JAMES BUCHANAN AS A LAWYER.*

Except in so far as his performance of official duties was related to and influenced by his training and character as a lawyer, I shall not enter into any exposition or defense of Mr. Buchanan’s conduct in the many positions of public trust and responsibility which he filled during a long and notable career.

Upon a fit occasion, however, I should not shrink from maintaining the proposition with which his authoritative biographer concludes his work: “He was the most eminent statesman yet given by that (this) great Commonwealth to the service of the country since the constitution was established.”

I shall assume that the main events of his life are familiar to this audience—his long experience and signal services in the many places of public trust he held; his unsullied private character and unquestioned personal integrity; his almost continuous discharge of high official duties through the many years in which he rose from the rank of State legislator, through service as representative, diplomat, senator, secretary of state and ambassador, to the highest office under our government—advancing to the place by those gradations of experience, once familiar and common, but now seldom known in our political system; since—for better or worse—canned statesmanship, like condensed food and preserved music, are furnished to order, on short notice and ready for immediate use—accepted generally for the gaudiness of the label rather than on the merits of the contents.

He was born of that hardy race whose pioneer settlements early penetrated Pennsylvania, who carried rifle and Bible toward the ever receding frontier, who believed in a church without a bishop and a state without a king, and who, by temperament, experience and education, were especially fitted to produce and nourish leaders of the new American jurisprudence. Mr. Buchanan’s own parents, like the progenitors of most notable Americans, were of that great so-called “middle class” of worthy people, to whom Agur’s prayer was answered, to be spared alike

* A lecture delivered before the Law School on March 28, 1912.

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from grinding poverty and from smothering riches. His mother was a woman of literary as well as religious culture, his father keen in business and alert to civic duty; both were persons of much force of character, affectionately loyal to their children's fortune, but deeply sensible of the duty of discipline. Graduated from Dickinson, whence Taney had gone out years before, and where Gibson matriculated, young Buchanan lost little time in getting to work in the best law school of that day—a general country practitioner's busy office. The choice of Lancaster as a place of residence never needs explanation or apology. A century ago that second judicial district of Pennsylvania was second only to Philadelphia in the volume and variety of its business and in the strength of its bar. James Hopkins was easily the leader; his fame and clientage were state-wide, and when the elder Buchanan saw and heard him try a case somewhere in the Cumberland Valley he fixed upon Hopkins as a preceptor for his son.

James Buchanan came to Lancaster in December, 1809, in his nineteenth year. His determination that severe application should make him a good lawyer was only equalled by the splendid self-restraint with which he followed his father's prayerful exortation that he guard against the temptations which beset a young man in Lancaster—one hundred years ago.

I have recently had the privilege of reading correspondence between Mr. Buchanan and his parents while he was a law student. It is pervaded by a spirit of domestic piety, parental solicitude, filial respect and mutual confidence that I fear do not abound nowadays as they should. Their solemn injunctions to a life of rectitude, regard for the Sabbath, purity of political action and respect for religious observances, go far to account for the singular integrity of his professional and political career.

The traditions of the Lancaster bar as to both preceptor and student justify the statement that young Buchanan maintained the standards of study which he exacted in later years from his own students.

He has left on record this statement of his own methods of study:
"I can say, with truth, that I have never known a harder student than I was at that period of my life. I studied law, and nothing but law, or what was essentially connected with it. I took pains to understand thoroughly, as far as I was capable, everything which I read; and in order to fix it upon my memory and give myself the habit of extempore speaking, I almost every evening took a lonely walk, and embodied the ideas which I had acquired during the day in my own language. This gave me a habit of extempore speaking, and that not merely words but things. I derived great improvement from this practice."

The success which he so rapidly attained after his own admission on November 17, 1812, confirms it.

There were no peculiar personal advantages to Buchanan in locating his permanent office in Lancaster, except the volume of business there and the strength of the local bar. Walter Franklin was the president judge—within eight years Buchanan was to be called upon twice to defend him in impeachment proceedings. Besides Hopkins, the Rosses, Smiths and Montgomerys were in the front rank; likewise William Jenkins, who built "Wheatland," later the home of William M. Meredith, and then of Mr. Buchanan; Amos Ellmaker, afterwards Attorney-General of Pennsylvania and a nominee for Vice-President of the United States; Molton C. Rogers, destined to become Secretary of the Commonwealth, and a Justice of the Supreme Court of Pennsylvania; and here also sought admission, about that time, John Bannister Gibson, whose fame as the great Chief Justice of our State is the heritage of every lawyer between Westminster and California.

Until lately I was of the opinion that Buchanan never had hesitated about engaging in practice where he had to break his youthful lance against foemen of experience and well-tested strength. Some years ago, the New York "Herald" re-published an old story of the future President going to the far country of Kentucky to settle, where he supposed the bar was weak; that there he found Ben Hardin and other intellectual giants in homespun who had forgotten more of Coke and Blackstone than he ever learned, and that he made quick return to the easier rivalries of Lancaster practice. The publication was promptly refuted. I had myself the assurance to "explode this myth," by demonstrat-
ing conclusively that no trace of this fiction appeared anywhere in the great amplitude of early Buchanan biography. Although the refutation has never been publicly contradicted, I now feel constrained to admit the “explosion” was premature. Further investigation has satisfied me the Kentucky story is credible. From some unpublished family correspondence I find as early as April 19, 1811, his father inquiring as to his future settlement to practice. He recurs to the subject some months later and favors Lancaster as a place where lawsuits and money were plenty—one hundred years ago. March 18, 1812, he answers a letter from his son in which the latter contemplated “a ride to Kentucky” for his health, to look after some Buchanan lands and doubtless to spy the prospects for a young lawyer. No further trace of this South-Western venture appears anywhere, but it was likely made during the summer that preceded his actual admission to the Lancaster bar. Samuel Haycraft, who had been Clerk of the Court of Hardin County, Kentucky, for half a century, published a serial local history in the Elizabethtown, Ky., “News,” in 1869. He refers confidently to the Buchanan incident; and Alfred M. Brown, of the same bar, who died in 1905, at the age of ninety-one, verified it. Both agree as to the impression created upon the ardent Pennsylvania youngster, with his social and scholarly culture, by the towering intellectual strength of such backwoods lawyers as Judge Rowan and Ben Hardin.

More singular and convincing testimony of the visit of Buchanan to Kentucky is furnished by an incident that has special interest for older members of the Philadelphia bar. There is in existence a manuscript narrative written by Mrs. Susan Dixon, who was a sister of the late John C. Bullitt, the widow of Hon. Archibald Dixon, United States Senator from Kentucky, 1852-1855, elected to fill the vacancy caused by the resignation of Henry Clay. One of the phases of a memorable journey from Kentucky to the great Eastern capitals, described by Mrs. Dixon, was the visit of her party to Washington and their reception by President Polk. His Secretary of State, Mr. Buchanan, was a conspicuous figure, and, after some polite attentions to the ladies of the group, he turned his attention to Mr. John C. Bullitt, and their talk is thus described by our contemporary reporter:
Mr. Buchanan at once engaged in conversation with brother John—seeming to take great interest in him—inquiring about his location, etc. He said very earnestly, 'You ought to come East—come to Philadelphia—you will make a success there—Eastern people like the Western pluck and grit—and Kentucky is a great state to come from. When I was a young man, I thought with my learning and fine education I could make a great show in Kentucky—could cut a great figure before her backwoodsmen who had no education (as I imagined). Well, I went to Russellville to practice law. The first Court that met was at Bowling-Green—I went there full of the big impression I was to make—and whom do you suppose I met?

'There was Henry Clay! John Pope, John Allan, John Rowan, Felix Grundy—(he named about a dozen, but I forget the rest) why, sir, they were giants, and I was only a pigmy. Next day I packed my trunk and came back to Lancaster—that was big enough for me. Kentucky was too big. But sir, if you will come East, you will succeed—you will make a big success in your profession, and I advise you to come.'

'How much this may have had to do with brother John's going to Philadelphia, the next spring, I do not know. I do not remember our speaking of it afterwards, but it may have been the first thing to turn his attention that way.

'A singular coincidence in connection with this occurred quite recently. When I went to Wet Point in the summer of 1900, to escape the intense heat of Louisville,—I met an old gentleman, Dr. Greenlay—who had practiced medicine in Jefferson County for years and years. He was very intelligent and agreeable, over 80 years old, and could relate many things of interest. He told me of this incident of Mr. Buchanan's coming to Kentucky, exactly as the Secretary of State had told it to me.'

