

AN ESSAY  
ON THE  
LIFE, CHARACTER AND WRITINGS  
OF  
JOHN B. GIBSON, LL. D.

By

William A. Porter

An Essay  
On The  
Life, Character and Writing  
Of  
John B. Gibson, LL. D.  
Lately Chief Justice of the Supreme Court of  
Pennsylvania  
By  
William A. Porter

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I RESPECTFULLY DEDICATE THESE PAGES

TO

MY STUDENTS

W. A. P.

## PREFACE.

The writer of the following pages esteems it an act of justice to the subject, and of fairness to the reader, to state their origin. He was prompted to write them by a sense of obligation, both to the intellect and to the personal kindness of Judge Gibson, and he intended them to form an article in a Periodical to which he has occasionally contributed. Before much progress had been made in the work, it began to exceed the bounds usually allotted to such articles, and he abandoned it. A casual glance subsequently cast on the materials collected, induced him to suppose them worthy of preservation in their present form. If mistaken in the supposition, little harm has been done. Truth only has been written, and the reader has the power to determine how much of it he will read. That portion of the author's time which has been devoted to the subject, has been taken from the cares of professional life, and has left him the gainer. If this had been otherwise, he would have found sufficient motive to the work. The fame of a great jurist, becomes the common property of the profession. If they do not protect and cherish it, who will?

W. A. P.

Philadelphia, October, 1855.

## AN ESSAY.

The design of this essay is sufficiently indicated by its title. In the case of so distinguished a man it is remarkable that no similar effort has yet been made in print. I except, of course, the beautiful eulogy — a picture, rather than a discourse — delivered on the occasion of his death, from the bench which he had so long adorned. On every ground a more extended tribute to his genius seems appropriate, for during nearly half a century, no man in Pennsylvania did more to strengthen and improve that literature which is the chief glory of the law. Time sufficient has now elapsed to cast a mellowing tint over the unavailing regret with which we view the departure of the living, and to enable us to pronounce with less partiality on the qualities which have challenged our applause.

All that I expect to accomplish may be stated in a few words. I propose to sketch the leading events in the life of Chief Justice Gibson; to interweave with the narrative such reflections as it may naturally suggest; to trace his intellectual progress by the landmarks set up in his own writings; to note incidentally the advancement made during the same time by our jurisprudence; to examine his qualities as a judge; and to portray his character as a man. To the theme itself, I can demand the attention of the reader; for the mode of its discussion, I may require his indulgence.

The parents of Mr. Gibson resided at the date of his birth, on the 8th of November, 1780, in Shearman's Valley, then Cumberland, now Perry County, Pennsylvania. His ancestry on the side of his father originally Scotch<sup>1</sup>, and then Irish, pass generally under the name of Scotch-Irish — a people whose story is entitled to an important place on the page of history. It is known that they were a body of men driven from their own country to the north of Ireland by the persecution of the Stewarts, there to remain for a few generations, and then year by year to find with us a more congenial home. Fortunately, enough remained behind to assist in relieving one of their royal oppressors of his head, and another of his crown; and enough were driven off to form a valuable element in American colonization. In Pennsylvania, their settlements were more widely diffused than in other portions of the Union, and they have always constituted an important part of its population. Quiet, peaceable, laborious, lovers of order, lovers of justice, republicans by nature and by adoption, drawing a pure religious faith from the well of living waters, and bowing the knee to no power but that of the King of Kings, it may well be doubted whether amid the varied phenomena attending the settlement of the colonies, we received any people more exactly suited to the wants of the country, or the genius of her institutions. To the present day they retain their distinctive peculiarities. Let any traveler in the interior of Pennsylvania turn aside to one of their un-ambitious dwellings, and he will find as much kindly hospitality, as much purity of life, as much cheerfulness and content, as much accurate information on all questions of public and private interest, as he can find among the people of any rural district in the bounds of civilization. As the German has generally been able by his superior foresight and wealth, to pitch on the limestone valley, and as the Scotch-Irishman has sometimes been obliged to betake himself to the slate or shale land, such an inquirer may find the latter poor in the goods of this world, oppressed with the cares of a family, and broken by unremitting toil, but nowhere else will he find a being more devoted to his country, more just to man, or more loyal to God.

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<sup>1</sup> In Scotland the family name was Gilbertson.

In a letter written from Carlisle on the 7th July, 1851, to a friend<sup>1</sup> in Philadelphia, Judge Gibson gives the following particulars respecting his maternal ancestry, which, it will be perceived, were of a somewhat different stamp. "You ask about my maternal relations. My mother was Anne, daughter of Francis West, a substantial freeholder, descended from an Irish branch of the Delaware family, probably before it was ennobled. The peerage is an English, and, I believe, an existing one. My maternal grandmother was a Wynne. Owen Wynne, the head of the family, is, or lately was the first commoner in Ireland, and refused a peerage. Through the Wynnes, we are connected with the Coles of Enniskellen. Another connection, not so reputable, was the famous Colonel Barre, the associate of Wilkes in his politics and his vices. My mother was born at Clover Hill, near Sligo, in 1744, and came with the family to this country about 1755. She died on the 9th February, 1809. I believe her father had been a Trinity College boy, for he spoke Latin after the fashion of his day."

The same letter contains this description of his early life, &c., "I was born among the mountains of Cumberland. \* \* \* Fox hunting, fishing, gunning, rifle shooting, swimming, wrestling, and boxing with the natives of my age, were my exercises and my amusements. My mother, who having been educated in Philadelphia, was qualified for the task, directed my reading, and put such books into my hands as were proper for me. We had from one to two hundred volumes, Burke's Annual Register included. and I read all of them so often that they are as fresh in my memory as if I had read them yesterday. My poor mother struggled with poverty during the nineteen years she lived after my father's death, and having fought up gallantly against it, till she had placed me at the bar — died." She was certainly a noble soul, but the little talent of the family came from my father's side; I should say genius, for he had no talent at all. He was celebrated as a humorist, and even a wit, but though without a positive vice, he never could advance his fortune, except in the army, for which alone he was qualified."

His father was Col. George Gibson, who served with distinction in our Revolutionary war. He commanded a regiment at the defeat of St. Clair, in 1791, and expired on the field on that memorable day, covered with honorable wounds. His wife and four children survived him. Francis and William, the elder two, died at an early age. General George Gibson, who has for many years held an important position in the army of the United States, is believed to be now the only survivor. The son whose fortunes we are to follow was the youngest member of the family.

I know of no other point in the narrative, at which I can more appropriately insert the following scrap of poetry. It is given as it will be found printed in the Model American Courier of 19th November, 1853. It certainly contains nothing to increase the author's fame, and like Judge Story, with his elaborate poem on Solitude, he would probably have gone to more trouble to repress it than to write it. I present it as reflecting a mild and gentle light on the scenes of his youth. The statements which precede it are believed to have been written by himself.

#### RETROSPECTION.

*On revisiting the dilapidated Birth-place of the writer, after an absence of many years.*

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<sup>1</sup> John William Wallace, Esq., to whom the writer is indebted for several facts in the life of Judge Gibson, which would otherwise have escaped attention.

(A FIRST AND LAST ATTEMPT. )

The home of ray youth stands in silence and sadness:  
None that tasted its simple enjoyments are there;  
No longer its walls ring with glee and with gladness;  
No strain of blithe melody breaks on the ear.

The infantile sport in the shade of the wild-wood,  
The father who smil'd at the games of the ball.  
The parent still dearer who watch'd o'er my childhood,  
Return not again at Affection's fond call.

And the garden — fit emblem of youth's fading flowers:  
No fawn-footed urchin now bounds o'er its lawn:  
The young eyes that beam'd on its rose-cover'd bowers,  
Are fled from its arbors — forever are gone.

Why memory cling thus to life's jocund morning?  
Why point to its treasures exhausted too soon?  
Or tell that the buds of the heart at the dawning,  
Were destin'd to wither and perish at noon?

On the past, sadly musing, oh pause not a moment;  
Could we live o'er again but one bright sunny day,  
'Twere better than ages of present enjoyment,  
In the mem'ry of scenes that have long pass'd away.

But Time ne'er retraces the footsteps he measures;  
In fancy alone with the Past we can dwell:  
Then take my last blessing, lov'd scene of young pleasure  
Dear home of my childhood — forever farewell.

In the spring of 1795, young Mr. Gibson was placed in the grammar school connected with Dickinson College, and about two years afterwards, was matriculated as a student in that institution. The destruction of the College buildings by fire in 1804, and the lapse of more than half a century, have left no authentic record of his progress or even of his graduation. We cannot but remark the circumstances under which he was sent to College. Here was a widow of very slender means, contriving to educate a son at one of the first literary institutions of his country. Why not deposit in some safe place the money thus hazarded, to remain there until his arrival at manhood, and then to be consumed in vanity and folly? For such a course, abundant precedents could have been found then as now. Down to the present moment, the effect of disregarding

them may be traced in the jurisprudence of a million and a half of people. Who shall predict the results which may flow, even to one generation, from the cultivation of a human intellect?

At the period of Mr. Gibson's entrance into Dickinson College, the presidential chair of the Institution was filled by Charles Nisbet, D. D., whose attachment to the American cause had made him an exile from his native land, and whose love of letters and science had given him a just celebrity in the country of his adoption. His pupil retained through life, a grateful recollection of the advantages he derived from the instructions of this celebrated teacher. In the seventeenth volume of the Port Folio, (January, 1824) he published a memoir of his preceptor, equally creditable to the author and to the subject of it. I extract this sentence: — "His lectures on criticism and taste are particularly admired by those who are competent to judge of their merit. As a preacher, there was nothing to strike the senses in the character of his eloquence: yet he never failed to fix the attention of those who could dispense with the graces of personal exterior, and be satisfied with a manly and fervent piety, with sound doctrine, with strong and original conceptions, and with a masterly arrangement of argument and matter, delivered in a downright natural manner, and in a plain but polished style." At page 327 of the same volume of the Port Folio, will be found an engraving of the monument erected to the memory of Dr. Nisbet, in the burial ground at Carlisle, Pa., "for the drawing of which," says the editor, "we are indebted to the pencil of our friend, J. B. Gibson, Esq., one of the Judges of the Supreme Court of this Commonwealth." The drawing appears to evince some artistic merit; and this is a convenient place to observe that Judge Gibson possessed peculiar skill in that department of art. He could at any time sketch by a few dashes of his pen, admirable likenesses both of men and things. Many a dull speaker who has been encouraged by the energy with which the Judge's pen moved, might have found on his notes, little more than a most excellent representation of the speaker's face. Occasionally, on his forgetting to destroy such efforts, they have passed round the Bar to the amusement of all but the sketcher and the sketched. His taste also extended to paintings, in which he was regarded as a competent critic.

On the completion of his collegiate course, he entered on the study of the law in Carlisle, in the office of Thomas Duncan, with whom he was afterwards to occupy a seat on the bench of the Supreme Court. In this preceptor he was equally fortunate. The name of Judge Duncan occupies a respectable place in our judicial annals. His manners were kind and simple; his habits of investigation, patient and systematic; his powers of discrimination cultivated by study, and by intercourse with the acutest minds of his day; his style, both of speaking and writing, easy, natural, graceful and clear; and his acquirements quite equal to those of his predecessors on the bench. In that day the learning of the profession was confined mainly to special pleading and real estate. The former attracted the attention of students by its utility in practice, by the profound and intricate nature of its principles, and by the satisfaction which, when mastered, it imparts to the mind. The doctrines of real estate were investigated with care, because in the state of the country, the settlement of titles to land necessarily formed the bulk of every lawyer's business. Of commercial law, we had next to none. No bank had then been chartered by the State to do business exclusively out of the city of Philadelphia, and that city had but three banks within its limits. Partnership, negotiable paper, and insurance were terms whose import differed widely from their import now. The carrying trade of the country was done mainly in the "Conestoga wagon," and as this required in each case, but one wagon and one set of horses and harness, the time had not arrived for that union of capital and labor so essential to the success of large

commercial enterprises. Where credit was small, and labor was paid for in cash, or by an exchange of commodities, negotiable instruments were comparatively unnecessary. So little were insurances known out of Philadelphia, that according to the recollection of persons now living, when a bill was introduced into the legislature to incorporate the first life insurance company of the State, it was scouted and rejected as a vain effort, if not to affect by pecuniary considerations the length of human life, at least to trifle with that which belongs to the dominion of a Higher Power. In the absence of the usual subjects of commercial decision, we could have little commercial law. — The jurisprudence of England, though some centuries older, exhibited almost equal dearth. Lord Holt had here and there laid a foundation stone in such cases as *Coggs v. Bernard*, 3 Salkeld, 11, on the liability of common carriers, and these had been improved by Lord Mansfield in many such cases as *Heylyn v. Adamson*, 2 Burrow's 669, on the steps necessary to fix an endorser, and by Lord Loughborough in such others as *Lickbarrow v. Mason*, 1 H. Blackstone, 357, on the right of stoppage in transitu. But all that had then been done will be found to bear feeble comparison with the generous contributions which have since been made to that department of legal science. In this branch, therefore, we must suppose that neither preceptor nor pupil had made any considerable attainments in the outset of his career. I think it might be shown by citations from his opinions, that Judge Duncan's taste inclined more strongly to special pleading than to real estate, and that his accuracy in that department was greater than in the law of property. We shall see that his pupil acquired eminence in the entire three branches; certainly in our Pennsylvania land law; while of our mercantile law, he must be regarded as a chief architect.

On the 8th of March, 1803, on motion of Mr. Duncan, he was admitted to the bar of Cumberland County, and entered on the practice of the law in Carlisle, afterwards for a short time in Beaver, Pa., and then in Hagerstown, Md. It is known to his friends that he always refused to include in the computation of his age, the time he spent in Hagerstown. It is related on good authority, that having on one occasion, in the presence of his brethren of the bench, who knew his age exactly, stated it as somewhat less than it really was, and resolutely re-affirmed it, a calculation was proposed, and readily assented to by himself. They started with the date of his admission to the bar, with his stay in Carlisle, and were about to include the time spent at Hagerstown, when the Judge with good-humored violence, broke up the count, and refused to let it proceed, — inveighing strongly against the injustice of charging him with that item of time, and assigning numerous reasons, which it will not be necessary to chronicle here. At the lapse of two years and a few months, he reopened his office in Carlisle, and continued the practice of his profession in Cumberland and the adjoining counties until his appointment to the bench.

