of journalistic ethics. He could have said of it "*The Spectator—c'est moi!*" Although he resigned its editorship about a year ago he continued to write for the great weekly until his death.

Vixere fortes ante Agamemnona. There were brave editors in England before John St. Loe Strachey, but none more intrepid in maintaining their convictions. For him principle was the first and last thing—fixed and ineluctable. Conservative by native bent, he relentlessly opposed the stream of political thought that leads to State Socialism. The minimum wage, the dole, old age pensions and insurance, all to him were anathema. In the days of the Marconi scandal he declined to buy oil shares because as an editor he would be called upon to direct public opinion as to "whether the Navy ought or ought not in future to take to mineral oil," and he asked Cabinet Ministers if it were unreasonable to expect them to adopt a similar attitude towards investments that would be influenced by government contracts.

Mr. Strachey was a busy reviewer of books, but while ripe scholarship was his he lacked the power of strong feeling—the emotional, the creative quality—which transmutes the art of reviewing into the art of criticism. He has also given us books on political science and the philosophy of life; and a short time ago he ventured

upon the path of fiction. But his reputation as an author will be ravaged by time; it is because he was a great journalist that his memory will endure.

ATHENIAN LAWYERS AND LITIGANTS. In the June number of the REVIEW (p. 456) I ventured to applaud Dr. Bonner's book¹ on Athenian lawyers and their clients, although at that time I had only skimmed its pages and was unprepared to give a considered judgment on its merits if my acclaim had been challenged. I am glad to say that a reading of it done in obedience to the Baconian requirement concerning books of this sort confirms my incipient opinion of its merits. In every way it requires the earnest attention of the reader who would be informed as to the genesis of the legal profession. It presents to the reader a more detailed account of Athenian lawyers and of the organization of Athenian courts and their procedure than is to be found in such works in the English tongue as Forsythe's *Hortensius, or the Advocate*, published in 1849, or in Lofberg's *Sycophancy in Athens*, published in 1917.

JUSTICE BY AMATEURS. * * While the Greeks were not the first to give the world a code of law history appears to concede to the citizens of Athens the claim of being the first to introduce a system of legal procedure. But Dr. Bonner points out that the administration of justice in Athens was mainly conducted by amateurs. This statement may seem too broad so far at least as it applies to the courts when one recalls that legal business, both of a criminal and civil nature, was subdivided with some nicety and assigned to special magistrates—such as the Board of Forty, the two Archons, the Polemarch and the Thesmothetae, not to mention special boards of magistrates supervising trade and commerce. But the tenure of these judicial functionaries was temporary, nor were they selected because of their special knowledge of the laws to be administered by them. Then, too, the decisions of these courts and boards were subject to an appeal to the sovereign people sitting in juries—the *dikasteria*—an untrained body of citizens of which a normal panel was 501 for public, or criminal cases, and 201 for private, or civil cases—the odd number being required to avoid the possibility of a tie. Speaking of this appeal feature of the Athenian judicial system, Professor

¹ *Lawyers and Litigants in Ancient Athens*. By Robert J. Bonner, Ph.D., Chicago: University of Chicago Press. 1927.

Mahaffy, in his *Social Life in Greece*, says it was

"thoroughly unsound, and fraught with great mischief For these large bodies of average citizens, who, by the way, were not like our jurymen, unwilling occupants of the jury-box, but who made it a paid business and an amusement, did not regard the letter of the law."

So much do we gather from a considerable store of material in the books to show the "amateur" character of those who acted in a judicial capacity in the administration of justice in ancient Athens.

GENESIS * * Turning now to the part that advocacy played
OF in securing justice for the parties to suits before the
ADVOCACY. Athenian courts, it necessarily came in through the
amateur door because, as Dr. Bonner says with some
asperity,

"Ever jealous of the expert, as democracy always is, the Athenians even tried to prevent the rise and development of a legal profession. The law required every man to plead his own case in court and permitted any man to prosecute a public offender."