Despite some discrepancies of locality among these various witnesses, the main fact is proved. Considering the professional futures that awaited both Mr. Buchanan and Mr. Bullitt, it may be conceded that a successful law practice could be built up by a man of talent and genius, whether he stayed in Pennsylvania a hundred years ago or migrated from Kentucky forty years later.

Mr. Buchanan's admission in Lancaster was not, however, a finality as to his permanent location. An eminent Philadelphian may have determined that. About that time Lancaster County, the prolific mother of counties westward, had joined Dauphin in the parentage of Lebanon; and Hopkins recommended his pupil to Jared Ingersoll, then Attorney-General under Governor Simon.
Snyder, for the deputyship in the new county. In soliciting this appointment of district attorney—which he received—Mr. Buchanan said: "I am a young man just about selecting a place of future settlement, and that your determination will have a considerable influence upon my choice."

From the very outset of his career at the bar Mr. Buchanan secured a large clientage and what was then a profitable practice, and he retained both until the larger activities of official life claimed his exclusive attention. Between 1813 and 1829 his professional emoluments ranged from $938 per annum—a fine start for the first year—to $7,915 in 1818. After 1825 he gave less attention to his law practice, and, after 1835, I find no mention of him in the court records. He frequently appeared in the neighboring counties of York, Dauphin and Lebanon. His practice covered the wide range of a miscellaneous and busy country lawyer, without any of the modern labor-saving devices, with no digests to speak of and even printed paper books being unknown. His work lay almost exclusively in the state courts, nisi prius and appellate. From 3 Sergeant & Rawle (1817) to 4 Watts (1835)—the termination of his active practice—he is reported as of counsel in 108 cases in the Supreme Court of Pennsylvania, his last reported participation being in Bassler v. Union Canal Company, 2 Watts, 271.

He was admitted to the bar of the Supreme Court of the United States March 16, 1824, but there is no record of his engagement in any case before that tribunal; and as this date was after he became a member of Congress, his admission to the Supreme Court, likely, was only formal.

Less than two years after his admission to the bar, he had served in the army and had been elected to the Legislature; and before he had ended his first term, a shrewd, strong-minded and influential Democratic Senator ventured to predict that if he would change his politics he "would become President of the United States." He did both. His father had no less concern for him as a legislator than as a law student, and, after his election, wrote him: "Above all earthly engagements, endeavor to merit the esteem of Heaven; and that Divine Providence, who has
done so much for you heretofore, will never abandon you in the hour of trial."

His sagacious parent was wise enough to know that the law is a jealous mistress and wrote him that political office-holding was calculated to lead him away from study and practice; that eminence at the bar was "preferable to being partly a politician and partly a lawyer." Mr. Buchanan himself realized this when, twelve years later, he wrote to his friend, Andrew Jackson: "I have spent a busy summer. This change from law to politics and from politics to law makes both pursuits very laborious. A man cannot do himself justice at either."

The law student of today may profitably ponder Mr. Buchanan's advice to one who applied for a desk in his office in 1821. He wrote:

"I should be proud in being instrumental to make you a useful man and a respectable lawyer. This can only be effected by years of close study and abstinence not only from the dissipation of the world, but from the levity and waste of time which necessarily follow an indulgence in fashionable society. If you persist in the study of law you should be under my absolute control and if you become inattentive you shall seek another preceptor."

One of the earlier judges of Lancaster has left on record this tribute to Mr. Buchanan's ability as a lawyer:

"There was a combination of physical and intellectual qualities that contributed to make him a powerful advocate. He was more than six feet in height, with a fine, imposing figure, a large, well-formed head, a clear complexion, beautiful skin, large blue eyes, which he turned obliquely upon those he was addressing, looking so honest and earnest as to engage their sympathy by his gaze alone; then his voice was strong, resonant and not unmusical, and his elocution, though very deliberate, flowed on like a full river in a constant current. Add to this, he was a logician and indefatigable in his preparation of his case. In fact, he was cut out by nature for a great lawyer, and I think was spoiled by fortune when she made him a statesman."

Horton in his 1856 "Campaign Life" relates an incident which is likely true, but of which I cannot furnish local identification. He says of Mr. Buchanan at the Lancaster bar:
“Once only after he left his profession, could he be prevailed upon to again appear at the bar. This was in the cause of an aged widow, where he was appealed to by the most earnest solicitations. It was an action of ejectment which involved all her little property. The case was a difficult one, and technically decidedly against the unfortunate woman. To the surprise and astonishment of every one, he succeeded in establishing her title to the property in question. The poor woman was intoxicated with joy, and overwhelmed her benefactor with expressions of gratefulness, and offers of remuneration. Mr. Buchanan, however, would accept nothing for his services.”

His most notable case as a country lawyer was his successful defense of Judge Franklin before the Senate of Pennsylvania, when he was only twenty-five years of age; when next called to a like task he insisted on the association of senior counsel.

The frequency of judicial impeachments at that early period illustrates asperities of the profession and animosities of politics that by no means prevail today. Franklin and his lay associates were vindictively pursued because in a doubtful case they had declined to summarily order reputable members of the bar to pay over to their clients a balance retained under a claim of right. Even the nine votes, out of thirty, cast for their conviction seem to have been inspired by party prejudice. Another effort was made to impeach them because they took cognizance of a case of trespass against the members of an alleged illegal court martial. Finally, in 1825, Franklin was again impeached for various judicial delinquencies, and, though he was acquitted on all four articles, one vote of 12 to 16 was close enough to have almost the admonitory character of a Scotch verdict.

By the way, the attempt to impeach Judge Franklin that failed grew out of the celebrated case of Moore v. Houston,¹ which gave Tilghman an opportunity to write one of his most notable opinions, wherein is enunciated the doctrine that “Where the states are prohibited expressly by the constitution of the United States, from the exercise of power, all their power ceased from the adoption thereof; but where the power of the state is taken away by implication, they may continue to act until the United States exclude them.”

¹ 3 Sargent & Rawle, 170.
This case twice went to the Supreme Court of the United States. The fact that one of the defendants in the original action subsequently became a justice of the Supreme Court of Pennsylvania, only illustrates the vitality of the Lancaster bar—a hundred years ago.

Mr. Buchanan’s early entrance into politics and his steady continuance in its activities leave little room for doubt that a public career for him was design and not chance. Nevertheless his training and experience as a lawyer were his main equipment, and these he never ceased to recall. In 1847 he wrote: “I shall ever feel proud to have been a member of the Lancaster bar.”

II.

When he became a legislator, having been elected to Congress in 1820, he had opportunity to reveal the character and to exercise the qualities of a constitutional lawyer. He served five successive terms—during four years of Monroe’s administration, four of the younger Adams and two of Jackson. This was the period of partisan dissolution. The old distinctions of Federalist and Democrat could scarcely be observed. Mr. Buchanan, however, had changed his politics and his views of our governmental system; and, franker than many others who have done so and denied it, he made free avowal. “Time was that when the brains were out men died”; and nothing is more foolish than when parties have abandoned their distinctive dogmas and utterly changed their fundamental faiths, individual members cling closely to the empty shibboleths. Of Mr. Wayne MacVeagh’s many reported witticisms, none is keener than, when a notable person accused him of being a Democrat, he retorted: “I am a Democrat, and I know it. You are a Democrat, too, but you don’t know it.”

The time Mr. Buchanan began his Congressional career was opportune for a Federalist to become a Democrat; and it was easy for him from the outset to act and talk and vote like a lawyer, though a public and party representative in the House. He had been a member scarcely three months when his speech against the Bankrupt bill challenged the attention of his colleagues and the
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country for its masterfulness. It largely influenced the defeat of the bill, notwithstanding the law had been reported by Mr. Sergeant, chairman of the Judiciary Committee, and Mr. Buchanan's intimacy with, his confidence in and affection for Sergeant were all so great that he had ardently desired, if he consistently could, to support his colleague's pet measure.

In his second term Mr. Buchanan encountered new colleagues, among them Edward Livingston, of Louisiana, Clay and Webster; and he became a member of the Judiciary Committee of the new House, of which Webster was chairman. Jackson and Benton came to the Senate at the same time. Throughout his membership of Congress, in debate Mr. Buchanan measured up to the best of his contemporaries, always logical, incisive and effective; nor was his range less extensive than that of the most versatile.

