

THADDEUS STEVENS

AS A COUNTRY LAWYER¹

Mr. President, Ladies, and Gentlemen of the Pennsylvania State Bar Association:

I come neither to "bury Caesar" nor to praise him." I shall not ask you to follow this man's career in the field where he achieved his real eminence, much less permit you to exact from me approval of or encomium upon his work as a statesman and publicist, however much it may have been shaped or influenced by his education, his experience or his character as a lawyer. I shall content myself with a brief sketch of his career as a practitioner for two score years at the "country bar," and I reserve, with your consent, the privilege to somewhat enlarge this paper in the publication of your proceedings.

His life stretched from the days when the skies were reddened by the first torches of the French Revolution to the time when the embers of the great American Civil War were cooling into ashes. Thaddeus Stevens was born in the first term of George Washington's administration, and he died in the last year of Andrew Johnson's. His experience was not exceptionally extended, but it was stormy. While it lasted most of the history of American jurisprudence was written, but he did not enrich it with any material contribution. In the great vol-

¹Address before the Pennsylvania State Bar Association, at Bedford Springs, Pa., by W. U. Hensel, June 27, 1906.

ume which the Marshalls and Websters, and our own Gibson and Tilghman, Binney and Sergeant, and a thousand other leaders of the profession have written, no page is his; nor shall I make bold to hang his portrait in the gallery of great American lawyers.

But the fact that he was a Pennsylvanian of first rank, and that before he entered the field of national politics, and long before he became the parliamentary leader of a triumphant party, he had rapidly risen to front place as a trial lawyer, and the observation that so little of his work is recorded in the permanent annals of bench and bar, make sufficient apology for a brief recognition by an association one of whose most agreeable and useful purposes is to prepare and perpetuate the history and biography of our profession in Pennsylvania.

His struggle—or, rather, that of his widowed mother, for her lame boy, the youngest and favorite—to get an education, his escapades at Burlington and graduation from Dartmouth, his choice of the law and beginning the study of it under Judge Mattocks in his native State; his unexplained venture from Peacham, Vermont, to York, Pennsylvania; his engagement there as a teacher in an academy of which Queen Anne was a patroness (and where young Stevens prepared for college the maternal grandfather of Associate Justice J. Hay Brown); how, outside of any law school, or even of any lawyer's office, he pursued his studies diligently under David Casset, one of the leaders of the local bar, are all matters of familiar history.

His admission was characteristic of the practice of his time. It may have been 'infra dig.' in the York of that day to combine the study of a learned

profession with self-support as a school teacher; his alien Yankee ways or caustic tongue may have won him personal enemies. Whatever prevented his application for admission there, it is certain he rode horseback to Bel Air, the seat of the adjoining county of Harford, in Maryland, and presented himself, an entire stranger, on Monday, August 26, 1816, for membership at a bar, where, if the gate did not stand open, its latch was loose. The Judges sitting were Theodoric Bland and Zebulon Hollingsworth. They, together with Joseph Hopper Nicholson, Chief Judge, constituted the Judges of the Sixth Judicial District, comprising the counties of Baltimore and Harford.

A committee of examination seems to have been appointed, and one of the members on it was General Wm. H. Winder, a noted lawyer, who had been a distinguished Maryland soldier in the late war with Great Britain, in command of the District of Virginia, Maryland and the District of Columbia.² It is also related that Judge

²In Scarff's History of Maryland I find the following reference to Brigadier General W. H. Winder:

"When in 1814 the President secured information from our Minister in Europe that a number of transports were being fitted out in England for the purpose of taking on board the most effective of Wellington's veteran regiments and conveying them to the United States, the President and Cabinet judged it expedient to create a new military district, to be composed of parts of Virginia, District of Columbia and Maryland. The officer selected to command the new district was Brigadier General Wm. H. Winder, lately exchanged and returned from Canada, where he had been kept a prisoner after his unlucky capture at the battle of Stony Creek, in June, 1813. He immediately accepted the command, without means and without time to create them; he found the district without magazines of provision or forage; without transport, tools or implements, without commissariat or quartermaster's department, and with-

Chase, of later impeachment fame, participated in the examination, which was held after supper at the hotel; and a pre-requisite of the proceedings was an order (by the applicant) of two bottles of Madeira, which satisfactorily passed the committee's test. Then after young Stevens' assurance that he had read Blackstone, Coke upon Littleton, a work on pleading and Gilbert on Evidence, and that he knew the distinction between a contingent remainder and an executory devise—and the production of two more bottles of Madeira—his certificate was signed—a much more expeditious, and, perhaps, more agreeable method of testing professional fitness than the methods prescribed and pursued nowadays by the State Board of Law Examiners.

The "subsequent proceedings interested" a large concourse of persons attending Court, and in "the game that ensued" of "fip-loo," to which Stevens was then something of a stranger, he lost nearly all of the fifty dollars he had brought with him.

The minute of the Court next day thus records his admission:

out a general staff, and without troops. A requisition was made by the President for 93,500 men. Maryland was required to furnish 6,000 and when the State was invaded or menaced with invasion, then and not sooner, Winder was authorized to call for a part of the quota assigned to Maryland. Winder came to Baltimore and immediately proceeded to examine the condition of the district to which he had been assigned." Then follows a list of the places visited and the dates thereof, and also: "Though the flotilla was in flames and Winder retreating, Ross still doubted whether to proceed and attempt the capture of Washington."

General Winder was in active practice in Maryland both before and after the time Mr. Stevens was admitted to the Bar. He was frequently in Court at Bel Air, as most of the removed cases from Baltimore were tried in that Court.

“Upon the application of Stevenson Archer, Esq., for the admission of Thaddius Stevens, Esq., as an attorney of this court, the said Thaddius Stevens is admitted as an attorney of this court and thereupon takes and signs the several oaths prescribed by law, and repeats and signs a declaration of his belief in the Christian religion.”

That Stevenson Archer became Chief Judge of that same Circuit in 1823, and was subsequently Chief Justice of Maryland, and died in 1848. He had a son of the same name, who was elected to Congress in the fall of 1866, and took his seat on the 4th of March, 1867. When he was sworn into the House of Representatives, Mr. Stevens, who was then a member, came over and shook hands with him, and told him he was attracted by his name and wanted to know if he was a son of Judge Archer, of Maryland, on whose motion Stevens had been admitted to practice at Bel Air. Finding that he was, Mr. Stevens then indulged in some reminiscences connected with his admission to the bar and substantially confirmed this account of it.

The day after he had qualified as a lawyer in Maryland, Mr. Stevens rode from Bel Air to Lancaster, scarcely escaping drowning while crossing the Susquehanna river at McCall's Ferry; took a hasty look at the town, and (for some unaccountable reason) quit it for Gettysburg, where he started upon a career as a lawyer, without friends, fame, family or fortune.

Begins Practice in Adams County.

Tradition, based, however, most likely upon his own personal narration, has it that, just when he had begun to despair of success, fortuitous employment to defend a notorious

murderer brought him a large fee and great reputation, followed by many retainers. Confidence in the entire accuracy of all the details of the incident is disturbed by the reflection that a \$1,500 fee in Adams county, at that time, paid to a yet obscure local lawyer, by a murderer, whose case never reached the Appellate Court, and who was himself hanged, seems somewhat improbable. Certain it is, however, that Mr. Stevens, to his death, protested the mental irresponsibility of his client and acknowledged this case to have been the beginning of his professional fame and the basis of his fortune. Thenceforth he leaped to the front of the local bar and to fame. In all the courts of his county, especially in the Common Pleas and Quarter Sessions, he became engaged in the very miscellaneous practice which crowds the desk and throngs the office of a busy and successful country lawyer. From 1821 (7 S. & R.) to 1830 (2 Rawle), he seems to have appeared in every case in the Supreme Court from Adams county. Compared with the modern volume of business and reports, or the multitude and variety of cases from populous counties, this record is not, in itself, a very extensive one; but the fact that, out of the first ten appeals in which he appeared, he was successful in nine—six times, as plaintiff in error, reversing the court below—may help to account for his sudden rise to eminence and his lucrative returns in fees.