The same hostility to the profession of the advocate showed itself in the early history of American democracy, notably in Virginia; but in the Old as well as in the New World democracy found that the lawyer was like the cat in the fable—slam the door in his face and he comes in at the window. Notwithstanding the fact that public speaking was more generally practised by the average citizen in the Athenian democracy than in any other community before or since, suitors began to feel after the *rhetoires* had made oratory more or less of a profession that if they could avail themselves of the services of these experts in the "art of persuasion" judgment, if not justice, would be more likely to perch on their banners. But the orators did not find instant entrance into the halls of justice in the capacity of advocates; they began by composing speeches for the suitors to be recited in the law courts. Then when the native bent of the Athenian for litigation became highly developed and legal procedure made intricate, the plain citizen, who was dragged into court to defend himself against a charge of breaking the law, finding himself hard pressed without the assistance of a trained apologist, naturally sought to obtain it. The fairness of granting such a request was too obvious for it to be refused, and so the doors of the law courts were opened to the advocate. To quote Dr. Bonner:

"In private (civil) suits the principals were required by law to handle their own cases in court, but the law was not rigidly enforced. It would have been a hardship to insist that everybody should conduct his own case without assistance. The jury regularly permitted a relative, friend or associate to assist a litigant by making a plea on his behalf at the close of the proceed-

ings, or even to take his place and conduct the whole case. Apparently no serious difficulty was encountered in securing such permission."

When it is learned that an advocate was forbidden to take fees for his services, the "amateur" quality of his status becomes more apparent. However, if we are to believe Plato (*Laws* IV. 49) and accept the *Clouds* of Aristophanes as fair satire, the Athenian advocate did not scruple to put his art and his eloquence at the service of him who was willing to pay for them, and to get away with his fees.

THE * * One of the features that differentiated the ad-
 'FIG- ministration of justice in ancient Athens from that
 DISCLOSERS.' prevailing in modern States was that there were no
 official prosecutors. Under a law of Solon any citizen
 in good standing could prosecute a criminal, the object of the law
 being to promote good citizenship by creating a sense of individual
 responsibility for the maintenance of social order. In actions of
 certain kinds prosecutors were rewarded for their services by
 receiving a liberal share of all moneys recovered or fines levied.
 This privilege eventually opened the door for unscrupulous men to
 make a business of terrorizing the community, honest citizens as well
 as evildoers. Thus there grew up a "profession" of prosecutors, who
 were known by what to us is a curious name—sycophants. At
 first the name was not an epithet of reproach, that is to say, the
sycophantes originally discharged the same useful function to the
 State as the Roman *delatores*. The derivation of the word from
sukon (a fig) and *phainein* (to show), is clouded in some obscurity,
 but classical etymologists pretty generally agree that the term arose
 out of the exportation of figs from Greece, which was prohibited by
 law both for religious and economic reasons. So that one who
 informed against another for this offence became known as a "fig-
 discloser." However, we learn from the speeches of Demosthenes
 that in his time the term fitted one "who makes all kinds of charges
 and proves none;" and Lysias, another of the great Attic orators,
 explains that their business was "to involve in accusation even those
 who have done no wrong, for from them they can obtain the greatest
 gains." In his work above cited Professor Mahaffy speaks with
 some heat of

"the universal prevalence of what was called *sycophantia*, a profession followed by men of impudence and ability in speaking, who lived by carrying on 'speculative actions,' as our newspapers now absurdly call them, and who extorted money from rich and quiet people by a sort of *chantage*, not very different from that practised in modern Paris. All the Attic literature is full of allusions to these villains, and it seems hopeless to deny their existence or their power."

Dr. Bonner, in his interesting chapter on Prosecutors and Sycophants (pp. 59-71), informs us that while special proceedings against unconscionable sycophants were authorized, "freedom of accusation was, as Aristotle pointed out, one of the corner-stones of democracy in Athens," and, therefore, there was no general law against this "amateur" method of bringing to book those who got on the windy side of the law. But the sycophants, although having the right of audience in the courts, were not ranked with the Attic orators, such as Demosthenes and Hyperides, who laid the foundations of the profession of advocacy. That being so, lawyers of today need not shy at the term as did certain members of the Irish Bar when a novice on the job of crier to the court called out: "All ye blaggards that are not lawyers lave the buildin'!"