During the period of Mr. Gibson's practice at the bar, and for some years preceding it, the professional field in Pennsylvania had been occupied by a race of lawyers of rare powers. Of those who practiced in the eastern and north-eastern portions of the State, (excluding Philadelphia,) the names of Dick, Sitgreaves, Ross, Ewing, Spering, Patterson, Shaw, Pawling, Evans, Wells, Griffin, Dimmick, Cross, Mott, Hall and Graham, may be mentioned. The west had Jas. Ross, Brackenbridge, Addison, Lyon, Woods, Mason, James and Parker Campbell, Alexander, Mountain, Foster, Steele Semple, Collins, Simonson, Young, Baldwin and Kennedy. In the counties lying between these extremes there were Shippen, Watts, Duncan, Hale, Yeates, Darlington, Hemphill, Duer, Kittera, Montgomery, Hopkins, George Ross, Hubley, Charles Smith, Jenkins, Passmore, Barton, Elder, Fisher, McLean, Laird, Graydon, Biddle, Spayd, Reed

and Bayard. But time would fail me to tell of all. Many of them were men of the very first order of intellect. In professional learning and ability, they seem to have imbibed much of the spirit bequeathed to them by Hamilton and by Francis, the only two lawyers in Pennsylvania, whose reputation has survived the lapse of a century. In important land causes throughout the State, they were accustomed to enter the lists with the lawyers of Philadelphia, then enjoying supremacy of reputation throughout the Union, and they proved themselves the equals of the former in all but the good fortune of making so permanent a record of their fame. They were in the main, bold, intrepid, self-reliant men, — independent in their thoughts and habits, — of strong impulses and understandings, and capable by an eloquence suited to the people and the occasion, by superior knowledge of the country and its customs, of prevailing in many a well contested battle over their more polished visitors. Let not the reader be surprised that these lawyers should be spoken of as learned men. It is true they had few books. In 1800, the only Pennsylvania law books were three volumes of Dallas' Reports. Not a volume of Johnson's Reports and not a volume of Massachusetts Reports had been published. Perhaps I ought to say, that with the exception of Mr. Dallas', not one volume of any regular series of Reports had been published on this side of the Atlantic. Story had not been admitted to the bar, and the design of writing a commentary had probably never entered the mind of Kent. Having few books, they studied them well. A lawyer who was disposed to read must take Bacon & Coke and authors of that stamp or not read at all. In such companionship^ he must become saturated with the very elements of the science; for nothing in the history of the law is mo surprising than to observe how few sound principles have been originated in the vast publications that have since deluged us. — The men of that day had another characteristic. Their physical labors gave them a degree of bodily vigor and energy, which of itself was no inconsiderable obstacle in the way of an antagonist in the trial of a cause. From 1791 to 1806, there were but five judicial districts in the State, and there were lawyers who practiced in a majority of them. Now we have twenty-five. A county then, was not what a county is now. In 1800, Lycoming embraced all the territory which lies between the Allegheny River and the western line of Luzerne County, bounded on the north by the State of New York, and on the south by Northumberland, Mifflin, Huntingdon, and Westmoreland. Its population entitled it to one representative in the legislature. Thirteen entire counties and portions of several others now occupy the same space. Northampton County embraced chiefly what is now Wayne, Pike, Monroe, Carbon, Lehigh, and Northampton. These are illustrations. Dispensing law in a parlor with the assistance of a well stocked library is difficult enough, but transporting it in the crown of the hat on horseback over a rough mountain road, must be equally so. I venture to suppose, that if a sudden requirement were now made on the denizens of certain destitute frontier settlements on Walnut street and its vicinity, to mount horse and display their prowess in this manner, a few retainers (if any such continue to be paid,) could not fail to be returned with what reluctance soever, to their original possessors. Of a truth, the lawyer of the present day is intrinsically, and extraneously, physically and mentally, a different man from the lawyer of fifty years ago. The early life of Judge Gibson was passed with the latter, and no man's character can be understood without the light which flows from the associations that have surrounded his youth.

His success at the bar appears to have been equal to that of the majority of practitioners in the country at that period of time. In reading our reports, I observe but three cases in which he appeared before the Supreme Court. The name occurs in others, but I have satisfied myself that the counsel there referred to, was Mr. James Gibson, who is mentioned in flattering terms in the

opinion delivered in *Hobbs vs. Fogg*, 6 Watts, 555. The first case which Mr. J. B. Gibson is reported as having argued, is that of the *Comth. v. Crevor*, 3 Binney, 121, which involved a question of interest on a sum of money received by the sheriff, and deposited in bank under an agreement of the parties, but afterwards withdrawn by the sheriff without their consent. His opponent was Mr. Duncan, and his colleague, Mr. Watts, and the judgment of the Supreme Court was in favor of his client. In his next case, *Commonwealth v. Blaine*, 4 Binney 186, he was not so successful. The point which he raised was curious. The Act of 29 March, 1788, in regard to the births of negro children, directed that an entry should be made in the book of the Clerk of the Peace of the county, in which the master or mistress lived, within six months next after the birth of the child, which entry should set forth its age, name, and sex, &c., under the penalty of forfeiting all right and title to the child, who it was provided should, in case of omission of the entry for six months, immediately become free; and the entry was to be verified by the oath of the person who made it. The defendant on the 26th of June, 1807, made an entry of the birth of the relator in the case, and described him as having been born on the 2d of January, 1808, which of course was impossible. Mr. Gibson contended that the registry was void, and that the negro was free; that the intention of the act was to provide record evidence of the time of the relator's freedom; that it should be construed most strictly in favor of liberty; and that where the owner made by his own fault a registry which was unintelligible and impossible, it was no registry at all. The court, however, differed from him and remanded the negro to the claimant. — The remaining case was that of the *Commonwealth vs. Harkness*, 4 Binney, 194, which decided that in forcible entry and detainer, although the indictment does not set out an offence on the part of the defendant, yet in the event of an acquittal, the jury may require the prosecutor to pay the costs. His argument, as reported by Mr. Binney, seems to be a conclusive answer to that of Mr. Watts, who was retained on the other side, and the Court in an opinion delivered by each judge sustained him. — It is proper to remark that the number of the cases in which he appeared in the<sup>^</sup> Supreme Court is by no means a fair criterion of the extent of his practice, for in that day it was less common than now to carry cases to the Court of last resort.

In respect to his deportment to clients, a rumor has prevailed so widely and with such universal credit as to warrant its repetition here. It is said that he had become at this time, as he ever afterwards continued, a votary of music, and that when clients knocked at the front door, the sound was frequently overcome by the strains which proceeded from a violin in the hidden recesses of the office. I am unable to vouch for the entire correctness of the story, or to recommend it as an example for imitation. If true, the instance was unique. Euripides, in his *Medea*, is careful to tell us of the power of Orpheus over the rocks and the trees, and Plato mentions that when the same personage followed his lost wife to Hades, the charms of his lyre suspended the torments of the damned. This was very well for those times. But neither poet nor philosopher has been bold enough to inform us of the existence of any melody sufficient to satisfy modern clients. I certainly have heard few musical airs rapid enough to accord with their excited emotions, or •slow enough to suit their ideas of the march of justice, or sweet enough to purify the turbid and bitter waters which litigation lets loose. Whether or not the rumor respecting these exploits of our young practitioner be true, it may serve to show a popular impression that if he wanted clients, the want was ascribable to other causes than the I absence of learning and skill.

The question naturally occurs on taking leave of Mr. Gibson's professional life, whether he was fitted to attain eminence at the bar. Certainly, unless his habits of thought and expression had taken a very different turn, he never would have become a successful advocate. He subsequently studied the law profoundly, and evinced real genius for it. He was master of its nicest distinctions, and as capable as any other man of applying them to the practical affairs of life. But these qualities have never yet made an eminent advocate. A man of good sound intellect, well cultivated by philosophical studies and vigorously applied, may readily acquire them. The test of success at the bar is the capacity to influence a court and jury, and it may be applied almost indiscriminately. It was the great power of Erskine, the most brilliant production of the English bar, as it would have been of Fox, his more solid competitor in the House of Commons, if he had been a lawyer. On the other hand, Burke, with all his powers, would as certainly have lost any man's cause as he was sure to clear the House by one of his immortal speeches; an observation to which even the result of the Hastings' impeachment furnishes no ground of exception. It was the great power of Lewis, Pinkney, Wirt, Dexter, Emmet, Webster and Sergeant. No man who heard John Sergeant, for example, in a deliberative assembly, or before a court in banc, or even in a consultation where his great wisdom placed him out of the reach of common men, could form any opinion of his powers until he heard him before a jury. It was only when in a case largely affecting character or property, when in his peculiar attitude he drew close to the jury, his frame agitated, his eye flashing and his voice choked by excitement almost to a whisper, you could see how tremendous a grasp he was capable of taking of the very hearts of his hearers. It is true/that without profound legal learning, this power could no more be exerted in a court of justice than a man could fly without wings, but with the profoundest learning alone it could no more be exercised than a man could fly with wings. It is a mysterious and indescribable faculty. One man may address a jury, fluently, correctly, agreeably, and with apparent force, and not one word leave the slightest impression on opponent, judge or jury. A man of awkward manners may reply, confused and embarrassed in his opening, setting at defiance all rules of elocution, and entirely unattractive to the mass of the audience: and you shall find every word of that man to pierce the very heart of his adversary; you shall see jurors opposed to him up to that moment, unconsciously nodding to each other, as much as to say, I told you so, and it shall require all the strength of a strong judge to restrain them from injustice. Like the wind, it bloweth where it listeth and we cannot tell whence it cometh nor whither it goeth. Oftentimes, it is probably exercised most unexpectedly to the speaker himself; and again, like the remorseless spirits in the play, it may be sedulously summoned without response. Preparation frequently spoils it, and in the absence of preparation it is sounding brass. Without it no man can rise to eminence in the profession of the law. He may browbeat well and distort well; he may be able to cite cases by the hour and to assert the existence of everything in a case except what does exist, to ferret out facts, to cross-examine skillfully, to render doubtful everything that is certain, and to sustain by show of reasoning the most paradoxical positions; but in all this he is like a child setting up his toy windmills, which shall be torn to atoms by the first breath which nature in her agony breathes over the scene. A portion of the effects of spoken eloquence has been attributed by philosophers to the effect of mere sound on the ear, just as the highest and best music, when not a word is uttered or understood, will fill the mind with deep emotion. But certainly one of its most indispensable elements is the language in which it is uttered. In our language, it must be natural, simple Saxon; a language not only agreeable to the ear, but equally well understood both by learned and unlearned. A man may accustom himself to express his thoughts on paper in stiff, inverted, Latinized, Johnsonian English; and this may suit his own purposes sufficiently well; but

if he is ever the advocate of another man's cause, in which every word he utters must tell on the tribunal he is addressing — where no preparation or previous arrangement is possible — where he must reply to everything his opponent has advanced, and leave nothing in his own track to be replied to— he will lay aside such a style as necessarily as a coat of mail would be put off by a mechanic working at his anvil. The pertinency of these observations has doubtless been apparent. The style of Judge Gibson was well adapted to the uses to which he put it. It possessed, as we shall see, many of the highest and rarest characteristics of judicial writing. To every extent in which he had employed such a mode of conveying his thoughts at the bar, he would have signally failed. Other disqualifications may also have existed. He possessed no aptitude for that exhausting physical labor so essential to success in the practice of the law. When well roused, the entire professional mind of the state knows what he was capable of producing; but both his mind and his body seemed incapable of exertion, even to the pitch of writing, unless urged by the excitement of a great subject. Of the practical inconvenience of this, he frequently complained. — I resume the narrative.

In 1810 he was elected by the Democratic party of Cumberland County, a member of the House of Representatives of Pennsylvania, and served as such in the sessions of 1810-11, and 1811-12. His appearance at this time is recollected by many persons yet on the stage. He was considerably over six feet in height, with a muscular, well proportioned frame, and a countenance expressing strong character and manly beauty. Until the day of his death, although his bearing was mild and unostentatious, so striking was his personal appearance, that few persons to whom he was unknown, could have passed him in the street without remark; youth and vigor must have rendered his presence even more commanding. In the business of the House he bore at least a useful part. Beside giving the customary attention to affairs pertaining to his own county, and affecting his own constituents, he originated numerous measures of public importance. The legislature convened on the 4th of December, 1810, and on the 15th of December, he moved for the appointment of a committee, "to bring in a bill to abolish the right of joint tenants to take by survivorship, and to make real estate held in joint tenancy, divisible " The resolution was adopted, and throughout the session he seems to have labored for the passage of the bill with unusual diligence. On every occasion it was called up on his motion, (pp. 100, 290, 306, &c., of the Journal.) But he was not successful in passing it until the succeeding session. — In the spring of 1811, the impeachment proceedings against Thomas Cooper, then President Judge of the Eighth Judicial District, had begun to occupy a share of public attention, and on the 7th of March, Mr. Gibson was appointed one of the committee to consider the complaints against him. On the 27th of March, the committee reported the draft of an address to Governor Snyder for the removal of the Judge from his office. Against this address, and the doctrines which it advocated, Mr. Gibson placed on record a written protest, which will be read with interest, and may be referred to with advantage, in any similar proceeding. It is written in clear strong English, and contains a sound constitutional argument on the causes for which the legislature may petition for the removal of a judge. I make the following extract as a specimen of its reasoning and style:

"The constitution clearly distinguishes between cases which are the subject matter of impeachment, and cases proper to be redressed through the medium of the legislative address. The framers of that instrument intended to secure to every person accused of a criminal act, the right of being heard in his defense before punishment could be inflicted; and although in the present case, the accused has been heard at the bar of this House by his counsel, yet it will not be

pretended that this hearing was granted as a right, but as an indulgence, which the House might have refused if it had thought proper. This is not that kind of hearing which the constitution contemplates; it secures a right not dependent on the will of any branch of the government. But can we answer that the Senate, before concurring with this resolution, will also hear the Judge and his witnesses in his defense? This House has no control over that body, which may, if it pleases, refuse him that courtesy. In case both branches of the legislature shall address the Governor, he shall have been heard but by one. How can it be said that he was heard fully and fairly? To prevent evils of this nature, which possibly might have happened, the framers of the Constitution appear to have been unwilling to rest the matter wholly upon the ninth section of the bill of rights, which declares, "That in all criminal prosecutions the accused has a right to be heard by himself and counsel, &c, They have therefore made the Senate a Court to enquire into and punish on articles of impeachment, such crimes and misdemeanors as cannot well be redressed in the ordinary courts of justice. The matters cognizable by the Senate sitting as a Court are distinctly defined, and over those matters that body has exclusive jurisdiction as far as respects removal from office, the end to be attained by conviction. In article four, section three, of the Constitution, it is declared, 'The Governor and all other civil officers under this Commonwealth, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust or profit under this Commonwealth.' The acts of misconduct detailed in the report of the committee fall directly within the description of misdemeanor in office: they are charged to have been done by the judge on the bench, and in the execution of his judicial functions, and if they amount to misconduct at all, it must be official misconduct, and consequently they are misdemeanors in office.

But the framers of the Constitution appear to have had in view, not only to secure an impartial trial to the accused, and an acquittal in case his innocence was made to appear, but also that in case guilt was established by the event of such trial, the person convicted might be disqualified from holding an office subsequent to such conviction. The appointment to office of a man whose want of integrity had been established by conviction, was to be sedulously prevented, and most particularly so, with regard to a judicial office; a judge being the administrator of justice, above any officer, should possess integrity. But a judge removed upon an address of the legislature, may the next day be reappointed to the same office from which he was so removed. We think it is evidently intended that when an officer is removed at all for corruption or an official crime he shall be removed effectually,"

The independence of the stand which he took in this proceeding, may be appreciated by the fact that out of ninety-five members of all parties, he was joined in his dissent by only four — Thomas Graham of Luzerne, Jacob Holgate of Philadelphia, John W. Cunningham of Chester, and Matthew Brooke of Montgomery; so highly had the tide of popular sentiment run against the Judge.