The first reported case in which Stevens seems to have appeared in the Supreme Court was *Butler et al. vs. Delaplaine* (7 S. & R., 378), heard at Chambersburg, where the Court then sat, Tilghman being Chief Justice, Gibson and Duncan the Justices. Oddly enough, he appeared against a colored

woman claiming freedom for herself, her husband and two children. The Adams County Court, on a writ of homine replegiando, submitted the case to determination by a jury, who, duly charged, found a verdict against the slaves under the following circumstances:

“Charity Butler was admitted to be the slave of Norman Bruce, an inhabitant of the State of Maryland, and still to continue a slave, unless she obtained her freedom by the laws of this State; and if she were free, her children after her emancipation were likewise free. Norman Bruce, in 1782, was the owner of a tract of land in Maryland, stocked with a number of slaves, and demised it, with the slaves to cultivate it, to one Cleland, and removed to a place seventy miles distant in the same State. Shortly after the lease, Cleland entered into a contract with one Gilleland, respecting Charity. Gilleland, for her services, was to feed and clothe her, until her arrival at sixteen years of age. Gilleland was an inhabitant of Maryland. A separation took place between Gilleland and his wife, and Mrs. Gilleland, being left destitute, was obliged to support herself and an infant child. She quitted housekeeping, and went to reside with her mother in the house of Mrs. Patterson, who lived in Maryland, near the line between that State and Pennsylvania, taking Charity with her. She was a seamstress, and occasionally went into Pennsylvania to work, taking the child and Charity with her to nurse it. She returned, at intervals, to her mother's in Maryland, which continued her domicile. Whether she ever remained with Charity, at any one time, for six months, was a fact left to the jury. She returned Charity to Norman Bruce, when she arrived at

the age of eleven years. Mrs. Gilleland never was an inhabitant of this State, and never came into it, with an intention of residing."

Under the Abolition Act of 1780, and its supplement of 1788, a residence in Pennsylvania, for six months, with the consent of the owner, would have entitled Charity to her freedom, and her children born after such residence would follow their mother's condition; but if she were a slave by being born in Maryland they were slaves also. Mr. Stevens successfully contended that a lease of land to cultivate it gave the lessee no right to carry away any of the slaves out of the State, and that, as to the continued residence for six months, a slave, who happened to come with his master into Pennsylvania on different visits, which may, on adding up the time of their duration, exceed six months, could not, therefore, claim freedom. Upon this latter phase of the contention, it is not without local and timely interest at this particular meeting to quote the language of Mr. Justice Duncan in delivering the opinion of the Court:

"It was well known to the framers of our Acts for the abolition of slavery that Southern gentlemen, with their families, were in the habit of visiting this State, attended with their domestic slaves, either for pleasure, health or business; year after year, passing the summer months with us, their continuance scarcely ever amounting to six months. If these successive sojournings were to be summed up, it would amount to a prohibition—a denial of the rights of hospitality. The York and Bedford Springs are watering places frequented principally, and in great numbers, by families from Maryland and Virginia, attended by their domestic slaves. The same fam-

illies, with the same servants, return in each season. The construction contended for by the plaintiffs in error would be an exclusion of the citizens of our sister States from these fountains of health, unwarranted by any principle of humanity or policy, or the spirit and letter of the law."

In his Congressional reminiscences of Mr. Stevens, the late Godlove S. Orth, of Indiana, who was a native of Pennsylvania and spent his boyhood in this State, narrates the following incident of Mr. Stevens' early career at the Bar. It has been told elsewhere in somewhat different form and may be in the main accurate, though no relator seems to have altogether verified it:

"On one occasion, while journeying to Baltimore for the purpose of replenishing his law library, he stopped for the night at a hotel in Maryland, kept by a man with whom he was well acquainted. Soon after his arrival he discovered quite a commotion among the servants at the hotel, and a woman in tears approached him and implored his assistance to prevent the contemplated sale of her husband, who was a slave. On inquiring who and where her husband was, she replied, 'Why, Massa Stevens, he is the boy who took your horse to the stable.' Stevens knew the 'boy,' and at once went to his owner and expostulated with him in reference to his sale, and at length offered to pay him \$150, half the price, if he would restore him to liberty. The landlord was inexorable, and Stevens, knowing the relations between the slave and his master, replied, 'Mr. —————, are you not ashamed to sell your own flesh and blood?' This stinging appeal only brought forth the response, 'I must

have money, and John is cheap at \$300.' Prompted by his generous nature, Stevens purchased and manumitted 'John,' and then retraced his steps to Gettysburg, without completing his journey to Baltimore. At that time \$300 was a large sum of money for one who had been but a few years at the Bar, and he postponed the replenishing of his law library to a more convenient season."

Incursions Into Politics.

Throughout the first period of his professional career, and while he was laying the foundation of a large practice, he wisely abstained from activity in party politics, though he was a pronounced Federalist. Like many successful lawyers in counties where the so-called Pennsylvania-German is a large and important element, he gained and kept the confidence of a people with whom he seemed to have nothing in common. During the next decade, and before his removal to Lancaster, his professional work was frequently and materially interrupted by bold and aggressive incursions into the fields of political strife, by intense advocacy of anti-Masonry, radical membership of the General Assembly and the Constitutional Convention of 1837, and on the Board of Canal Commissioners, by his heroic, eloquent and effective defense of the common school system and its executive patron, who was his dire party foe, and by his inglorious, if not ludicrous, figure in the bloodless "Buckshot War." But his prominence in politics and in official life added to, rather than detracted from, his success and eminence at the Bar. He continued, as an adviser of clients and trier of causes, to gather practice and reap fortune, and he was tempted to en-

gage largely, and (as often happens to the business ventures of brilliant lawyers) disastrously in manufacturing enterprises and real estate investments.

From 1830 to 1840 he continued to be engaged on one side or the other of all important litigation in Adams county, and was often called into neighboring Courts. The reports of the period tell of his activity and the wide range of his practice; though it was restricted to a rather narrow locality, it partook of great variety. The meagre reports of the arguments of counsel and the few citations of authorities by no means detract from the strength or strenuousness of those earlier contentions; and it is easy to conceive that ejectments for "one hundred and fifty acres of land, with grist mill, saw mill, oil mill and plaster mill erected on it" (Roth vs. McClelland, 6 Watts, 68); questions of "an estate tail in the first taker, or an estate in fee with an executory devise over" (Eichelberger vs. Barnitz, 9 Watts, 447); and the disputed freedom or servitude of the son of a manumitted female slave (Scott vs. Traugh, 15 Sergeant & Rawle, 17), were just as warmly contested and as learnedly disposed of as the more complex and profound questions which now vex bench and bar—and even bewilder the "many-sided" reporter.

In the Convention of 1837.