THE * * "Athenians chirp over their lawsuits their
LITIGIOUS whole life long," declares one of the characters in the
ATHENIANS. *Birds* of Aristophanes, and Dr. Bonner's chapters on
Athenian Litigiousness and the Career of a Litigious
Athenian present facts which go far to refute the opinion of certain
critics that Aristophanes is no safe guide to an understanding of the
social life of his day.

TACTICS * * The chapters of the book under review deal-
AND ing with the Character of Athenian Courts and
TECHNICALITIES. Tactics and Technicalities in Litigation contain
a wealth of information for the professional reader
with a bent for the practical. Indeed the book as a whole is a
contribution of the highest value to the literature of the law. I
have given more space to it than is usually allotted to a single
book, not only because it is the work of a Canadian, formerly of
the Ontario Bar, but also for the reason that its ripe scholarship
and excellent technique demand the homage of a full length review.

CONCERNING By a very logical sequence I find next to hand for
DEMOSTHENES. notice *Demosthenes and His Influence*,¹ by Pro-
fessor Adams, of Dartmouth College. This is one
of the excellent "Our Debt to Greece and Rome" series of books now
being published by Longmans, Green & Co.

The place of Demosthenes in the public life of Athens is quite
fully disclosed by Dr. Bonner in the book reviewed above; but, as
would be expected, we have a much more intimate revelation of his
life and character, and his services both to his own age and to
posterity, in the essay of Dr. Adams. In no particular could it be

¹ *Demosthenes and His Influence*. By Charles Darwin Adams, Ph.D.,
Toronto: Longmans, Green & Co. 1927. Price \$1.75.

said of Demosthenes that his fame was writ in water. His enemies unwittingly have made him immortal even if what he wrote without their assistance upon the scroll of history were forgettable.

The learned Professor of Greek at Dartmouth College has given us, within the compass of some hundred and thirty pages, the pith of the material concerning the life, the achievements of his oratory, and the influence of Demosthenes on antiquity lying *in pleno* on the shelves of our libraries. The average reader finds himself overwhelmed with scholia in Kennedy, or in Blass or Schäffer, but in the little book before us he can take on knowledge through easy reading.

Dr. Adams provides interesting material in that portion of his book which deals with the influence of Demosthenes on English and American oratory. He shows that Brougham found in the great Athenian "ideals which appealed to him utterly." The Irish orators, Flood, Grattan and Wellesley, also drank deep of this Attic well of eloquence. We find, too, that the famous American and lawyer and statesman, Rufus Choate, is to be numbered amongst the ardent admirers of Demosthenes. Dr. Adams thinks that Choate more nearly approached the Demosthenic manner and style than other Americans noted for their oratorical affluence. I think that this opinion is sound, although it will doubtless provoke dissent. Choate was criticized by Dickman for his habit of indulging in "glittering generalities, leaving an impression more delightful than permanent." Now, according to the English scholar S. H. Butcher, it was one of the marked features of the speeches of Demosthenes that "a close grappling with detail" was relieved by "large generalizations from experience and the broad assertion of moral truths." That lends strong support to the view of Dr. Adams.

THE RENAISSANCE AS A DARK AGE. Mr. Sidney Dark¹ could not write a dull book if he tried, more especially a dull book about the Renaissance. But an author may write pleasingly around and about a subject and yet not convincingly—and that in my opinion Mr. Dark has done in the book now under notice. We cannot agree with him, in the face of so much excellent authority contrariwise, that this great awakening of the minds of men which laid the foundations of the modern world was of dubious value, or that the question can be reasonably asked whether "it did not take away more than it gave." We prefer to regard the Renaissance as it was viewed by one of the great French scholars of the nineteenth century: "This was Europe's

¹ *The Story of the Renaissance*. By Sidney Dark, New York: George H. Doran Company, Toronto: The George H. Doran Company (Canada) Limited. Price \$1.50 net.

grand age, and the most notable epoch of human growth. To this day we live from its sap, we only carry on its pressure and effects."