When on a proposition to send ministers to a Pan-American Congress at Panama (Jackson having named John Sergeant as one of them), the House was disposed to defeat the mission by refusing to vote the necessary appropriation, Mr. Buchanan made a scholarly argument to demonstrate that the House was bound to vote salaries for ministers appointed by the President and confirmed by the Senate; Mr. Webster said he had placed the whole subject in a view that could not be improved on. He favored strictness in expenditure, but was never parsimonious, especially toward patriotic appeals. In discussing the tariff, navigation laws, inland improvements, banking and indeed every subject of legislative interest or action, he exhibited comprehension and courage of conviction. His attitude as a legislator was notably consistent in upholding the dignity of American citizenship, the independence of the judiciary and the soundness of the government's financial system—three vital elements of our national life, which challenge the allegiance of every patriotic member of our profession.

Two conspicuous services rendered while a member of the House, and when he was scarcely forty years of age, establish Buchanan's rank as a lawyer, and avouch contemporary recognition of his ability. In 1830 he had succeeded Mr. Webster as chairman of the Judiciary Committee, and as such he not only re-
ported the articles of impeachment against Judge Peck, but he was chosen chief manager to conduct the prosecution. Peck, it will be remembered, had committed and disbarred Luke E. Lawless, of St. Louis, for alleged undue criticism in the newspapers of Judge Peck's judicial decision in a case in which he was of counsel. The rarity of precedents made the responsibilities of the managers weighty; and the eminence of Judge Peck's counsel—Wirt and Jonathan Meredith—put the prosecution into a position in which learning, logic and eloquence had to be invoked to make the combat equal. All of these pervaded the trial on both sides, not only in its conduct, but in the summing up. To Mr. Buchanan was given the task of replying to a four days' speech of Mr. Meredith, only ended by his physical exhaustion, and then to three days of Wirt's matchless wit, sarcasm, and pathos. Mr. Buchanan's argument was entirely adequate to the occasion, and the bare acquittal of Judge Peck by a vote of 21 to 22 was in no wise due to ineffectiveness of presentation on the part of the chief manager of the impeachment.

Prior to this eventful episode in his career as a lawyer, and which shortly preceded his retirement from Congress, Mr. Buchanan had, in a speech of great lucidity and power, strikingly displayed his knowledge of the Federal judiciary system, in discussing the question of releasing the Judges of the Supreme Court entirely from the performance of circuit duties. While neither he nor any of his contemporaries could then forecast the future exactions upon their time and services, or the enormous subjects of their jurisdiction, one extract from his great argument relating to the Supreme Court judges has an ever-recurring timeliness:

"It has been said, and wisely said, that the first object of every judicial tribunal ought to be to do justice; the second, to satisfy the people that justice has been done. It is of the utmost importance in this country that the judges of the Supreme Court should possess the confidence of the public. This they now do in an eminent degree. How have they acquired it? By travelling over their circuits, and personally showing themselves to the people of the country, in the able and honest discharge of their high duties, and by their extensive intercourse with the members of the profession on the circuits in each State, who,
after all, are the best judges of judicial merit, and whose opinions upon this subject have a powerful influence upon the community. Elevated above the storms of faction and of party which have sometimes lowered over us, like the sun, they have pursued their steady course, unawed by threats, unseduced by flattery. They have thus acquired that public confidence which never fails to follow the performance of great and good actions, when brought home to the personal observation of the people.

"Would they continue to enjoy this extensive public confidence, should they no longer be seen by the people of the States, in the discharge of their high and important duties, but be confined, in the exercise of them, to the gloomy and vaulted apartment which they now occupy in this Capitol? Would they not be considered as a distant and dangerous tribunal? Would the people when excited by strong feeling, patiently submit to have the most solemn acts of their State Legislature swept from the statute-book, by the decision of judges whom they never saw, and whom they had been taught to consider with jealousy and suspicion? At present, even in those States where their decisions have been most violently opposed, the highest respect has been felt for the judges by whom they were pronounced, because the people have had an opportunity of personally knowing that they were both great and good men. Look at the illustrious individual who is now the Chief Justice of the United States. His decisions upon constitutional questions have ever been hostile to the opinions of a vast majority of the people of his own State; and yet with what respect and veneration has he been viewed by Virginia? Is there a Virginian, whose heart does not beat with honest pride when the just fame of the Chief Justice is the subject of conversation? They consider him, as he truly is, one of the greatest and best men which this country has ever produced. Think ye that such would have been the case, had he been confined to the city of Washington, and never known to the people, except in pronouncing judgments in this Capitol, annulling their State laws, and calculated to humble their State pride? Whilst I continue to be a member of this House, I shall never incur the odium of giving a vote for any change in the judiciary system the effect of which would, in my opinion, diminish the respect in which the Supreme Court is now held by the people of this country.

"The judges whom you would appoint to perform the circuit duties, if able and honest men, would soon take the place which the judges of the Supreme Court now occupy in the affections of the people; and the reversal of their judgments, when they happened to be in accordance with strong public feeling, would naturally increase the mass of discontent against the Supreme Court."
It was left to him in the closing days of his membership in the House, to render a most signal service to our whole constitutional system, to the cause of federal sovereignty, national unity and the enlarged jurisdiction of the Supreme Court of the United States. The movement in 1831 to repeal or modify the 25th section of the Judiciary Act of 1789 had, in its inception, discussion and defeat, the germ and potency of nearly everything that makes for the essential elements of our nationality.

Granted that in our governmental ideas of both commonwealth and country, the executive, judicial and legislative branches are co-ordinate and independent, each in its sphere, in the last analysis one must be supreme. Otherwise conflict of authority would result in conflict of force. Since it is at last fully settled in our jurisprudence that in all federal matters, even the State judiciary are subordinate to the Federal judiciary, and that all question as to whether or not a Federal question is involved must be finally determined by Federal power; so it is finally settled that the judicial power may nullify the legislative and mandamus the executive—the mace of the marshal shall sheathe the sword of the commander-in-chief. But these conclusions have been reached and acquiesced in only after long years of forensic debate and judicial discussion. In the earlier days of Pennsylvania jurisprudence the right of the Court to declare a legislative statute invalid because of its unconstitutionality was not only seriously questioned, but it was vigorously denied.

Early in his judicial career Gibson (1817) expressed the view that to hold a legislative act unconstitutional was a judicial power to be sparingly exercised by the Courts. In Eakin, et al. v. Raub, et al.,2 he denied the right of the state judiciary to nullify an act repugnant to the Federal constitution. Finally in De Chastellux v. Fairchild,3 he asserted the complete power of the judiciary and declared "from its very position, it is apparent that the conservative power is lodged with the judiciary, which, in the exercise of its undoubted right, is bound to meet every emergency."

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2 12 Sargent & Rawle, 330.
3 15 Pa. 18 (1850).
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Early in the history of the United States Supreme Court the question as to whether it could declare void an act of Congress that violated the constitution, was carefully avoided. Subsequently Marshall and Story gave the doctrine vigor and vitality. In the Federal Courts generally the power to declare a State statute invalid because it violated the Federal constitution, was, a century ago, very “sparingly exercised,” if indeed it was ungrudgingly conceded anywhere. Although the 25th section of the Judiciary Act seemed to give the Supreme Court the power, in specified cases, to review and reverse the highest Court of law in any State, the constitution had not, in express terms, conferred this power; and its exercise was either sullenly acquiesced in, or, as in the case of Virginia, boldly denied. Patrick Henry rejoiced “that Virginia has resisted”; and around such cases as Martin v. Hunter's Lessee, Cohen v. Virginia, McCulloch v. Maryland, and Dartmouth College v. Woodward, waged conflicts that “shook” the very “arsenal.” To the extreme exponents of State's rights this doctrine frankly avowed was “tyranny unmasked.” To the Jeffersonians it was “judicial usurpation.” To every close student of our institutions and judicial system it must appear as to Professor Patterson, that no more important function is vested in the Supreme Court than the exercise of its appellate jurisdiction from the State tribunals. Defeated in court the advocates of the exclusive State rights doctrines appealed to the legislative branch of government. They had not the temerity of modern agitators to resort to a “popular vote,” or to the ruder methods of the assassin's bullet in the mountains of Virginia and the anarchist's bomb in Manhattan.