It was probably the position taken by Mr. Gibson on this occasion that led to the intimacy which afterwards subsisted between himself and Judge Cooper. On the death of the latter, in 1840, Judge Gibson furnished to Professor Vethake, a sketch of the life of his friend, which will be found in the sixteenth volume of the Encyclopaedia Americana. He there passes in review his attainments in the natural sciences, in chemistry, anatomy, and medicine, his matriculation at the

University of Oxford, his residence at the Inns of Court, his attendance on the circuits, his deputation from one of the democratic clubs in England to the party of the Gironde in France, Edmund Burke's denunciation of him in the House of Commons and Mr. Cooper's reply, his establishment as a bleacher and calico printer at Manchester, his practice as a lawyer in Northumberland, Pa., his prosecution under the sedition act, his appointment as President Judge and the effort at his impeachment, his appointment as professor of chemistry in Dickinson College, afterwards in the University of Pennsylvania, and then as President of Columbia College, South Carolina. The sketch concludes with a notice of his numerous works on law, medicine, politics, metaphysics and divinity. It is the history of a very extraordinary man, concisely and clearly written. In reference to the legislative proceedings against him in 1811, the author remarks, that "becoming obnoxious to some influential men of his own party, a complaint of arbitrary conduct was got up against him, and so artfully fomented before the legislature, that he was removed by legislative address." But this sentiment must be received with some grains of allowance for the partiality of the writer. If Judge Cooper had been guilty of one-tenth of the ridiculous and almost incredible acts proved against him, he was certainly a most incompetent presiding officer in a court of justice.

At the Session of 1811-12, Mr. Gibson was appointed Chairman of the Committee on the Judiciary, then, probably, a better test than it would be now, of advancement in public estimation. Early in the session, he presented a report from a Committee appointed respecting a contested election in Montgomery County, which displays accuracy and care in the investigation of the subject. His labors in behalf of the bill to abolish joint tenancy were revived thus: "On motion of Mr. Gibson and Mr. Anderson, ordered that an item of unfinished business relative to the laws respecting joint tenancy and the extending of real estate, be referred to the Committee on the Judiciary system." The bill passed finally on 31st March, 1812, and it has since been regarded so important a provision in our law of real estate, as to have remained entirely undisturbed, and to have led to similar legislation in other States. As Chairman of the same Committee, he reported a bill "for the more effectual organization of the Courts of Common Pleas within this Commonwealth." He was also a prominent member of the Committee on Roads and Inland Navigation, and in that early day threw the weight of his character in favor of the system of internal improvements, which has since placed the State so far in advance of the mass of the States in the Confederacy. Without going into more tedious details, these may serve as illustrations of the services which he performed in the legislature.

On the 12th of October, 1812, in Carlisle, Penna., he was married to Miss Sarah W. Galbraith, the daughter of Major Andrew Galbraith. Major Galbraith had been a gallant officer in the war of independence, and had been taken prisoner on Long Island with a number of the Pennsylvania troops, who chose to stand their ground in defense of their country, on that day so disastrous to its arms. His daughter, Mrs. Gibson, having passed with her husband a long and tranquil life, yet survives him, fortunate above most of her kind, in the privilege of having spent it in the society of so gifted an intellect, and fortunate also in the impression which her understanding and deportment invariably made on the friends of her husband. Their family consisted of eight children, five of whom survive their father.

On the 16th July, 1813, Mr. Gibson was appointed President Judge of the eleventh Judicial District, composed of the Counties of Tioga, Bradford, Susquehanna and Luzerne. He had now

entered a new sphere. The duties and qualifications of a lawyer and of a judge are necessarily widely different. The business of a lawyer is to plead a cause; the business of a judge, to be right in his decisions. A lawyer is to undertake a case which fairly appears to be just, to state the facts of it in the most effective manner, and to urge with his utmost power, the reasons and principles which support it; a judge is at the peril of his character to see that by no mischance or design the law is misapplied, and injustice wrought to either party. A lawyer who performs his duty faithfully, prepares diligently and presents the cause of his client with clearness, fairness and force, may gain reputation and find consolation in the midst of disaster, because it is no part of his duty to insure success; but a judge who is led aside from the right by sophistry or prejudice, who takes the rule for the exception or the exception for the rule, and fails to pronounce the law as it has been established, by whatsoever splendor of rhetoric or acuteness of reasoning he may announce the result, but in that degree signals the loss of his reputation and attracts plunderers to the wreck. All men admit the necessity of the judicial office in civilized and perhaps in savage life; but how few of its incumbents left to their own reflections without the assistance of forensic discussion, and particularly discussion of the facts, would be capable of reaching a just and satisfactory result! The profession of the law is therefore as necessary as the office of the judge. Since the dawn of civilization it has existed, and how far soever it may sink, it will exist while the administration of justice shall endure. But all eminent lawyers will not make good judges. It is a fact worthy of observation and susceptible of explanation, that our best judges, both in America and in England, have been furnished in men who were not eminent as practitioners. K the digression were not already too wide, this might be illustrated by reference to individual cases embracing the whole range of the law, and extending very nearly to the present time. The explanation is not difficult. A lawyer hears but one side of a cause, prepares for one side, argues one side; and if it were not for the practice of giving written opinions, it would be next to impossible for any man's intellect to resist the warping influence of such a state of things. On the other hand, a judge ought to be and usually is, engaged in nothing but that most difficult of all human employments, the ascertainment of truth and the settlement of it by firmer landmarks. To the general fact we shall see that the career of Judge Gibson furnishes no exception.

He remained on the bench of the Common Pleas somewhat less than three years. Of the manner in which he discharged his duties as a judge of that Court, it is impossible after this lapse of time to speak with accuracy. He has left no monument of his labors. Like the fruits of much of the best ability of the State displayed in the same sphere, they perished on the spot without a record to perpetuate their worth. The few survivors of those who practiced in his Court, describe him as exhibiting much energy in the transaction of judicial business, but too much impulsiveness in his judgments, both of legal affairs and of human nature. Even at that early day; it is admitted that he attracted the attention of learned lawyers throughout the commonwealth, and that his opinions were held by them in high consideration. The same vigor of thought and acuteness of intellect, had doubtless begun to display themselves, which afterwards shone so conspicuously on every page that received his opinions.

On the 27th of June, 1816, he was brought more prominently before the public by receiving from Governor Snyder the appointment of an Associate Justice of the Supreme Court, in the place of Hugh H. Brackenridge, deceased, and he was succeeded in the presidency of the Common Pleas by Thomas Burnside, whose career on the bench, and in the state and national councils, is fresh in the recollection of all. This appointment seems for the first time to have roused his intellect,

and to have fired his ambition. It withdrew him from companions in the country to whom his warm affections and genial temper had greatly endeared him, and this fact, while it lost him the means of much agreeable relaxation, delivered him from numerous temptations to indolence and dissipation. It withdrew him also from politics, — the grave of a vast amount of intellectual force, which, if devoted to the practice of the law, might at least have earned for itself a more respectable name. In Philadelphia, where the Court sat for the longest period in the year, he mingled much less than at a subsequent part of his life, in general society, and was much less known to all classes of its citizens. The reason or the result was that he had become more devoted to study. He seems at length to have formed the resolution to make himself master of the law as a science. At some time in his life it is evident that he was a diligent student of Coke. No reader of his opinions can fail to be struck with the frequent and pointed illustrations which they draw from that author. Doubtless the quaintness of his style, the careless and disorderly mixture of things great and small, and those unceasing covert puffs of Littleton which everywhere meet the reader, amused the new student as much as they have amused lesser men, while the grasp of his author's intellect, the severity of his logic, and the abrupt, direct, forcible, and natural expression of his thoughts, waked strangely agreeable emotions in a mind conscious of the possession of vast but slumbering power. There have indeed been few lawyers worthy of the name, who have not been familiar with the commentaries and reports of Coke. Eminent jurists have advanced the opinion that no student could read them without catching enough of the author's spirit to give the reader an important impulse in his professional studies. This is possible; but I apprehend the effect of his writings may be traced to other causes. They are the great source of law learning. The natural dread of every practitioner unacquainted with them, that his antagonists possess more learning than himself, forces him back to the fountain-head. In a few years he returns, established in a confidence which no assumption of erudition in others can shake. When driven into the lowest depths of legal investigation, he stands like a man in deep water, whose feet rest on solid ground. Unless nature has endowed him beyond her usual allotment to mortals, he cannot be sure of his footing, until the foundations of the system have been thus explored. In the case of Judge Gibson's study of Coke, I feel confident, from all the evidence I have obtained, that it was mainly pursued within a few years after his elevation to the Bench of the Supreme Court.

That Court had jogged on from the period of its origin, with but three judges on the bench. It was now to experience important and rapid changes. Under an Act passed by the General Assembly on the 8th of April, 1826, increasing the number of judges to five, Molton C. Rogers and Charles Houston were respectively commissioned by Governor Shultz, on the 15th and 17th of April, 1826. But little more than a year had elapsed, when another change was occasioned by the death of Judge Tilghman. "He continued," says Mr. Binney, "to preside in the Supreme Court with his accustomed dignity and effect, until the succeeding winter, when his constitution finally gave way, and after a short confinement, on Monday, the 30th of April, 1827, he closed his eyes forever." "It will be long," adds his eulogist, "very long, before we shall open ours upon a wiser judge, a sounder lawyer, a riper scholar, a purer man, or a truer gentleman." "Such," he concludes, "is the praise of the late Chief Justice Tilghman. He merited, by his public works and by his private virtues, the respect and affection of his countrymen; and the best wish for his country and his office is, that his mantle may have fallen upon his successor." That successor was the subject of the present sketch, who had been commissioned Chief Justice on the 18th of May, 1827, and whose place in the ranks of the associates had been supplied by the appointment

of Judge Tod, in the same month. We shall see that the wish thus expressed by the orator was not unfulfilled. The powers of the new Chief Justice seem to have caught a fresh impulse from the eminence to which they had conducted him. Even then, his style was no mean vehicle of judicial thought; but it soon acquired infinitely more massiveness, compactness, and polish. His original style, compared to that in which he now began to write, was like the sinews of a growing lad compared to the well-knit muscles of a man. No one who has carefully studied his productions can have failed to remark the increased power and pith which distinguish them from this time forward. The gradual and uniform progress of his mind may be traced in his opinions, with a certainty and satisfaction which are probably not afforded in the case of any other judge known to our annals.

In the year following his appointment as Chief Justice, the friends of General Jackson, whose cause he advocated with as much warmth as was consistent with a judicial place, desirous to secure for their candidate the highest measure of popular confidence, placed the name of the Chief Justice at the head of their electoral ticket for Pennsylvania, and the ticket thus nominated received in the State an almost unprecedented majority over the vote cast for any other candidate.

On the 19th of November, 1838, he resigned his commission of Chief Justice, and was re-appointed by Governor Ritner. This act received at the time, the censure of a large portion of the press. The Constitution of 1838, which had then been approved by a vote of the people, provided for a change of the judicial tenure, from that of life, to a term of years, and for the gradual extinction according to a prescribed scale, of the commissions then held by the judges; — that is, their commissions were to expire at intervals of three years, in the order of seniority in which they stood on 1st January, 1839. In common with a majority of intelligent citizens in almost every portion of the State, except along its northern boundary, Judge Gibson had been decidedly hostile to the adoption of this instrument, and supposed it the forerunner of disorder and confusion. In this frame of mind, a voluntary suggestion was made by his associates for his re-appointment as Chief Justice, the effect of which would be to prolong for several years his term of office. The proposal seems to have been made and accepted with slight consideration on either side. It was believed that a judge could resign his office at any moment, and that no right to prevent this existed in the people or in any depository of power. It was equally clear that the executive, when the office had become vacant, had the right to fill it by the appointment of any competent person. The constitutional and legal views of the subject were thus believed free from difficulty. Hear his own views as expressed in a letter to W. M. Roberts, Esq., of 13th December, 1838. In the music of his periods there is a sad note, which will find its way to the heart of the reader.

"To me, who for a bare subsistence, had given the flower of my life to the public, instead of my dependent family, a continuance in office for the longest period was a matter of vital importance; but the arrangement of the convention, unintentionally severe to me, or anyone else, proposed to consign me to penury and want, at a time of life when I could scarcely expect to establish myself in practice, which, under the most favorable circumstances, requires several years. This was known to my brethren, and felt by them as men," The measure, since carried into execution, was proposed by one of them on the Western Circuit, and with the assent of another, whose term would be shortened by it. The assent of the other, who stood in the same predicament, was cordially given, as soon as it was mentioned to him. Feeling then, that the personal interest of no

one else was concerned; that it was an arrangement which contravened no principle of public duty; and that if any objection lay to it on the ground of public expediency, it would be enforced by the constitutional arbiter, I permitted a personal friend, with whom I have never coincided in party sentiment, to submit it to the executive for his sanction or rejection."

"No condition, express or implied, was attached to the appointment, nor was it hinted that anything was expected. What could I do for the Governor, or his friends? Personally, I had nothing to offer; for my early retirement from the political arena, had left me without influence, and officially, I had still less."

"And what injunction of the amended constitution, or what presumptive intent of the convention, has been frustrated by the arrangement so harshly complained of? To introduce the favorite principle of rotation, it was necessary to point out the manner of its application in the first instance by fixing some rule of procedure; and the rule of seniority was adopted because it was more definite and convenient than any other. It will not be said that it was adopted with a view to personal considerations, connected with the present judges. If they, or any of them, had died in the meantime, it would have operated exactly in the same way on their successors."

"Had the convention intended that the amendments should fix the destinies of the individuals, before the system should go into operation, it would have said so in terms, instead of saying the contrary. But no such thing was proposed even in debate. Instead of specifying the day of final adjournment as the criterion, which would have been done had the intent been to fix those destinies as of that day, the amendments were left to fix them, expressly as of a day not yet come. Is it not clear, then, that the convention did not mean to concern itself about changes in the mean time? Forbid them, it certainly did not. It was sufficient for the system, without regard to the individual, that the commission of a judge would expire every three years — a result that must as certainly follow, notwithstanding the change of place betwixt the judges, as if no such change had been made. That the convention meant not to discriminate on the score of years or vigor, is manifest from the actual application of their principle, by which the youngest in years was to go out first; and betwixt myself and my brethren who are to be affected by my re-appointment, the difference in that respect is that one of them is six years my senior, and the other one year my junior."

These were the views which influenced his mind in accepting the commission. His motives, no man who knew him could doubt. He was too proud to do wrong, if he had been restrained by no better feeling. No man ever admired more sincerely than he, high and elevated sentiment and conduct on every subject, and no man ever more cordially despised evasion, indirectness or duplicity. This seems to have been admitted by common consent on the part of the political press on both sides, by dropping the subject, and agreeing not to renew the discussion on subsequent occasions when it might have been rendered prominent in party warfare. But it must be admitted that the act was a mistake and an accident to his fame. As such, he afterwards felt it. There was no necessity for it. The people, as we shall see, took the earliest opportunity to re-elect him to his office, at a period when the advance of age had rendered his capacity to serve them less complete than at any time after his first appointment to office. The acts of every man, and emphatically every public man, which relate to others, should be right, and consequences should take care of

themselves; when they relate to himself, they should not only be right, but reasonably clear of the possibility of censure.

