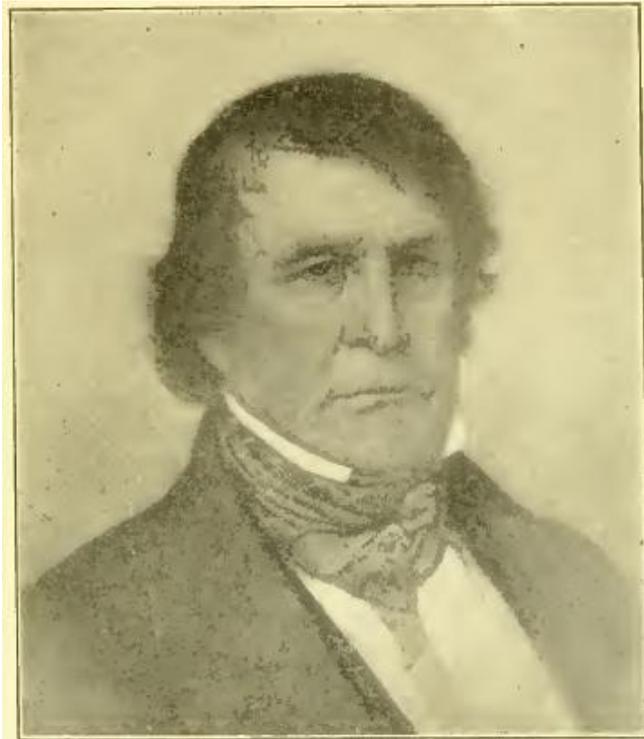


History of Perry County, Pennsylvania, Including Descriptions of Indian and Pioneer Life from the Time of Earliest Settlement Sketches of Its Noted Men and Women and Many Professional Men, By H. H. Hain, Harrisburg, Pa., 1922 - Hain-Moore Company, Publishers, Harrisburg, Pa.

Chief Justice John Bannister Gibson.



Justice John Bannister Gibson,
One of the Greatest of Pennsylvania Jurists, who was born in
Perry County Territory.

Perry County soil has been the birthplace and the early home of three different men who have become the chief justices of three different states of the Union. Chief Justice **John Bannister Gibson**, of the Supreme Court of Pennsylvania, was one of the greatest to serve in that high office, and many authorities place him first. His ancestry on his father's side were from Ireland, and emigrated to this country late in the Eighteenth Century, settling at Lancaster, where **George Gibson I**, built the first public hostelry, keeping tavern for a time. The earliest record of the family shows that in the year 1730 Governor Hamilton was instructed by the proprietors of the province — the Penns — to lay out the city of Lancaster "at or near the tavern of **George Gibson**," who was the grandfather of the chief justice. This tavern bore the sign of the "Hickory Tree," being located by the roadside, at the point where grew a large hickory tree. There the son, **George Gibson II**, was born.

The son later located at Silver Springs, Cumberland County, where he purchased a mill. After a time he married **Ann West**, a daughter of **Francis West**, who at the time of the out breaking of the American Revolution was judge of the Cumberland County courts. **George Gibson II**, removed to what is now Perry County and settled on lands of his father-in-law. He was the father of four children, of whom the eldest, **Francis** was born before coming north of the mountain, and his greatest distinction was service as register and recorder of Cumberland County for a term. The second son, **George**, became Commissary General of the United States Army, his biography appearing elsewhere in this book. A third son, **William Chesney**, became a miller, later going to sea. The fourth son, **John Bannister Gibson**, born November 8, 1780, is the subject of this sketch. A **daughter** died in infancy. The father, **George Gibson II**, removed to Sherman's Valley, in 1773, the year following his marriage. At the close of Lord- Dunmore's war, in 1774, he returned to his home at Westover Mills (the **Gibson mill**), but at the call to arms of the Continental Army he hastened to Pittsburgh and recruited a company of one hundred men for service, the first company organized for that army west of the Alleghenies. No fifer could be

