

(editor's note: This paper was transcribed from a handwritten cursive copy with various difficulties. For a perfect rendition, the reader might wish to consult the original, itself a copy, in the volume entitled Literary Club Papers 2, 1886 – 1887 June 5, '86 to May 21, '87)

Judah P. Benjamin

One morning in July in the year 1881 I turned the corner of Fleet Street and continuing until nearly opposite to where the old Temple Bar stood, found myself at the entrance to the Middle Temple. Lamb's Court in the Temple was my goal, for it was there that Mr. Judah P. Benjamin had his chambers. I had a letter of introduction to him from Mr. Jonas who at that time occupied the seat in the United States Senate once filled by Mr. Benjamin. Ringing the bell of his chambers, the door was opened and I entered a large and barely furnished room, whose sole occupant, a clerk, asked my business. I told him that I wished to call on Mr. Benjamin not by way of business and handed him my letter, with which he disappeared into an adjoining room. In a few moments he returned saying that Mr. Benjamin would see me, and assured me into the latter's presence. The sanctum was in no way remarkable, unless perhaps for its shabbiness. On entering, Mr. Benjamin advanced and offered me his hand. His appearance disappointed me greatly. He was I should judge no more than five feet, five inches in height with a considerable protuberance of stomach, a round smooth shaven fat face, and lips which indicated to an observant person, much more surely than any nose could have done his race. He was just about leaving for the House of Lords, where he had a cause to argue, and invited me to accompany him: an invitation which I gladly accepted. The argument however was a disappointment. The case was one which a litigious Scotchman insisted on fighting out, the question being whether the public had a right to play golf on a certain green. It all turned on points of Scotch real estate law, of which I knew nothing; the plaintiff had no earthly interest in the matter except to prove to his neighbors that they were wrong, and I never knew how the case ended. He invited me to call on him again for a day named, to accompany him to be present at the hearing of a cause before the Judicial Committee of the Privy Council. This courtesy was probably due to his knowledge of the friendship existing between myself and Mr. Frederick Pollock in the chambers of whose uncle, Baron Pollock, Mr. Benjamin had served his time as a student before he could be admitted to the English bar. I called according to appointment and we drove in a hansom to the Privy Council Building. Then Mr. Benjamin's man met us, and I observed that Mr. Benjamin's physical condition was of such weakness that he required his valet's assistance in taking off his coat and putting on his robe and bands. The Privy Council is the Court above all others in Christendom, in which one can practice law, like a gentleman. Being the final court of appeal court of appeal of the entire British Empire other than Great Britain and Ireland. The case on trial was an appeal from the judgment of the Court of last resort of Canada. The question for determination was the constitutionality of a law passed by the Canadian Parliament. The Dominion of Canada unlike England has a written

constitution. In a discussion of this kind Mr. Benjamin had English lawyers at a great disadvantage, and his argument was more than anything else like an authoritative statement to the judges of the law applicable to this case. The court did in the end decide the case in his favor. English lawyers are much less emphatic and vehement in argument before a court than are American lawyers. But no lawyer whom I heard in England was so absolutely impersonal as Benjamin. On both occasions that I heard him he seemed to represent not his client, but abstract justice, the law: he appeared for Themis. Never raising his voice above the conversational tone, making no gestures, apparently having no personal interest in the event of the matter in hand, he stated his views upon the subject under discussion so easily and so quietly that no one not interested in it would have been moved, to pay any attention. But anyone following him while he spoke would be ready at once to declare that the traditional belief that the law is difficult, obscure, or uncertain is false. As he spoke, all uncertainty seemed to vanish: there appeared to be one view, which could in reason be accepted, and that view was presented so simply and clearly, that it seemed that any boy of ten years of age could not fail to grasp it. No one familiar with the work will dare deny that the author of Benjamin on Sale was a lawyer of consummate learning, but more than to his learning, I am convinced, he owed his success at the bar to an equal capacity for lucid statement. His manner of argument did not seem to be an effort to persuade, but simply a shedding of light upon a matter which had been wrapped in darkness. This Court of which I have already said that it is the court of the widest jurisdiction in the world, presents the singular anomaly of not having any authority to pronounce any judgment whatever. In theory it's members are merely a body of gentlemen selected by the Queen by reason of her personal confidence in them; it is to her all appeals heard by them are directed, and consequently they never reverse or affirm any judgment, but only advise her Majesty that she should do so: and she always follows their advice. Carrying out this fiction the chamber is not fitted up after the manner usual with courtrooms: the judges sit at a large table. They wear neither robes nor wigs; there are no tip staves or usual Court functionaries but only liveried servants. Towards noon, the judges intimated that they desired to retire for lunch, and thereupon left the room. Mr. Benjamin beckoned me to follow him, and all of the Council in the case crossed the hall into another room where a table had been spread for the party and we sat down to lunch. The party consisted besides myself of Mr. Bethune, a Canadian lawyer, Sir John Holker afterward a judge of the Court of Appeal and Sir Farrar Herschel the Solicitor General and now Lord Chancellor. As at this club, both wine and beer were served with the lunch. While smoking and chatting at the table, word was brought that the judges were ready to go on, and thereupon we returned to the courtroom where the argument was resumed and concluded.