In this year, he received from the University of Pennsylvania the degree of Doctor of Laws, an honor which is believed to have been rarely granted by that institution. The same degree was subsequently conferred on him by the University Of Cambridge, Mass., — a spontaneous tribute paid to his worth by the distinguished professors who for so many years directed the law department of that University, and to whom he was known chiefly by the productions of his pen.

In 1848, 1849 and 1850, the principle of an elective judiciary was engrafted on the constitution of Pennsylvania. On the 11th of June, 1851, a convention of one of the political parties of the state assembled at Harrisburg, to nominate five candidates to fill the offices of Judges of the Supreme Court. The only member of the then existing Court who was placed on that ticket was Judge Gibson. The nomination was an act of high homage to his character. It was the result of that feeling. He was more than seventy years of age, — too old, if he had been willing, to accomplish by his own energy anything to promote his nomination, and as unacquainted as a child with partisan politics and with party leaders. In one sense, the nomination was a rebuke to himself. He had seldom lost an opportunity to express his want of confidence in popular action, and his disapprobation of every movement designed to enlarge the boundaries of popular power. He took as little pains to conceal his sentiments on this point as on all others and while he expressed them decorously, he uttered them boldly. It must, therefore, have cost him surprise, if not compunction, to find that in carrying into practical effect the very movement of which he had most horror, the people through their representatives, chose to retain their hold of him as one of their most important public servants. In yet another respect his nomination was memorable. For many years a disposition has prevailed in Pennsylvania, to overthrow rather than to sustain men of distinguished ability. It has long been the subject of remark at home and abroad, that it seems only necessary for a man of more than ordinary capacity to appear in the politics of that state, to be struck at by every other politician, great and small. For this reason, probably, in the sixty-seven years which have elapsed since the adoption of the Federal Constitution, we have not sent to Congress one man in ten years capable of making an impression there, and not more than three or four who could lay claim to high ability. There is scarcely a congressional district in the state from which a member could be returned for more than two terms. So far is the policy pushed, that it is becoming impossible to re-elect any one to an important office within the state, be his ability what it may. The dearth of eminent political men cannot be ascribed to the want of material. The strength, intelligence and cultivation of our people are at least on an average with those of other states in the confederacy. In the liberal professions, we have excelled all others. The bar of Philadelphia has maintained an unrivalled supremacy for a century. Our medical colleges have for the same time supplied with physicians almost the entire south, south-west and west. Our public charities have attracted the admiration of the world and furnished models to the oldest European states. The fact here inveighed against seems ascribable to political men themselves. It originates in narrow jealousy which cannot even gratify itself, and in petty feuds which make us an object of ridicule in less enlightened communities. It has thus far prevented us from having a President, and it may prevent us from ever having one. If the same feeling had prevailed in Virginia and South Carolina, Massachusetts and Kentucky, where then had been the great lights of our firmament? The renomination of such a man as Judge Gibson even to a judicial office, was a notable exception to our usual course of policy. Happy for our

jurisprudence if it remain not an exception I On assuming his seat as an associate justice, after his election in 1851, he appeared to take much less interest than formerly in the proceedings of the Court and much less part in its business. He seemed like a noble bird that had been by some unexpected event thrown into a strange flock, which, whether better or worse, were not his old associates, but, of necessity, widely different and belonging almost to a different age. When occupying his seat on the bench, there was a look of abstraction which told that his thoughts dealt more with the past than with the present. The powers of his mind, however, had lost nothing of their ancient vigor. When he wrote at all, he wrote like himself. During the sessions of the Court in the country, he occupied the bench with his brethren, and delivered an occasional opinion. In Philadelphia, he seemed to prefer to hold the Court of Nisi Prius, for this caused him less labor after the usual court hours. In this mode, for the most part, he performed his duties until the occurrence of that last change which I am to record further on in the narrative.

Having thus traced his progress down to the acceptance of his last office, I proceed to some selections from his published opinions, for the purpose of illustrating his judicial character. I am aware of the hazard of such an attempt. It is like undertaking to exhibit the genius of a sculptor, by means of an arm separated from its trunk, or of a painter, by a handful snatched from the canvass. The idea of attempting to estimate a life of three score years and ten by the light of a few paragraphs, has in it something almost ridiculous; especially so, a judicial life, for many a good judge has been unable to write a good opinion, and many an excellent opinion has been delivered by men of very small capacity to balance one idea against another, and to tell the difference in their weight. But it is this or nothing. To present none of Judge Gibson's written productions, would require the reader to adopt other conclusions than his own respecting the intellectual powers of their author, and not to decide for himself on competent evidence. To bring forward too many, would convert the present performance into that least interesting of all human productions — a digest. Such cases only will be referred to as derive importance from the nature of the subject, the mode of its discussion, or the peculiarities of the writer which they display. Where they fail to interest, they may serve to inform.

Before doing this, it is necessary to say something of the manner in which his judgments have been reported. We have occasionally had excellent reporting in Pennsylvania, but a portion of it cannot be described by any but very uncharitable terms. Some of the volumes are hardly written in English. I am looking now at two of them in my library (not of cases in the highest Court) which I will present to anyone who can show me one page of correct English from the hand of the reporter in the entire two volumes. From such reporting, it is as impossible to obtain an intelligible statement of a case, as to procure it from a chapter of the Koran. The effect on the opinion of the judge is manifest. A good judicial effort may be caricatured by a reporter, just as a gentleman may be made a harlequin by his tailor. The soundest wisdom that ever emanated from the bench may be converted into its opposite, by the statement of the reporter, on which the judge generally does and always should rely. When a single fact is left out, or so stated that, nobody can understand it, much more when a mass of facts are omitted and those which exist are clothed with undue importance, the judge's pen must possess superhuman power, if it could adapt its productions to these arbitrary and unanticipated changes. Judge Gibson suffered from this cause more than judges usually do, for the reason that more than all others, he relied on the statement of the reporter, and concerned himself only with the principles of the cause. We view many of his writings under this disadvantage.

He delivered his first opinion on the Supreme Bench in the case of the Commonwealth vs. Holloway, 2 S. & R. 305, which decided that birth in Pennsylvania gives freedom to the child of a .slave who had absconded from another State before she became pregnant. The style of the opinion is natural and pure, but in conciseness and force it contrasts strongly with that in which he wrote twenty years afterwards.

In Clow vs. Woods, 5 S. & R., 275, he established the doctrine that on a private sale of chattels, retention of possession by the vendor is fraudulent against creditors and bona fide purchasers. From that time to the present, this has been a leading case, and is much relied on in our own and other States. In the excellent note which the American editors have appended to Twyne's case, in Smith's Collection of leading cases, due prominence is assigned it. Anyone who desires to estimate the value of the decision which imparted this direction to the law of Pennsylvania, has only to study the difficulties and inconsistencies in which the Courts of the United States, of Virginia, Kentucky, Illinois, Indiana, New Hampshire, and South Carolina, on the one hand, and Massachusetts, Maine, Ohio, Tennessee, and perhaps Alabama, on the other, have become involved by adopting different rules. The forecast which the opinion in Clow vs. Woods displays, was all that saved our own jurisprudence from similar confusion on a topic so fruitful of litigation.

In Watson vs. Mercer, 6 S. & R. 49, he foreshadows that dissatisfaction with the principles of the common law respecting the rights of married women, which, nearly twenty years afterwards, was to lead to the adoption of our Act of 11th April, 1848. The passage which I transcribe will afford a fair specimen of his style at this period of his life:

"In no country where the blessings of the common law are felt and acknowledged, are the interest and estates of married women so entirely at the mercy of their husbands as in Pennsylvania. This exposure of those who from the defenseless state in which even the common law has placed them, are least able to protect themselves, is extenuated by no motive of policy and is by no means creditable to our jurisprudence. The subordinate and dependent condition of the wife, opens to the husband such an unbounded field to practice on her natural timidity or to abuse a confidence never sparingly reposed in return for even occasional and insidious kindness, that there is nothing, however unreasonable or unjust, to which he cannot procure her consent. The policy of the law should be, as far as possible, to narrow rather than to widen the field of this controlling influence. In England, the courts of equity will not assist the husband to obtain possession of his wife's personal property, although it becomes his absolutely on the marriage before he makes an adequate settlement; here, he has power to obtain her personal estate, not only without condition, but in some instances by means of the intestate acts, even to turn her real into personal estate against her consent. In other countries, the wife's dower, that sacred provision which the law makes for her, in return for the personal property she brought her husband, and in recompense of a lifetime devoted to him and his children, is put beyond the reach of every effort which selfishness or profligacy can make to deprive her of it: in this, it may be swept away by his debts, contracted in the gratification of his vices. In the country whence we derive our laws, the wife's land can be aliened only with her assent, deliberately expressed on a fair, full and careful separate examination in a court of record: in this, the examination is

considered a matter of such little importance, that it is entrusted to a justice of the peace, by whom it is sometimes entirely dispensed with in fact," &c.

In the case of the St. Mary's Catholic Church, 7 S. & R. 517, which produced a violent interest in the community on the occasion of its trial and decision, he delivered perhaps the most elaborate opinion on which, up to that time, his pen had been employed. If his sentiments, as contained in the extract which I am about to make, should become generally known to that new sect of political philosophers which has sprung up in our midst, I see not how his memory could escape canonization. What he says, may at least serve to show that many of the doctrines recently heralded forth, are much older than their advocates suppose them, and that a Judge of the Supreme Court announced them firmly and boldly before many of its leaders were born, and when few other public men could have been found to second them:

"Here, then, is a foreign jurisdiction, in its nature political as well as ecclesiastical, holding and exercising the power of appointing to an office, created by the government of Pennsylvania, for purposes entirely civil and domestic. Can it be said that the Legislature has so far divested itself of power over the subject, as to be unable to resume the right of the appointment and to place it elsewhere? Far be it from me to counsel the Catholics of this country to shake off their spiritual allegiance to the pope: that is their concern, not mine; but I do protest against a right of appointment to a civil office, incautiously granted to a foreign potentate, being held irrevocable by the laws of our own country. With me, it is of no consideration that the Catholic bishop is elected by the Catholic clergy, here or elsewhere: both he and they acknowledge the see of Rome as the source of all their authority, and the supreme power to which they are responsible. It is enough, that our citizens here, whose rights are involved in the government of the corporation, have no voice in nominating or rejecting the pastors who are to sit over them. Will it be said that the annexing of the office of trustee to the office of pastor, as an incident or accessory of the latter is a direct and personal grant of corporate office, to the clergyman who may be in the actual discharge of the pastoral duties? It was never so intended. This union of office was created for temporary purposes of convenience: not to vest a permanent interest in individuals or any ecclesiastical body; and when purposes of convenience will be promoted by the measure, it may be dissolved by the same power which created it, or by those to whom that power has delegated its authority.

In this view, neither the authorities of the church, nor the pastors as individuals, have ground for complaint. By depriving the principal of its accessory, the right of the pope, the bishop, or the individual pastors, which never extended beyond the principal, are left untouched, and precisely as they existed before the union of these two offices. But even should the provisions of the charter amount to a constructive grant of the right of appointment to a foreign potentate, I would hold the grant void on the ground of surprise."

In Lyle vs. Richards 9 S. & R. 322, he delivered an opinion on the law and the practice in Pennsylvania in regard to common recoveries, which illustrates the progress he was making in knowledge and power. Anyone who has studied his writings up to this point, will be slow to believe that he could have written that opinion on the day of his appointment to the bench. Whether he was right or wrong in his conclusion, I suppose the opinion itself to be one of the nearest approaches which our jurisprudence can exhibit to the highest species of philosophical

writing. The following paragraph relates less to the subject than to the man, and less to his powers and attainments than to his peculiarities and tastes. I quote it to exhibit the latter:

"Although this opinion may be received as a legal heresy by the profession, particularly in this city, I do not regret having expressed it; and having stated the reasons which forced my judgment to adopt it, I leave it to its fate. At the worst, however, it will not, I hope, be thought to spring from sentiments of hostility to the English common law. No freeman would hesitate to prefer the hardy features of personal independence of this most excellent system of jurisprudence, notwithstanding the subtlety of its forms and the tediousness of its administration, to the civil law, the code of continental Europe<sup>^</sup> under which justice may be unceremoniously snatched by the hand of power. It is one of the noblest properties of this common law, that instead of moulding the habits, the manners, and the transactions of mankind to inflexible rules, it adapts itself to the business and circumstances of the times, and keeps pace with the improvements of the age. There are undoubtedly principles of remote antiquity which are foundation stones, and cannot be removed without, destroying the beautiful and commodious modern edifice erected on them. But common recoveries are not a foundation alone. They were no part of the original plan, but were introduced, and not very skillfully managed to repair an injury from a violent innovation by the legislature. In this state they have been successfully separated from the structure, and might be entirely dispensed with; but as to a certain extent, they undoubtedly exist, with their rotten parts cut away, I am for allowing them exactly the effect which it seems to me the legislature intended they should have, the effect of barring estates tail, and no further."

In *Sauerman vs. Weckerly*, 17 S. & B. 116, a defendant who had gone to trial on a declaration which contained no date, and on which no issue had been joined, subsequently endeavored to reverse on these grounds the judgment rendered against him, and thus stirred up the indignation of the Chief Justice:

"Precedents are the highest evidence of the law, and are to be followed implicitly where they do not produce actual injustice or some intolerable mischief. But nothing is stronger than the injustice of suffering a party who has gone to trial without plea or issue, or on a declaration in which there are blank spaces for dates or sums, to elude the consequences. An omission to compel the opposite party to perfect the pleadings beforehand, ought to be considered, what it is in justice and truth, a tacit agreement to waive matters of form, and try the cause on its merits; just as going to trial on a short plea is, according to our practice, a waiver of the right to demand a plea in full form. Where it is the business of a particular class of the profession to attend to the pleadings, and prepare the cause for trial, slips are infrequent, and the injustice of applying strict rules of pleading to cases like the present is consequently less annoying. But here, where the attorney is also the advocate, where an almost unlimited indulgence is extended to each other by gentlemen of the profession; and where, in consequence, the pleadings are frequently left unfinished; our sense of justice is perpetually shocked by exceptions like the present. From the same spirit of accommodation arose our short entries or memoranda of the substance of the defense, in lieu of pleadings at large; yet, according to strict rules of pleading, these short rules would be bad on demurrer or a writ of error; and it is not a little surprising that this Court should have had regard to the circumstances, and practice of the profession in the one case, and not in the other. But the discrepancy would be comparatively insignificant were it not for the insufferable mischief of its consequences in cases where counsel are too frequently instigated by

the exigence of the case, to avail themselves of the unimportant errors." — The paragraph which I have quoted is a fair illustration of the effect which mere technical points generally produced on the mind of its author, and of the manner in which he disposed of them.