found, and **Captain Gibson** became his own fifer. Composed of the roughest of frontiersmen, never subjected to discipline, they foraged regardless of orders or of trouble, and so became jocularly known as "**Gibson's** Lambs." Needing powder badly, **Gibson** was detailed to go to New Orleans and negotiate with the Spanish government for a supply. He traversed the wilderness then existing between Pittsburgh and New Orleans and in due time arrived with a supply loaded upon flats. Offered a monetary reward or promotion for his success, he chose the latter, and was made a colonel, serving as such throughout the Revolution. To **Colonel Gibson**, when Cornwallis surrendered his army at Yorktown, General Washington gave command of the surrendered troops, save the commissioned officers, to be sent to York, Pennsylvania, as prisoners of war. The statement that he never returned to the county's territory to reside is erroneous, as he did so in 1782, at the conclusion of the treaty of peace, and lived largely the life of a country gentleman until early in 1791, when Congress voted two thousand men — two regiments, from Virginia and Pennsylvania — to assist General Arthur St. Clair in an expedition against the Indians, renegades and British at Detroit, from where they harassed the residents of the Ohio Valley. **George Gibson** was appointed lieutenant colonel and field commander of the Pennsylvania regiment. This was the first considerable military undertaking of the new nation. Early on the morning of November 4, 1791, the troops were surrounded by the redskins, on the banks of the Wabash, and, early in the engagement, **Colonel Gibson** fell, wounded in the head. Bandaging it he again entered the fight, thus being a conspicuous target. He was again wounded, and for the third time, in the wrist, which disabled him. He was carried to a stockade, thirty miles back, and there, a few days later, he died; and there his body rests. The township, in Mercer County, Ohio, in which the battle was fought, is named **Gibson**, in his honor. At no other place, save the Custer massacre at the Little Big Horn, were American troops handled so severely. Of 1,400 men actually engaged, 593 privates were killed and 252 privates and thirty-one officers wounded. As a young man **Colonel Gibson** had engaged in the trade with the West Indies, and also as a trader, trafficking with the Indians at Fort Pitt. At the opening of the Revolution **Francis West**, of the Cumberland side of the mountain, his father-in-law, was a sympathizer of the mother country, and an extremely bitter feeling existed between them, **Colonel Gibson** being an ardent Federalist.

Unfortunately the mother, **Ann West Gibson**, did not live to see her son's elevation to high position. She died in 1809, and her son **Francis** leased the mill to **Jacob Bigler** (father of the two governors), and removed to Carlisle, where he remained for many years, later returning there, where he died March 18, 1856, aged 82 years.

When the county was created in 1820, **George Gibson's** heirs were assessed with 450 acres of land, a sawmill and a gristmill. **Francis West**, the maternal grandfather of **Chief Justice Gibson**, was the owner of five slaves which he disposed of in his will at the time of his death in 1784. As stated, he was judge of the Cumberland County courts, and is said to have been a brilliant man. His daughter **Ann**, who became the mother of the future jurist, was also a brilliant woman, and during the first ten years of her married life, besides rearing her family of little children, found time to build the old **Westover** mill, named after the family estate in England, now and long since known as the **Gibson** mill.

John Bannister Gibson's boyhood home, which occupied a site near the mill, was located in the wooded section of present Spring Township, near the Carroll Township line, almost on the banks

of Sherman's Creek, with the towering peak of Mt. Pisgah immediately facing it, and below a mighty boulder jutting to the very edge of the waters of the creek, and known to this day as **Gibson's Rock**. Amid this wild and picturesque section he first beheld the light of day and heard the clatter of the mill and the swish of the waters.