The battle for a reversal began in the attempt in Congress to repeal the 25th section of the Judiciary Act. The motion went to the House Committee on the Judiciary, where a large majority, in sympathy with the great body of the membership, were in favor of the repeal. It was then Mr. Buchanan again illustrated that, though he may have quit the Federalist party, he had not abandoned Federalist doctrine, so far as it conformed with the

1 Wheaton, 304. 4 Wheaton, 316.
6 Wheaton, 264. 14 Wheaton, 518.
constitution and was in harmony with the spirit of our national life. A majority of his committee reported a bill to repeal; he secured the support of only two others to a minority report, which he drafted, and of which Mr. Curtis, a great constitutional lawyer, has said: "I know of few constitutional discussions which evince a more thorough knowledge or more accurate views of the nature of our mixed system of government than this report from the pen of Mr. Buchanan." He was, "at this comparatively early period of his life, a well-instructed constitutional jurist."

Despite the political accord of the majority of the House with the majority of the Judiciary Committee, and notwithstanding the vehement popular opposition in many States to the doctrines enunciated by Marshall and Story, the minority report submitted by Mr. Buchanan prevailed by a vote of 138 to 51—a most signal and permanent victory for national unity and federal sovereignty. Surveying the long line of decisions that have followed—involving rights of property and person, checking encroachments on federal rights, restraining state interference in inter-State and Federal concerns, repelling confiscatory attacks on corporate and individual property and rights, down through such cases as Ableman v. Booth \(^8\) to the recent deliverance of the Supreme Court, through Mr. Justice Van Deventer, in the Connecticut case of Mondou, holding that rights arising under Federal regulations must be enforced, as of right, by and in the state courts and the decision in Northern Pacific Railway v. Washington, \(^9\) that, in a matter subject to Federal authority, when Congress acts or manifests a purpose to call into play its exclusive power, the right of the State ceases—will be seen that the section of the Judiciary Act saved by Mr. Buchanan's report and leadership has constituted a most powerful bulwark against Federal disintegration and weakening of the spirit of nationality. For this statement let me cite an authority far more credible and authoritative than any opinion an Old Line Democrat might venture. In a recent address on the history of the Federal courts, your gifted Hampton L. Carson frankly and bravely said:

\(^{*21}\) Howard, 506.
\(^{*222}\) U. S. 370.
"In truth the 25th section of the Judiciary Act, regulating the appellate jurisdiction of the Supreme Court of the United States, is one of those veritable Bonds of Union which has become sacred from time and association. An effort to repeal it was once attempted, and the measure received a favorable recommendation from the majority of the Judiciary Committee of the House of Representatives in Congress, which was defeated on the floor by the extraordinary strength of the dissenting minority report of James Buchanan, of Pennsylvania, for which service his memory deserves at the hands of our profession a Civic Crown, for it is the section from which, as from a quarry of Parian Marble, John Marshall chiselled those columns of Doric strength which support the dome of the Capitol."

It were surely enough to vindicate the reputation of any lawyer that he merited this eulogium; and no American statesman has higher claim to fame than that, regardless of past or present partisan association or future ambition, his instinct as a lawyer and his fidelity as a patriot led him to the high ground from which he battled successfully against all attempts to overturn the vital principle of national sovereignty.

[I am much indebted to Mr. Charles L. Miller, A. B. (Haverford, 1908, and now of the Law School, 1912), for a comprehensive and valuable appendix to this lecture, illustrating, by numerous cases cited, the far-reaching influence, upon the political institutions and jurisprudence of the United States, of preserving in all its vigor the 25th section of the Judiciary Act of 1789. That its salvation was due solely to Mr. Buchanan's patriotic instincts and legal ability is undeniable. The ultimate effect was inestimable in establishing the doctrine of Federal sovereignty and national unity. Had the then popular Democratic sentiment for the repeal of this section prevailed, who can say that the eloquence of Webster or the military genius of Grant would have availed to save the Union from disintegration? Nay, there might have offered no opportunity to any of them to have been invoked or exercised.]

III.

Thenceforth immediately Mr. Buchanan's public services ran on diplomatic lines; but, as Minister to Russia, under appointment from Jackson, his treaty negotiations stamped him as a master
of international law. Retiring from foreign service to be elected to the United States Senate, he entered that body at a time and served it with men whose historic traditions made the period of his membership a golden age of American politics. The great triumvirate of Clay, Webster and Calhoun were there; Thomas H. Benton and Lewis Cass, Rufus Choate and Silas Wright were of his contemporaries; and numerous of those silver-tongued and adroit Southerners whose charm and chivalry gave them in the legislative branch of government an influence more than commensurate with their relative number.

Without any of that quality which has come to be styled "Jingoism" in modern diplomacy, Buchanan as diplomat, Senator and Secretary, always stood stoutly for the American view of international vexations; and whether in the assertion of the rights of naturalized aliens, or in defense of the prerogatives of the native citizen, he was almost aggressively positive. In the discussions over the power of appointment and removal and the exercise of the right of veto he maintained the independence of the Executive, with resoluteness and skill such as were displayed by President Cleveland in his first term, when he practically vanquished the veteran lawyer leaders of an opposition Senate.

As early as 1836 his expressed views on the independence of Texas forecast the attitude of an administration ten years later, in which he was to become premier throughout the period of the Mexican war. His early assignment to the head of the Committee on Foreign Relations marked his eminence in a body of which he was one of the younger members. His speech in defense of Jackson on the famous Benton expurging resolution was one of the ripest of his forensic efforts; and repeated deliverances on questions of banking and finance demonstrated that he had the too infrequent combination of legal learning and business genius. Quite often he and Mr. Clay and sometimes he and Webster were the chief antagonists in always courteous debate; and though Mr. Buchanan seldom resorted to the weapons of wit, their controversies were sometimes illumined with that humor, without some sense of which any otherwise great lawyer is markedly deficient. Rufus Choate, who was surely lawyer enough to know
one of his class, especially admired Buchanan, and there is last-
ing evidence that Mr. Webster was on terms of private hospitality. I find this neat note among the Buchanan papers in the Penn-
sylvania Historical Society:

(Saturday, March 21, 1835).

"Dear Sir:

‘My wife may like to go to meeting, or church, tomorrow, in the P. M.—Would it not be better for that reason, that we taste your wine at a later hour than that proposed.

“Yrs. truly

“D. Webster.

“Hon. J. Buchanan.”

Lancaster was famous for its Madeira—a hundred years ago. The “J. B.” whiskey, which Mr. Buchanan made celebrated during his public career, did not take its brand from his own initials, but was made by his neighbor, “Jake” Baer. Some of Buchanan’s most vehement quarrels with his colleagues was because they insisted on the superiority of the distillate of their respective districts. In this respect at least he was always right.

The offer, by President Polk, to him of the place of Sec-
retary of State was not in terms of unbounded graciousness, and the recently published diary of that Executive shows there was always some reserve between him and his premier. But Mr. Buchanan’s dignified and firm assertion of our country’s rights in the Oregon boundary question and the final settlement of that long controversy was a diplomatic trophy of the Polk-Buchanan administration, to be followed by the complete national triumph over Mexico in the Cabinet and on the field of battle.

When Grundy resigned the office of Attorney-General under Van Buren, in 1839, the President offered the place to Buchanan, and he declined it. Later his thoughts turned toward the logical goal of every lawyer’s ambition—a place on the highest court in the land. When Mr. Justice Baldwin died, early in Polk’s term, Mr. Buchanan’s desire to steer shoreward from “the stormy deep,” which he had ridden for a quarter of a century, made him hope for appointment to the Supreme Bench. His friends re-
lected, rather than himself expressed, his disappointment, though it would have involved withdrawal from the premiership of the
administration, at the critical time when the Oregon boundary dispute and the shadow of a war with Mexico made his presence in the Cabinet indispensable to his chief and gave him opportunity to display exalted statesmanship. Later, when there is reason to believe the President would have been glad to transfer him, he had taken the hint which his friend, William R. King, once sent him in a letter from Paris when he wrote: "You will find the field open for the Presidency unless you place yourself on the shelf by accepting of the judgeship."

The friends of Chief Justice Gibson generally believed that President Jackson would have appointed him to succeed Marshall, but for Buchanan's influence with the Executive. I do not find any direct evidence of this, though there are numerous writings which indicate Mr. Buchanan's distrust of Gibson's Democracy; that the great Chief Justice of Pennsylvania went to what would now be considered unjudicial lengths in his partisan espousal of Jackson's cause, is well known history. In deprecating Gibson's resignation, to take from Governor Ritner a new and longer appointment, Mr. Buchanan felt a regret that many lawyers shared, though; like him, they recognized his "transcendent legal abilities."

