

"Up From Aristocracy"

The Career of Louis Brandeis, Named for a Seat in the Supreme Court

[From March Current Opinion]

That thrill which America still gives, as the Promised Land of Big Opportunity, arises anew from the surprising appointment of Louis Dembitz Brandeis to be an associate justice of the supreme court of the United States. "Up from Aristocracy" is the unique way in which some of his intimates describe his career. He is the Kentucky-born son of a well-to-do Bohemian Jew who was drawn to this country after the European reaction from the revolutions of 1848. His career not merely represents professional success and the development of high earning capacity, but it is an extraordinary idealistic contribution of personal service toward the solution of melting-pot problems of American democracy.

Here is a partial record of the kind of achievement credited to Brandeis by Jewish Comment:

"He has established a new legal point of view in regard to social questions.

"He has overthrown old ideas of financing public corporations.

"He has established a new system

GOOD REPORT

Doctor Proved Value of Postum

Physicians know that good food and drink, properly selected, are of the utmost importance, not only for the relief of disease but to maintain health even when one is well.

A doctor writes, "I count it a pleasure to say a good word for Postum with which I have been enabled to relieve so many sufferers, and which I count, with its valued companion Grape-Nuts, one of the daily blessings.

"Coffee was banished from my own table some time ago and Postum used regularly in its place." (Coffee is injurious to many persons, because it contains the subtle, poisonous drug, caffeine.)

"I frequently find it necessary to instruct patients when they take Postum for the first time to be quite sure that it is properly made according to directions, then it has a clear, seal-brown color and a rich, snappy taste, as well as health giving qualities."

The above letter, received over ten years ago, is fully confirmed by a recent letter from the doctor, in which he says:

"It is a pleasure to render a good report covering a product of which I am so enthusiastic a friend.

"I am using in my home your Postum Cereal in both its forms, and, what is more, I am having it used in the families of several patients in which there are children, and all unite in endorsing the fine qualities of your admirable product."

Name given by Postum Co., Battle Creek, Mich.

Postum comes in two forms:

Postum Cereal—the original form—must be well boiled. 15c and 25c packages.

Instant Postum—a soluble Powder—dissolves quickly in a cup of hot water, and, with cream and sugar, makes a delicious beverage instantly. 30c and 50c tins.

Both forms are equally delicious and cost about the same per cup.

"There's Reason" for Postum.

—sold by Grocers.

of insurance for persons of moderate means.

"He has given a new charter to working women.

"He has compelled railroads to inquire into what efficient handling of their roads means.

"He has stood for the masses against the encroachment of privilege and done so without resorting to the methods of the demagog or to the ecstasies of the reformer.

"In Jewish matters he has taken over the direction of Zionism a time when it threatened to go to pieces on account of the complications occasioned by the war and he has given it new life."

Significant, too, is the fact that Brandeis leaves a voluntary labor court of his own creation for the highest court in the land. His conciliation court is a part of the machinery devised to keep industrial peace between garment manufacturers and garment workers in New York City. Brandeis settled the strike of 1910 by inducing an agreement on the new line of "the preferential union shop," and was chosen chairman of the arbitration board. The complex issues there passed upon are typical of the legal and extralegal problems in modern industry. "Mr. Brandeis' mind is the clearest, the keenest, and the justest I have ever known," says Hamilton Holt of the Independent, an associate on the board.

"His unerring sense of justice and ability to get at the truth quickly have been a never failing source of wonder . . . In the perplexing cases that have come before us—cases that involve nearly all the human passions, good and bad—a man with an insincere mind would have been sure to betray himself sooner or later. If ever, then, I have met an honest man, it is Louis Brandeis. I would as soon trust him as my own father."

Yet the New York Press, voicing an entirely different attitude, calls the Brandeis appointment "a national shock" and an "insult" to the supreme court itself. This journal, not long ago a prominent champion of the progressive party, says:

"The insuperable objection to Brandeis as a member of the highest tribunal in the land is that he is a man of furious partisanship, of violent antagonisms and of irredeemable prejudice, utterly disqualifying him, or any other man of like temperament and passions, whatever abilities and virtues he might have, from acting in a judicial capacity, where nothing but calm, cold reason should dominate the mind."

The senate committee, subjected to such diverse currents of sentiment, decided to hold open hearings prior to a vote on confirmation of the President's appointment.

Mr. Brandeis has shown a curiously candid streak of honesty ever since the early days of his legal practice. His professional and personal associations were those of Boston's socially elect. The president of a shoe company called him in during trouble with the workmen. After listening to the story of the employees' representative Brandeis frankly startled both sides by saying to him, "my client is entirely wrong. What are you going to do to help us out?" The difficulty was soon settled! The same candid streak appeared in the latest case of the western shippers for whom Brandeis appeared before the interstate commerce commission. The case was one of protest against increase of freight rates. Yet the

hearing of facts led Brandeis to advocate that the railroads charge for various "free services" they had been giving, in order to increase their legitimate revenues. Brandeis considers himself free to thus deal with issues in controversy because he makes a practice of accepting no fee in cases involving "the public" as a party in interest. In his earlier private practice he was counsel for the United Shoe Machinery Company, one of the big trusts and an "efficiency" concern. He severed the connection and has contended against some of the contracts, presumably formulated by him, as being contrary to sound public policy. Friends impute righteousness and courage to him for such action. Opponents call it "unprofessional," even "dishonorable."

