JOSEPH P. BRADLEY.
1813–1892.

by
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An anecdote is narrated of Joseph P. Bradley's childhood which may or may not be true, but which at least effectively illustrates one of the most prominent characteristics of his maturity. When he was first learning to read, his mother, in reply to his inquiry, told him that there were twenty-six letters in the alphabet. With the respect due to such a source of information the boy felt quite sure that this statement was accurate, but nevertheless nothing but the certainty acquired by personal examination would satisfy him. Accordingly he scanned the largest volume he could find in his father's library and patiently perused page after page to see whether he could discover any letter which was not included in the list of twenty-six which had been furnished him. It is needless to

1 The "P" does not represent the initial letter of a name. Bradley's baptismal name was Joseph. His father's name was Philo, and Bradley adopted the "P" probably merely as a patronymic.
add that, as the result of this minute and painstaking investigation, he finally accepted the number given as the correct one.

The quality which most marked Bradley both as a lawyer and as a judge was thoroughness in investigation. He was of all the eminent judges who have sat upon the bench of the federal Supreme Court the most scholarly and the most profound. It may be and no doubt is true that many excelled him in that peculiar attribute of some jurists which is usually designated as “legal instinct.” For example no one had a more unerring power of intuitive judgment than Bradley’s associate Mr. Justice Miller. But Bradley was infinitely painstaking, exceedingly cautious, and learned as no other American jurist has been. In any biographical narrative of the lawyers and judges of the United States it would not be improper to characterize him as preeminently the scholar of the American bar.

The success which Bradley attained he gained by hard work. No advantages of family wealth or position were his; no environment was ever less conducive than his to any easy path to fame and glory. His early education he wrested from the humblest of country schools; his living he eked from the most barren of hillside soils. His boyhood was one of wretched poverty and exacting physical labor. Only an indomitable will, a lofty ambition and a remarkable capacity for work opened for him the door that leads to that greatest of all successes—a life
filled with the ability to serve, and richly utilized for the welfare of his countrymen.

As early as 1638 his paternal forefathers migrated from England and settled in New Haven. His great-grandfather participated in the Revolutionary War, and his grandfather in the War of 1812. For generations his ancestors had followed farming for a livelihood, moving in 1791 to Berne in Albany County, New York, where Bradley, on March 14th, 1813, was born. He was the oldest of eleven children, and his early years spent on his father's farm were hard and arduous. For a few months each winter he attended the country school, supplementing the meager education thus gained by a diligent study of any and every book which came within his grasp. From very childhood he had a passion for reading and study, an avidity for knowledge that ceased only at the grave. The crops of the paternal farm were all too scant to support a large family and Bradley helped out the financial deficiencies by cutting wood from the slopes of the Helderberg Mountain, burning it into charcoal and peddling it around the streets of Albany. Spring, summer and autumn, he worked as a laborer on the farm. At fifteen he added to his employments that of teacher in the winter school, and for five years earned a little money in this capacity while continuing his studies, especially mathematics and surveying for which he had a great fondness. His labors, however, were so irksome and he was so eager to improve his con-
dition, that he determined to go down the river to New York and try there to obtain a position. But at this time he met the Reformed Dutch clergyman of the precinct who took an interest in him and offered to teach him the rudiments of Latin and Greek. Bradley gladly availed himself of the opportunity and in this way prepared for entering college.

In September, 1833, there came to Rutgers College at New Brunswick, New Jersey, a most peculiar looking young man, awkward in his manners, and clad in a suit of a nut-brown color which had been wholly woven by his mother on the home farm. At first, by reason of these things, the laughing-stock of his companions, he soon became the object of their respect and admiration. Advanced by his scholarship to a higher grade, he became the classmate of many who in later years attained no small measure of distinction,—such men as Cortlandt Parker, the eminent lawyer of Newark and Bradley's lifelong friend; Frederick T. Frelinghuysen, afterwards Secretary of State; and William A. Newell, subsequently Governor of the state of New Jersey. Even among such rivals Bradley forged to the front, meanwhile supporting himself by teaching. Graduating in 1836, he taught for a short time in an academy at Millstone, Somerset County, New Jersey, and became principal there of the school. At this time his intention was to devote himself to theology, but his college friends, impressed by his manifest ability,
were eager that he should come to Newark and begin the study of the law. Fortunately the Collector of the Port of Newark, Archer Gifford, himself a lawyer, needed an Inspector of Customs, and consented to appoint Bradley to this position, paying him a small salary which enabled him to defray his living expenses, and at the same time received him into his office as a student of the law. Three years later, in November, 1839, Bradley was admitted to the bar.

A superficially attractive personality, engaging manners, brilliant rather than solid attainments, the prestige of influential family and social connections,—any of these may lead to a rapid success at the bar, short lived, perhaps, if not accompanied by actual ability, but at least without the painful days of waiting for clients that are the lot of those less fortunately gifted by nature. Without these advantages the early years of an attorney's practice are rarely other than dreary indeed. The greater and deeper the power and merit the less rapidly is the world apt to recognize them. It has become a tradition of the bar that amounts almost to a superstition, that quick success is attended in most instances by subsequent permanent failure. Bradley's career was no exception. The first years were years of toil and privation, of much preparation, but little fruit. Of rather an unimpassioned and retiring disposition, he was not one who immediately attracted suitors. Only after opportunities, coming at not too frequent
intervals, had enabled him to demonstrate that he was a wise and safe counsellor and an able advocate, did he begin to attract clients and to lay the foundation of what subsequently became an extended, a varied, and a lucrative practice.