While he was Secretary of State Buchanan promulgated a doctrine that marked a distinct advance in American jurisprudence and positive statesmanship. Once more I shall cite a witness from a party opposed to his and mine, whose eminence as a lawyer adds weight to his testimony. In a speech in the United States Senate, on the treaty of 1832 with Russia, delivered so lately as December 19, 1911, Senator Elihu Root, of New York, said:

"In 1830, immediately before the negotiation of this treaty, there came up in the Supreme Court of the United States the case of Shank v. Dupont, which turned upon the question whether a citizen could divest himself of citizenship and acquire citizenship in another country. The Supreme Court of the United States, Mr. Justice Story delivering the opinion, said:

"The general doctrine is that no persons can, by an act of their own, without the consent of the Government, put off their allegiance and become aliens."

"And the case was decided on that ground."
"In that same year Mr. Kent, in his Commentaries, which were published from 1826 to 1830, declared the general rule maintained by the United States to be the rule of the common law of England of indefeasible allegiance.

"So, when this treaty was made and we gave our express recognition of the right of the Emperor of Russia to make laws to prevent the emigration of his subjects, it was a treaty between two powers both of which maintained that no subject or citizen of theirs could ever emigrate to the other country and become a citizen of the other country without the express assent of his native land.

"That, sir, was the universal doctrine of the civilized world at that time. We held to that doctrine for many years, until, in 1848, James Buchanan—to his eternal credit be it said—as Secretary of State of the United States, first announced the repudiation by the Government of the United States of that theory and declared the inalienable right of man to change his domicile and to change his allegiance at his own will.

"There were varying views expressed. After Mr. Buchanan, with views reverting to the old doctrine, came Webster and Everett and Marcy, until Buchanan became President, and then he again asserted his view, and so effectively that it has never been departed from by the United States. It was asserted by Buchanan as President. It was reasoned out by Jeremiah Black as Attorney-General of the United States, in dealing with the Ernst case, that arose regarding the effect of the naturalization here of a citizen of Hanover. In that case, by the action of these great statesmen, to whom sufficient honor has never been given for the firmness and constancy with which they asserted that view—in that case the position of the United States was irrevocably changed, repudiating the view she had taken at the time this treaty was made and repudiating the view under which she gave in this treaty her assent to the right of the Emperor of Russia to prevent the emigration of his subjects."

Although Mr. Buchanan was the logical candidate of his party for President in 1848, he did not press his candidacy; and he yielded to the supposed availability of Pierce in 1852. From his victorious rival he accepted the post of Minister to England, and no ambassador from America was ever more gracious to the Court of St. James, notwithstanding he had dealt firmly with British power and pretension in the Oregon boundary dispute.

Delicate diplomatic questions were skillfully handled; with England our chief contention revolved about Central American affairs, and the construction of the Clayton-Bulwer treaty. The
Earl of Clarendon and the American minister pitted against each other made a situation in which our government never figured other than creditably; and the relations between these two international lawyers, as shown by later personal correspondence, must have been of almost boyish affection. On one occasion the subject of arbitration came up between them. Buchanan said if it were not impossible he would rather take his country's chances before the Court of Queen's Bench than any sovereign the English would select. Clarendon answered laughingly that just as likely as not Campbell (meaning the Lord Chief Justice) would decide against them.

IV.

Unquestioned leadership and success at the bar of a great county and in a judicial district like Lancaster—a hundred years ago—could not be attained without merit. To supplement this with brilliant service in the State Legislature and in both branches of Congress, to fitly fill the chairmanship of the Judiciary Committee in the House and of Foreign relations in the Senate; to have been offered the high professional honors of legal adviser of one President and a place in the Supreme Court by another, to have conducted skillful diplomatic negotiations as minister to two of the great powers of Europe, and to have guided an Executive administration, as its premier, through two brilliant victories, one of peace and one of war, one with the Anglo-Saxon antagonist, and the other with the Mexican foeman, surely gave proof of claims to the fame of a great American lawyer; and ordinarily. I might rest my thesis here with confidence. But the "avenging" pen of false history, poisoned with prejudice, has laid upon me the task of vindicating Mr. Buchanan as a lawyer from the foul and even wicked aspersions that have been cast upon his career as President. There is no phase of our history . . . that has been so grossly misunderstood and so basely misrepresented as the relation of President Buchanan to the issues that plunged the country into civil war soon after he retired forever to private life. You, young gentlemen, who assume that history is fairly written, may be readily pardoned for accepting the familiar idea that Mr. Buchanan, as President, at
the outbreak of the secession movement, was a weak, timid, old man; who had gained his place by the favor of, if not through a bargain with, an arrogant, unscrupulous, slaveholding oligarchy of the South; that he was an accessory after, if not before, the fact, to the plot of a partisan majority of the Supreme Court to withhold the Dred Scott decision until after his election and then make it cover a point not vital to it, for unscrupulous political purposes; that he was the tool of crafty Southern leaders, who used him and his cabinet to bring to successful issue long predetermined plans to break up the Union; that in the development of these, he permitted, if he did not connive at, the weakening, scattering and disintegrating of the armed forces of federal power on land and sea, the distribution throughout the Southern States of great and disproportionate quantities of muskets, rifles and cannon, so that the impending Confederacy might have a long start on the Union forces in physical preparation for armed conflict; that he obstructed Congress in its efforts to avert rebellion and war, or to properly, promptly and effectively meet it when declared; that he drooped the colors of presidential dignity when he treated the envoys of defiant rebellion with a consideration due only to foreign ambassadors; that he parleyed over the re-inforcement of federal forces in government forts until the Confederates could rally enough troops to capture them; that he repudiated the right to assert some existing constitutional executive power to levy war against a rebellious state government or the people of a rebellious commonwealth; and that when he quit the office, March 4, 1861, he was succeeded by a firm, resolute, patriotic successor, whose policies, methods and executive acts, in striking contrast with, and immediate reversal of, Mr. Buchanan's, asserted the proper presidential prerogative, antagonized rebels, roused patriotism, reinforced forts, inspired Congress, raised armies, established national credit, waged war; and, with a combination of Jefferson's statesmanship, Jackson's courage, Washington's patriotism, Hamilton's skill and Webster's enthusiasm, after four years of civil war, the expenditure of ten billions of treasure and the loss of a half million human lives, accomplished what Mr. Buchanan could have done bloodlessly and economically had he not been a dotard or a traitor!
On the other hand the incontrovertible facts of history are that Mr. Buchanan was no more of a disunionist than Mr. Lincoln, and not nearly so much of one as Seward, Greeley, Beecher or Wendell Phillips; that the doctrine of secession, the right of a State to withdraw from the Federal Union, was not solely indigenous to the South and was never countenanced by Mr. Buchanan; that the views of the Buchanan administration on the constitutional right of the executive to coerce a seceding State, or to make war on its people, were exactly those then held by substantially all the great lawyers, judges and statesmen of the country, including Abraham Lincoln; that there was no spoliation of the public treasury, no apportionment of the federal military equipment, nor dispersion of the navy in the interest of any particular section; that in his efforts to maintain peace and prevent dismemberment of the Union, Mr. Buchanan was more aggressive, positive and definite than was Mr. Lincoln at the time; that his Secretary of State, during the time the secession movement was organizing, was more courageous and determined than Mr. Lincoln's premier, even after rebellion became far more defiant and threatening; that the attitude of Lincoln's administration toward the Confederate agents of peace was more conciliatory than Buchanan's; that in his efforts to preserve peace and effect a compromise, Mr. Buchanan had the encouragement and support of an overwhelming majority of the Northern people, and was hearkening to the almost unanimous voice of those who represented their great moral and material interests; that no act of his hastened or encouraged the outbreak of hostilities, and that nothing he might have done and left undone, could have checked, prevented or suppressed the rebellion and the ensuing war; that Mr. Lincoln's utterances against force, invasion of Southern territory and resort to arms, from the time of his election until his inauguration, were much more emphatic for peace and conciliation than Mr. Buchanan's; that a Republican House of Representatives and Congress, as a whole, during that period, did nothing, and did not offer to do anything, to justify or support the President in assuming any other attitude toward the South or its rebellion than he assumed—in short, that Mr. Buchanan did no
less than Mr. Lincoln would or could have done in his place during those four months, and Mr. Lincoln did, dared and said nothing before, at or immediately after his inauguration to show he was not in full accord and sympathy with the policies of the Buchanan administration.