John Bannister Gibson was born November 1, 1780. He was named after the celebrated Virginia soldier and statesman, **John Banister**¹, a member of the Continental Congress, a signer of the Articles of Confederation, and an officer in the Virginia line during the Revolution — a friend of **Colonel Gibson**. His boyhood was similar to that of the boys of the period, save that he was early sent to Dickinson College. Absence of his father in the Continental Army placed entire responsibility upon his mother, **Ann West Gibson**, an educated and talented woman, to whom he was indebted for much of his early education. With the determination that her sons should not degenerate she built a schoolhouse near the homestead and there, herself, became the teacher. His preparatory education was received at the preparatory school attached to Dickinson College, where he later graduated. The exact date of his graduation is in doubt. He began to attend college in 1795 or 1796. In the Union Philosophical Society of the college his name first appears in 1797, but in later published records of the students of the college his name appears in the Class of 1798. Biographical sketches generally place the date of his graduation as 1800. He was classed as an irregular student, his terms not being consecutive. His graduation occurred during the presidency of Charles Nesbit, D.D. He read law with that brilliant jurist, Thomas Duncan, later an associate justice on the supreme bench. He was admitted to the Carlisle Bar in 1803 and located at Carlisle, but soon left to locate in Beaver County. From there he went to Hagerstown, but by 1805 was back in Carlisle, resuming his practice there. In 1810 he was elected by the (then) Republican Party as a representative to the General Assembly of Pennsylvania, being reelected the following year. Judges were then appointive and the governor of Pennsylvania, **Simon Snyder**, was married to a cousin of **Mr. Gibson**, which accounts for his first step up the ladder, probably, but his rise was one of attainment altogether. His appointment was made in 1813, as judge of the Eleventh Judicial District, in the northern part of the state.

When **Gibson** was a student at college he drew the attention of Judge Hugh H. Brackenridge, who noticed the "country boy" and invited him to use his fine library. Through his long life he often mentioned this act, which created a lifetime friendship. A strange coincidence is that Judge Brackenridge, **Mr. Gibson** and his preceptor, Thomas Duncan, all came to be justices of the Supreme Court of the state. All did not sit together, however, as **Gibson's** appointment came immediately after the death of Brackenridge. At the time of being made a justice of the Supreme Court **John Bannister Gibson** was a common pleas judge of the newly created Eleventh District. He was appointed June 27, 1816, the day following the death of Judge Brackenridge, by Governor Snyder. Appointments were during good behavior, which practically meant for life. During the fall of 1812 **Mr. Gibson** had been united in marriage to **Sarah Galbraith**, a daughter of a retired Revolutionary officer. On his appointment to the supreme bench, they moved to Carlisle, where they continued to reside, although the sessions of court called him afar.

¹ In his early life **Justice Gibson** did not use his full name, and in later years spelled the **Banister** thus, **Bannister**, although the man after whom he was named spelled his name with a single "n."

Of **Gibson's** mother it is said that she was a devout member of the Church of England (Episcopal), and attended the services of St. John's Church at Carlisle, fifteen miles distant, across the Kittatinny Mountain, either afoot or horseback. The justice later, when at home at Carlisle, was a faithful attendant of this church. On an occasion she invited the bishop of her church to come over and baptize her boys. When he arrived they were gunning, and he retired before their return, as it grew late. During the night a slight snow fell, and the boys were off hunting before his reverence arose, and he never did get to see them.

From the pen of the late **Benjamin F. Junkin**, himself an authority of note on legal matters, we quote:

"Thus, as he started in 1816, his opinions for over thirty-six years, to 1853, when he died, are models of perspicuity, sententiousness and accurate diction. He had ceased to be chief justice in 1851, and the last opinion delivered by him was filed January 6, 1853, in the case of Beatty vs. Wray, reported in 7th Harris, page 517, determining 'that a surviving partner is not entitled to compensation for winding up the partnership business,' and after that his voice was heard no more. In his last opinion he said, 'At the formation of a partnership, its dissolution by death is rarely contemplated. It is an unwelcome subject, for no man who enters on a speculation can bear to think he may not live to finish it,' and whoever will read that last opinion and shut his eyes to the date of its delivery, will not be able to distinguish his clear and vigorous language, citations of authorities and surprising grasp of the questions involved from one of his famous efforts of twenty years before.

"There was that about **Gibson's** opinions which cannot be described. While he entered learnedly into the question, with amplifications, his language was so terse, his words so few, the structure of his sentences so harmonious, so replete with elegance of diction, that the conclusion was reached, the point decided, and the judgment convinced ere the charm was broken. He described a negotiable note in four words, 'a carrier without luggage.'

"If we of Perry are proud of his achievements and wonderful powers, other places have not withheld their admiration. As a jurist he had a world-wide renown, wherever his language is spoken. It was difficult to tell when he read and how he obtained his legal learning, but we have seen him consulting books in the State Library very often."