The first step was to ally himself with some one who could attract business which Bradley could take care of for their mutual profit. This was accomplished by the formation of a partnership with the clerk of the county, John P. Jackson, and Bradley also was aided by his friend Frelinghuysen, who employed his help in some cases. To earn necessary money and to broaden his acquaintance with Bradley also engaged in work not within the regular scope of his practice; for example, during the winter of 1841 he busied himself in the study of legislation at Trenton, and wrote letters concerning it to the "Newark Daily Advertiser," which brought him into some prominence. Then again he achieved some reputation because of his remarkable talents in mathematics. There was much excitement in the state at that time caused by hostility to the Camden and Amboy Railroad Company, which, it was suspected, had not made proper returns to the state as one of its stockholders. The railroad company agreed that a committee of three citizens should examine its books, and this committee appointed Bradley as its clerk. A short time thereafter the Legislature appointed a committee of its own to investigate the matter, and Bradley, being now thoroughly conversant with all
the facts and figures involved, was engaged by the company as its counsel, a position which soon ripened into that of permanent counsel, and subsequently into membership of the company’s board of directors. Once launched in this way, progress was easy. Other corporations sought his services. He became counsel of the United Canal and Railway Company, and a member also of its board of directors. He was appointed actuary of the Mutual Benefit Life Insurance Company of Newark, where his aptitude for mathematics found scope in the devising of a new system of life tables, and still later he was elected to the presidency of the New Jersey Mutual Life Insurance Company. Indeed he became famous as a corporation lawyer, and at the same time locally known and respected because of his participation in the communal life of Newark,—in its religious, educational and philanthropical organizations. Thus gradually, very gradually,—for the years in which success thus came stretched over a period of thirty-one years of practice,—Bradley became a prominent citizen not only of his adopted city but of the entire state as well, and his name was not unknown to the country at large as that of an able, an honorable and a successful lawyer.

The secrets of Bradley’s progress at the bar were his serious devotion to his work, his scholarly knowledge of the law and his indefatigable industry. In every argument, in every trial he was prepared. No detail escaped his attention. In all that he did and
said he was sure of himself, and therefore others learned to rely upon him, for all his actions and words were the result of careful prior thought and deliberation. It is said that in order to prepare himself for the argument of a legal question relating to the water-power of the City of Paterson, he conducted a private series of experiments to ascertain the pressure of a flow of water under varied conditions, as to the size of orifice and the like, and calculated the results through mathematical formulæ of his own devising. With all his learning, and notwithstanding some little pedantry—for he delighted sometimes to display the minuteness of his knowledge—he was eminently practical. He was a man of the world as well as of the library. He employed the learning of the dead for the solution of the problems of the living. He spoke with contempt of "legal scholars," meaning "a class of lawyers who are often more learned than sound, and more knowing that safe." He says of such counsellors: 2

They will tell you about all the obscure and recondite cases which have been decided on any particular point; what this judge asserted, and what that judge doubted; and yet be unable themselves to form any sound and definite conclusion on the subject—any conclusion for themselves or their clients to adopt as a rule. They will still doubt and hesitate, and fortify themselves with so many "ifs," and "ands," and "buts," that they only "darken counsel by words without knowledge," and leave those dependent

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2 "A Memorial of the Life and Character of Hon. William L. Dayton, late United States Minister to France," a paper read by Bradley before the New Jersey Historical Society in 1865.
upon them for advice in greater doubt and distress than before. Or, if they happen to be of a positive disposition, ever ready to give their opinion at a breath, they are as apt to be wrong as right.

An example of the careful and ingenius arguments which Bradley was wont to prepare is his brief in the case of The Bridge Proprietors vs. Hoboken Company, one of his earliest cases in the Supreme Court of the United States. The state of New Jersey had, by act in 1790, given power to certain commissioners to contract for the building of a bridge over the Hackensack River, and by the same statute it was enacted that it should not be lawful for any person or persons whatsoever to erect "any other bridge over or across the said river for ninety-nine years." The commissioners entered into a contract under the terms of this act, and such a bridge was constructed. Subsequently, in 1860, an act of the state was passed, authorizing another company to build a railway viaduct over the Hackensack. The question was whether this act was an infringement of the contract contained in the former statute between the state and the proprietors of the existing bridge. Bradley, who represented the railway company, contended that it was not, in that the viaduct in question was not a "bridge" within the meaning of the act of 1790, since such a viaduct was not in contemplation of the Legislature at that time, and since it could not be crossed by persons except in the

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31 Wallace's Reports, 116 (1862).
cars of the railway company. This contention was upheld by the Supreme Court in an opinion by Mr. Justice Miller. Bradley's argument, briefly set forth in the report, is wonderful for its logical cogency, its completeness and its cleverness.