A very eminent American historian, with whom I have had much controversial correspondence on this subject, finally writes me that the only fault he has to find with Mr. Buchanan as a statesman and lawyer, is that, being from a free State, he had not oppose the odious Fugitive Slave law; and that being in a position to suppress the incipient rebellion, he allowed it to proceed to the point of successful warfare.

I would not detract from the popular fame of Mr. Lincoln, albeit myth and mysticism have contributed largely to the ideal character which prevailing historical judgment ascribes to him. But it is altogether fair to compare his conduct and contrast his utterances with those of Mr. Buchanan, to ascertain whether contemporary history has been just and impartial in its estimate of their respective character and conduct. I assert with absolute confidence as to their attitude toward slavery that Mr. Buchanan was never more insistent that it should be let alone in the States where it existed and that the fugitive slave law was constitutional and should be enforced than Mr. Lincoln. Their differences were wholly as to the conditions which should govern it in Federal territory. Down to and long after his inauguration Mr. Lincoln reiterated his intention to not disturb slavery where it existed and to enforce the Fugitive Slave Law.

From the time Mr. Buchanan entered public life until he withdrew from it, no political party of any considerable strength and no public representative with any considerable and continuing constituency either asserted or demanded freedom or civil rights for the enslaved negro. No President, no Federal Court, no Congressional declaration and no platform of any recognized party ever claimed that slavery could be abolished in any State except by the action of the State itself. Lewis Cass and Thomas H. Benton, Daniel Webster and Henry Clay, Salmon P. Chase and Abraham Lincoln, and a hundred others—who concurred
entirely with Mr. Buchanan in these views—are lauded as patriots and Unionists and friends of freedom, while a lot of so-called historians poison “history” and the popular school books with aspersions of Mr. Buchanan as a “Bourbon,” “pro-slavery Democrat,” “traitor,” “disunionist” and the like, for cherishing the same views as those who are extolled as liberty-loving souls.

The first Republican National Convention, in which Lincoln was voted for and Fremont nominated, neither denied nor disputed the legal and constitutional right of slavery in the States where it existed. It claimed no Federal right to interfere with it. It expressly recognized and affirmed the constitutional doctrine that escaping slaves must be delivered up to their owners. Neither Abraham Lincoln nor the National Republican convention of 1860, before Lincoln’s election, ever made any declaration against the legal and constitutional existence of slavery in the States where it existed, nor against the enforcement of the Fugitive Slave Law of 1850; and the Republican Convention of 1860, and Mr. Lincoln in his speeches as a candidate, expressly and distinctly declared for “the maintenance inviolate of the rights of the States and especially of the right of each State to order and control its own domestic institutions according to its own judgment exclusively”—by which declaration it was understood—and it was intended to be understood—that the Republican party of 1860, and its Presidential candidate, Abraham Lincoln, recognized and respected the right of each slave State to continue and maintain, under its own regulation, the institution of human slavery, free from Federal interference or disturbance by any other State. After his election and upon his inauguration Mr. Lincoln pledged himself to the slave States to regard and maintain the institution of human slavery. He assured “the Southern States that by the accession of a Republican administration, their property and their peace and personal security are not to be endangered.” He declared that he “had no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it existed. I believe I have no lawful right to do so and I have no inclination to do so.”

The Buchanan administration was mostly discredited by the
turbulent proceedings over the declaration and determination of what was the actual verdict of the people of Kansas on the question of slavery under its state government. The attempt of what was stigmatized as the "border ruffian" element to falsify that verdict reacted terribly against the political fortunes of the Democratic party. The outrages committed on both sides during that fierce and bloody contest were reprehensible; and it may be conceded that the slavery forces were by far the more aggressive, insolent and unscrupulous. It was a party blunder on the part of the Buchanan administration not to recognize this, or, if it was recognized, not to admit it was a political crime; albeit Kansas was finally admitted as a free State, President Buchanan signing the bill.

It may also be conceded that the Dred Scott decision, so far as it involved the unconstitutionality of the Missouri Compromise and held that the condition of slavery could not be excluded from the territories, was an unnecessary political blunder—and, being unnecessary, was therefore a political crime. But Mr. Buchanan was no party to that deliverance; and the brilliant, bitter and mendacious speech in which Senator Seward arraigned him and Taney for conspiracy, has long since been proved false. But, if as President he acquiesced in the judgment of a competent and supreme tribunal, he only acted upon Abraham Lincoln's advice, who declared at the same time:

"We believe . . . in obedience to and respect for the judicial department of the government. We think its decisions on constitutional questions, when fully settled, should control not only the particular cases decided, but the general policy of the country, subject to be disturbed only by amendments to the Constitution as provided in that instrument itself. More than this would be revolution."

The fundamental error and sin of slavery was in the assumption that there could be property in human flesh and blood. In this error and sin the whole nation shared. The smallest possible segment of the people of the United States differed from this view; and yet, the legality and morality of that institution once conceded, the Dred Scott decision and its results logically followed. If, the black slave was only a beast of the field, there
was no reason why his owner should not take him and his servitude at will into any Federal territory and reclaim him from escape into any free state.

A noted agitator of revolutionary changes in our system of government has singled out Mr. Buchanan's devotion to the constitution and his submission to the Dred Scot decision as an illustration of the imbecility and weakness of an Executive. May I remind you and him that the President of the United States takes an oath of fidelity to the laws and of submission to such interpretation of those laws as the Supreme Judicial power shall make.

It is as untrue as it is unjust to assert that Mr. Buchanan's strict regard for constitutional law withheld him from suppressing the rebellion by force at a time when those who succeeded him and his party in power would have acted otherwise. The Republican national platform of 1860 denounced "the lawless invasion of armed force of the soil of any State or Territory, no matter under what pretext, as among the gravest crimes." Mr. Lincoln, on his tour eastward to take the inaugural oath of office, publicly said: "The marching of an army into South Carolina without the consent of her people, and with hostile intent toward them, would be invasion; and it would be coercion, also, if the South Carolinians were forced to submit." This was as extreme a declaration of States rights and against Federal coercion as any utterance made by President Buchanan up to that time.

Because these indisputable facts have been suppressed, concealed, disregarded or ignored by notable historians of this period, I have ventured to present them, not only for the truth of history, but lest the misrepresentation unanswered should destroy Mr. Buchanan's just claim to a high place at the American bar.

Not only the country at large, and even the city of his home, have been cruel to his memory, but the Commonwealth of which he was native and which he so ably and honestly represented in the seats of the mighty has done him the injustice of gross disrespect and neglect. In the great mural decorations of the new State Capitol an inspired artist, whose figures in his
“Apotheosis of Pennsylvania” were doubtless suggested to him by some political historian, has found two score subjects without including the only Pennsylvanian who ever rose to the highest office in the nation. Nor is there a mark of him elsewhere, though the exquisite bronze doors are ornamented with portrait heads that have peered through prison gratings; and in the virgin-white marble niche on the grand stairway stands the chaste and spotless statue of the late Senator Quay. The ornamentation of this great pile of architectural splendor may not, however, be entirely completed!

A year or two before he died, reviewing his career at the bar and in public life, Mr. Buchanan wrote, “I pursued a settled, consistent line of policy from the beginning to the end, and, on reviewing my past conduct, I do not recollect a single important measure which I should desire to recall, even if this were in my power. Under this conviction, I have enjoyed a tranquil and cheerful mind, notwithstanding the abuse I have received, in full confidence that my countrymen would eventually do justice.”

For this he may long wait; the judgment of his own conscience, I am sure, never tarried nor faltered.

Bishop Stubbs says finely in the preface to his Constitutional History of England:

“Constitutional History has a point of view, an insight, and a language of its own; it reads the exploits and characters of men by a different light from that shed by the false glare of arms, and interprets positions and facts in words that are voiceless to those who have only listened to the trumpet of fame. The world’s heroes are no heroes to it, and it has an equitable consideration to give to many whom the verdict of ignorant posterity and the condemning sentence of events have consigned to obscurity or reproach.”