While many of our readers will remember **Judge Junkin**, yet he was already a member of the bar while **Judge Gibson** was on the supreme bench and was a personal acquaintance, thus showing how closely we follow the period of the celebrated jurist.

While James X. McLanahan was in the United States Congress as the representative of the district of which Perry was a part, he was abroad and sat in the court of Westminster, where the twelve judges of England were hearing a case. A lawyer was reading an opinion to the court without stating whose it was, when the chief justice remarked, "That is an opinion by Chief Justice **Gibson**, of Pennsylvania." The lawyer admitted it was, when the chief justice replied, "His opinions have great weight with this court." The congressman related the story to Chief Justice **Gibson**, in the presence of **Judge Junkin**, on an occasion, to which he replied, a tear stealing clown his cheek, "A prophet is not without honor, save in his own country."

It was Chief Justice **John Bannister Gibson** that rendered the important decision which settled for all time that the powers of the legislature are not judicial, but constructive. In the case of De

Chastellux vs. Fairchild (15 Pa. 18), decided in 1850. The legislature attempted to order a new trial in an adjudicated case. Justice **Gibson** said:

"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 of the legislature is not judicial. . . .It is limited to the making of laws; not to the exposition or execution of them."

In appearance Chief Justice **Gibson** was a powerful, broad-shouldered, tall man (over six feet). His face was handsome, intellectual and benevolent, with a florid complexion, and the oil painting of him which hangs in the Supreme Court room was pronounced by no less an authority than **Judge Junkin** as being "not recognizable, having, in fact, more the look and expression of the driver of a broad-wheeled wagon in the days when a six-horse team drew eighty hundred with a wheel locked, over the pike from Philadelphia to Pittsburgh." He was slow in gait, unheeding of surroundings, careless of personal appearance, and attracted attention. He was a connoisseur in music and painting, and was an adept on the violin. When Ole Bull played in Philadelphia, **Gibson** and another supreme judge attended, the other not being skilled along musical lines. While the audience was being held spellbound by the marvelous performance of the prodigy, the other judge turned to **Gibson** and remarked, "Let us go home; that fool will never get done tuning his fuddle." **Gibson** replied, "Why, you uncultivated heathen ! That's the most enchanting music I ever heard."

Until 1826 the Supreme Court consisted of but three judges; during that year it was increased to five. In 1827, upon the death of Chief Justice Tilghman, **Gibson** was appointed chief justice, and so remained until 1851, when the new Constitution's provisions required that the five men elected to that august body should "draw cuts," the one drawing the shortest term (three years) to be chief justice, and the one drawing the longest term (six years) to be his successor. Through that law the state was deprived of his wonderful ability in that important position, but had he lived he would have again become chief justice in 1854, as he drew the long term of six years. When the amended Constitution was adopted, in 1838, he immediately resigned as chief justice. Although party excitement ran high, Governor Ritner, a Whig, ignored it, and reappointed him. In 1851, of the five justices he was the only one to be re-nominated.

Chief Justice Gibson discharged his duties until the illness which culminated in his death, on May 3, 1853. He sat in the Supreme Court with twenty-six different justices, none of whom, it is said, owed their position to him, save Judge Duncan, whose appointment he advocated. He was for twenty-four years chief justice and for thirteen years an associate justice. From 1824 to 1828 he was president of the Board of Trustees of Dickinson College. In the year following his elevation to the chief justiceship, the friends of General Andrew Jackson placed his name at the head of the Pennsylvania electoral ticket, with the result that the ticket received in the state an almost unprecedented majority.

Judge Gibson was a lover of the theater, and he and Judge Rogers, an associate justice, placed a marble slab upon the grave of the celebrated actor, Joseph Jefferson, who died in Harrisburg in 1832, and whose body rests in a Harrisburg Cemetery, the epitaph being written by Judge **Gibson**. He also wrote the inscription for the monument of his preceptor, Judge Duncan, at

Carlisle, and drew the design as well as wrote the inscription for that of Dr. Charles Nesbit, D.D., whose attachment for the American cause made him an exile from his native land.