By the year 1870 Bradley, fifty-seven years of age, was one of the prominent lawyers in the country. He was a recognized "jurist," not merely a "practitioner." Although not a holder of public office, at least one college had bestowed upon him an honorary degree.* His practice, though chiefly in railroad and corporation law, covered a wide field. He was not eloquent nor especially distinguished as a "jury lawyer," but there were few cases of importance in civil law in the courts of New Jersey—real estate matters, patents, will cases, questions of constitutional law, actions in contract and in tort—in which he was not asked to advise. In politics he had taken but little active part, his sole ventures in that line being to accept a nomination of the Republican party for Congress in 1862, only to meet with defeat at the polls, and his heading the Republican electoral ticket in New Jersey in 1868 for Grant and Colfax. His sympathies for the federal cause were of course ardent in their intensity, and when the war broke out he rendered, as counsel and director of the New Jersey railroad companies, valuable assistance to the government in the transporta-

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* Lafayette College, 1859, conferred on him the degree of Doctor of Laws.
tion of its troops and military supplies to the front. Now, at an age when most men who have pursued such an active career are wont to prepare for the twilight of life, he was eager for judicial office. This had long been his ambition, and what could be a more honorable one when based, as in his case, upon the claim of proved merit and successful attainment? Older then than most judges at the time of their appointment to the bench of the Supreme Court of the land, he little dreamed that before him lay twenty-two years of service, rich in accomplishment, and leading him to the foremost rank of American constitutional jurists.

The office which Bradley first coveted was that of Chancellor of the state of New Jersey, but his long affiliation with corporations made it impolitic for the Governor to appoint him to such a position. Accordingly he became a candidate for the office of Judge of the United States Circuit Court for the judicial districts of Pennsylvania, Delaware, and New Jersey. Again, however, he was disappointed, for President Grant appointed Judge McKennon to this post. When Mr. Justice Grier retired from the bench of the Supreme Court Bradley’s friends worked hard to have him appointed as Grier’s successor. The President chose Edwin M. Stanton. It looked as though the desired honor was not to be secured. By Act of Congress, to take effect in December, 1869, it had been provided that the number of justices of the Supreme Court should be increased.
from eight to nine, and to the additional position thus created E. R. Hoar, then attorney-general, was appointed. But Stanton died before taking the oath of office, and Hoar's appointment was not confirmed by the Senate. On February 7th, 1870, the President sent to the Senate, to fill these two vacancies, the names of Judge William Strong and Joseph P. Bradley. The latter's nomination was opposed by some on the ground that he was a "railroad lawyer," and by the South on the ground that the new justice should have been selected from one of the southern states. The two nominations being, however, on March 21st of the same year confirmed by the Senate by a decisive majority, Bradley became a member of the highest judicial tribunal of the nation.

He had not been long on the bench when two questions presented themselves for solution,—questions of the gravest import in the history of our jurisprudence, and which put Bradley's abilities to the keenest test. The eyes of the country were fastened upon the new Justice in this emergency. Each of the cases involved political as well as legal problems. The one was that of Knox vs. Lee, better known as the Legal-Tender Case; the other, the Slaughter-House Cases, came before Bradley on circuit. Each case called for an exposition of the fundamental principles of our federal system of gov-

3 12 Wallace's Reports, 457 (1870).
4 The cases in the Circuit Court are reported in 1 Wood's Reports, 21 (1870).
ernment. The one was to determine the powers of the national sovereignty, the other the powers of the states. In each of them Bradley expressed his views upon these basic subjects, and the people of the United States, whether they shared his views or not, never thereafter doubted that Bradley was able to adorn a bench on which were such associates as Miller, Field, Chase, Swayne, Nelson, Clifford, Davis and Strong.

The charge that Justices Bradley and Strong were appointed to the Supreme Court bench in order to reverse the decision in Hepburn vs. Griswold— that the Supreme Court was deliberately "packed" for that purpose,—that Grant selected these two men because their views on the legal-tender question were known or anticipated,—is one that perhaps can be more easily refuted by a statement of the facts than dispelled in the public mind as a disagreeable taint on the history of the court. For a long time it constituted a popular scandal. When it is considered, however, that the nominations of these men were sent to the Senate on the same day but a few hours prior to the time when the opinions in Hepburn vs. Griswold were read by the court, it can be readily seen that the charge must be without foundation unless it be further asserted that the President had knowledge of what the decision was to be before it was officially announced from the bench, and, since no proof nor indeed evidence of any kind exists that

8 Wallace's Reports, 663 (1879).
any of the Justices thus flagrantly violated the ethics of his office, the entire story may be dismissed as a mere fabrication or suspicion on the part of the opponents of President Grant's administration and of the view of the Supreme Court upholding the constitutionality of the legal-tender acts. Whether it was wise or politic or proper for the court to reconsider its decision in Hepburn vs. Griswold is, of course, another question, and one as to which opinions will differ, although there can be no doubt that the respect of the American people for the judiciary is not increased by such reversals of prior rulings, especially in questions of political significance.

The view taken by Bradley in his concurring opinion in Knox vs. Lee was that it was not necessary to search the clauses of the Constitution in an attempt to find a vesting in Congress by that instrument of the express power in question. He started at once in his judicial office with a doctrine which even such other judges as entertained it did not adopt until they had been on the bench, namely, that the central government was endowed with all the powers, whether expressly granted or not, which sovereign governments are wont to possess and exercise. After enumerating all the great powers which were given to the national government by the Constitution, Bradley said:

Such being the character of the general government, it seems to be a self-evident proposition that it is invested with all those
inherent and implied powers which, at the time of adopting the Constitution, were generally considered to belong to every government as such, and as being essential to the exercise of its functions.