The Presbyterian Corporation vs. Wallace, 3 Rawle, 109, furnishes an instance of the power of his pen. Willard vs. Norris, 2 Rawle, 56, decided that where land subject to a mortgage had been sold under a judgment younger than the mortgage, the sheriff's vendee took the land discharged of the lien of the mortgage, — a decision which he admits in 3 Rawle, 126, was viewed in a particular part of the State as a portentous novelty." That particular part of the State was Philadelphia, and the profession in this city exercised a controlling influence in procuring the Act of 6th of April, 1830, which placed the law, in most respects, where it stood before Willard vs. Norris had upset it. In the Presbyterian Corporation vs. Wallace, which came before the Court after the Act had passed, on facts which had arisen before its passage, the doctrine of Willard vs. Norris was reviewed by a large number of the very ablest counsel, and the arguments on both sides will be found reported by one of their number, with unusual fullness and clearness. Stung by the action of the legislature, and roused by this new onset, he deals the blows about him, on all sides, with a force so irresistible, and bears himself throughout with a bravery so admirable, as almost to compensate for our regret that the original error had been committed. Few better specimens of legal ingenuity can be found in the books, than his opinion in the Corporation vs. Wallace.

Siter's case, 4 Rawle, 468, contains probably the most elaborate opinion he ever wrote. To be appreciated, it must be read just as he wrote it, and not by piece-meal; but I suppose the following would be regarded as good writing in any department of literature which demanded concise and cogent expression of thought: — "Marriage is in strictness not an immediate gift of the wife's chattels, whether in possession or in action, though it is so in effect, the suspension of her capacity to exercise a dominion over them, and the transfer of it to the husband, as the necessary consequence of the blending of their persons, putting it in his power to assume her title, or transfer it to any one else. Her civil existence enters into, and is consolidated with his, so that they form but one person; but it enters, attended with all the individual powers and capacities, which before resided in her person separately, to be exercised thenceforth by him, through whom alone she can speak and act. That he succeeds to all her personal capacity, is proved by her marriage, when she happens to be an administratrix, which devolves on him the business of the administration, and enables him to act in it without respect to her assent or concurrence; and it is his succession to this capacity that enables him to exercise her personal right of election, under our intestate acts, and thus to divest her title, even to her land. But her title to her choses in action, continues to reside in her natural person, notwithstanding the transfer to that of her husband, of the power necessary to exercise the dominion incident to it, and on a dissolution of the union, follows her person, or goes to the representative of it, unless it has been divested by the husband, while the power to do so resided in him. Her term for years, in which the marriage gives him an anomalous interest along with her, is an exception to this, and the only one that goes indifferently to either surviving, in analogy, I presume, to joint tenancy. But to divest her title to her chattels personal any act, it will be seen, is sufficient which evinces a present purpose to do so. As regards her chattels in possession, nothing further is necessary to make them his, than the possession itself, which, when unexplained by circumstances, is essentially an index of ownership; and of an ownership necessarily exclusive, as she is destitute

of capacity to possess them or use them in any other character, than that of his agent or servant; consequently his use or possession of them, is to be taken as under the new title which his power may create."

The members of the legal profession, as a class, are not without their obligations to Judge Gibson. He omitted no opportunity to maintain their privileges, to exhibit the high estimation in which he held them, and to frown upon that vulgar prejudice which liberal studies and pursuits sometimes excite in rude and illiberal minds. In the case of Austin and others, 5 Rawle, 191, he expressed the sentiments which follow. Probably the same number of words have never served to convey a more truthful and beautiful eulogy of our profession, than those which I will place in italics.

"The grant of an office without express limitation at common law being taken most strongly against the grantor, endures for the life of the grantee; and though this principle has not been applied to offices within the grant of the executive, it must necessarily be applied to the office of attorney, for to subject the members of the profession to removal at the pleasure of the court, would leave them too small a share of the independence necessary to the duties they are called to perform to their clients and to the public. As a class, they are supposed to be, and in fact have always been, the vindicators of individual rights and the fearless asserters of the principles of civil liberty; existing where alone they can exist in a government not of parties or men, but of laws. On the other hand, to declare them irresponsible to any power but public opinion and their consciences, would be incompatible with free government. Individuals of the class may and sometimes do, forfeit their professional franchise by abusing it; and a power to exact the forfeiture must be lodged somewhere. Such a power is indispensable to protect the court, the administration of justice, and themselves. Abuses must necessarily creep in; and having a deep stake in the character of their profession, they are vitally concerned in preventing it from being sullied by the misconduct of unworthy members of it. No class of the community is more dependent on its reputation for honor and integrity. It is indispensable to the purposes of its creation to assign it a high and honorable standing, but to put it above the judiciary, whose official tenure is good behavior, and whose members are removable from office by the legislature, would render it intractable; and it is therefore necessary to assign it but an equal share of independence. His efforts on behalf of the profession were not always so successful. In that class of cases commencing with *Mooney vs. Lloyd*, 6 S. & R. 412, and ending with *Foster vs. Jack*, 4 Watts, 834, which regulate the recovery of compensation for professional services, the sentiment of the bar is almost universal that a sad blow was struck at its dignity and importance; and for this result, it must be admitted that Judge Gibson was mainly responsible. In *Mooney vs. Lloyd*, Judge Tilghman had wisely held that compensation for such services (beyond the fee expressly allowed by the Act of Assembly) could not be recovered. This decision was overturned by *Gray vs. Brackenridge*, 2 Pa. R. 75, against the dissent of Judge Rogers; but the record shows that "Gibson, C. J., expressed his satisfaction in overruling that case." In *Foster vs. Jack*, he collects his strength and expends it in an opinion which has probably fastened upon us forever, the doctrine that a lawyer may recover by an action at law compensation for his services. The decision was practically useless, because not one respectable lawyer in five hundred ever brings such an action. A fee is regarded as a mode which the client adopts of testifying his appreciation of what has been done, or is about to be done, for his benefit; if he declines to pay it, nothing further should be said or done about it. The decision did harm, because it reduced the

profession in this respect to the level of the very lowest trade, and that, too, in the face of the shining examples set us by the advocates in the Roman forum, and by the barristers of the English courts. The error of adopting such a principle was not a light one. I point the attention of the reader in the next place, to the case of the Commonwealth vs. Green and others, 4 Wharton, 531; a case, says Judge Rogers, p. 606, "without precedent and presenting some extraordinary features." It arose out of the division which occurred in 1837, in the Presbyterian Church, an institution which for more than two centuries and a half, has served the cause of civil liberty so well, as to have merited better treatment from the members of her own household. The case occasioned intense interest in every part of the Union. On the trial at Nisi Prius, a verdict was rendered in favor of the relators, the effect of which, if it had stood, would have been to declare the trustees elected by the new-school body, the true, legal and proper trustees of the General Assembly of that church. Reasons for a new trial were filed (sixty-five in number) and after argument before the Court in banc, an opinion was pronounced, making the rule for a new trial absolute. If the reader possess any partisan views of the subject, it is quite probable that in this case, as in others, they will influence his estimate of the result which was reached; but I see not how anyone familiar with the best efforts of the human mind in the solution of difficult questions of law or morals, can fail to admire the powers of analysis and condensation which the opinion of Judge Gibson in that case displays. He threads his way with a confidence and skill almost matchless, through constitutions, systems of church polity, plans of union, maxims of ecclesiastical government, books of discipline, rules, orders, motions, debates, synods, presbyteries, congregations, and associations, some of them referring to nearly a century of time, and all of them evidently unknown to him before the argument. Anyone who has read the case, can scarcely be surprised that the opinion of the Judge should have had the effect of preventing all other litigation on the subject.

In Logan vs. Mason, 6 W. & S. 12, he put forth this sentiment, which led to much criticism, " I know not a more beautiful system, nor one more founded on principles of general equity, than the land laws of Pennsylvania." Old gentlemen in the country, who had been all their lives trying the titles to land, adjusted anew their cravats, and looked more grave than ever, in the sudden consciousness that they had been engaged in building up, not only a system, but a beautiful system. Practitioners in the metropolis, on the other hand, who had almost no practical acquaintance with the supposed system, sneered at it as a mere budget of augers, a collection of sharp points and short corners, having no pretension to form or comeliness. Certainly it does require a higher degree of charity than that usually ascribed to legal minds, to admit that the land laws of Pennsylvania form a system, and a much higher degree to predicate of it, the term beautiful. But I forbear to enter into the controversy.

The following quotation from Johnson vs. Lines, 6 W. & S. 80, is made less in proof of the writer's rhetorical taste, than of his morality, and more to show the extent to which his honest impulses were sometimes carried, than to furnish a model of judicial style:

"The case of the plaintiffs below is poor in merits. It appears that they supplied a young spendthrift with goods, which they call necessaries, but which ill deserve the name. Their account mounts up to more than a thousand dollars, comprising charges for many articles which might be ranked with necessaries when supplied in reason; but not at the rate of twelve coats, seventeen vests, and twenty-three pantaloons, in the space of fifteen months and twenty-one

days; to say nothing of three bowie knives, sixteen penknives, eight whips, ten whiplashes, thirty-nine handkerchiefs, and five canes, with kid gloves, fur caps, chip hats, and fancy bag to match. Such a bill makes one shudder. Yet the jury found for the plaintiffs almost their whole demand, including sums advanced for pocket money, and to pay for keeping the minor's horses, which no one would be so hardy as to call necessaries. How they could reconcile such a verdict to the dictates of conscience, I know not. They surely could not complacently look upon the ruin of their sons brought on by ministering to their appetites and stimulating them with the means of gratification. Every father has a deeper stake in these matters than the public mind is accustomed to suppose, and it intimately concerns the cause of morality and virtue, that the rule of the common law on the subject be strictly enforced."

In the recent life of an eminent theologian,<sup>1</sup> I observe that his biographer has deemed it proper to observe that down to the latest period of his life, he was not known to utter anything in disparagement of the present as contrasted with the past, or to eulogize the latter at the expense of the former. If any one had desired to portray a character opposite to this, he should have procured Judge Gibson to sit for the portrait. For some years of his life, he seems to have attributed all excellence to the men and things of former generations, and to have regarded their successors as their inferiors. A tone of this kind frequently pervaded his conversation, and sometimes broke out in his writings. Witness the following in Bower's Appeal, 2 Barr, 434: "The time has been when there was a simple and very convenient system of practice in the settlement of administration accounts; but it has so long gone by, that the present generation of lawyers and judges seem to be uninformed of it, and in its place we have nothing but confusion. If an account was intended to comprise the whole administration, it was called the administration account of the estate, in general terms; and the Court, in confirming it, decreed that there was so much (naming the sum) in the hands of the accountant, subject to distribution according to law, or to the terms of the will. If the account was intended to be a partial one, it was so headed, and the balance was decreed, subject to further settlement. A subsequent partial account was called the further account, on which there was the same decree. The final account was called such at the head of it, and the decree was the same as on a general and final account. If assets came to hand after the final account, they were included in what was called a supplemental account. All these were integrant parts of a whole, constituting one account; and while the system lasted, the Courts knew what they had to deal with."

Any memoir of Judge Gibson would be incomplete without some notice of his agency in settling the law of Pennsylvania on the subject of riots. The people of the State, and perhaps of the Union, will not soon forget the popular commotions which prevailed in Philadelphia between the years 1836 and 1846. We had the Abolition riots, the Railroad riots, the Negro riots, the Weavers' riots, the Native American riots, and the Military riots. Having run short of names, territorial designations were adopted, and we had the Moyamensing, Southwark, and Kensington riots. Interspersed with these, were the riots of various fire companies, who seemed to have achieved little distinction until their members had been bound over to each successive term of the Quarter Sessions. Learned jurists were at work in the meantime. It was easily shown that this disorder was all wrong — that the power to suppress it must exist somewhere — that the sheriff could employ both civil and military power — that all citizens were bound to obey his requisition — that peaceable citizens were more numerous than the disorderly — that the riots

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<sup>1</sup> Dr. Alexander.

could therefore be put down, and must be put down. Editors, lawyers, judges and philosophers all agreed in opinion, and resolved that there must be no more riots. This was very well, but the riots continued. Good citizens ascertained that if they disobeyed the sheriff's summons, they would be fined, and if they complied with it, their heads would be broken, and with strange contempt for the law, and unaccountable forgetfulness of their civil duties, they preferred to encounter the fine. The sheriff therefore went to the attack with men, the value of whose assistance may be estimated in proportion to the price they placed on their own heads, and to whom any attempt to test the thickness of their skulls was of small consequence, provided they received compensation for turning out. The writer of these pages saw but one of these bodies of men so famous in legal treatises under the title of posse, and he hopes to be excused for his want of taste in not desiring to see another. The description of Falstaff's regiment renders any account of it unnecessary. Their conduct was what everyone but a writer of disquisitions could have predicted. At the first discharge of arms by the mob, they left the commanding officer with five men out of three hundred. The military were next thought of; but when the military arrived the mob was not there; and when the military had dispersed, the mob, by a singular coincidence, again convened. Thus every theoretical means existed that could have been desired to effect the end, and the practical means were absent to a degree that made all efforts of the kind simply contemptible. In the meantime, the character of our city had suffered immensely. Accounts of the disturbances, bad enough if not exaggerated, had been extensively published, both at home and abroad, and one of the most peaceful and peace-loving communities in this sisterhood of States, had begun to be known as the city of riots. The commotions of 1844 filled up the measure of our shame. Two churches, a school house, and numerous private dwellings were reduced to ashes. All men felt that the time had come when the law must do something, if it could do anything. Inferior tribunals quailed before the mob spirit, and the mass of the rioters arrested were acquitted and discharged. An opportunity now presented itself to the Chief Justice to display his powers. The Act of 31st May, 1841, founded on that of Geo. L, authorized the owners of property in the County of Philadelphia, destroyed by this species of violence, to bring suits against the county for the injuries sustained, and numerous suits were brought under the authority of the Act. The case of Donoghue vs. The County, was the first on the list, and the Chief Justice held the Court. His charge was worthy of the man, and of the occasion. No one who heard it can forget its influence on the case, on the subsequent cases, and on the community. One of the chief defenses set up, that armed men had fired on the crowd from the building afterwards burned, was demolished with a boldness, an energy, and an eloquence rarely surpassed in judicial proceeding. He discarded utterly the distinction which had been taken between defending a dwelling house and a church, and held that a man has the same right to defend and to take life in defense of the place in which he worships God, as of the domicile which shelters his family. He carried the doctrine even further, and applied it to the school contiguous to the church, in which the children were receiving their education. In the meagre scrap of the charge which is reported in 2 Barr, 231, this is sufficiently evident. The result was a verdict in favor of the plaintiff for the whole amount of the property destroyed. A similar result followed in the case of the Hermits of St Augustine vs. The County, Brightly's Reports, 116; and in that of the St, Michael's Church vs. The County, Brightly's Reports, 121, Of a different verdict in the first case, on that turning point between the dominion of law and the dominion of violence, no man could have ventured to predict the result. From that time to this, we have had no riots. Other causes have contributed to produce this state of things; but no one act tended more directly to restore permanent good order and to re-establish popular confidence in the people themselves,

than the manly and patriotic course of Judge Gibson in the case of *Donoghue vs. The County*. Business men began to feel that if they were certainly liable to pay their own proportion of the property thus destroyed, it was their pecuniary interest to require its preservation. Lawless men found that they inflicted no injury on the objects of their violence, when the property destroyed was paid for at its highest value. Patriotic men, both at home and abroad, were glad to discover in these proceedings, fresh evidence of the power which a wise and benignant system of law, administered by an enlightened judge, may exert among a free people.