W. U. Hensel.
APPENDIX.


On the 21st of December, 1830, a resolution to inquire into the expediency of repealing the twenty-fifth section of the Judiciary Act of 1789 was referred to the Committee on the Judiciary of the House of Representatives. A majority of the committee made an elaborate report in favor of the repeal. Mr. Buchanan's minority report, which had the concurrence of two other members, caused the rejection of the bill presented by the majority by a vote of 138 to 51. The following cases have been collected for the purpose of showing the importance of the jurisdiction thus saved to the Supreme Court:

The 25th section of the Judiciary Act of 1789 is now embodied in Section 709 of the Revised Statutes, with some slight changes of phraseology and some additional clauses. The substance, however, of this organic law remains the same. As the law now stands, the Supreme Court may review the final judgment or decree of the highest court of a state in which a decision could be had in three classes of cases where a Federal question is involved:

(1) Where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision of the State court has been against their validity; or

(2) Where is drawn in question the validity of a statute of, or an authority exercised under, any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity; or

(3) Where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held, or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed by either party under such Constitution, treaty, statute, commission, or authority.

Without discussing the requisites and limitations of this appellate jurisdiction, it will perhaps be sufficient for the purposes of this appendix to note, that it extends to criminal as well as to civil cases; and may be exercised regardless of the citizenship of the parties; and is wholly irrespective of the amount in controversy.

1 U. S. Sts. at L. 85.

2 The modifications were first introduced by the Act of Feb. 5, 1867, 14 Sts. at L. 385, §2. For a discussion of the changes made by this Act see Murdock v. Memphis, 20 Wall. 590 (1875).


4 Cohens v. Virginia, 6 Wheat. 264 (1821).
Early in our constitutional history the momentous question whether a charter constitutes a contract between the granting State and the corporators, within the "Contract Clause," 8 was decided in the affirmative in Trustees of Dartmouth College v. Woodward, 9 on appeal from the Superior Court of New Hampshire. This decision had two important effects: (1) The reservation by the States of the right to alter, amend, or repeal, the charters of corporations; and (2) the development of the doctrine that all contracts, including charters are subject to a reasonable exercise of the police power. 10 In Fertilizing Co. v. Hyde Park, 8 it was said that every charter is subject to the police power of the State. So the legislature cannot, by chartering a lottery company, or an oleomargarine company, defeat the will of the people of the State authoritatively expressed in relation to the continuance of such business in their midst. 9

Under its appellate jurisdiction from the State courts, the Supreme Court has held: (1) that a State legislature may make a contract binding on future legislatures to exempt the grantee of a privilege from taxation, i.e., a State may bargain away its taxing power, 11 but such exemption will never be presumed; 11 (2) that a State may sell public land, 12 not under navigable water; 13 (3) that a legislature may grant exclusive franchises, the operation of which does not affect public safety or morals, was decided in the famous Binghampton Bridge case, 14 and affirmed in New Orleans Gas Co. v. Light Co. 15 But as no rights in derogation of the rights of the public will be implied, where a charter says nothing about the right being exclusive, the legislature is free to grant a similar franchise to another company, though it practically destroys the value of the first grant. This was decided in the Charles River Bridge Case. 16 (4) Other cases have held that a State may make binding

9 4 Wheat. 518 (1819).
10 For an excellent definition of the police power see opinion of Chief Justice Redfield in Thorpe v. R. R. Co., 27 Vt. 149 (1854) and for a broad statement of the general doctrine see Lawton v. Steele, 152 U. S. 133 (1894). See also 1 Watson on the Constitution, p. 596, for a discussion of the police power and the recent cases, state and federal, on the subject.
11 97 U. S. 659 (1878).
15 New Jersey v. Wilson, 7 Cranch. 164 (1812).
17 3 Wall. 51 (1865).
18 115 U. S. 650 (1885).
19 11 Pet. 420 (1837).
contracts in re rate regulation. But in no other respect can one legislature restrict an exercise of the police power by subsequent legislatures.

The Supreme Court has frequently been called upon to exercise its appellate jurisdiction where a violation of the Fourteenth Amendment has been alleged in a State court; and the importance of this jurisdiction is apparent upon glancing at the cases dealing with this amendment alone. In Davidson v. New Orleans, the court suggested the difficulty and danger of attempting an authoritative definition of what it is for a State to deprive a person of life, liberty, or property without due process of law; and held that the annunciation of the principles which govern each case as it arises is the better mode of arriving at a sound definition. One of the leading cases in this group is the Slaughter House Case, which held that the privileges and immunities protected by this amendment were those which owe their existence to the Federal government; and that it was not the intention to transfer to the Federal government the protection of all civil rights, or to take a step which would radically change the whole theory of the relations of the State and Federal governments to each other. A decision of great importance to our railroads is C., M. & St. P. Ry Co. v. Minnesota, which held that a State could not by legislation decide what are reasonable charges, and deprive the carriers of their rights to a judicial inquiry as to the reasonableness of such rates. Another "due process" case of particular local interest is Marchant v. P. R. R., which arose out of the extension of the Pennsylvania railroad into Broad Street, Philadelphia. The court held that the construction of an elevated railroad on private land abutting on a public street gives the owner of land on the opposite side of the street no claim to recover consequential damages for injury inflicted upon him thereby.

Strander v. West Virginia and Carter v. Texas decided that State laws which prevented negroes being drawn as grand jurors deprived a negro defendant of equal protection of the laws. In L'Hote v. New Orleans a city ordinance providing for a "Restricted District" was sustained, it not being a denial of equal protection of the laws. Many cases involving classification have reached the Supreme Court under this jurisdiction, the question being whether the State law violated this "equal protection" clause.

A recent case of great importance to companies doing business

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18 96 U. S. 97 (1877).
19 16 Wall. 36 (1872).
20 134 U. S. 418 (1892).
21 153 U. S. 380 (1894).
22 See American Sugar Co. v. La., 179 U. S. 89 (1900) and McLean v. Arkansas, 211 U. S. 539 (1909).
within a foreign State is Southern Ry. Co. v. Greene,\textsuperscript{26} holding that while a State may have power to exclude or determine upon what conditions a foreign corporation may enter its borders to do intra-state business, yet after it has permitted a company to come into its borders, and the business is such that it requires the investment of large sums in permanent property, it is not a reasonable classification to impose upon such foreign corporation a heavier tax than is laid on home companies engaged in the same business.

In nearly every State, as well as in the United States, there is constitutional provision that a person shall not be forced to be a witness against himself. However, a State law requiring one to testify, but providing that his testimony should not be used against him in the State courts, was held constitutional, even though the evidence could be used against him in the Federal courts, in Jack v. Kansas.\textsuperscript{27} And in Twining v. New Jersey\textsuperscript{28} it was decided that exemption from compulsory self-incrimination in the State courts is not secured by the Constitution, nor does the Fourteenth Amendment require exemption from compulsory self-incrimination in the courts of a State that has not adopted the policy of such exemption. Keerl v. Montana\textsuperscript{29} questioned, but did not decide, whether putting one in jeopardy a second time was prohibited by this amendment.

In view of the present agitation to protect the working classes Holden v. Hardy\textsuperscript{30} and Knoxville Iron Co. v. Harbison\textsuperscript{31} are interesting, holding that a State may limit the hours of work of those engaged in dangerous or unhealthy employments and may compel employers to pay all wages in cash.

Davidson v. New Orleans,\textsuperscript{32} Spencer v. Merchant,\textsuperscript{33} and Norwood v. Baker\textsuperscript{34} deal with the power of a State to tax a particular class for a public improvement which peculiarly benefits those on whom the extra burden is thrown; and are of particular interest to owners of real estate.

Head v. Amoskeag Manufacturing Co.\textsuperscript{35} raised the constitutionality of the New Hampshire Mills Acts, which allowed a lower riparian owner to raise his dam to the damage of a higher owner upon making compensation. The case seems to be based on the theory that everybody in the State has an interest in all the property in the State, and not solely the holder of the legal title. This is one of the few instances of the exercise of the police power in which the person injured is entitled to compensation. For an application of this doctrine to the problem of irrigation see Clark v. Nash.\textsuperscript{36}

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\textsuperscript{26} 216 U. S. 400 (1910); and see W. U. Tel. Co. v. Kansas, 216 U. S. 1 (1910).
\textsuperscript{27} 199 U. S. 372 (1905).
\textsuperscript{28} 211 U. S. 78 (1908).
\textsuperscript{29} 213 U. S. 135 (1909).
\textsuperscript{30} 169 U. S. 366 (1898).
\textsuperscript{31} 183 U. S. 13 (1901).
\textsuperscript{32} 96 U. S. 97 (1877).
\textsuperscript{33} 125 U. S. 345 (1887).
\textsuperscript{34} 172 U. S. 269 (1898).
\textsuperscript{35} 113 U. S. 9 (1885).
\textsuperscript{36} 198 U. S. 361 (1905).
\end{small}
The recent decision in Noble State Bank v. Haskell goes farther than any case for the power of a State to take private property under the police power, the Supreme Court holding that a State may compel State banks to pay five per cent. on their average deposits toward a guaranty fund to secure depositors in all the State banks.