Brandeis was a precocious lad. From the public schools of Louisville, Kentucky, to a Dresden Realschule, thence back to Harvard law school where rules were suspended to graduate him at the age of 20, so runs his academic record. He paid his way through law school by tutoring and had money to spare. By the time he was 30 he had become a leading light among Boston lawyers. Fiduciary responsibilities and profitable corporation practice came his way. Position and income were assured. Later, "precocity" showed itself in the incorporation and organization of his "law factory" on the "efficiency" lines of scientific management. Then he divided his professional income with his wife, who is interested in charitable work. For himself Brandeis obtained a new freedom to take up cases for "the public" without charging a fee. In the last 25 years he has gained an unparalleled reputation as the "people's attorney." He is easily the most liked and most hated man at the bar in America," according to the editor of the Boston Common.

None of the airs of the sensationalist are adopted by Brandeis even when he is doing the unusual thing, and it is mostly by unusual things that the public knows him. There were sneers at the national capital when Brandeis appeared at the Dingley tariff hearings in 1897 "in the interest of the Consumer." Then it became widely known that he had been the brains of the traction fight in Boston. A measure of city control of the transportation system through public construction and short-term leases had been won—and Brandeis would accept no fee for his services. Brandeis also put through an adjustment plan for Boston's gas supply. The company is allowed seven per cent on a fixed capitalization for gas at 90 cents. For every reduction of five cents in price (efficiency again!) one per cent is added to the company's dividend. Gas goes down to 80 cents and dividends up to nine per cent. No fee to Brandeis.

Through the efforts of Brandeis industrial insurance can now be secured from savings banks in Massachusetts at more than 20 per cent below former cost. And Brandeis' advice as counsel for the Equitable society's protective committee, headed by Grover Cleveland, is credited with numerous permanent reforms in the insurance business.

In the Ballinger case during the Taft administration, Brandeis as counsel for Glavis in Alaskan affairs prevented a "hush-up" where important public interests in the territory were at stake.

Five years ago the press of the country found a newspaper sensation in Brandeis' suggestion to railroad managers that a million dollars a day could be saved by applying the principles of scientific management to their business methods. Brandeis interjected this side issue while protesting before the interstate com-

merce commission, in behalf of eastern shippers and boards of trade, against an increase of railroad rates. Rates were not raised. Noteworthy instances of increased efficiency in railroad management have latterly been given wide publicity.

Brandeis did not succeed in preventing the merger of the Boston and Maine with the New Haven railroad system, although his published facts and figures were monumental. But his predictions of the effects of attempted monopoly of New England transportation and of the wilicat financial methods of management proved only too true according to the verdict of a public after it had been "stung." New Haven management has since become a hissing and a byword. The crash in New Haven stock has left in New England many bitter hatreds, and a large number of them are directed against Brandeis. It is the theory of his critics that the New Haven road would, in time, have emerged from all its difficulties but for the attacks made and directed by him.

Twelve times, at the invitation of state authorities, notes the Survey, Brandeis has participated, for National Consumers' league, in defense of women's labor laws. He has an unbroken record of success in proving the constitutionality of laws limiting hours of women's work before the courts of Illinois, Ohio, Oregon and New York. He won the Oregon case on appeal to the United States supreme court. In these pleadings he presented a new type of brief. Instead of clinging to precedents and legal arguments he offered data to show the facts of working conditions and their effects upon the workers and the community. He used the testimony of medical and other experts on "over-fatigue" and "social damage." The Oregon minimum wage law for which he also argued before the supreme court has yet to be passed upon by that body to which he has now been nominated.

Only from such an abbreviated list of Brandeis' exceptional acts of free law service can one get a conception of his status. It is the record of a fighter, but of one always fighting within the law, never as a revolutionist. Clearly his career has aroused the bitterest antagonisms. Conservatives condemn him as a radical and radicals insist that he is a conservative. Neither socialist nor anarchist label fits him. He is more of an individualist clinging to the idea of freedom of opportunity under fair competition. He says that he has no rigid philosophy unless the democratic ideal with a small "d" may be so styled. The trouble he senses is the lack of social adjustment between political democracy and industrial absolutism in the United States. He professes faith in the decline of exploitation of human beings once Americans of all classes clearly see the facts. His latest book on "Other People's Money" deals with the ethics of centralized control of deposits and credit whereby impersonal absentee management of business obtains rule.

Brandeis would extend the domain of law by absorbing the facts of life. He has the point of view taught by Professor Wilson before he became President; law as the record of society's determination regarding concrete realities of life, rather than a fixed rule of thumb for a technical "state." That he has an instinct for ethics, a passion for justice and a genius for public service his friends consider amply demonstrated. His capacity for social interpretation of masses of complicated data is not denied even by those who consider his conclusions dangerous to the established order.

Brandeis is not a man who would be picked out in a crowd. One might