Though I am warned by the limitations on both my time and my topic not to refer to Mr. Stevens' political career, it may not be altogether a transgression to note, as part of his work as a lawyer, that he was a member from Adams county of the so-called "Reform" Convention of 1837, to

revise the Constitution of Pennsylvania. The many volumes which contain the stormy debates and exhibit the partisan virulence of that convocation teem with illustrations of his biting personalities and caustic wit. Politics, especially on the anti-Democratic side of pending controversies, was in a somewhat disorganized condition, and Stevens was something of a free lance—being not entirely satisfied with the Whig leadership—nor it with him. With characteristic consistency, that in a body to reform the organic law of the Commonwealth mounted almost to offensive obduracy, he battled against recognition of any race or color distinction; and a generation before he came to select a site for his grave or to write his own memorable epitaph, he refused to affix his name to the document promulgated as the new Constitution, because it restricted suffrage to "white" males

Nor can I forbear, in this presence—so much enriched a few years ago by Mr. Ashhurst's scholarly and valuable memorial of the late William M. Meredith—to cite a passage at arms in that convention which may well serve to "point a moral" to those who constantly bewail the degeneracy of modern manners and who fancy that the attitude of the old school lawyers and politicians toward each other was always so dignified and unruffled. It happened that Mr. Stevens (who, in this instance, at least, had absorbed Jefferson's sentiment that cities were "sores of the body politic") favored a limited legislative representation in Philadelphia—just as a later convention actually engrafted upon the fundamental law a restriction in senatorial representation, which a most thoroughly regenerated executive and leg-

islature have both found an insurmountable obstacle to the constitutional enforcement of the Constitution. Mr. Meredith, resenting the bucolic reflection upon urban rights, spoke of Stevens as the "Great Unchained of Adams," and called him even worse names; whereupon—imagine the feelings of a polite Philadelphian—the artillery of Gettysburg thus blazed forth:

"The extraordinary course of the gentleman from Philadelphia has astonished me. During the greater part of his concerted personal tirade I was at a loss to know what course had driven him beside himself. I could not imagine on what boiling cauldron he had been sitting to make him foam with all the fury of a wizard who had been concocting poison from bitter herbs. But when he came to mention Masonry, I saw the cause of his grief and malice. He unfortunately is a votary and tool of the 'handmaid,' and feels and resents the injury she has sustained. I have often before endured such assaults from her subjects. But no personal abuse, however foul or ungentlemanly, shall betray me into passion, or make me forget the command of my temper, or induce me to reply in a similar strain. I will not degrade myself to the level of a blackguard to imitate any man, however respectable. The gentleman, among other flattery, has intimated that I have venom without fangs. Sir, I needed not that gentleman's admonitions to remind me of my weakness. But I hardly need fangs, for I never make offensive personal assaults; however, I may, sometimes, in my own defense, turn my fangless jaws upon my assailants with such grip as I may. But it is well that with such great strength that gentleman has so

little venom. I have little to boast of, either in matter or manners, but rustic and rude as is my education, destitute as I am of the polished manners and city politeness of that gentleman, I have a sufficiently strong native sense of decency not to answer arguments by low, gross, personal abuse. I sustained propositions which I deemed beneficial to the whole State. Nor will I be driven from my course by the gentleman from the 'city,' or the one from the county of Philadelphia. I shall fearlessly discharge my duty, however low, ungentlemanly and indecent personal abuse may be heaped upon me by malignant wise men or gilded fools."

It was possibly due as much to what his most admiring biographer calls his "total want of creative power" as to his partisan and personal antagonisms that Stevens' influence was very light in a convention composed largely of lawyers and assembled to make laws; but he was no inconspicuous figure in a body which embraced in its membership, beside Mr. Meredith, such distinguished and able men as Daniel Agnew, Wm. Darlington, S. A. Purviance, James Pollock, George W. Woodward, John Sergeant, Joseph R. Chandler, Joseph Hopkinson, Charles Chauncey, Thomas Earle, Charles J. Ingersoll James M. Porter and Walter Forward.

Thirty years later, when Mr. Stevens died, one of this distinguished galaxy, George W. Woodward was his colleague in the Federal House of Representatives. He had been Justice and Chief Justice of the Supreme Court of Pennsylvania, and knew the lawyers of the Commonwealth for a full generation. He had no political sympathy with Mr. Stevens and deplored "the final influence of his great talents;"

but he "knew much of him as a lawyer," and when, after his death, the memorial addresses in the House were made, Judge Woodward said of him:

"As a lawyer Mr. Stevens was bold, honorable and candid, clear in statement, brief in argument, and always deferential to the bench. He was not copious in his citation of adjudged cases. I think he relied more upon the reasons than upon the authorities of the law. Indeed, his tastes inclined him rather to the study of polite literature than of the black letter. He loved 'Pope's Essay on Man' more than 'Siderfin's Reports.' Yet he betrayed no defect of preparation at the Bar. He always came with a keen discernment of the strong points of his case, and he spoke to them directly, concisely, and with good effect. His humor was irrepressible and trenchant; sometimes it cut like a Damascus blade. He was a lucky lawyer who would go through an argument with Mr. Stevens without being laughed at for something. Mr. Stevens' legal sagacity was exhibited here, in the presence of all of us, when he suggested the eleventh article of impeachment, which came nearer costing the President his official life than all the other articles together."

It certainly requires no apology—and scarcely an explanation—for any man's removal from anywhere to Lancaster, even seventy years ago. As a part of the "history of the case," it may, however, be fitly stated that Mr. Stevens, born to poverty, had, in early youth, learned to know the value and to keenly appreciate the power of money, and he never forgot his lesson. It is much less discreditable than many other things said about him, that he had, in a large degree,

the spirit of the gambler; and it is surely to his credit that, though he may have played high and, at times, even recklessly, he always "played fair," and never indulged in what has come to be called "a tight game." Personally, he was open-handed and generous, and paid his legal and moral debts to the last farthing.

Removed to Lancaster.

Furnaces and farms, even in Adams county, are fine things for a lawyer to own, when he does not have to practice law to keep the fires burning or the plough moving in the furrow; but there are—or, at least, there used to be—times of agricultural depression and industrial stagnation when, like the luckless Jerseyman in Mosquito county, the more one owns, the poorer he is. Between ventures in business and expenses in politics—before the days when campaign disbursements are rigidly filed in verified public statements—Mr. Stevens' debts approximated the then enormous sum of nearly a quarter million dollars, and he was "land poor." He came to Lancaster mainly to better his personal fortunes and to extend his practice, but not without regard to enlarged political possibilities. He found himself at a bar of able, brilliant and successful lawyers. There was no particular warmth of greeting toward him, neither did he ever get—nor apparently seek—generous social welcome; the dominant elements in his own political party were altogether too conservative to invite him to its leadership; and there, as in the county of his first "home-at-law," he bided his time to grasp political control. Though he was not personally well known to the general public in Lancaster county, his political fame had preceded him,

and business naturally came without special contrivance. Like many a less famous lawyer, he did not hesitate to first break a lance in the Quarter Sessions, and his volunteer defense of a negro ruffian was so spirited as to widely advertise the newcomer. Within six months, he was recognized as a leader, and his place in the foremost rank remained undisputed as long as he was in active practice. Until his death, he retained property interests in Adams and Franklin counties, and had a large clientage there as long as he practiced. The reports from 1842 (3 W. & S.) to 1858 (30 Penna. State) teem with his appearances in the Appellate Court; but the wealth of his professional labors lay in the varied miscellaneous practice of a populous and rich agricultural county, inhabited by people who not only "know their rights," but who—may the Lord long bless them—are willing to pay lawyers to assert and defend them.³

Among his more distinguished contemporaries at the Lancaster Bar were Attorneys General Ellmaker,

³I found among my audience, when this address was made, many Pennsylvania lawyers quite skeptical as to the reported professional incomes at the Lancaster Bar during the first half of the nineteenth century. Several Philadelphians especially scouted the idea that Mr. Buchanan, "or any other man," within six years after his admission to the Bar, earned and received over eight thousand dollars per year in this "country town." The unerring accuracy of Mr. Buchanan's biographer, the late George Ticknor Curtis, and Mr. B.'s own characteristic precision and integrity are all-sufficient guarantees of the exact truth of their statements (Curtis' *Life of James Buchanan*, Vol. 1, p. 15) that from 1818 to 1823, inclusive, Buchanan averaged over \$6,500 per year. I am satisfied this was by no means the highest earnings at the Bar of that period; Mr. Buchanan's preceptor, James M. Hopkins, easily doubled it; and doubtless Mr. Stevens, at a later day, averaged very much more.