At the time the Constitution was adopted it was and long had been the practice of most civilized governments to employ the public credit as a means of anticipating the national revenues; the Continental Congress had issued bills of credit, and it was considered a matter of legislative discretion as to whether or not such bills should be made legal tender; the Continental Congress, not being a regular government, had referred the matter to the state legislatures. No one doubted the power of Congress to issue such bills, and the giving to them, contended Bradley, of the quality of legal tender was merely incidental to their issue. "It is," he said, "absolutely essential to independent national existence that government should have a firm hold on the two great sovereign instrumentalities of the sword and the purse, and the right to wield them without restriction on occasions of national peril." The power in question "is one of those vital and essential powers inhering in every national sovereignty and necessary to its self-preservation." It is true that the power was one not to be resorted to except upon extraordinary and pressing occasions, such as war or other public exigencies of great gravity and importance; but of the times when and the periods during which it should be exercised the legislative de-
partment of the government was the judge. No true friend of the government could be indifferent to the great wrong it would sustain by a denial of such an essential prerogative.

We thus have at the very outset of Bradley's career upon the bench an expression of his conception of the independence, the dignity and the sovereignty of the national government. This was the keynote of his nationalistic interpretation of the Constitution. Before his mind's eye rose the vision of a self-sufficing state, the country of all its citizens irrespective of state lines and having all the powers necessary, not only for its own preservation, but to enable it to act without impediment and upon an equality with the other nations of the world. Such a government should be a source of the greatest pride to all the American people. Bradley could not understand the selfish local patriotism which looked antagonistically upon the concept of a truly national state. He could not conceive why there should be a feeling of jealousy toward the growth of federal power, as though it were a foreign sovereignty instead of being as much the government of the people as were the states themselves. In his first great dissenting opinion in The Collector vs. Day,8 reported even before the Legal-Tender Cases, he says, in opposing the decision of the court that it was not competent for Congress to impose a tax upon the salary of a judicial officer of a state:

8 11 Wallace's Reports, 113 (1870).
It seems to me that the general government has the same power of taxing the income of officers of the state governments as it has of taxing that of its own officers. It is the common government of all alike; and every citizen is presumed to trust his own government in the matter of taxation. No man ceases to be a citizen of the United States by being an officer under the state government. I cannot accede to the doctrine that the general government is to be regarded as in any sense foreign or antagonistic to the state governments, their officers, or people; nor can I agree that a presumption can be admitted that the general government will act in a manner hostile to the existence or functions of the state governments, which are constituent parts of the system or body politic forming the basis on which the general government is founded.

Here indeed was a new force acting upon the development of our constitutional jurisprudence. No judge had theretofore taken such advanced views of the independent character of the government at Washington. These were the fearlessly aggressive enunciations of one just elevated to the judiciary and expressed only five years after the close of the great conflict which had been fought to crush the heresy of state sovereignty and decentralization. To us, in our generation, long accustomed as we have been to the utter predominance of the national over the state governments, to the intervention of the federal government in the affairs of our daily lives, to a national concept, to a government that is a world power, ruling distant territories and alien peoples, regulating our railroads, our food-stuffs, our great corporations, these views of Bradley can with difficulty be understood as revolutionary, but the student of our
constitutional history can realize their then novel import and the constant struggle with which such views were combated by Bradley's more conservative associates.

A government may be extremely powerful in matters affecting the nation as a whole and yet not be able to impress the forcefulness of its sovereignty upon its people by reason of the fact that it fails to present itself to them in their exercise of the ordinary pursuits of life and the protection of their fundamental and most cherished liberties. Bradley apparently believed that if the people of the United States had more occasion to invoke the federal authority and thus to become more familiar, so to speak, with its organization and its purposes, they would come to regard it less as a strange and foreign governmental system and more as their own creation and protector. The fourteenth amendment furnished to his mind the means of obtaining this desired end. Accordingly, contemporaneous with his opinion in Knox vs. Lee, was his decision, in the United States Circuit Court for the District of Louisiana, of the Slaughter-House Cases, subsequently reversed by the Supreme Court. In his opinion in these cases, and his dissenting opinion in the appellate court, Bradley contended that the right to adopt and follow a lawful industrial pursuit is a privilege belonging to citizens of the United States as such, and therefore one which cannot, under the fourteenth amendment,

9 16 Wallace's Reports, 36 (1872).
be impaired or abridged by any of the individual states. His language is noteworthy:

It is futile to argue that none but persons of the African race are intended to be benefited by this amendment. They may have been the primary cause of the amendment, but its language is general, embracing all citizens, and I think it was purposely so expressed. The mischief to be remedied was not merely slavery and its incidents and consequences; but that spirit of insubordination and disloyalty to the National government which had troubled the country for so many years in some of the states, and that intolerance of free speech and free discussion which often rendered life and property insecure, and led to much unequal legislation. The amendment was an attempt to give voice to the strong national yearning for that time and that condition of things, in which American citizenship should be a sure guaranty of safety, and in which every citizen of the United States might stand erect on every portion of its soil, in the full enjoyment of every right and privilege belonging to a freeman, without fear of violence or molestation.