In passing down the list of our Reports, *Twaddell's Appeal*<sup>5</sup> Barr, 15, may be mentioned as an instance in which his judgment lost for a time its usual equipoise. He there sanctioned the conduct of a guardian who had invested the funds of his ward in the common loan of the Lehigh Coal and Navigation Co., on the ground that the Company owned mines and other real estate, and that the investment had been made in effect on the security contemplated by the Act of 1832. This decision was looked upon by the profession with much apprehension and occasioned some discussion. A writer in the *Pennsylvania Law Journal* for August, 1847, (Vol. 6, 485) reviews it, line by line, and reaches very different conclusions from those on which the decision of the Court was rested. A reference to that article will probably cause an unprejudiced reader some difficulty in determining how any Court could have reached the result which the case announces. It is but just, however, to say, that in *Worrell's Appeal*, 9 Barr, 508, the ground taken in *Twaddell's* case, was substantially abandoned without dissent from the Chief Justice. Indeed, it was a characteristic of his life, that he never persevered in error, after being convinced of it. Observe his course in *Mitchell vs. Hamilton*, 8 Barr, 487, and hear his language — "No man is more thoroughly convinced, than I am, of the wisdom of abiding by what has been decided. Want of stability in the law, is a public calamity which ought to be averted by almost any concession of opinion; yet, in building up a new system, in part on the model of an old one, it is better to incur the reproach of inconsistency, than to perpetuate a false principle. Where we have not been following a beaten path, but have been exploring untrodden ground; and where we find that we have lost our way, as we sometimes must; it is certainly the part of wisdom to retrace our steps, rather than to persist in going wrong. I submit that in the present case, in which our own decisions afford no lamp to our feet, and in which the English decisions are misleading fires, the first determination of the point before us ought not to be conclusive. If a single decision were so, many of our first attempts to interpret our digested statutes, grown almost into a code, would do little more than impart immortality to error." There are few readers who would be unwilling to ascribe these sentiments to an honest source. Practitioners understand their value\* A vacillating and undecided judge is bad enough, but one who supposes himself born under a moral obligation to stand by to the day of his death every opinion he may express, becomes a vast evil to the State.

*Hillyard vs. Miller*, 10 Barr, 326, contains the next opinion which I shall notice. A testator who possessed one of the largest estates ever acquired in the interior of Pennsylvania, dying childless, devised it in a form of trust, which required for its purposes the perpetual accumulation of the income of the estate. This brought the devise into conflict, as his heirs contended, with the law against perpetuities; and the Court decided, that where a trust directs the accumulation of the estate, beyond the period allowed for the vesting of an executory limitation, it is absolutely void. A professional reader who should light on this principle in a digest or newspaper, would be sure of the authorship of the opinion which announced it. The discussion of such a case was as

exactly suited to Judge Gibson's powers, as if the will had been written to evoke them. I can transcribe but a few sentences:

"It was the indestructibility, not only of springing and shifting uses, and of executory devises, but also of future trusts, which forced upon the judges, the rule against perpetuities, in order to set bounds to the remoteness of, not only legal, but equitable limitations; and it acts upon perpetuities wherever they appear, except in conveyances in mortmain, or to charitable uses."

"If every perpetuity is a future limitation, the devise before us is not a perpetuity; for the limitation is immediate, and it vested, if at all, at the testator's death. But, though, as it is said, trusts for accumulation, have no immediate connexion with the doctrine of perpetuities, they may sometimes fall within the rule against them. The mischief of such trusts, when the limitations are immediate and absolute, are as great as when they are future and contingent; and that they are not suffered to last forever, is shown by cases of trusts to accumulate a fund for the renewal of leases, which must be restricted to the prescribed period, either expressly or by reference to the time which the particular lease has to run. The same reason requires the suppression of a trust for endless accumulation, in an increasing ratio, by turning interest into principal, which would be a perpetuity of the worst kind. There must be a power in some person, to put a stop to piling up capital from income, and to deal with the estate, in some reasonable time, as an unshackled one. No trust of this class can be allowed to last beyond the period for the vesting of an executory limitation, or even so long, if it be not then to vest in a person, capable to convey it in fee by deed, fine, or common recovery."

The opinion delivered in the case of *Hileman vs. Bouslaugh*, 1 Harris, 344, may be referred to in proof of the continued vigor of his powers. It is familiar to the professional reader as one of the few instances which have occurred in the United States, of a full discussion of the rule in *Shelly's* case. I have examined the opinion with the view of transcribing some portion of it, and holding it up to admiration. But the effort is almost vain. It is welded into so compact a mass as to forbid the tope of separating any part of it fit to give the general reader an idea of the whole. Take the following passages at a venture:

"A devisor who uses words of limitation in an improper sense, may so explain the meaning of them by other words in the context, as to exclude his devise from the rule; for it operates only on the intention, when it has been ascertained, not on the meaning of the words used to express it. The ascertainment is left to the ordinary rules of construction peculiar to wills, but when the intention thus ascertained is found to be within the rule, there is but one way; it admits not of exceptions. It is to the application of those ordinary rules, sometimes controlling the meaning on weak and inconclusive grounds, and not to the nature of the particular rule — which is in truth not a rule of construction, that the discrepancy of the decisions is attributable. The question on a will is not whether the testator intended that the rule should not operate, for that is not subject to his power, but whether he uses the words heirs of the body, as synonymous with the word children, or its proper equivalent. By not adverting to this, the rule has sometimes been thought to be a flexible, instead of an unbending one."

"No greater effect is attributable to the want of a limitation over, which evinces no more than an intent that the inheritance shall be in the particular tenant if he shall have issue. But even where

the question stands on a will, such a limitation has no other effect on the life estate, than, in the absence of express words of procreation, to turn it into an estate tail. The operation of the rule in Shell's case, is just this: it gives the ancestor an estate for life, in the first instance, and, by force of the devise to his heirs, general or special, the inheritance also, by conferring the remainder on him, as the stock from which alone they can inherit, and the source alone from which their inheritable blood can spring. Thus, a devise to one for life, with remainder to the heirs of his body, gives him an estate tail in possession by the merger of his life estate in the inheritance; but a devise to him for life, remainder to another for life, remainder to the heirs of the body of the first donee, gives him an estate for life in possession, and, by reason that the intermediate life estate prevents the merger, an estate tail in expectancy."

But these extracts are not enough. The case must be read and the opinion studied. In the legal learning and critical skill, and in the conciseness and force which it displays, there is nothing which would detract from the fame of any man who has ever occupied a judicial seat. Others may be able to do so, but for myself I cannot recall the name of a writer who if required to discuss the question which the case involved, would have performed the task with more ability. Let it be observed that when the opinion was delivered, its author had reached his seventieth year.

It is not easy to determine the peculiar aptitude of such a machine as the mind of Judge Gibson to any one branch of jurisprudence. Probably the mass of the bar would agree that it was best fitted for the investigation of questions of constitutional law. There were a breadth and comprehensiveness in his views, and a tendency to rely on the great principles of the science, which, so far from being assisted, were impaired in their excellence and utility by a recurrence to decided cases. The greatest mistakes of his judicial life were occasioned by a disinclination to be guided even by the lights which his own Court had set up, and by a predisposition to illuminate his path by the sparks struck out for the occasion by his own understanding, or to thread his way by principles derived far back in the history of the law. In the extensive and fertile fields of our American Constitutional Law, his powers exhibited to advantage the proportions which nature had given them, and he breathed out his great thoughts with the conscious freedom of a man who is master of the very ground which he occupies. To this, such cases as the following bear ample testimony: *Eakin vs. Raub*, 12 S. & R. 330, on the right of the Court to annul an act passed by the legislature, in violation of the Constitution; *Philadelphia and Trenton Railroad Company*, 6 Wharton, 25, on the right of the General Assembly to legislate in regard to the streets of an incorporated district; *Hobbs vs. Fogg*, 6 Watts, 553, on the disability of the negro to exercise the elective franchise; *Gray v. The Monongahela Navigation Co.*, 2 W. & S. 159, on the effect of an Act impairing the obligation of a contract; *O'Conner vs. Warner*, 4 W. & S. 223, on the right of the legislature to explain a doubtful law before the judiciary has fixed its meaning; *Comm'th v. Flanagan*, 7 W. & S. 68, on the effect of an Act authorizing a Judge of the Supreme Court, and two associate Judges of a county to hold a Court of Oyer and Terminer; *Comm'th v. Clark*, 7 W. & S. 127, on the effect of the Act authorizing the election of Canal Commissioners; *Chadwick vs. Moore*, 8 W. & S. 49, on the suspension for a time, by Act of Assembly, of Sheriffs' sales of property; *Norris vs. Clymer*, 2 Barr, 277, on the effect of certain legislation on testamentary trusts; and finally *De Chastellux vs. Fairchild*, 3 Harris, 18, in which he rendered so important a service, that I cannot pass the case without further remark. No one need be informed of the vital necessity of a complete separation of the legislative, judicial and executive powers of

government. A republic could as well stand without it, as a man could exist whose arteries and nerves were constructed in a solid mass. Between judicial and executive functions there is seldom a clash; so seldom, that in the history of our Federal government, the Cherokee case furnishes one of the few instances of its occurrence. Not so with the judicial and legislative, or the legislative and executive. The active portion of our General Assembly is usually composed of young men, of strong impulses, and frequently of strong understandings, but wanting necessarily the caution and experience which age only can impart. A weak executive who is willing to submit to any aggression on his powers, may succeed with them excellently well ; while a man of strong intellect and energy, resolved to stand by the rights of his office, must be prepared for controversy. The tendency of the legislative branch (I had almost said rod) is to swallow up both the others. Against its aggressions, the judiciary is our main reliance. Before it became elective, a case occasionally occurred of its succumbing to those who were supposed to represent more nearly the wishes of the people, but that danger is now past, for the Courts are quite as near the people as the legislators themselves. *Braddee v. Brownfield*, 2 W. & S. 271, was an instance of lamentable acquiescence in legislative encroachment. In that case, the legislature had passed an Act directing a judgment to be opened and the defendant let into a defense. The Court, on grounds which it is hard to understand, in place of rebuking this usurpation of judicial functions, pronounce it "the exercise of a jurisdiction of a remedial character, partly legislative and partly judicial, and not in violation of the constitution." The principle thus announced, continued to be the law of Pennsylvania for nearly ten years, and until Judge Gibson upturned it in the case of *De Chastellux vs. Fairchild*. His memory would deserve well of the State if he never had delivered another opinion. I hold these to be words of wisdom:

If anything is self-evident in the structure of our government, it is, that the Legislature has no power to order a new trial, or to direct the Court to order it, either before or after judgment. The power to order new trials is judicial; but the power of the Legislature is not judicial. It is limited to the making of laws; not to the exposition or execution of them. The functions of the several parts of the government are thoroughly separated, and distinctly assigned to the principal branches of it, the legislative, the executive, and the judiciary, which, within their respective departments are equal and co-ordinate. Each derives its authority, mediately or immediately, from the people: and each is responsible, mediately or immediately, to the people for the exercise of it. When either shall have usurped the powers of one, or both of its fellows, then will have been affected a revolution, not in the form of the government, but in its action. Then will there be a concentration of the powers of the government in a single branch of it, which, whatever may be the form of the constitution, will be a despotism— a government of unlimited, irresponsible, and arbitrary rule. It is idle to say the authority of each branch is defined and limited in the constitution, if there be not an independent power able and willing to enforce the limitations. Experience proves that it is thoughtlessly but habitually violated; and the sacrifice of individual right is too remotely connected with the objects and contests of the masses to attract their attention.

From its every 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; else causes would be decided not only by the Legislature, but, sometimes, without hearing or evidence. The mischief has not yet come to that, for the Legislature has gone no farther than to order a rehearing on the merits; but it is not more intolerable in principle to pronounce an arbitrary

judgment against a suitor, than it is injurious in practice to deprive him of a judgment which is essentially his property, and to subject him to the vexation, risk and expense of another contest.

It has become the duty of the court to temporize no longer, but to resist temperately, though firmly, any invasion of its province, whether great or small."

After this, his opinions were less frequent, and I forbear to trace them. I go back only to notice the peculiarity of expression and illustration to be found in some of them. In *Riddle vs. Welden*, 5 Wharton, 15, in considering whether the goods of a boarder are liable for rent due by the keeper of the boarding house, he supports himself by an authority more frequently referred to at the bar than on the bench; — "in fact his (the lodger's) right to enter and use the inn for his accommodation, stands on the footing of his legal right to enter and use his own house, which is his castle, and in other respects more highly privileged. It is his own while he uses it, and Falstaff speaks with legal precision, when he demands, 'Can I not take mine ease in mine inn?'" In *Gowen vs. The Philadelphia Exchange Co.*, 5 W. & S. 144, he calls Shylock to his aid, and speaks of the "hall where merchants most do congregate." In *Logan vs. Mason*, 6 W. & S. 13, he affirms that "the morality of the New Testament is for all times, and that the maxim cannot endure a test so severe, is proof as strong as holy writ that there is something wrong in it," — a very just sentiment, which he came very near expressing in the words of Iago, who speaks of "confirmations strong as proofs of holy writ." In *Patterson vs. Poindexter*, 6 W. & S. 227, he declares that, "the contract of endorsement is not an independent one, but a parasite, which like the chameleon, takes the hue of the thing with which it is connected." In *Rogers vs. Walker*, 6 Barr, 375, he pronounces certain exceptions, — "a reticulated web to catch the crumbs of the cause, and as they contain no point or principle of particular importance, they are dismissed without further remark." In *Hays vs. Harden*, 6 Barr, 413, in discussing the effect of affixing a mark to a legal instrument, he speaks of the "will of a marksman," — terms that would suggest an idea very different from his own, on the Allegheny Mountains, or in the territory of Kansas. In *Weiting vs. Nissley*, 1 H. 655, he declares that, "the record in this case, as in most others, has exceptions like the pockets of a billiard table, to catch lucky chances from random strokes of the players; but as they have caught nothing in this instance, it is unnecessary to enter into a particular investigation of them." In *Shannon vs. The Commonwealth*, 2 Harris, 228, in referring to the law of adultery, he supposes "the framers of it knew the futility of attempting to smother the instincts of our nature, or to cleanse our thoughts by an Act of Assembly." Other instances of the use of expressions so novel in judicial opinions, might be gleaned from his writings. In quoting them, I have intended only to present them to the reader.