Champneys and Franklin; Judge Ellis Lewis, later of the Supreme Court, who became Judge of the local Court soon after Stevens came to Lancaster; W. B. Fordney and Reah Frazer, local "sons of thunder;" Samuel Parke, whose ingenious special pleading was Stevens' special aversion; Isaac E. Hiester, who beat Stevens for Congress in 1852, and upon whom Stevens revenged himself in 1854 by beating him with ex-Sheriff Roberts; the meteor of the Bar, "Wash" Barton, and the brilliant John R. Montgomery, who survives in tradition as the star of first magnitude in our local constellation; A. Herr Smith, who became one of Mr. Stevens' successors in Congress and served there more years continuously than the "old Commoner" himself; Judge D. W. Patterson, Judge John B. Livingston, who studied under Stevens, and Hugh M. North, who, full of years and honors, yet connects us with what at least is secure—a glorious past.

Although, as previously noted, he was not welcomed to the Lancaster Bar, and his invasion of it was regarded jealously by most of its members, he was especially antagonized at the outset by Benjamin Champneys—later Attorney General under Governor Shunk—an active and pugnacious, but withal learned lawyer. The traditions of the local Bar are replete with stories of their collisions. Stevens was wont to sneer at Champneys' copious citations of English authorities, and sometimes, it is to be feared, displayed the character of the demagogue in Court. When Champneys blustered, however, Stevens was cool and sarcastic. On one occasion when his antagonist "rode the whirlwind" Mr. Stevens slyly expressed the hope that the jury would "not be taken by storm"—"nor by

strategy," hissed Champneys, dreading the effect of his opponent's sarcasm. When a railroad attorney vigorously objected to Stevens "leading" one of the witnesses on the other side, Stevens raised a laugh among the jurymen by observing "he looked so young and innocent I felt it my duty to lead him." When in arbitration at a tavern his antagonist hurled an inkstand at him, Stevens dodged it and dryly said: "You don't seem competent to put ink to better use." In his defense of a young man charged with that odious crime which south of Mason and Dixon line is regarded as no less horrible than murder, Mr. Stevens actually illustrated the trite Elizabethan story with sword and scabbard, and acquitted the defendant.

Sometimes His Own Lawyer.

That Stevens was not unwilling, at times, to risk the reproach supposed to attach to a lawyer who presents his own cause, appears from a number of reported cases to which he himself was a party. Adjoining his furnace and timber lands to which, after his native county in Vermont, he gave the name "Caledonia," were the estates of a Hughes family, rival iron masters of that day. As far back as 3 Watts and Sergeant, 465, heard at Harrisburg in May, 1842, in an action of trespass *quare clausem fregit*, Stevens had won his title to the disputed locus in quo "on the headwaters of the Conococheague in the South Mountain." Years afterward the strife was renewed in Stevens vs. Hughes (31 Pa., 331), where he sharply reversed the lower Court's binding instructions against him and secured from Justice Strong the assertion of the principle that "one judgment upon the title to real estate in an action of trespass

is so conclusive as to preclude the same parties or their privies from afterward controverting it."

On the new trial Stevens recovered \$500 damages. He had been indignant at his summary treatment by the Court on the first hearing, but was now quite as much astounded when, in jocose mind, he moved the Court to assess treble damages, to have the Court promptly raise the verdict to \$1,500 and enter judgment for that amount. An appeal being taken Colonel McClure (who was of counsel for record and is my authority for the statement) scarcely had the hardihood to print a paper book in defense of the judgment, and Stevens, who, after dodging all other responsibility for the appeal, had agreed to argue it, disappeared at the critical moment. His associate promptly lost the case, and, when Stevens himself reappeared and learned the outcome, he grimly said he had expected it, he "knew it all the time," but he wanted the Supreme Court also to see and know "what an utter d—d fool the Judge below really was."

If the somewhat apocryphal story—as related of him—is true that, on one occasion, he made a rude demonstration in Court and the presiding Judge asked if he meant to show his contempt of the Court, whereupon Stevens retorted: "No, I am trying to conceal it"—it must have happened in Franklin county. The Lancaster Courts have never feared to punish offenders contemptuous of their dignity.

In an earlier case, *Dobbins vs. Stevens* (17 S. & R., 14), 1827, Mr. Stevens successfully defended his conduct in purchasing a property at Sheriff's sale, upon the title to which he had given an opinion that was

claimed to have deterred purchasers. The Court below said he had committed a "legal fraud," but Chief Justice Gibson set him right. His opponents, however, at the bar and in politics were wont to remind him of the case; and "Dobbins, Dobbins" was frequently fairly roared at him. Dobbins was an Adams county lawyer who died in the almshouse.⁴

Besides land-title and water-right cases, in which he was eminently successful, notable litigation like the case of Commonwealth vs. Canal Commissioners (5 W. & S., 388), in which he was associated with Mr. Meredith; Stormfeltz vs. Manor Turnpike Road (13 Pa., 555); Commonwealth vs. Orestes Collins (8 Watts, 331), involving the judicial tenure of a Lancaster county Judge under the Constitution of 1838; the perennially interesting Coleman vs. Grubb (23 Pa., 394)—Mr. Stevens was very frequently employed in cases of contested wills and especially delighted in that sort of fray. One of these which excited great popular interest and intense local feeling was the Stevenson case (33 Pa., 469), in which the decedent left an estate to strangers to his blood. Mr. Stevens lost it below—as most lawyers will lose such a case when left to a jury of the vicinage—but the trial Judge went so far as to say, in substance, that, for a testator to be competent, he must know who were the natural objects of his bounty, and how his estate was to be distributed "among them;" to which the dictum of Justice Woodward aptly replies that "a man without parents, wife or children, can scarcely be said to have natural objects of his bounty." After reversal the case was settled.

⁴See, also, Miles vs. Stevens, 3 Pa. 21.

In Behalf of Religious Liberty.