Here again is the new Justice's own "yearning" for an American citizenship, irrespective of state lines, which should secure all the necessary rights and liberties of civil life. It completes the revelation of Bradley's views of a true nation, and no doubt would, if followed, have rendered the states, without regard to their proud history, the diversity of their settlers, or the variances in their growth, mere provinces for the administration of purely local affairs, and without any real powers in the organization of the federal system.

In the case of most of the Supreme Court Justices one is able to detect, upon study of their opinions, a
gradual maturing of views,—a growing conservatism to be expected with the advance of age. But Bradley was not a young man when he ascended the bench, and between his views at the age of fifty-seven and his views at the age of seventy-six little if any difference can be detected. The phrases of Mormon Church vs. United States,\textsuperscript{10} are almost identical with those of the Legal-Tender Cases.

The incidents of these powers (to acquire territory, to make treaties, to declare war) are those of national sovereignty, and belong to all independent governments. The power to make acquisitions of territory by conquest, by treaty and by cession is an incident of national sovereignty. . . . Having rightfully acquired said territories, the United States government was the only one which could impose laws upon them, and its sovereignty over them was complete. No state of the Union has any such right of sovereignty over them; no other country or government had any such right.

So we may select almost at random any of Bradley's opinions in the long line from Ninth Wallace to One hundred and forty-one United States Reports,—all are to the same effect, and picture the same view of the National Government and the same argument against the existence of a tendency to regard it as an alien political and judicial organization. Here, for example, is a quotation from Claflin vs. Houseman:\textsuperscript{11}

The laws of the United States are laws in the several states, and just as much binding on the citizens and courts thereof as

\textsuperscript{10} United States Reports, 1 (1869).
\textsuperscript{11} 93 United States Reports, 130 (1876).
the state laws are. The United States is not a foreign sovereignty as regards the several states, but is a concurrent, and within its jurisdiction, paramount sovereignty. Every citizen of a state is a subject of two distinct sovereignties, having concurrent jurisdiction in the state,—concurrent as to place and persons, though distinct as to subject matter. . . . If an act of Congress gives a penalty to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided otherwise by some act of Congress, by a proper action in a state court. The fact that a state court derives its existence and functions from the state laws is no reason why it should not afford relief; because it is subject also to the laws of the United States, and is just as much bound to recognize these as operative within the state as it is to recognize the state laws. The two together form one system of jurisprudence, which constitutes the law of the land for the state; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent. The disposition to regard the laws of the United States as emanating from a foreign jurisdiction is founded on erroneous views of the nature and relations of the state and federal governments. It is often the cause or the consequence of an unjustifiable jealousy of the United States government, which has been the occasion of disastrous evils to the country.

The same theme is expatiated upon in *Ex parte Siebold.*12 The question involved in that case was the constitutionality of the "Enforcement Act," an act which made it a penal offense against the United States for any election officer, at an election held for a representative in Congress, to neglect to perform, or to violate, any duty in regard to such election,

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12 100 United States Reports, 371 (1879).
whether required by a law of the state or of the United States. Could Congress provide for the punishment of state officials for violating state laws? The Court, Mr. Justice Bradley delivering the opinion, held that the act was constitutional, that Congress could legislate upon this subject, but did not have to provide a whole new scheme for the regulation of Congressional elections; it might adopt the state laws and provide simply for their enforcement. Until Congress acted the states could act, and when Congress did act, the laws of the states, so far as they were in conflict with the legislation of Congress, were superseded by the latter, just as in the case of the regulation of interstate commerce. But the case is here mentioned, not so much for what it decided, but as yet another illustration of Justice Bradley's constantly reiterated thought on the duty of patriotism toward the National Government. He says:

It seems to be often overlooked that a national Constitution has been adopted in this country, establishing a real government therein, operating upon persons and territory and things; and which, moreover, is, or should be, as dear to every American citizen as his state government is. Whenever the true conception of the nature of this government is once conceded, no real difficulty will arise in the just interpretation of its powers. But if we allow ourselves to regard it as a hostile organization, opposed to the proper sovereignty and dignity of the state governments, we shall continue to be vexed with difficulties as to its jurisdiction and authority. No greater jealousy is required to be exercised towards this government in reference to the preservation
of our liberties, than is proper to be exercised towards the state governments.

Bradley was a stanch supporter of the doctrine that no state should be allowed in any way to hamper or impede those instrumentalities through which Congress chose to execute the purposes of its delegated powers. This was a necessary corollary of his views of the nature of the National Government. The sovereignty of that government was far more important to his mind than the unimpaired taxing powers of the individual states over the property within their boundaries. He was always fearful lest the selfishness of the local government might defeat the great structure and purposes of the nation. His position on this point was far more extreme than was that of either Miller or Field. As early as 1873, in the case of Railroad Company vs. Peniston,13 we find him dissenting from the opinion of the court which allowed the state of Nebraska to tax the realty and personalty of the Union Pacific Railroad Company, chartered by Congress to establish a national post-road and to facilitate transportation of every kind between the East and the West. Bradley could find no distinction between the question involved in this case and that decided in McCulloch vs. Maryland.14

The states cannot tax the powers, the operations, or the property of the United States, nor the means which it employs to

13 18 Wallace's Reports, 5 (1873).
14 The latter case is found in 4 Wheaton's Reports, 316 (1819).
carry its powers into execution. . . . Where the general government creates a corporation as a means of carrying out a national object, that corporation and its powers, property, and faculties, employed in accomplishing the service, are the instrumentalities by which the government effects its objects. Hence the corporation is not taxable by state authority. And it matters not that private individuals are interested for their private gain in the stock of the corporation. Such individual interest may be taxable by itself, but the corporation and its property and operations cannot be, without interfering with the agencies used by the Government for the accomplishment of its objects.