The book seems to have been written with haste, as the author is not consistent with himself from time to time. For instance on p. 24 he says (with some flippancy, considering his own ecclesiastical and editorial affiliations) that among the "splendid figures" of the Renaissance was Henry VIII., "who attempted to create a new Church in order that he might possess a new wife," and yet on p. 56 we read "He had no quarrel with either the doctrine or the practice of the Catholic Church." Let us ponder these observations for a moment. In the first place how could a man who is charged with being willing to commit schism in order to gratify his lust be a "splendid figure" in history? Secondly, is it conceivable that Henry, who brooked no attempt to displace the three-fold Catholic ministry as it existed in the Church of England at the time, and, as Mr. Dark declares, adhered to Catholic "doctrine and practice," could indulge the notion of creating a new church? Henry Tudor did not busy himself with founding a church, but with plundering one already existing. Mr. Dark should not write so carelessly as to leave us in the dark about matters that are not at all obscure in the works of historians of accepted authority. And speaking of accepted authority, Mr. Dark is courageously at variance with it. For him Henry VIII. seems to stalk across the stage with much the same persistency as the shade of the royal Dane in *Hamlet*. At p. 57 he says that the break with Rome was "brought about, not by the English people, but by the English king." A glance at the statute-book would have shown Mr. Dark that such a view is untenable. Let us quote Mr. Trevelyan's excellent *History of England* published last year:

"What was the attitude of the English people towards the question? The average Englishman retained the feeling of his ancestors against the Pope's interference in England, but held it more strongly than ever in the light of the new times, and supported Henry in his decision to settle the question once for all. The nationalism of England was fully grown; she would no longer submit to be governed by a religious authority that was seated a thousand miles beyond seas and mountains, and that judged English questions by Italian, Spanish, Imperial and occasionally by French standards and interests, but never by English The instrument chosen by Henry to effect his Royal Reformation was Parliament."

Again, Mr. Dark ventures to suggest that Henry VIII. founded his policy on Machiavelli's *The Prince*. It is true that Henry's minister, Cromwell, had familiarized himself with Machiavelli's opinions on statecraft during his visit to Italy, but it is very doubt-

ful if Henry himself was influenced by them, especially as *The Prince* was not published until five years after the authors' death, namely in 1532, and the breach with Rome had begun before that. Cardinal Wolsey had been indicted in 1529, and Parliament had begun the Reformation legislation in its session of 1530-1. Moreover Henry's policy in raising the importance of Parliament in the government of his realm was opposed to the basic principle of Machiavelli's policy. In 1543 Henry told the Commons:

"We be informed by our Judges that we at no time stand so high in our estate royal as in the time of Parliament, when we as head and you as members are conjoined and knit together in one body politic."

That declaration comports ill with the doctrines of one who did indeed exalt monarchical absolutism to its summit, not, if we read him aright, as a means of governing the world at large nor as a policy for all time, but as an expedient for redressing the humiliation of Italy whose ship of State was in a worse condition of wreck in his time than it was when salvaged a few years ago by Mussolini.

There are other views in Mr. Dark's little book which challenge criticism, but enough has been said to show that it hardly fulfills its purpose, namely, to provide in handy form for the average reader a pleasantly-written, and at the same time a thoroughly reliable, survey of one of the great epochs of history.

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COLOUR IN LAW.

Editor, CANADIAN BAR REVIEW.

SIR,—In *Hoare v. Silverlock* (1848), 12 Q.B. 625 at p. 632, Lord Denman, C.J., says: "Black men have not been declared to be criminal by any Act of Parliament"; and "The 'Friday' alluded to in *Forbes v. King* (1 Dowl. P.C. 672) was a very respectable person."

Was Lord Denman, then, one of those celebrated by Juvenal, iii, 30: "qui nigrum in candida vertunt"? And what are we to do about old Horace's warning, Sat. 1, 4, 85: "Hic niger est; hunc tu, Romane, caveto?" (Is there any other old Victorian who remembers with me, S. W. horrifying "Old Trin." by translating this: "He is a nigger?")