One of the notable cases outside of Lancaster county in which he was engaged while at the Lancaster Bar, was that of *Specht vs. the Commonwealth*, 8 Pa., 312, involving the right of the Seventh Day Baptists to engage in worldly employment on Sunday, in accordance with their conscientious belief that the seventh day of the week was the true Sabbath of the Lord. The report of the case presents Mr. Stevens' argument at exceptional length and is illustrative of his scholarship and legal learning. He recognized that the question at issue had been decided against him in *Commonwealth vs. Wolf*, 3 S. & R., 48, in which Tilghman, C. J., being absent, Yeates, J., rendered the opinion, Gibson concurring, and it was held that "persons professing the Jewish religion and others who keep the seventh day as their Sabbath are liable to the penalties imposed by the law for this offense." But he boldly grappled with "stare decisis" and argued that the question should be re-opened and the constitutionality of the Act of 1794 be re-considered, because the former opinion had been rendered "by two Judges, one of whom was just closing a long life of usefulness and was then of great age; the other was just entering upon his judicial career." Questions, he contended, of such "importance to the happiness of man" had been frequently re-considered by the Court, and he cited significant precedents. He derided the doctrine that "the Christian religion is a part of the common law," and declared that this doctrine had been "promulgated in the worst times and by the worst men of a government that avowedly united church and State; in times when men were sent to the block

or to the stake on any frivolous charge of heresy." Of course, the judgment of the Court was adverse to his contention, but his argument is a most readable and interesting one.

His Defense of Fugitive Slaves.

Like a large proportion of leading lawyers in the interior of the State, Stevens seldom appeared in the Federal Courts. It is not likely he was ever admitted to the Supreme Court of the United States; and, with all his large practice and professional activity for forty years, he cannot be said to have linked his name with any great case or legal principle, to have aided the development of jurisprudence, or to have made material contribution to the literature of the law.

In one branch of practice, happily now forever extinct, he attained unique distinction. It was altogether to have been expected that, in cases arising under the fugitive slave law, so conspicuous a political advocate of the free-soil doctrine would find and even seek frequent and most generally unrequited employment in the defense of the fugitive bondmen. It was not an uncommon thing for him, in habeas corpus hearings, and before Magistrates and Commissioners asked to detain or release alleged slaves, to make most extended, brilliant and effective speeches. These were eagerly awaited and listened to. When, too, as was frequently the case with the prominent Lancaster lawyers of his period, he and they visited the village taverns to try their law suits before arbitrators, he was greeted by troops of partisan admirers. These "halcyon and vociferous" occasions—be it noted in passing memory of the older and wiser bar—were generally graced with the cheerful presence of that "old

Madeira" for which Lancaster was famous (now, alas! lamentably scarce) and the price of several bottles was frequently added to the "docket costs." Physical encounters between opposing counsel were not unheard of, and Mr. Stevens' sometimes too loosely-fitting wig, which covered an entirely hairless head, tradition has it, was at times displaced in the collision. He himself scarcely ever indulged in ardent spirits; but, though of deformed foot, he was an athlete and a lover of the chase.

In what is said to have been the first suit in Pennsylvania under the fugitive Slave Act, a Cumberland county man named Kauffman was indicted and suit was brought against him for the full value of a lot of slaves to whom his family had given food and shelter without his knowledge. The great public and political importance attached to the principle involved made the case a celebrated one. It was tried in the Federal Court at Philadelphia, Stevens for the defense. A bitter and lengthy legal fight ensued, and, after long delay, the case went to the jury on the facts. It may be presumed the Government had the better of it, but Stevens excelled in the valuable professional gift of selecting a jury with excellent judgment; and a prominent citizen of his own county and a political sympathizer was on the jury. He kept his fellows out for six weeks and the defendant was acquitted. By a singular coincidence, the present successor of Mr. Stevens, representing Lancaster county in the Federal House of Representatives, is the son of his efficient friend on that jury.

The "Christiana Riot."

Of all the cases of this character, however, in which he was engaged as counsel, none was so sensational and dramatic as the trial for treason of some of the persons engaged in what has passed into history as "The Christiana Riot." On the 11th of September, 1851, near the village of Christiana, in Lancaster county, on the border of Chester, and about ten miles above the Maryland line, Edward Gorsuch, of Baltimore county, Md., accompanied by deputies marshal and slave catchers, sought to arrest his escaped slave, who was hidden and protected in the house of a free colored man named William Parker. The cottage, which became the centre of a fierce battle and witnessed the first bloodshed in resistance to the fugitive slave law,⁵ was lo-

⁵With characteristic literary and historical thrift, that most accurate, genial and liberal of New England writers, the accomplished Col. Thomas Wentworth Higginson, in his "Cheerful Yesterdays," published in the Atlantic Monthly (and wisely republished in permanent book form, 1899), fell into the easy error of recording that the death of a United States Marshal's deputy, named Batchelder, in one of the Faneuil Hall anti-slavery riots in 1854, was the "first drop of blood actually shed" in resistance to or enforcement of the Fugitive Slave Law. Unwilling to have the history of Pennsylvania forever written—or unwritten—by New Englanders, I challenged the distinguished historian's accuracy and called his attention to the "Christiana riot." In reply I had the following letter:

Glimpsewood, Dublin, N. H.,
September 3, 1899.

Dear Sir: Thank you for your note, calling attention to an undoubted error in my "Cheerful Yesterdays." What I must have meant to say was that the killing of Batchelder was the first shedding of official blood, so to speak; i. e., that of a United States officer. As I remember, the persons killed at Christiana were the slaveholder himself and his son, which puts the matter more on

cated in a valley where nearly every house of its Quaker residents was a station on the famous "under-ground railroad." It was not an uncommon thing for the residents of the neighborhood to speed fugitives on the way which led to the blazing North star of freedom; nor was it an unknown incident in that locality that, when the disappointed slave holder failed to find his lost property, he could enlist the services of those known as kidnappers to replace the fugitive with a free negro. These social and political conditions were well calculated to promote angry collisions between those who took upon themselves the official responsibility of enforcing an odious law, and earnest abolitionists who stoutly believed in the higher law of freedom for men of all race and color.

There had been a gathering of negroes at Parker's house the night before the arrival of the slave catchers, and the blowing of a horn soon collected a motley crowd of blacks, with a sprinkling of whites, armed with axes, hoes, pitch-forks and corn-cutters. In the onset upon the house GORSUCH was killed by a shot from a gun, presumably in the hand of his own slave, and his son was seriously wounded and the posse put to flight. Conspicuous among those who assembled at the scene—and who, if they did not give active aid to the infuriated negroes, at least refused to assist the officers in executing their writs—were Castner Hanway and

the basis of self-defense as between claimant and slave; whereas the death of Batchelder was that of an United States officer. I have not access to books here, but on my return to Cambridge, will make the needed correction in the plates of "Cheerful Yesterdays."

Very truly yours,

T. W. HIGGINSON.

Elijah Lewis, prominent citizens of the neighborhood, of pronounced and well known abolition sentiments and sympathies. The death of Gorsuch and the armed resistance to the enforcement of the law produced a flame of excitement throughout the country, only equalled in its intensity by the events of the John Brown raid nearly ten years later. This is not the occasion to exploit the far-reaching consequences of the event, nor can we at this time calmly measure the confidence with which it was popularly asserted the offense committed on the peaceful soil of Lancaster county rose to the dignity of treason, by making war against the United States in resisting by force and arms the execution of the Fugitive Slave Law, and for obstructing the United States Marshal in the execution of due process.

Wholesale arrests followed, including Hanway and Lewis, and more than a score of negroes. At the preliminary hearing, in the City of Lancaster, Stevens outlined the testimony which the defense would produce, and, while he admitted the crime of murder had been committed, and was deplored by all the citizens of the county, and promised that the perpetrators, when ascertained and secured, would receive due punishment, he denounced, with characteristic savagery and invective, the testimony of the deputy marshal, and pictured, with vivid power, the provocation which the people of the neighborhood had to resentment and excitement by frequent outrages perpetrated upon innocent freemen by slave catchers from outside the State, and from desperate kidnappers who plied their nefarious trade at home.