It had been argued, and it was so held by the court, that the laying of a tax on the roadbed of the company was nothing more than laying a tax on ordinary real estate. But Bradley combated this contention. A railroad track is essential to the operations of a railroad company, and therefore "to tax the road is to tax the very instrumentality which Congress desired to establish, and to operate which it created the corporation." 15

True to his ideas of the dignity of the Federal Government, Bradley applied his theory consistently in all other questions which in any way affected the attribute of national sovereignty. To believe that such a government could be sued was abhorrent to his conceptions. As a consequence we find him dissenting from the finely expressed opinion of Mr. Justice Miller in United States vs. Lee, 10 on the ground

15 See also Bradley's opinion in California vs. Central Pacific Railroad Company, 127 United States Reports, 1 (1887).
10 106 United States Reports, 196 (1882).
that not only can the United States not be sued without its consent, but that an action brought against its agents, not claiming any right or title in themselves, is an action against the United States itself, and therefore, no matter how apparently flagrant and unjust the evil complained of, no remedy can be sought except to the extent, in the tribunals, and by the methods, allowed and prescribed by Congress. Bradley believed in government, in property and in the stability of authority. He had as a lawyer, represented large property interests and influential corporations, and he was not, as cannot be too often pointed out, a young man when he went upon the bench. He therefore was not the judge to countenance attacks on the established order of things. He wanted strong government, and government that could be respected, and, if necessary, feared. The state governments too, therefore, were not to lack dignity and power, except when the sovereignty of the National Government required their inferiority. A state also, whatever the question involved, could not be sued by a private litigant without its consent. This doctrine was enunciated by the Supreme Court in *Hans vs. Louisiana*,\(^\text{17}\) and it was Bradley who wrote the opinion of the Court in that case, although it admittedly overruled *Chisholm vs. Georgia*,\(^\text{18}\) which apparently had been decided sufficiently long before to have established itself firmly as the law of

\(^{17}\) 134 United States Reports, 1 (1889).
\(^{18}\) 2 Dallas' Reports, 419 (1793).
the land. It was Bradley who wrote the opinion of the Court in New York Guaranty Company vs. Steele, in which it was held that a suit against an officer of the state, to compel him, in his official capacity, to act toward the raising of a tax, authorized by a former law, but contrary to subsequent legislation of the state, was an action against the state, and prohibited therefore by the eleventh amendment to the Constitution. It was Bradley who wrote a dissenting opinion in the Virginia Coupon Cases,—cases that allowed the recovery of property taken by state officials on judicial process for non-payment of taxes, on the ground that the plaintiffs had made proper tender of payment by the presentation of certain coupons which the state had originally promised to take, but subsequently, under an act breaking the contract, had refused to accept. Bradley thought that the prohibition of the right to sue a state should not be frittered away by refinements, and that these suits were virtually actions against the state to compel a specific performance by the state of its agreement to receive the coupons in payment of all taxes. Only where it was sought to mandamus a state officer to perform a plain official duty requiring no exercise of discretion, or to enjoin him from violating such a duty by some positive official act, and the defendant attempted to justify his action by pleading the authority of an unconstitutional and therefore void law,

\[19\] United States Reports, 230 (1889).
\[20\] United States Reports, 269 (1884).
should the action be allowed notwithstanding the mandate of the fourteenth amendment.\textsuperscript{21}

In the same way Bradley held, as we should expect him to hold, that a state could not by any contract divest itself of its sovereign powers, for example, its police power.\textsuperscript{22} Otherwise the state governments would soon deteriorate to a position where they could command little respect and exercise little real governmental authority.

It already has been stated that Bradley’s career at the bar had tended to render him conservative in his attitude toward the protection of property. Having represented corporations and corporate wealth, railroads, banks and insurance companies, he naturally was opposed to any attack on vested rights, and to all socialistic propaganda, which, however, had of course not asserted itself to any marked extent in Bradley’s day. Legislation by either the United States or the individual states should not be countenanced if it effected, even in the slightest degree, a confiscation of property, altered a contractual right, or repealed a tax exemption previously granted. Characteristic of Bradley’s views on such questions was his dissenting opinion in Campbell vs. Holt,\textsuperscript{23} in which the court held that the repeal of a