His manner of reaching his conclusions, and writing his opinions was well known. It is believed that he took little part in the consultations of the bench, communicating his views usually in short detached sentences, sometimes not at all, but when he did, hitting the exact point, and diffusing additional light on the principles in question. When appointed to deliver the opinion, he generally made an examination of the authorities, and sometimes it must be admitted, much too brief an examination. His habit then was to think chiefly without the aid of his pen, and out of the reach of books. He did this in his chamber, on the street, at the table, sometimes, it is feared, on the bench during the progress of other causes, and not infrequently in the public room of his hotel. Persons who approached him on these occasions, were struck with, and sometimes offended at, his abstracted and careless air. To those who knew what he was doing, he frequently complained

of his difficulty in determining on what principles to pitch the cause, — without mentioning it particularly. He did all the labor of thought before he commenced to write, and he never wrote until he was ready. Before he began, it is believed the very sentences were formed in his mind, and when he assumed the pen, he rarely laid it aside until the opinion had been completed. The bold, beautiful, and legible character of his hand-writing, and its freedom from erasure, induced those obliged to read his opinions in manuscript, to suppose that he transcribed them, but this was very rarely, if ever done, — ^he had too little time, and too much horror of the pen to attempt it. Such a method of writing undoubtedly possessed great advantages. It gave his fine logical powers full play. It contributed to that condensation which forms one of the distinctive features of his writings. It enabled him to proceed with directness right to his conclusion, and to make everything point to it from the first sentence to the last. No repetition occurs. We see each idea but once, and need not count on seeing even the shadow of it, more than once. Having always something to do ahead, the pen spent no more time on the thought in hand than was necessary to complete it. He knew precisely where he was to end before beginning, and he avoided aU the difficulties of those writers who begin to write when they begin to think, and sometimes before it, and who produce works resembling, for the most part, the patch-work emblazoned on the best beds of German housekeepers, and giving evidence not to be mistaken, of the exact places at which they have been joined, and of the diverse and heterogeneous materials out of which they have been composed. The most casual reader of Judge Gibson's opinions must have observed how seldom he professes to give any history of the decided cases, from the creation of the world, from the reign of Richard I., or from the assumption of the reins of justice by Chief Justice McKean; and how invariably he puts the decision upon some leading principle of the law, referring but to a few cases for the purpose of illustration, or to show their exception to the general rule, and how all this is done with the ease and skill which betoken the hand of a master.

It must be conceded that rich, powerful, and even graceful as his style was, it had its defects. In common with Dr. Chalmers, he betrayed an unfortunate proneness to the use of long and unusual words, generally of Latin origin. I am not sure that the great Scotch divine would ever have condescended to say desire, when he could with a show of propriety have said desiderate. So we frequently have Judge Gibson employing the terms unilateral, individuate, manipulating the testimony, immiscible as water and oil, convergent intent, &c., &c. There was also an unnatural stateliness and dignity in his style. Many of his sentences seem so constructed, that if placed on a pivot, they would remain in perpetual equipoise. Of all this species of writing, the Rambler and the Idler are the well-known models, and I suppose there can be little doubt that at some period of his life, those works had made an impression on him. I strongly suspect however, that the prose writings of Milton had made a deeper and better impression. — But his style had another defect, — it might have unfolded his meaning more rapidly. To any one thoroughly versed in the subject of his opinion, or to anyone who would take the trouble to read it twice or thrice, the import of every word and syllable was clear. But this is not enough, — for more than one-half of his readers have not such knowledge or time at their command. It is not sufficient that the language of a writer when put to the torture, can be made to yield but one meaning, — ^it should suggest that meaning at once. Other writings do this, and all should do it. Those of Calvin and Owen, of Tillotson and Doddridge, of Hamilton and Calhoun do it, in different departments, in different ways, and on subjects as difficult as ever employed human pen. I know of nothing in judicial station which dispenses its occupant from a like duty. Men are generally not compelled

to write, but when they do, it should be borne in mind that one object of writing is to be read — sometimes, by absolute necessity to be read rapidly, and always with the loss of as little time as possible.— It must be owned that Judge Gibson did not always remember this, or if he did, that he could not command the time to put it into practice. — But when this has been said the worst has been said that can be urged in the way of abatement from his eulogy as a judicial writer. In whatever he uttered on any subject, he had a meaning, and a very precise and definite meaning, which few men could have expressed in smaller space. His words were not used to conceal or to dress up and trick out ideas too poor and mean to be presented simply and naturally. The thoughts themselves were great thoughts struggling to make themselves felt through words, which, however well chosen, but obstructed them, and which were used at all, only because better could not then be found. The resemblance which his writings thus assumed to the best productions on the philosophy of the mind, has frequently induced the charge that he was a metaphysical writer. If by this is meant that he was confused or obscure, nothing is further from the truth. Any man who could establish such an accusation against the works of Locke, Reid, or Thomas Brown, would be a most successful slanderer. In itself metaphysical science is abstruse enough; the principles on which it rests have been refined to the purity of gold; but in the statement of them, a precision and strength have been attained, unsurpassed in any department of literature. These are the great qualities of a judicial style. Of all other men, a judge ought to be able to state the very point of his decision, and so to express it that human ingenuity cannot make it convey more or less than he intended it should. The time of every Court is chiefly occupied by efforts to include under a principle previously promulged, cases which it was never intended to cover, and to exclude from its operation those which have occurred from its literal and faithful observance. Few greater evils therefore can arise, than those which result from the obscure and ambiguous expression of judicial determinations. From such defects, the decisions of Judge Gibson are exempt to a degree, which make them models. So skillfully are his words adapted to his thoughts, that his writings can be made to convey just what his language expresses, and nothing else. On the other hand, his metaphysics were as little adapted to the splitting of hairs "twixt south and south-west side," or between any other points of the compass. Though his reasoning is often refined, his conclusions are satisfactory, clear, and fitted to work in the practical concerns of life without function or damage—I am familiar with no writings to which they bear an exact resemblance. He was in the end almost as unlike Johnson as unlike Addison. He was as far from Carlyle as from Irving. The class whom he most resembled were doubtless, as I have intimated, those on the philosophy of the mind. He had less subtlety than many of these writers, but as much of it as any other judge, unless Lord Eldon be the exception. He had points in common with the great author of the Analogy, but he must be admitted unequal to him in the power of treating a moral theme with so much of the exactness and conclusiveness which belong to demonstrative reasoning. He never wrote so agreeably as Dugald Stewart, but with decidedly more power. The style of President Edwards, whether for philosophic or judicial disquisition, cannot, in my estimation, be compared to that of Judge Gibson. Every student of the Treatise on the Will has observed how frequently the finest distinctions and the profoundest reflections are there conveyed with a carelessness of expression to be found only in the most ordinary literary composition. If asked to name an author of note whom he most resembled I would unhesitatingly say, John Foster. He certainly had less credulity than that eminent writer, less brilliance of imagination, and quite as slight a dash of poetry in his nature, or no opportunity to show it. Both were alike addicted to the use of words which suited them whencesoever derived, and were as little afraid of involved and parenthetical sentences. Both exhibited the same depth of thought,

the same power of condensation, and the same facility of illustration from unusual sources. I incline to think, however, that in classic beauty, in strength and boldness of illustration, and in opulence of language, Gibson was more than his match. Having already quoted largely from the writings of the latter, it would be unnecessarily burdensome to quote more. The test may be applied to any of his more elaborate written judgments. If the space justified, it would be easy to gather from the Eclectic Review, and from the other publications which gained to Foster his world-wide fame, sufficient proof that, after making allowance for the difference of subject, the resemblance of these writings is not imaginary. I refer, for example, to his Essays on a man's writing memoirs of himself, and on the application of the epithet romantic; and to his reviews of Macdiarmid's British Statesmen, of Franklin's Correspondence, of Fox's James the Second, &c., &c. It is of course difficult to make that allowance for the diversity of subject which has been suggested; but I am sure that the student of Judge Gibson's writings will see in the performances to which I have referred, much that will forcibly remind him of the dead Chief. For one, I doubt whether there is any man known to our literature who, if he had been discoursing on the same themes would have spoken more nearly like Foster than the subject of this sketch, and great though this praise would be regarded by literary men, I esteem it within those reasonable bounds which a friend may prescribe to himself in a tribute to departed worth.

It is not unusual to hear the wish expressed by learned men, that Judge Gibson had employed his powers in a treatise on some topic of the law, fit to perpetuate his fame more completely than the usual round of judicial duties could do it. I doubt not that if he could have been induced to construct such a work, it would have proved equal to any which our American law authors have yet produced. There would have been nothing in its style to interest a general professional reader. It would have possessed the hardness and dryness of flint. To consume an hour of professional leisure a page of the differential calculus would have been about as serviceable. Its only students would have been the advocate in search of an authority to insure the success of his cause, and the judge anxious to secure a steady light in threading his path through doubt and error; these students would have paid to it the profoundest homage of their understandings. But the wish is a vain one. There probably never was a day in his life, when he could have been prevailed on to undertake such a work. If attempted, it would have died out before the close of the first chapter. The concurrent testimony of those who knew most of his habits, is, that he never wrote except under the pressure of absolute necessity. It seemed to require this to bring his powers to the pitch at which alone they could work satisfactorily to himself. When the time came for the delivery of the opinion, he wrote it, and we have seen how he wrote it. On a work whose completion depended on his own volition, he would have been as little capable of severe toil, as any writer equally able whose name is known to the reader.

As a jurist, Judge Gibson was ardently attached to the principles of the common law. His love of them beams in his writings as affection will beam in the human countenance. He not only looked on them with the admiration of an artist, as symmetrical and beautiful parts of a great fabric, but he regarded them as the best rampart which the common sense of mankind have yet thrown up against the despotism of the king or the judge, of the purse or the sword. We shall see hereafter that the last thing he ever wrote for publication, was a declaration of his unshaken loyalty to the doctrines of the common law. A part of the language which he applied to Judge Kennedy, (4 Barr, 6,) might as justly have been uttered of himself; for like Byron in many of his characters, he was probably describing himself without seeing that the world would recognize the portrait. "

He clung to the common law as a child to its nurse, and how much he drew from it, may be seen in his opinions, which, by their elaborate minuteness, remind us of the overfullness of Coke," The Chief Justice was also an admirer of our Pennsylvania system of law, in which the substantial principles of equity are applied under the forms of the common law. The wonder is that in any case they should have been separated. To appoint one judge to execute the law, and another to do equity, seems like creating one man all head, and another all heart. To execute the law upon a suitor's person or property, and to allow him in the meantime to apply to a Court of Equity for relief, or to turn him out of the latter because his case has no equity in it, with the assurance that he will have no difficulty in recovering in a court of law, in other words, to permit two different rules of legal duty on the same subject, to press on the same man, at the same time, is a state of things which the mass of mankind will never understand, if each individual man should rival the patriarchs in the term of his natural life. From the day when Lord Erskine uttered his quiet humor on the subject, down to the publication of Bleak House, the severest sarcasms on this state of things have been flung into the faces of lawyers, without the possibility of turning the point of one of them. The Pennsylvania system of law is among the few that have been measurably free from the reproaches which the learned and the unlearned have thus conspired to hurl at the whole science. It is natural that the mind of a man like Judge Gibson, who had done so much to advance this system, and who had witnessed the strides which the legal world seems making towards it, should feel some pride in perpetuating it. With this spirit, it is consistent, that when our legislature adopted certain equity remedies, and provided for separate equity proceedings, he should endeavor to carry them fairly into practice. An opposite course, if he could have pursued it, would have caused disquiet and disaster. Beside this, whatever he might have thought, he was not a man to set himself up against what seemed to be useful reform. He had seen defects which some of these remedies seemed to supply, and he applied them in the very spirit in which the profession and the legislature had called them into being. So successfully was this done, that with all his attachment to the common law, it has not been infrequent to hear from those most devoted to the equity system, the admission that he would have made a better chancellor than he was a judge. It is pertinent to remark here that he had no undue fondness for the civil law. His mind was too liberal — for the mind of a scholar is always liberal in its appreciation of learning—not to admire the beauty wisdom and simplicity of many parts of that system, and its adaptation to the state of society in which it has grown up; but it must be admitted that he ever and anon cast a suspicious glance on the efforts of Judge Story, and the writers of that school, to infuse its principles into our cherished common law. He could not have denied that many of the branches of our law have been enriched in this mode, but he was alive to the danger of pushing such improvements too far. I need refer the reader only to the opinions delivered in *Lyle vs. Richards*, 9 S. & R. 322, and in *Logan vs. Mason*, 6 W. & S. 9, in proof of the existence of these views in the mind of their author.

Let me here ask whether anyone can fail to perceive the effect which the presence on the bench of such intellect as I have been describing, must exert on the bar? Doubtless, in this respect, they act and re-act on each other, but I speak only of the effect of the bench on the bar. I suppose that a display of the highest forensic ability before a tribunal incompetent to appreciate it, would be next to impossible. The chief stimulus for preparation would be wanting; and truth, however sound, would fall powerless. The more cultivated men are, the more conscious they are of their own defects, and the more tolerant of the faults of others; and of this, a speaker seldom loses his consciousness. The best orator, as a matter of choice, would probably select the most intellectual

and refined audience. One of an opposite kind would be little better than an empty apartment. The orations of Demosthenes could not have been delivered in an age less intellectual than that which witnessed them, and some proof of this, is, they never were delivered in any other age. Before others than kings and warriors grappling with questions of life and death, Nestor himself would have been nobody; and I cannot, at this moment, recall an instance throughout the entire poem, in which he is introduced in any other company. Eloquent speeches to an ignorant jury prove nothing to the contrary, for in such instances they are generally brought out by the presence of the bar and the bench. These speculations might be carried further. I only meant to say that a bar which aims at the highest standard of excellence, cannot tell what priceless treasures it possesses in a high order of intellect in those who are to decide upon its efforts. If the mere administration of justice were altogether nothing, the profession would be the gainer by keeping the bench at the highest pitch of intellectual power.

In summing up the personal character of Judge Gibson, I do not mean to represent him as faultless, for then he had been more than human. Doubtless he had his defects; whatever they may have been, I do not propose to discuss them. To do so, would be to imitate the conduct of some visitor to a gallery of art, who should employ himself in tracing rough images in the dust of the floor, instead of contemplating the beautiful conceptions of genius on all sides around him and above him. I speak rather of what Judge Gibson was, than of what he was not. His case has been removed to that great appellate Court, which, while it administers perfect justice, is governed also by perfect mercy. Jurisdiction having vested there, on the soundest principles of jurisprudence no allegation should be permitted against him here. He certainly had small faults, which to small eyes were large enough to shut out any perception of his great qualities. He despised the anise and the cumin, and necessarily lost the respect of those valuable members of the state, outside and inside of the bar, who do the least important things first, and the most important, last. Frank, generous and confiding, he spoke on the bench and elsewhere, of persons and of things, with that impulse which none but an honest heart can know; and in doing so, he occasionally lost in dignity, as much as he gained in the pleasure of giving expression to his real sentiments in his own way. If, as a presiding officer, he had preserved order more rigidly, his Court would have been a more solemn place, and if he had attended more directly to what was passing before him, the business would have been more efficiently dispatched. But enough of what he was not. The qualities which he possessed were striking and peculiar. That which most impressed those who knew him best, was the exceeding kindness of his heart. The knowledge of this was a key to his character. Any newspaper editor or legislative orator who had abused him, might have approached him with the profoundest confidence, not only that he had forgiven, but actually forgotten, any calumny however gross. In that respect at least, no man could have reduced to practice more directly, the morality of the New Testament. He cherished no antipathies, and formed no prejudices, and this constituted one of his chief excellencies as a judicial magistrate. Few lawyers would hesitate between presenting a cause before a judge who had been purchased to do wrong, and one blinded by prejudice towards a party, or the subject in dispute, or the principle Ji it involve. The fonder might be restrained by the fear of detection or the consciousness of guilt, or he might by the force of argument, and by the plainness of the matter, be hemmed in and shut up to decide the right. Not so the latter. His eyeballs are seared; molten lead has been poured into his ears; he sees only his own foregone conclusion; he hears only the voice of his own stubborn will; and it were as reasonable to expect just perceptions from the dead. One of these characters is totally unknown in our American courts, but, alas for the

weakness of human nature, the other is probably not without its types. Both the official and the personal intercourse of Judge Gibson was eminently free from such blemishes. He neither hated nor suspected. In every relation, public and private, he displayed that charity of the heart which makes a man a gentleman, despite of early associations and even of bad manners. In the liveliest sallies of his wit and humor — the last acts on which benevolence exerts its restraining influence — he never allowed himself to trench on the sensibilities of others. When he said anything from the bench approaching severity, as he sometimes did when worn down by a dull and tedious argument, no time was lost in trying, by a remark of a different kind, to wear away its effect both on the speaker and the audience. He was a sound critic in the best sense of the term, and when a harsh observation was made of one whom he knew, he was generally able to relieve its effect by pointing out some excellence which had escaped the attention of others. To the young, and especially to those who were endeavoring to become the architects of their own fortunes, he was kind, affable and indulgent. But the picture requires higher coloring.