On the trial in the United States Circuit Court in November, upon the charge of treason, Judges Grier and Kane sitting, it required a week to select a jury, and, by another strange coincidence, its foreman was a Lancaster countian, a conservative Whig, who lived to be a candidate for Congress against Stevens and one of the most formidable opponents he ever encountered. A mere outline of the exciting features of that trial would far outrun the limits of this paper and of your patience. For prudential motives, the leading part of the defense was assigned to John M. Read, then a Democrat with free soil inclinations, and Mr. Stevens even refrained from addressing the jury. But he was the central figure and dominating spirit of the scene, which was rendered especially picturesque by the two dozen accused colored men sitting in a row, all similarly attired, wearing around their necks red, white and blue scarfs, with Lucretia Mott sitting at their head, calmly knitting, the frightened negroes half hopefully regarding her sidewise as their guardian angel, and the tall, stern figure of Stevens as their mighty Moses. It will be remembered that James R. Ludlow, afterwards the distinguished Judge, assisted U. S. Attorney Ashmead in the prosecution; and it will never be forgotten with what vigor and venom the learned and ordinarily temperate Judge Grier, in his shrill, piping voice, hurled his anathemas at the "male and female vagrant lecturers" of the abolition cause, "infuriated fanatics and unprincipled demagogues" who had counselled "bloody resistance to the laws of the land," the necessary development of whose principles and the natural fruitage of whose seed, he de-

clared, was this murderous tragedy.

None the less, his judicial temper was so far restored that he felt constrained to admit the accused had not been shown to have been involved in a transaction which "rose to the dignity of treason or a levying of war." The prisoners were acquitted.

It is by no means certain, however, that Mr. Stevens' regard was not such as to lead him to deprecate lawlessness, even in advancement of his pronounced abolition ideas. No less accurate a chronicler than Judge Penrose relates that he was in Lancaster and in Stevens' office when the news came of John Brown's raid and capture. Some one said: "Why, Mr. Stevens, they'll hang that man;" to which he replied, "Damn him, he ought to be hung." It may be, however, that Mr. Stevens despised the blunder more than he hated the crime.

A Great "Country Lawyer."

For the purposes of this study or sketch, Mr. Stevens must be regarded simply as a skillful, brilliant and successful trial lawyer. To this task he brought undoubtedly great natural qualities, a liberal education and arduous special preparation. These were supplemented by a broad and intimate knowledge of men, gained in the varied fields of business, legal and political activity; by unbounded physical courage, and moral fearlessness to even do the wrong. A rare quality of wit and sarcasm, which he always knew how to use effectively and without abuse; perfect control of his temper, joined with unusual power of invective; readiness of expression, without any tendency toward mere "sound and fury" or rhetorical waste of vigor—were other distinguishing marks of his style. His vernacular was not,

however, entirely destitute of picturesque forms of speech. On one occasion in the Common Pleas, when he assailed one whom he conceived had acquired lands by fraud, and the defendant was not of an altogether prepossessing countenance, Stevens turned to him savagely, in the sight and hearing of the jury, and said: "The Almighty makes few mistakes. Look at that face! What did He ever fashion it for, save to be nailed at the masthead of a pirate ship to ride down unfortunate debtors sailing on the waves of commerce?"

If he was weakened by a lack of faith in others, he atoned for it, in part, by supreme confidence in himself; if he was naturally sympathetic, he did not permit this infirmity to mislead him from a sternness which he could readily harden into cruelty. To a lawyer friend, from whom he had a right to expect something better, but who did him a nasty trick, and not in a nice way, he once said: "You must be a bastard, for I knew your mother's husband, and he was a gentleman and an honest man." To a constituent who listened with intense interest to Webster's great Seventh of March speech, a plea for the Union, with or without slavery, but always for the Union, and who spoke to Stevens in admiration of the speech, came the crushing reply, "As I heard it, I could have cut his damned heart out."

And yet, he had a milder mood. When a committee of somewhat perturbed preachers called upon him for advice and expressed some apprehension lest they could not afford to pay his fee, he cheerfully assured them that he often defended clergymen for all kinds of misdemeanors and never charged them a cent. Neither in life nor in death did he ever seem

to be unmindful of the mother who bore him, or of the sacrifices she made to equip him for life's battle; but if he ever spoke other words in defense or exaltation of womanhood, the whisper died in the air. He was disgusted at the nomenclature adopted in the creation of some new districts in Lancaster county, and when one was called "Elizabeth," he declared he could never remember "townships named after women." His most fulsome biographer says he had no conception of beauty as expressed in painting, architecture or sculpture, and he "was not a man of taste." He read history and the classics, not novels nor poetry.

It will be remembered that on the memorable occasion which called forth Judge Black's superb eulogy on Gibson, at the May term of the Supreme Court, Harrisburg, May 9, 1853, the formal announcement of the ex-Chief Justice's death was made by Stevens; and those who read the proceedings as reported at the beginning of 6 Harris—and none can afford not to read them—will not fail to be impressed with the stately severity of Mr. Stevens' literary style and with his high appreciation of a great jurist; however much, as a politician, he may have ignored the true principle of selecting the judiciary, as a lawyer he professed the loftiest ideals.

Although Mr. Stevens had a great deal of kindness of heart and never seemed to be happier than when doing acts of charity to the deserving or extending relief to the unfortunate, or in ministering to the crippled and deformed, his tendency toward sarcasm and his disposition to say "smart things," often made him regardless of the feelings of those with whom he came into contact—especially if they were persons of power and influence

It is related that when Chief Justice Thompson once told him of the infinite pains which he took in the preparation of his judicial opinions—often writing them over and over before he got them into a shape to satisfy himself—Mr. Stevens replied: "Yes, and then you don't get them in shape to satisfy the profession."

Once in the Lancaster County Oyer and Terminer, when the Court assigned a rather inferior member of the Bar to defend two notorious negro murderers, Stevens remarked, "The Court appointed H——— to defend them, so that there would be no doubt of their conviction."

It is perhaps a trite—though very characteristic—story that once when a lady admirer rather effusively addressed him as the "Apostle of Freedom" and begged a lock of his hair, he gallantly took off his wig and, laying it before her, invited her to "help herself."

His Qualities as a Lawyer.

As to what were his professional standards, his ethical ideas or religious beliefs, there is wide room for divergence of opinion. He had no social aspirations nor elevated domestic tastes. He viewed and even joined in foot ball with the judicial office without concern; and it was a matter of no particular importance to him if every man in public life had his price—except himself. He attracted many law students, and when he was asked for terms, he replied: "Two hundred dollars. Some pay; some don't,"—a custom at our local bar which, by the way, is occasionally still honored in the observance. It is not at all certain that his influence on those closely associated with him was not more enduring for ill than for good. He was a

student of the Scriptures, but rather for their historical and literary value than as a lamp to his pathway.

As a lawyer, Judge Black once said of him to Mr. Justice Brown, "When he died he was unequalled in this country as a lawyer. He said the smartest things ever said. But his mind, as far as his sense of his obligation to God was concerned, was a howling wilderness."