\begin{footnotes}
\item[21] Board of Liquidation vs. McComb, 92 United States Reports, 531 (1875).
\item[22] Beer Company vs. Massachusetts, 97 United States Reports, 25 (1877); Butchers’ Union Company vs. Crescent City Company, 111 United States Reports, 746 (1883).
\item[23] 115 United States Reports, 600 (1885).
\end{footnotes}
statute of limitations of actions on personal debts does not, as applied to a debtor the right of action against whom is already barred, deprive him of his property in violation of the fourteenth amendment; Bradley contended that an immunity from prosecution in a suit is a property right, the right of defence being as valuable as the right of action. So also in the famous Sinking-Fund Cases,21 Bradley dissented. He thought that Congress had no right to enact the legislation which retained in the United States Treasury part of the money due from it to the Union Pacific and Central Pacific Railroad Companies for services rendered to the Government, as a sinking-fund to apply to the payment of the bonds issued by the Government in aid of the construction of these roads. Even though there was in the Constitution no express clause forbidding Congress to impair the obligation of contracts, such a restriction was implied, and Congress could not arbitrarily and despotically violate agreements. Nor did the power reserved in the charters of the railroad companies to alter or amend them make any real difference, because an abrogation of the contracts under the guise of such power was in effect a deprivation of the property of the companies without due process of law and was therefore unconstitutional.

The case of the Bridge Company vs. United States,25 is another illustration of Bradley's tendency

21 99 United States Reports, 700 (1878).
25 105 United States Reports, 470 (1881).
to resist any invasion of the rights of property. In that case Congress had assented to the erection of a bridge by a state corporation across the Ohio River at Cincinnati, provided that it was built in conformity with certain requirements, and when thus built, the bridge was to be a legal structure; if, however, the free navigation of the river should at any time be obstructed thereby, the right to withdraw such assent or to direct the necessary modifications of the bridge was reserved. While the bridge was being erected, Congress, by statute, declared that it would be unlawful to proceed therewith unless certain specified changes were made. The company finished the bridge in conformity with these prescribed changes, and the question was whether it could recover from the United States the cost of making them. The Supreme Court held that as the company had taken from Congress the right to build the bridge subject to the right of Congress subsequently to withdraw the privilege or to prescribe changes of construction, this reservation was a part of the contract or grant, and it was for Congress, not the judiciary, to say whether the bridge as originally planned and approved did obstruct navigation. Bradley dissented from this opinion, as did likewise Justices Miller and Field. His view was that the bridge had been declared to be a lawful structure, and therefore Congress could not constitutionally require its demolition or reconstruction, without providing for compensation to the owners. Only in the case of unlawful
structures can Congress take private property without compensation. Nor did the reserved power alter the case, because there was no stipulation or condition that it might be exercised without providing for reimbursement to the proprietors of the bridge, and it could not be presumed that this reserved power was to be exercised in any other than the constitutional mode.

In their construction of the constitutional and statutory clauses reserving to the states the power to alter, amend or repeal charters of incorporation, Bradley and Field were far keener in their distinctions as to the scope and limitations of this power than any other judges of the federal courts have been. The Supreme Court has taken the position, which is both historically and logically unjustifiable, that the reservation of the power to amend such a charter gives to the state the power to alter it not only to the extent to which the charter embodies a contract between the state and the corporation, but also as regards such provisions as in fact are nothing more than agreements among the stockholders themselves.26 In Miller vs. The State 27 the facts were that the Legislature of New York in 1851 had passed an act enabling the City of Rochester to subscribe for and hold stock in the Rochester and Genesee Railroad Company (a corporation subject to such a

26 Close vs. Glenwood Cemetery, 107 United States Reports, 466 (1882); Looker vs. Maynard, 179 United States Reports, 46 (1900).
27 15 Wallace's Reports, 478 (1872).
reserved power), and in case the company should elect to receive its subscriptions, the city was authorized to appoint one director of the company for every $75,000 of capital stock held by the city. The railroad company accepted the subscription of the city on these terms to the amount of $300,000. In 1865 the Legislature enacted that the city of Rochester should thereafter appoint one director of the company for every $42,857.14 of capital stock held by the city, thus giving to the latter the right to appoint seven instead of four of the directors of the company. The question before the Supreme Court was that of the constitutionality of this act of 1865, and the court upheld the act as a proper exercise of the reserved right to amend the charter. Bradley, with fine discrimination, and again true to his advocacy of the importance of maintaining the obligation of contracts unimpaired, dissented on the ground that "the agreement with respect to the number of directors which the city of Rochester should elect was not a part of the charter of the company, but an agreement outside of and collateral to it," and "whilst the legislature may reserve the right to revoke or change its own grant of chartered rights, it cannot reserve a right to invalidate contracts between third parties, as that would enable it to reserve the right to impair the validity of all contracts, and thus evade the inhibition of the Constitution of the United States."

Stanch as Bradley was in his defence of property
and of contracts, he was equally firm in his opposition to monopolistic privileges. He may have been what is apt to be loosely denominated a "corporation lawyer," but he knew where to draw the line between property rights and special legislative privileges. In the Slaughter-House Cases, which, as has been stated, constituted his first important judicial utterance, he is unsparing in his denunciation of monopolies. To grant such a privilege, he says, is not, and cannot be, a justified exercise of the police power. To give to any person the sole right to engage in a designated occupation within a large area is to deprive other citizens of their property, namely, their right to follow a legitimate trade, and to deprive them also of the equal protection of the laws. The whole history of English jurisprudence is recited to show how odious, from the earliest times, monopolies were to the common law. And eleven years after the delivery of this opinion, in the case of Butchers' Union Company vs. Crescent City Company,\(^{28}\) Bradley says:

Monopolies are the bane of our body politic at the present day. In the eager pursuit of gain they are sought in every direction. They exhibit themselves in corners in the stock market and produce market, and in many other ways. If by legislative enactment they can be carried into the common avocations and callings of life, so as to cut off the right of the citizen to choose his avocation, the right to earn his bread by the trade which he has learned, and if there is no constitutional means of putting a check to such enormity, I can only say that it is time the Constitution

\(^{28}\) 111 United States Reports, 746 (1883).
was still further amended. In my judgment the present Constitution is amply sufficient for the protection of the people if it is fairly interpreted and faithfully enforced.

