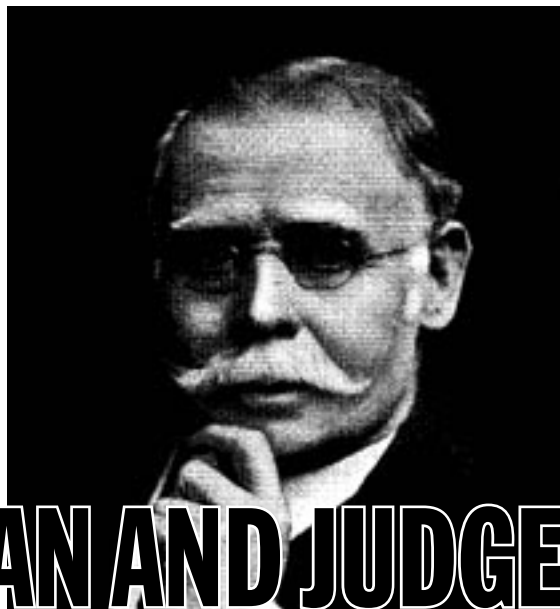


Robert Shiels

examines the career of Tommy Shaw (1850–1937) one of Campbell-Bannerman's law officers.



LAWYER, POLITICIAN AND JUDGE

In the scheme of things in Britain, a political career has never been regarded as wholly inconsistent with later judicial appointment. Lord Salisbury wrote, and warned, in 1897 that 'the judicial salad requires both legal oil and political vinegar: but disastrous effects will follow if due proportion is not observed'.¹ In the same year, he also observed more prosaically: 'there is no clearer statute in the unwritten law than the rule that party claims should always weigh very heavily in the disposal of the highest legal appointments'.²

The career of Tommy Shaw encompassed that of lawyer, politician and appeal judge in the course of a long life. He was born the son of a baker in 1850 in Dunfermline in West Fife. Shaw was five years old when his father died, aged 53, and he was an only child. He went to local primary schools and Dunfermline High School. He was brought up in what was then the United Presbyterian Church. He started work at the age of 14 as a clerk in a solicitors' office.³ He completed an apprenticeship and qualified as a solicitor, but he had his eye on the wider view. He attended the University of Edinburgh and graduated MA LLB; he was admitted to the Scots Bar in 1875.

Shaw took to advocacy; a contemporary wrote, 'with a jury he was superb. Some indefinable

charm in his most suasive voice always seemed to sway them to his client. And in the art of cross-examination no one at the Scottish Bar has approached his subtle, insidious way of extracting the truth.'⁴ Shaw himself said that in these matters he was a high-strung actor.⁵ His legal practice was, however, greater than merely that of court work; for many years, for example, he held a general retainer to act as counsel to Glasgow Corporation.⁶

There was little in the way of quick advancement in the legal profession for Shaw; in his time Crown Counsel (the supreme court prosecutors) were entirely political appointments. Shaw, having sided with the Liberal Party, was then linked with the political fortunes of the party. It was thus not until 1886 that Shaw was appointed as Crown Counsel, but then only for the short period of Gladstone's third administration. His next appointment was of a different magnitude, for in 1894 he was made Solicitor-General for Scotland.

By that time he was a Member of Parliament; his Parliamentary career extended from 1892 to 1909. He was returned on five occasions for the constituency of the Hawick District of Burghs, covering the towns of Hawick, Galashiels and Selkirk. In each electoral contest Shaw had only one opponent, on each occasion a Liberal Unionist,

the last of whom was Sir Arthur Conan Doyle.⁷

In politics Shaw was a strong Gladstonian: in particular he supported home rule, he was an ardent land reformer and later he was marked out as being a vociferous pro-Boer (anti-war) speaker. Shaw came closest to losing his Parliamentary seat at the election of 1900, most probably on account of his anti-war stance. He spoke out at several public meetings against the war amidst scenes of disorder, and he and his house in Edinburgh were attacked; his views and the consequent reactions were not dissimilar to those of Lloyd George at this period. He was also a founder member of the Young Scots Society.⁸ One point, however, indicates how Shaw's political career developed: he had close political connections, some thought too close, to Sir Henry Campbell-Bannerman ('CB').⁹

Shaw became a government law officer, as Lord Advocate, in the Liberal administration of 1905–09. Few other Scots lawyers had the legal knowledge and the necessary acceptable political experience that Shaw had at that point. Although he was not in the cabinet, it seems clear that Shaw was close to the centre.¹⁰ Shaw was often a guest of CB at the latter's home in Meigle in Perthshire and seems to have become a friend as well.¹¹ CB was considerably older than Shaw and a not

uncritical friend; CB is thought to have told Asquith that Shaw was too often 'maximus in minimus, minimus in maximus'.¹²

Shaw's resignation as Lord Advocate brought with it a minor incident that has generally overshadowed his judicial appointment. An unexpected death of a Lord of Appeal in Ordinary left a vacancy for an appeal judge in the House of Lords. Two aspects might have been thought of as preventing Shaw taking up the post: first, there was another judge with a stronger claim, applying the ordinary rules of professional succession. Secondly, Shaw had never been a judge at first instance (a trial judge), because as Lord Advocate he had been the senior public prosecutor for Scotland. Even then it was thought preferable to have had some experience as a judge at first instance before becoming an appeal judge.