Mr. Blaine, who had reversed Stevens' order of migration, and between whom and Stevens no love was lost—they were quite different types—sums up some of his characteristics as a parliamentary figure which were inseparable from his quality as a lawyer. He characterizes him as a natural leader, who assumed that place by common consent, "able, trained and fearless," "unscrupulous in his political methods," "learned in the law," and holding for a third of a century high rank at the bar—listen gratefully, brethren, to this even from an adopted New Englander—"of a State distinguished for great lawyers." He was taciturn, even at times misanthropic; "a brilliant talker, he did not relish idle and aimless conversation;" "he was much given to reading, study and reflection, and to the retirement which enables him to gratify these tastes;" like Emerson, he "loved solitude and knew its uses;" he spoke with ease and readiness, "his style resembling the crisp, clear sententiousness of Dean Swift;" his extempore sentences bore the test of grammatical and rhetorical criticism; he indulged in wit, not in humor; when his sharp sallies set the House in an uproar, his visage was that of an undertaker. His memory of facts, dates and figures was exact, and his references were to the book, chapter and page. "He had the

courage to meet any opponent, and was never overmatched in any intellectual conflict." Mr. Henry L. Dawes, in his Dartmouth College eulogy, accords him like high praise.

Col. A. K. McClure, who was for many years in close personal relations with him, and had large opportunities to make this contrast, has repeatedly told me substantially what he twice committed to permanent record; that Stevens was the most accomplished all-around lawyer of his day in Pennsylvania; thoroughly grounded in the fundamental principles, and altogether familiar with the decided cases; he was most skillful in eliciting testimony from his own witnesses and adroit in confounding the opposition in cross examination; he was ingenious and convincing in addressing a jury, and courteous to his opponents, especially if they were younger men, and unless they transgressed professional urbanity. Summing up his traits as a lawyer, Colonel McClure says: "I have known many of our great lawyers who were great advocates, or great in the skillful direction of cases; but he is the only man I recall who was eminent in all the attributes of a great lawyer"

No one was better qualified to analyze his character and career as a lawyer than his most distinguished student and immediate successor, as Representative of Lancaster County in Congress, the late Hon. Oliver J. Dickey, himself a leader of the Lancaster Bar in his day. His father was a prominent citizen of Beaver county, Pa., whose political devotion to Mr. Stevens had much to do with young Dickey's coming East to study law with him and locating in Lancaster to practice. In his eulogy of his predecessor in Congress, Mr. Dickey pro-

nounced the same high estimate upon his ability as a lawyer as those from whom I have already quoted; and he added:

“No matter with whom associated, he never tried a cause save upon his own theory of the case. At *nisi prius* he uniformly insisted on personally seeing and examining, before they were called, the important witnesses on his own side. Generally relying upon the strength and presentation of his own case, he seldom indulged in extended cross-examination of witnesses, though possessing rare ability in that direction. He never consented to be concerned or to act as counsel in the prosecution of a capital case, not from opposition to the punishment, but because it was repugnant to his feelings and that service was the duty of public officers. He was as remarkable for his consideration, forbearance and kindness when opposed to the young, weak or diffident, as he was for the grim jest, haughty sneer, pointed sarcasm or fierce invective launched at one who entered the lists and challenged battle with such weapons. He was always willing to give advice and assistance to the young and inexperienced members of the profession, and his large library was ever open for their use. He had many young men read law with him, though he did not care to have students. There were, however, two recommendations which never failed to procure an entrance into his office: ambition to learn, and inability to pay for the privilege.”

The recollections of his few surviving contemporaries and the oral traditions of the community concur with the recorded impressions of his two local biographers—one, Alexander H. Hood, his devoted friend and political

ally, the other, Alexander Harris, his inveterate antagonist. They agree that as a lawyer he showed marvelous early training. His power to remember and accurately repeat testimony without taking notes was unrivaled. In the famous Jackson land title case tried at Hollidaysburg, reported in 13 Penn. St. R., 368, which lasted many days, Stevens was not observed to have taken a single note; but his summing up of the testimony was such a marvel of accuracy and voluminousness that it remains to this day a vivid tradition of the Blair county Bar.

His illustrations were apposite, his speeches effective, never flowery, never tedious; his citations were few, but directly to the issue; his attacks were sharp and always concentrated on the weak point of his adversary. His handwriting was illegible, and he was often unable to read it himself—a characteristic of greatness which, I believe, has come into modern vogue.

Intuition, education and experience combined to endow him with that most valuable acquirement of a trial lawyer—the ability to wisely select a jury. When he could not get one to suit him, he would often make zealous efforts to continue the case. One time, it is related, under such circumstances in a case of his own, he found his antagonist just as anxious to continue, of which disposition he was quite willing to take advantage. The counsel for each, however, professed disinclination and insisted on the other paying the costs as a condition of the case going over. Stevens, apprehensive lest there might be a miscarriage, stepped forward and said to his counsel, “Mr. H——— and I will settle the question of costs between us,” and while counsel were adjusting the motion Stevens and

his antagonist went to the nearest tavern and decided the liability for costs of the term by a game of "seven-up."

In his earlier forensic efforts there is not lacking evidence of classic reading; and his style then had much of the florid rhetoric and historical allusion so characteristic of the popular orator of that day. For example, his speech, in the Pennsylvania House of Representatives, March 10, 1838, in favor of the "bill to establish a School of Arts in Philadelphia and to endow the colleges and academies of the Commonwealth," teems with references to the commerce of "Ancient Tyre or modern Venice," the "Appian ways of Rome," "the deserted plains of Palestine," "the eloquent example of Troy," "the learning of the Grecian bard," "the once proud, populous and powerful capital of Edom," and her "rock-built ramparts," "the poverty of Sparta," "the silken Persian with his heaps of gold," "the victors and victories of Marathon and Salamis," "the law giver of Sparta," "the mighty captain of Thermopylae," "mighty ocean of Pierean waters," etc. Like many others who in later years disdain their earlier florid style, Mr. Stevens recalled this highly decorated speech with some fondness; for as late as 1865 he republished and widely circulated it among his local constituents.

Not the least valuable of the lawyer-like gifts he possessed was the faculty of knowing when to quit, and of not going on after he was done. I have noted his effective, rather than his copious, citation of authorities, and his directness rather than tediousness of speech. He was unexcelled in the management of witnesses. In one exciting trial he greatly disconcerted his client by refusing to call his

strongest witness. Stevens had just apprehensions that his ultra-positiveness would prejudice the jury, and risked the chance of dispensing with him—very wisely, as it turned out. Unlike many men with ready wit, he never resented and always appreciated a keen shaft turned upon himself, and some of the old Court criers and interpreters tell amusing stories of retorts by witnesses under cross-examination whom Stevens quickly dropped, joining heartily in the laugh evoked at his own expense. He was quick to discern when he caught a Tartar.

He once won a close case by making an important witness against him, a very plain Amishman, admit on the witness stand that he was a "horse-jockey"—a term which he used with telling effect upon a jury of farmers.

In his defense, in the Adams County Court, of Taylor, tried for the murder of Bluebaugh, the principal witness for the Commonwealth swore to the declaration, made by the accused at the time of the shooting, "By G—d, I have shot him." Mr. Stevens succeeded in getting the witness to state that the words might have been, "My God, I have shot him," with all the force an exclamation of surprise and regret would have, in contrast with one of malicious acknowledgment and satisfaction; and thus Mr. Stevens acquitted his client.

When He Left the Bar.

When Mr. Stevens returned from Congress in 1853, after two terms of rather conspicuous service, he reasonably expected no further official experience. Not only was rotation the rule, but he had not yet become a controlling factor in local politics. The enlargement of his practice, the

restoration of his fortune and the redemption of his property had much to do with his change of purpose; but the organization of the Republican party, its aggressive attitude against the extension of slavery and the increasing arrogance of the South opened the path to his re-election in 1858. That year saw his last recorded appearance in the Supreme Court, and thereafter his docket shows but desultory attention to the business of his office.