Likewise many of the most important cases under the Commerce Clause have come before the Supreme Court on writs of error to State courts. The License Cases, overruled by Leisy v. Hardin, as a result of which decision the Wilson Act was passed, deals with the power of a State to prohibit the sale of liquor within its borders. In Plumley v. Massachusetts the doctrine of Leisy v. Hardin is restrained in its application to the case there actually before the court; the court holding that the earlier case is not authority for the proposition that a State is powerless to prevent the sale of articles of food brought from another State if their sale will cheat the purchasing public into buying something they do not intend to purchase, and which is wholly different from what its appearance imports.

The Passenger Cases, which held State statutes imposing taxes upon alien passengers arriving at ports of those States unconstitutional, as a regulation of commerce in a matter of national concern, is important in view of the immigration to our country. In 15 Wallace two leading commerce clause cases are reported, both of which came before the Supreme Court on writs of error to the Supreme Court of Pennsylvania. These cases also illustrate a State's power to tax a corporation engaged in interstate commerce. Perhaps the most important taxation case ever decided by the court of last resort is case of the State Tax on Foreign-Held Bonds in which the court clearly defined a State's power of taxation, declaring that it was limited to persons, property and business, and that state tax laws have no extra-territorial operation.

In Munn v. Illinois, it was held that a State regulation of grain elevator charges was not a violation of the commerce clause, notwithstanding they are used as instruments by those engaged in interstate commerce. And this case is of even greater importance on its public service side, holding that when the owner of property devotes it to a use in which the public has an interest, he, in effect,
grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public as long as he maintains the use.

Pennsylvania R. R. Co. v. Hughes 47 raised the question whether a State may require common carriers in the exercise of interstate business to be liable for the whole loss resulting from their own negligence, a contract to the contrary notwithstanding. A bill of lading had been given in New York for carrying a horse to a point in Pennsylvania, containing a clause limiting the carrier’s liability. The courts of New York and the Federal courts permit a common carrier to limit by contract its liability for its own negligence; but according to the common law of Pennsylvania it cannot so limit it. The court held that while Congress had the power, under the commerce clause, to provide for contracts for interstate commerce permitting the carrier to limit its liability to a stipulated valuation, it had not yet sanctioned such contracts; and in the absence of Congressional legislation on the subject, a State may refuse to recognize such a contract and may hold the carrier for the whole loss.

As a result of the Civil War several important cases came before the Supreme Court under this jurisdiction. Whether the depreciated paper currency was legal tender in payment of debts contracted before the Legal Tender Acts had been passed, was a question that concerned all, especially the debtor and creditor classes. In Hepburn v. Griswold, 48 the court decided this question in the affirmative; but this decision was flatly overruled in the Legal Tender Cases, 49 one of which was an appeal from the Supreme Court of Massachusetts. The legality of the Test Oaths was before the Supreme Court in the case of Cummings v. Missouri, 50 and the importance of its decision against their legality can hardly be over-estimated.

Prigg v. Commonwealth, 51 holding unconstitutional a fugitive slave law of the State of Pennsylvania, on the ground that Congress alone was given power to legislate on that subject by the Constitution; 52 and Strader v. Graham, 53 deciding that slaves did not become free by being allowed to pass occasionally into free States, though decided years before the war, are mentioned in this group as important forerunners of the Dred Scott Decision, 54 so often mentioned in unwarranted attacks on President Buchanan.

Many interesting cases have come before the Supreme Court from the State courts in respect to public lands, and involving titles derived from the United States. The jurisdiction of the Supreme Court in these cases was settled in Ross v. Borland. 55

47 191 U. S. 477 (1903).
48 8 Wall. 693 (1869).
49 12 Wall. 457 (1872).
50 4 Wall. 277 (1866).
51 16 Pet. 539 (1842).
52 Art. IV, §2.
53 10 How. 82 (1850).
54 19 How. 393 (1856).
55 1 Pet. 655 (1828).
case involved the construction of the act by which Virginia ceded the Northwestern Territory to the United States. Wallace v. Parker. Several cases grew out of the Louisiana Purchase territory and lands ceded by Spain, the most important being Lessee of Pollard's Heirs v. Kibbe. Other cases have been appealed on the ground that rights under a treaty were involved.

The Supreme Court has been called upon to exercise this jurisdiction where it appeared that a State court had failed to give full faith and credit to a judgment of a Federal court, or to the public acts, records, and judicial proceedings of another State; where the question has been whether a State law violated the prohibition against States issuing bills of credit. Decisions as to legal tender or the medium of payment have often come up for review. Still other instances of questions within this jurisdiction are those arising under the Homestead Laws, the State Insolvent Laws, and the Navigation Laws. But to give the Supreme Court jurisdiction the State law must be repugnant to some provision of the constitution or laws of the United States or some authority exercised under them. And, therefore, where a question arose in a State court whether an ordinance of the City of New Orleans violated religious liberty, the court held it had no jurisdiction, since the constitution makes no provision for protecting the citizens of the respective States in their religious liberty. Fermoli v. The First Municipality of New Orleans. It should also be noted that to give this appellate jurisdiction, the statute, the validity of which is questioned, must have been passed by a State; therefore a law passed by the Legislature of a Territory is not within the operation of the judiciary act.

6 Pet. 680 (1832).
7 14 Pet. 353 (1840). See also Chouteau v. Eckhart, 2 How. 344 (1844). Carondolet v. St. Louis, 1 Black, 179 (1861); and on the general subject of titles derived through the United States see Shively v. Browly, 152 U. S. 1 (1894) and Mobile Transportation Co. v. Mobile, 187 U. S. 479 (1903).
9 Crescent City Live Stock Co. v. Butcher's Union Slaughter House Co., 120 U. S. 141 (1887).
12 Trebilcock v. Wilson, 12 Wall. 687 (1871); Woodruff v. Miss., 162 U. S. 291 (1896); R. R. Co. v. Texas, 177 U. S. 66 (1900).
14 Sturges v. Crownshield, 4 Wheat. 122 (1819).
16 31 How. 589 (1845).
17 Scott v. Jones, 5 How. 343 (1847); Miners' Bank v. Iowa, 12 How. 1 (1851).
Under this jurisdiction the Supreme Court has twice been asked to decide contests over the election of governors. In Boyd v. Thayer, the court took jurisdiction because the conclusion of the Supreme Court of Nebraska involved the question of the claimant's United States citizenship. But in Taylor v. Beckham, the court held that the office of governor was not property in itself, and no federal question being involved, the court had no jurisdiction.

In the recent case of Bailey v. Alabama, the court defined a peon, and held that the words "involuntary servitude" have a larger meaning than slavery; that the Thirteenth Amendment prohibited all control by coercion of the personal service of one man for the benefit of another. So State legislation which seeks to compel service or labor, by making it a crime to fail or refuse to perform it, is unconstitutional.

Worcester v. Georgia was an appeal under Section 25 of the Judiciary Act by a missionary convicted under a State law making it a crime to enter an Indian Reservation without a license from the governor. In reversing the conviction, the court held that since the Indians were independent nations the State had no control over reservations, even if the reservation was within the borders of the State.

This collection of cases would be incomplete without a reference to M'Culloch v. Maryland, which has ever since been a leading case in our Constitutional law. That case came before the Supreme Court on a writ of error to the Court of Appeals of Maryland. These important questions were involved: (1) The right of the United States to establish a corporation for the purpose of carrying into effect powers delegated to the Federal government; (2) a State's power to tax such an instrumentality of government. See also Logan County Nat. Bank v. Townsend and California Bank v. Kennedy, the leading case on the legality of a national bank owning stock in another corporation, and the liabilities attaching to such ownership.

The importance of the jurisdiction retained to the highest court in the land by this triumph of Federal centralization is well summed up in the words of Mr. Carson as "a cession of power to the Supreme Court of more consequence to the States than the necessary and proper cause itself." 

C. L. Miller.

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4 143 U. S. 135 (1892).
5 178 U. S. 548 (1900).
6 219 U. S. 219 (1911).
7 6 Pet. 515 (1832).
8 4 Wheat. 316 (1819).
9 139 U. S. 67 (1891).
10 167 U. S. 362 (1897).
11 Carson's His. of the Sup. Ct. of the U. S., p. 245.