Shaw left Edinburgh and went to see the Prime Minister, by then Asquith, and secured the appointment as Lord of Appeal, which he took up in February 1909. Commentators at the time and over the years have sought to make much of this; there were suggestions of clients having been left in the lurch, but that is doubtful.¹³ In any event, Shaw served for twenty years as a Lord of Appeal and his speeches in appeal cases have been said to demonstrate a Scottish tradition within the judicial committee – a tendency to avoid pure legal analysis in favour of a keen sense of the political and social conditions bearing on the questions faced by the appeal judges.¹⁴

Shaw had political sense and courage and his whole attitude towards the law was said to be more that of a politician than a lawyer.¹⁵ It was most probably his political sensitivity and radicalism that led to his appointment to chair various inquiries: there was a Departmental Committee on the Truck Acts (1908), a Royal Commission on the landing of arms at Howth in Ireland (1914), a Departmental Committee on the state purchase and control of the liquor trade in Scotland

(1918) and the Court of Inquiry into transport workers' wages and conditions of employment of dock labour (1920).¹⁶

Shaw maintained an interest in literature and history. As a student he made various contributions to the *Encyclopaedia Britannica*. Soon after appointment as Lord of Appeal he published a lecture that he had given at University College, London: *Legislature and Judiciary* (1911). In later life there were several books: *Letters to Isabel* (1921) and *The Other Bundle* (1927) were a series of letters to his daughter relating events in his life. The former volume has often been cited for his narration of events surrounding the formation of CB's administration in December 1905. Shaw visited the annual meetings of the American and Canadian Bar Associations and his addresses to their members formed *The Law of the Kinsmen* (1923). There was a play in verse, *Darnley* (1925), a study of *The Trial of Jesus Christ* (1928), *Leicester* (1931), and a biography of a Chief Justice of the United States Supreme Court: *John Marshall in Diplomacy and in Law* (1933).

When Shaw retired as an appellate judge in 1929 he was advanced from a judicial life peerage to the rank of viscount, becoming known as Lord Craigmyle. It has been said that Shaw's contribution has been denigrated over the years.¹⁷ He seems to have been rather outspoken and abrasive at times, especially towards his political opponents, many of whom were his legal colleagues. Shaw maintained a diplomatic silence on contemporary domestic political issues during his time as a Lord of Appeal, although he was an ardent supporter of the League of Nations. It is remarkable, however, that he made his way from a modest and probably impecunious background, via the advanced wing of the Liberal Party, to so senior a legal position.¹⁸

In his personal life Shaw married Elsie Stephen of Aberdeen and they had a long and seemingly happy marriage. They had one son and three daughters. The son,

'With a jury he was superb. Some indefinable charm in his most suasive voice always seemed to sway them to his client. And in the art of cross-examination no one at the Scottish Bar has approached his subtle, insidious way of extracting the truth.'

Alexander Shaw (1883–1944) was Liberal Member of Parliament for Kilmarnock from 1915 to 1923, later became a Director of the Bank of England, and succeeded to the viscounty on the death of his father on 28 June 1937.

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- 1 Quoted in R. F. V. Heuston, *Lives of the Lord Chancellors 1885–1940* (1964), p. 57.
- 2 *ibid* p.52.
- 3 He worked 55 hours a week and there was no pay: *Letters to Isabel* (1936 ed) p. 25.
- 4 See the article 'The Apotheosis of the Lord Advocate' in *The Outlook*, February 20, 1909, at p. 254.
- 5 *Letters to Isabel* (1936 ed) p. 46.
- 6 (1909) 1 *Scots Law Times* 51.
- 7 See F. W. S. Craig *British Parliamentary Election Results 1885–1918* (2nd ed 1989) p 511
- 8 See R. Ian Elder, 'The Young Scots Society: A lost Liberal legion remembered', *Journal of Liberal Democrat History* 36 (autumn 2002), for more information on the YSS.
- 9 J. Wilson, *A Life of Sir Henry Campbell-Bannerman* (1973) p. 430. CB himself referred to 'Tommy' Shaw; in an age when Christian names seemed not to be used often, this probably indicated a special relationship
- 10 It has been said to be not easy to determine which, if any, of CB's Cabinet colleagues were closest to the heart of power: J. F. Harris and C. Hazelhurst, 'Campbell-Bannerman as Prime Minister' (1970) 55 *History* 360 at p. 379.
- 11 See R. Shiels, 'CB and Tommy Shaw: Prime Minister and Lord Advocate' (1993) 61 *Scottish Law Gazette* 50.
- 12 'Great in small things, small in great things'. Wilson *supra* p. 589.
- 13 See R. Shiels, 'Tommy Shaw and the Gilded Chamber' (1994) 62 *Scottish Law Gazette* 48.
- 14 R. Stevens, *Law and Politics: The House of Lords as a Judicial Body: 1800–1976* (1979) at p. 130.
- 15 Stevens *supra* at p. 248.
- 16 Details can be found in S. Richard, *British Government Publications: an index to chairmen and authors, 1900–1940* (1974) p. 135.
- 17 Stevens *supra* at p. 253.
- 18 Generally see L. G. W. Legg (ed) *DNB: 1931–1940* p. 807.