As a boy he showed considerable skill as an artist, and two paintings by him still exist, having been presented by his nephew, **Frank W. Gibson**, to the Allegheny County law library at Pittsburgh. One represents Pulaski on horseback, and the other is his own likeness, painted on a poplar board. The latter was painted under unusual circumstances. While a law student at Carlisle he visited his mother at the parental home at Westover Mills, along Sherman's Creek, with the intention of going deer hunting. During his entire holiday it rained, and, kept within doors, he painted the picture for amusement.

Chief Justice Gibson was elected Grand Master of the Grand Lodge, Free and Accepted Masons of Pennsylvania, on December 27, 1823, being possibly the only man born within the limits of what is now Perry County to fill that high office.

Interested largely in geology he wrote several contributions along that line, which showed him to be an authority upon that subject. While acting in the capacity of judge in the Eleventh District and residing in Luzerne County, his method of relaxation was studying the coal formations and visiting the old Indian fortifications. The statement sometimes made that **Mrs. Gibson** claimed that the first anthracite coal fires were built in her home, is doubtless without foundation, as **Judge Gibson** was appointed as judge there in 1813, while coal had been discovered in the Wyoming Valley in 1787, a quarter of a century previous.

Justice Black said of him: "Abroad he has for very many years been thought the great glory of his native state." In addressing the students of the University of Pennsylvania, in 1904, Governor Samuel Pennypacker, himself a learned judge, said: "Be earnest and thorough. If your field be the law, follow the example and study the work of **Gibson** and Sharwood." To no other man is America indebted so much as to **Gibson** for his interpretation of the English common law and its adaptation to our needs for his upbuilding of our system of equity and for his interpretation of the Constitution. In the formative period of Pennsylvania law he refused to slavishly follow outgrown conditions, when justice and right pointed otherwise. At the time of his death he had been longer in office than any contemporary judge in the world. His opinions were an unbroken chain of logic. For vigor, clearness and precision of thought they had no equals. At the May term of the Middle District, in 1853, in memorializing his decease, Chief Justice Black, among other things, paid this fine compliment to justice **Gibson**:

"He was inflexibly honest. The judicial ermine was as unspotted when he laid it aside for the habiliments of the grave, as it was when he first assumed it. I do not mean to award him merely that commonplace integrity which it is no honor to have, but simply a disgrace to want. He was not only incorruptible, but scrupulously, delicately, conscientiously free from all willful wrong, either in thought, word or deed."

Ex-Governor Samuel Pennypacker, whose fame, both as a jurist and historian, far excels that of his ability as governor, in his book, "Pennsylvania, the Keystone," says of **Chief Justice Gibson**:

"What John Marshall was to the law of the United States, **John Bannister Gibson**, born in Perry County in 1780, was to the law of Pennsylvania. During the formative period, when principles were being established, he was the chief justice, and his was the directing mind, and among lawyers he ranks higher

than such famous men as Story. He established the doctrine, now universal in America, that on the sale of goods the keeping of possession by the man who sells is a fraud as against creditors. He had been a member of the General Assembly, had written some verse, dabbled in art, and was regarded as an adept on the violin."

On an occasion **Chief Justice Gibson** and Daniel Webster attended a banquet in Boston. Mr. Webster left first and inadvertently took **Mr. Gibson's** hat. Unaware of that fact **Judge Gibson** put on Mr. Webster's hat and never discovered it until the next day, as it was a perfect fit. Each of these men had exceedingly large heads, about twenty-four inches in circumference, but **Judge Gibson's** was slightly the larger.

There existed a warm friendship between the supreme justice and his brothers, **Francis** and **George**, and throughout their long lives they lived in perfect accord. **George**, long Commissary General of the United States Army, annually took the month of October as his vacation, and much of it the brothers whiled away together. **General Gibson** was a personal friend of General Jackson, later President, who was a real admirer of the chief justice, and on several occasions wanted to make him a supreme justice of the United States, but was overruled by political combinations. Had another vacancy occurred in that august body during the Jackson administration there is little doubt that it would have gone to **Gibson**.