After which I drove back with Mr. Benjamin to his chambers. Speaking of the practice in England he said, "I suppose that the lawyers in America think we

make much less money here, then they do, because you don't hear often of large single fees in cases here, as you do on the other side; but I have done quite well. Now I practice only in three courts, the Court of Appeals, the Privy Council, and the House of Lords; I take no brief accompanied by less than sixty guineas, and generally none marked less than 100 guineas. As I try no case at nisi prius, and so of course get my cases on a record made up, I have simply to prepare the law applicable to a fixed state of facts, and that I can do in most cases over-night. From the time each case of mine is called until the argument in it is concluded, I receive in it a refresher of ten guineas a day. As I can be in only one court at a time, while I am engaged in a case in one of the courts, my refreshers in a case or cases in one or both of the other courts are running on. And what is the most delightful thing about the practice here is, that I never have to talk to, or even see a client. My terms are known, and solicitors either choose to employ one on them, or they don't; of course there is no such thing as bargaining about [fees]."

Speaking of the Supreme Court of the United States, I mentioned that our local bar had recently furnished a member of that court in the person of Mr. Stanley Matthews, though we had nearly failed, as his nomination was confirmed by a majority of only one vote. "To whose seat did he succeed," asked Mr. Benjamin. "To Mr. Justice Clifford's" I answered. "Why that is a remarkable coincidence"

[Note in margin: it was mistaken when I told Mr. Benjamin that Mr. Justice Matthews was appointed to succeed Mr. Justice Clifford; Judge Matthews succeeded Mr. Justice Swayne. The coincidence mentioned therefore fails. Gustavis W. Wald] said he, "I was in the Senate when Clifford's name was sent in; the President sent for me and told me there would be great opposition to Clifford's confirmation, and that he depended upon me to see to it that his nomination confirmed. I used my utmost endeavor, and when the vote was taken it resulted in confirmation by a majority of just one vote." As an instance of Mr. Benjamin's sense of personal dignity, I was told that on one occasion when arguing in the House of Lords upon his announcing a proposition, the Lord Chancellor in a tone of voice not intended for Benjamin's ear, exclaimed "Nonsense!" Without a word – Benjamin who had heard the exclamation, picked up his papers, and left the chamber and it was only after the Lord Chancellor had sent for him, and apologize to him, that he would consent to say another word in the case. On his retirement from practice, a dinner was given in his honor. Giving an account of it, the English legal periodical Pump Court said, "A brilliant assemblage of some of the brightest intellects in the kingdom assembled in the Inner Temple Hall on the last day of June, to do honor to the intellectual greatness of our man. Illustrious representatives of the Tsar, from England, Scotland, and Ireland came to pay respects to the gentleman whom two great nations may equally claim as their own." Benjamin's achievements as a lawyer I regard as the greatest ever accomplished by any man of whom I know. Remember, he was trained originally in the civil, not the common law for he absolutely mastered both systems. When bordering on the age of 60 years he found himself, in England without a penny, the few thousand dollars which he

took with him to that country having been lost in the failure of the Banking house of Overend, Gurney, & Co. Earning a subsistence by writing for the [occuvs] papers, he set himself to work upon his great treatise on the law of Sale, at the same time entering upon his duties as a Bar student. Beginning a new career at an age when most men are getting ready to retire from labor, in a foreign and conservative country, and in the most conservative profession of that country, he retired from the practice in 1883, admittedly the equal of any lawyer in England, and by many considered without an equal himself.

Editor

Budget
Wald editor
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