His last notable case in the local Court was at the January Oyer and Terminer of 1860, in Lancaster County, when he appeared with David Paul Brown, of Philadelphia; William Darlington and J. Smith Futhey, of Chester County, in the defense of Sylvester McPhillen (so indicted, otherwise "McFillen"), charged with murder. The case was one of the most famous and the trial one of the most exciting in the annals of the Lancaster Bar. The parties resided on the extreme eastern border of Lancaster county, and the homicide occurred along, if not across, the Chester County line. McFillen was indicted for the murder of Thomas G. Henderson. There was a long-standing feud between the two families, who represented, respectively, the old aristocratic and more pretentious English element of the community and the rougher and more popular Irish class. They met on August 11, 1859, at a "picnic," a semi-public function, rather of the character of a harvest home. Three Henderson brothers were there and two of the McFillens, with attendant partisan friends. There was a series of altercations; one of the incidents was McFillen hurling a good-sized stone, which struck Thomas G. Henderson on the back of the head. At first he was not supposed to have

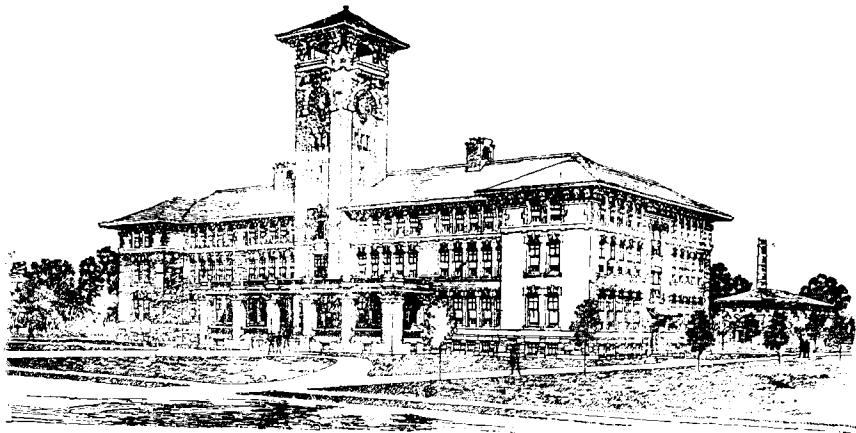
been seriously injured, but he died four days later.

Each party to the controversy had its adherents, and for months preceding the trial there was a rancorous feud, which gradually involved almost the entire neighborhood. The late Col. Emlen Franklin was District Attorney, but the manuscript indictment is in the handwriting of one of his colleagues; Hon. Isaac E. Hiester, one of Stevens' political antagonists, the late Col. William B. Fordney and Hon. O. J. Dickey, all eminent lawyers of their day, having been specially retained to prosecute the defendant to the utmost. The indictment was found at the November term, but there was a plea "against the jurisdiction of the Court," it having been contended either that the stone was thrown or that its victim was struck on the Chester county side of the line. The plea was overruled. At that time the new provisions of the Criminal Code of March 31, 1860, providing for the trial of offenses committed near the boundaries of counties, had not yet been adopted. In the report on the penal code the new 48th and 49th sections (which provide that trial may be had in either county for offenses occurring within five hundred yards of the inter-county boundary line, P. L. 1860, p. 427) are recommended as "of real practical value" "to obviate the difficulty of proof" which occurs when it is doubtful in which county the offense has been actually perpetrated.

The case came on for trial January 19, 1860, but Mr. Stevens did not take the leading part, a circumstance which was due in some measure to the fact that he was liable to be called away from the trial to his Congressional duties in Washington. It was also ascribed to the reason that he was not

accustomed to play the secondary part, even when so distinguished a criminal lawyer as David Paul Brown was his colleague. Mr. Brown, it will be remembered, was almost a fop in dress and manner, and his rotund and pictorial oratory was of a kind with which Mr. Stevens had little sympathy. It is related that during the trial he manifested a certain restiveness not common to him. The number of witnesses in attendance on the case was unusually large. They were divided into rival bands of rank and rabid partisans, who gave noisy vent to their sympathies and met in nightly brawls at public places in the city. The trial lasted Thursday, Friday and Saturday. Mr. Hiester opened for the Commonwealth, but before he had entirely closed his argument Mr. Stevens was granted leave to address the jury on behalf of the defense, as he was obliged to leave for Washington, his "pair" with an opposition member of the House expiring that day. He deplored the rancor which had characterized the prosecution, defined the different grades of murder under the law, expressed regret that the prosecution was pressing for conviction of the higher grade, and urged that his client was at most guilty only of involuntary manslaughter. On Sunday the jury attended the Presbyterian Church in the morning, St. James' Episcopal Church in the afternoon, and heard a temperance service at the Moravian Church in the evening. Mr. Hiester concluded for the Commonwealth on Monday; the local newspaper reports that when he was followed by David Paul Brown, for the defense, who spoke nearly all afternoon, Brown's remarks "were listened to in deep silence and with such intense interest that although the

bar was surrounded with an audience standing seven or eight deep, and the hall crowded to the door, it appeared like a collection of human statues." Col. Forney occupied the evening session with an address that lasted from half after seven until past ten o'clock.



Stevens Industrial School. (In course of erection.)

After being out two hours the jury returned with a verdict of "not guilty," and such a scene of disorder ensued as the Lancaster County Court House has probably never witnessed before or since. The newspaper reports that "for a time a stranger might have supposed himself in the hall of the House of Representatives at Washington or in a Court House where Sickles was tried and acquitted. The Court crier stamped his foot and demanded silence, informing the crowd that they were neither in a playhouse nor at a horse race." The street scenes until daylight were even more uproarious and disorderly. McFillen's friends engaging

in a prolonged demonstration, cheering the defendant's counsel and the jury, and groaning for the prosecution. Mr. Stevens, however, was not at home to see or hear the popular "vindication" of his last client in the Criminal Courts.

Years later he rendered a last service to the members of his profession by writing his own will, to which circumstance may be due in some part the fact that the contract for the orphans' home he founded was let only last month. The rapidly succeeding events of the war and his rise to leadership of his party, through parliamentary control of the popular branch of Congress, took him forever from the bar and ended his career as a practicing lawyer—with which only I have to do now.

Otherwise it would be interesting, and, perhaps, valuable to follow him into the wide arena of national power and politics, to weigh his policies and principles, to measure his attitude toward great questions of government and constitutional law, of finance, of emancipation and confiscation, of reconstruction, executive impeachment and of territorial extension, to discriminate how closely he adhered to or how far he departed from the law as he viewed it, and to determine whether or not, as a statesman, he was inspired by mean or noble, selfish or patriotic motives, whether he was a violent, malignant, headstrong destructionist, or an ardent lover of human liberty, whose hope for and faith in Republican institutions made him see with clear vision and hold with tenacious clutch to the higher law of a nation's supreme necessity, by which alone she can be saved for the destiny whither her people are

taking her and for which she was outfitted by the God of all nations.⁶

⁶(For valuable suggestions and interesting reminiscences embodied in the above sketch, I acknowledge my indebtedness to Col. A. K. McClure, Hon. Wm. McLean, of Gettysburg; Hon. H. M. North, LL.D., and Samuel Evans, Esq. of Columbia; Hon. J. Hay Brown and Hon. John Stewart, of the Supreme Court; Hon. C. B. Penrose, of Philadelphia; Simon P. Eby, Esq., of Lancaster; S. A. Williams, Esq., of Bel Air, Md., and to the biographies of Stevens thus far published, including those of McCall, Callender, Hood and Harris.)

W. U. H.

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