The chief justice was the father of eight children, as follows: **Anne Sarah**; **John Bannister**, and **Francis West**, who died in childhood; **Margaretta**, married to **Col. Charles McClure**, who represented the Cumberland district in the United States Congress and was secretary of the commonwealth during the term of Governor Porter; **Anna Barbara**, married to **W. Milnor Roberts**, once chief engineer of the state public works, whose name was associated with such projects as the Portage Road, the Harrisburg and Lancaster Railroad, and the Cumberland Valley Railroad; **John Bannister II**, a lieutenant in the First Artillery, U. S. A., at the breaking out of the Mexican War, brevetted for bravery; **George**, colonel of the Fifth Infantry, U. S. A.; and **Sallie**, married in 1851 to **Capt. R. H. Anderson**, of the Second Dragoons, U. S. A., a Southerner, and the last one of the thirty-three officers from South Carolina to resign from the United States Army in 1861, prior to the war between the States.

In these days of inflated salaries, it may be of interest to note that the highest salary ever paid the chief justice of Pennsylvania was two thousand dollars per annum. When the old historic State Capitol, the one replaced by the present building, was erected, **Justice Gibson** was one of the building commission appointed to oversee its construction.

Col. A. K. McClure, native Perry Countian, noted editor and author, in his book, "Lincoln and Men of War Times," says:

"Chief Justice **Gibson** is one of the most notable characters of Pennsylvania, and no one character is so carefully and so kindly studied by the legal profession of the state as is that of the great jurist. He stands in the annals of the commonwealth head and shoulders above his fellow great jurists, and his decisions are not only quoted in his state and country by judicial tribunals, but they have been quoted and commended in the courts of England. I did not know our great chief justice personally until within five years of his death, as he was chief justice of Pennsylvania a year before I was born. His name was a household word in the community of my boyhood, as his place of birth was only a very few miles from my own home.

His name was referred to with a pride that is natural in a primitive rural community when one of their own number has reached the highest distinction in the state, and among my early recollections I recall the chief justice's brother, **Frank Gibson**, as the man who played the fiddle for nearly or quite all the dances, corn huskings and butter boilings of the neighborhood. The chief justice, like his brother, was passionately fond of the violin, and even until the latest years of his life he would retire to his room alone and enjoy his own music on his favorite instrument.

"His magnificently chiseled face ever arrested the attention of even the most casual observer. I had few opportunities in my brief acquaintance with him of seeing him alone, but I sought every opportunity to do so because he was one of the most delightful conversationalists, and being from the same community that had given him birth he loved to talk about his own people and his neighbors for whom he cherished the liveliest affection. The only attempt he ever made at poetry was when late in life he visited the dilapidated home of his birth after an absence of many years. It is not a great poem, but it shows the simple tastes of the great jurist, and the heartstrings of love which went out to his old home surroundings. It might be said of **Gibson's** poem as Horace Greeley said in reviewing the poems of John Quincy Adams, that they show 'what middling things a great man may do.'" I quote the first and last of the six stanzas:

"The home of my 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 train of blythe melody breaks on the ear.

"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 pleasures.
Dear home of my childhood — forever farewell."

Where Gibson Sleeps.

In the graveyard at Carlisle, Pennsylvania, over the **Gibson** plot, is a stone on which appear inscriptions from the pen of that distinguished Pennsylvanian, Jeremiah S. Black, himself a jurist of note. On the face appears:

John Bannister Gibson, LL-D.,
For many years Chief Justice of Pennsylvania,
Born Nov. 8, 1780,
Died May 2, 1853,
Also his wife, Sarah W. Gibson,
Born Jan. 25, 1791,
Died Jan. 25, 1861.

The inscription on the right :

In the various Knowledge
Which forms the perfect Scholar,
He had no superior.
Independent, Upright and Able,
He had all the highest qualities
of a great Judge.

In the difficult Science of Jurisprudence,
He mastered every Department,
Discussed almost every question and
Touched no subject which he did not adorn.
He won in early manhood
And retained to the close of a long life
The affection of his brethren on the Bench,
The respect of the Bar
And the confidence of the people.

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