There was something in his magnanimity, in his forgiving temper, in his kindly charity, in his capacity to appreciate /excellence of any kind, in any form, which despite his apparent unconcern of manner and sluggishness of body, elicited and compelled affection. There was a true fire of the heart which glowed unceasingly, and cast even the splendor of his intellect into the shade. No man ever more cordially despised a cold, calculating, spider-like lawyer, weaving day by day his miserable toils, giving up nothing, retaining his grasp on every victim of chance and folly, and employing his powers only for the production of misery and the practice of oppression. No man ever spoke into being with so little effort, ardent and permanent friendship. He sat on the Supreme Bench with twenty-six different judges, none of whom, except Judge Duncan, owed their position to his influence, and almost all of whom, on their accession, were comparative strangers to him, and yet it may be doubted whether the purest and happiest household ever lived in more absolute harmony than he enjoyed in his personal intercourse with his associates^ In regard to anybody of men long associated together, this fact might be worth, repeating; but in that of so many independent men, of strong intellects and wills, employed together in the daily examination of exciting questions, where conscience and duty require each man to stand by his individual judgment, the case is somewhat remarkable. It is quite apparent that in the acceptance of the commission from Governor Ritner, it was the eagerness of his associates and friends to promote his welfare, and to smooth his declining years, that, for the moment, threw his judgment from her balance. His nomination in 1851 was a better directed effort of the same kind. There were in the judicial convention of that year, without his knowledge, more than a score of delegates whose chief business was his renomination. If they had been bone of his bone, they could not have been more anxious for the result. Less friendly exertion in his behalf, and two votes less than the number he received, would have lost to the State the remainder of his life. His intellectual acquirements were great, and he had a right to be proud of them; but that would be a poor monument to his fame, which should omit to mention those higher and finer qualities of the heart, which placed him so far above the level of ordinary men.

Take the following instance of their exercise. During a hot and laborious session of the Supreme Court at Harrisburg in 1843, the idea occurred to Judge Gibson and Judge Rogers, to place a marble slab over the remains of Joseph Jefferson, the actor, which, from 1832, had lain in a churchyard in that town, with nothing to mark their resting place. The former applied to Mr. Wm. B. Wood, one of the contemporaries of Jefferson, for some information necessary in

framing an epitaph; the information was furnished; the epitaph was written; the slab was laid; and the facts were, during the present year, communicated to the public by Mr. Wood, in his "Recollections of the Stage." Here was the case of a poor actor, who, as the epitaph states, had closed his career in calamity and affliction," and, as it appears, without one other monument to record his genius than that which was thus erected. The act was done kindly and quietly, without ostentation, without newspaper notice, and in such a manner as not to connect with it the names of its authors. Men may differ about the propriety of erecting a monument to the memory of Mr. Jefferson, but I should be glad to know whether any man would have done it, but one who had strong sympathies with human nature. "I knew him well, Horatio," the epitaph concludes, a fellow of infinite jest, and most excellent fancy." This was the motive, and the only motive, except the pleasure of doing a good act without making parade or exciting suspicion. Mr. Wood justly adds, that " Chief Justice Gibson's sensibilities and taste in the whole range of the fine arts, music, architecture, painting, statuary, and the drama, were hardly inferior to his uncommon intellectual parts;" and the author, if it had fallen in his way, might have said, what I have reserved to this place — that in geology, chemistry and medicine, Judge Gibson's knowledge was probably more extensive and complete, than that of any member of the legal profession who survives him.

It is almost unnecessary to speak of him as a man of integrity. I verily believe that the mere force of habit in seeking the truth and finding reasons to support it, would have driven him to the right, against every corrupt influence that could have been brought to bear upon him. But the truth is, no idea opposite to that of his utmost purity as a judge, was ever associated with his name. There was something in his character, conversation, manner and appearance, which would have crushed such a thought in the bud. A man who had approached him for the purpose of corrupting him, would have been as much disposed to fall down before him in an act of homage, as to have attempted to carry out his purpose. After a lifetime devoted to the service of his country, it is surely no mean praise of a public man, that declarations like these can be uttered, with the certainty that they will be credited, not less by the suitors against whom he decided, than by the profession who practiced before him, and the community whose laws he enforced.

There was another feature in his character, which is, though it should not be, worthy of a passing notice. I refer to his delicate sense of pecuniary obligation. He remained at the bar for too short a period, if he had been actively employed, to accumulate property. Of the smallness of his salary, during his entire judicial term, the reader is probably aware.<sup>1</sup> His hospitality through life was so

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<sup>1</sup> Just at this point, I cannot resist the opportunity to strike at the niggardly parsimony exhibited in appointing the salaries of Judges in Pennsylvania and in other States of the Union. The argument has been frequently and forcibly presented, and it shall not be here reproduced. I propose a different course. Let the reader cast his eye on the following statement of the salaries paid to Judges in England:

| Court of Chancery                                      |   |         |
|--|---|---------|
| Lord Chancellor Cranworth,                             |   | £10,000 |
| Sir James Lewis Knight Bruce, Lord Justice of Appeals, |   | £6,000  |
| Sir George James Turner,                               | " | "       |
| Sir John Romilly, Master of the Rolls,                 | " | "       |
| Sir Richard Torin Kindersley, Vice Chancellor,         |   | £5,000  |
| Sir John Stuart,                                       | " | "       |
| Sir William Page Wood,                                 | " | "       |

generous, as to be universally remarked by his friends; and in respect to all the appliances of domestic comfort, his views partook of the liberality of a man of fortune. Notwithstanding this, it is believed that he was never known to borrow money, or to contract an obligation which he did not promptly discharge. At his death, he bequeathed for the support of his family, no inconsiderable sum, — produced chiefly by the rise of small investments which had been made from time to time. He had evidently studied on principle, and studied successfully, the art of living on his means however small, and of living very comfortably on his means. The case contrasts strongly with that of some of our distinguished public characters. Men who would have resented indignantly an imputation on their integrity, have displayed in this respect a recklessness of conduct which ought to be humiliating to the nation. For the sake of the public

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|  | Court of Queen's Bench. |   |        |
| Lord Campbell, Lord Chief Justice,       |                         |   | £8,000 |
| Sir J. T. Coleridge, Puisne Judge,       |                         |   | £5,000 |
| Sir Wm. Wightman,                        | "                       | " | "      |
| Sir Wm. Erie,                            | "                       | " | "      |
| Sir Chas. Crompton,                      | "                       | " | "      |
|  | Court of Common Pleas.  |   |        |
| Sir John Jervis, Chief Justice,          |                         |   | £7,000 |
| Sir W. H. Maule, Puisne Judge,           |                         |   | £5,000 |
| Sir Cresswell Cresswell,                 | "                       | " | "      |
| Sir E. Vaughan Williams,                 | "                       | " | "      |
| Sir J. W. Talfourd,                      | "                       | " | "      |
|  | Court of Exchequer.     |   |        |
| Sir Frederick Pollock, Lord Chief Baron, |                         |   | £7,000 |
| Sir James Parke, Baron of Exchequer,     |                         |   | £5,000 |
| Sir E. H. Alderson,                      | "                       | " | "      |
| Sir T. J. Piatt,                         | "                       | " | "      |
| Sir S. Martin,                           | "                       | " | "      |
|  | Court of Admiralty.     |   |        |
| Sir Stephen Lushington,                  |                         |   | £4,000 |
|  | Court of Sessions.      |   |        |
| Sergeant Adams,                          |                         |   | £1,200 |

I have no desire to see the beauty of our republican system marred by introducing into it the extravagance of a monarchical court. But observe the contrast. There is not in that list the name of an abler man than John B. Gibson. There is not a man in the list who has performed more labor than he, in moulding the jurisprudence of his country. If sitting now as Chief Justice of Pennsylvania, he would receive a salary of \$2,200, in addition to a small allowance per diem for actual labor in court, &c. Our Common Pleas Judges, out of Philadelphia and Pittsburgh, receive \$1,600 per annum, and about \$50 to \$200 mileage. How long shall this state of things continue? Is there a tax-payer in the state who does not see that a stupid, third-rate Judge, may, during his term of office, cost the community more in actual money, than all the salaries of all the Judges in the state, not to speak of the havoc he may make of law and of justice? On what principle does the prothonotary of almost every court in the state receive larger remuneration than his President Judge? Why should the compensation of the Chief Justice be less than that of a first-class salesman in Market Street? Is there any term which could properly characterize the folly of such economy?

morals, the facts can be referred to only in the general, but the instances have not been rare in which public men, by contracting debts which they never intended to discharge, and accepting loans of money which they never intended to repay, have been content to live upon the charity of those on whose interests their public stations required them to act, — an evil bad enough anywhere, and one which would be intolerable in those whose duty it is to urge on every moral ground, and to enforce by every legal means, performance of the obligations of others.

I hasten to a close. In *Bash vs. Sommer*, 8 Harris, 159, Judge Gibson delivered his last reported opinion, which, singularly enough, was the affirmance of a judgment pronounced by the judge who was to be his successor. In the March number of the *American Law Register* for 1853, he published his last essay, in a review of Mr. Troubat's work on limited partnership. It is a compact and elegant specimen of that kind of writing, and will repay perusal. I quote from it the following passage, both for the sake of the subject, and the light which it reflects on the taste of the author. "Of all legal mechanism, statutory mechanism is the most imperfect; and this is one of the strongest objections to American codification. It is always adapted to the circumstances of a single case in the mind's eye of the constructor; and when it is required to work on any other, it works badly or not at all. A legislator, who has but one model, is like a shoemaker who has but one last. It is this propensity to generalize that leads to perpetual tinkering at the statutes, till they are at last a wretched piece of unintelligible patch-work. This would be prevented by not attempting to do too much, and leaving the rest to the courts. The writer of this article is not a champion of the civil law; nor does he profess to have more than a superficial knowledge of it. He was bred in the school of Littleton and Coke, and he would be sorry to see any but common law doctrines taught in it. Water and oil would as readily coalesce, as the technicalities of our law of real property and the simplicity of the Roman law. The principles of the latter required adaptation to the English law of contracts and personal property; but it cannot be denied that when they were adapted to it they enriched it. In France, Italy, Germany, Spain, and Scotland, where the Roman law is the basis of the municipal law, it required adaption to the habitudes of the people; but the English Law Merchant — an imperishable monument of Lord Mansfield's fame — shows what a magnificent structure may be raised upon it, where the ground is not pre-occupied." I have said this was his last published essay. The soundness of the great physical and mental machine, which had performed its office for so many years, was beginning to be affected. While the intellectual fire burned with brightness, the body was yielding to the consuming touch of time, and the pressure of some hidden malady. Early in the spring of 1853, his step became evidently less firm, and his face more haggard. Business began to lose its excitement, and society its charm. The inquiries of acquaintances became more frequent, and the friends who were nearest his heart, began to draw more closely to him. In a short time, it became necessary to summon about him the immediate members of his family. All that human sympathy and affection have in them to assuage, and all that professional skill and care have in them to alleviate, were vainly exerted to the verge of their power. The silver thread had been spun to its end, and without a murmur or a pain, he gently slept in death. He died at Philadelphia on the third day of May, 1853, in the seventy-third year of his age.

I have probably no more information than the reader, of Judge Gibson's views on that vital subject before which the splendors of human achievement die out in insignificance. He was not a man to say much on such a topic. It is known that he was attached to the doctrines of the Episcopal Church. During his residence in Wilkesbarre, and afterwards in Carlisle, he acted as an

officer in that institution, and attended on its worship with regularity. A friend, with whom he generally sat in attending church in Philadelphia, testifies to the emotion which he frequently evinced under the preaching of the gospel. On the death of a most estimable lady, at whose house he had been a frequent visitor, he observes in a letter to her son, that her vast superiority in intellectual force surprised him less than her unostentatious and orthodox piety pleased him; and adds, the testimony of a mind so competent to investigate and to judge, overbears in my opinion all the cavils of the philosophers." 'His belief in revealed religion is thus joined to that of all the more eminent men of the present century. The rest is a question between himself and his final Judge. With it, let not the stranger intermeddle. It is enough to hope that when he laid aside the distinctions of earth, he appeared in the spotless robe of imputed righteousness, a guest at the Marriage Supper.

I have thus concluded the observations I proposed to make on the life of Chief Justice Gibson. No succinct and general summary of his intellectual qualities has been attempted, for that has been already executed in a manner which renders any similar effort unnecessary and undesirable.<sup>1</sup> I cannot hope that the reader has coincided in all the conclusions I have thus presented, or in the mode of reaching them. He may know other facts, or entertain different views of those which have been stated, or he may have preferred other selections from Judge Gibson's writings. In that event, I remind him that I have been communicating my own sentiments, not his; and that truth is best attained by the free and temperate expression of individual thought. As an excuse for all that has been written, I remind him further of what, if an attentive reader of history, he must have before observed, — how much more frequently the historian is obliged to rely for his authority on the fugitive publications of the day of which he writes, and especially on those of a biographical kind, than on the more elaborate treatises of preceding authors. Indeed, the former are the chief means of correcting the errors or misstatements into which the writers of history, beyond all other men, are liable to betrayal. It seems probable that Pennsylvania will someday have a history, and somebody to write it. Considering the character of her early settlements, the size of her territory, her position in the Union, her exemption, on the one hand, from slavery, and on the other, from fanaticism in politics and infidelity in religion, the physical and moral character of her people, her progress in the useful arts, and the extent to which the advantages of education are being carried by her direct action as a State, and comparing her with the ancient republics, with Switzerland, with Scotland, or with England, there seems no reason to doubt that she is capable of reaching as high an elevation as any free State which has preceded her in the march of nations. In the history that shall mark her rise and progress, the course of her jurisprudence will form an important topic ; for in a free State, more than in any other, the bench is the great bulwark of civil liberty. In such a work, the name of Judge Gibson must appear. For more than forty years, his influence on that jurisprudence was such, and the juncture which that period formed in the history of our laws was such, and the character of his individual opinions was such, that no historical writer of mere taste, whatever his own opinions or prejudices, could omit his name and labors, unless resolutely bent on suppressing the truth. All this belongs to the future. For the present, I have simply strewn along the road a few facts and considerations, — happy if at any time they may be found to serve this or any other useful purpose.

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<sup>1</sup> 7 Harris, 10.