Perhaps the opinion of Bradley which is least in conformity with his general attitude toward vested property rights, least to be expected from one whose practice at the bar had been in the channels in which his had been, and least also in harmony with the later decisions of the courts, however it may coincide with public opinion and prejudice, is his dissent in the leading and important case of Chicago, Milwaukee and St. Paul Railway Company vs. Minnesota. Mr. Justice Blatchford, delivering the opinion of the Supreme Court in that case, held that an act of the Legislature of Minnesota establishing a railroad and warehouse commission, and providing that the rates of charges for the transportation of property recommended and published by the commission should be final and conclusive as to what were equal and reasonable charges, and that there could be no judicial inquiry as to the reasonableness of such rates, was unconstitutional as applied to a railroad company which pleaded that the rates established by the commission were unreasonable, and which was not allowed by the state court to offer testimony on the question of the reasonableness of such rates; such a company was deprived by the act of its property without due process of law, and was likewise deprived of the equal protection of the laws. In opposition to this

29 134 United States Reports, 418 (1889).
decision, now so universally recognized and sustained by the courts, Bradley contended that it was in effect an overruling of Munn vs. Illinois, the governing principle of which had been that the regulation and settlement of the fares of railroads and other public accommodations was a legislative and not a judicial prerogative, and that the Legislature had the right, if it chose to exercise it, to declare what was a reasonable rate or fare. It is difficult to see why, under such a view of the law, the Legislature could not, under pretense of regulating its rates, utterly destroy the earning power of a railroad or other quasi-public company, and thus practically confiscate its property, and in spite of the ability with which Justice Bradley stated his views it is not surprising that such a doctrine has failed to receive the sanction of our judiciary, however public clamor may inveigh against the barrier which the ruling in Chicago, Milwaukee and St. Paul Railway Company vs. Minnesota places between such corporations and the unbridled, hostile action of state Legislatures.

All truly great Anglo-Saxon judges have been protectors of the fundamental rights of the individual citizen against governmental tyranny and oppression, and Bradley was no exception in this respect. Although he did not render as many famous decisions involving the question of personal rights as did some of his associates, those in which he expressed his opinion are sufficient to indicate his views upon this

94 United States Reports, 113 (1876).
subject. His most elaborate and forceful exposition of the importance of a broad protection of individual rights is to be found in the opinion of the court which he wrote in the case of Boyd vs. United States.\textsuperscript{31} The question involved was the constitutionality of a customs revenue law which authorized the federal courts, in revenue cases, on motion of the government attorney, to require the defendant or claimant to produce in court his private books, invoices and papers; upon failure or refusal to obey the order, the allegations of the government attorney were to be taken as confessed. The court held that the act was void as applied to suits for penalties, or to establish a forfeiture of goods, being repugnant to the fourth and fifth amendments to the Constitution. The fourth amendment was violated, because it does not require an actual entry upon premises and search for and seizure of papers to constitute an unreasonable search and seizure; a compulsory production of a party's private books and papers to be used against himself or his property in a criminal or penal proceeding, or for a forfeiture, is within the spirit and meaning of the amendment, and it is equivalent to a compulsory production of papers to make the non-production of them a confession of the allegations which it is pretended that they will prove. And the fifth amendment was violated by the act, because the seizure or compulsory production of a man's private papers to be used in evidence against him is equiva-

\textsuperscript{31} 116 United States Reports, 616 (1885).
lent to compelling him to be a witness against himself; and a proceeding to forfeit a person's goods for an offense against the laws, though civil in form, is a "criminal case" within the meaning of the fifth amendment. Bradley's opinion in this case is of great length, scholarly, and at times eloquent, although in general the expression of his views is not as enthusiastic in style nor as oratorical as were the opinions of Mr. Justice Miller. Nor did Bradley follow Miller in some of the latter's highly technical and refined decisions designed to uphold personal liberty,—such, for example, as Kring vs. Missouri,32 and In re Medley,33 in each of which he dissented.

It fell to Bradley's lot to construe in various aspects the fourteenth and fifteenth amendments to the Constitution. We have seen that the Slaughter-House Cases came before him on circuit during the first year of his service upon the bench. To the views expressed by him in those cases he ever afterward strictly adhered.34 But in the course of his judicial career, he placed upon the fourteenth and

32 107 United States Reports, 221 (1882).
33 134 United States Reports, 160 (1889). Bradley also dissented from the opinion of the Court in Pierce vs. Carew, 16 Wallace's Reports, 234 (1872), which involved the same facts and principle as Cummings vs. State of Missouri, 4 Wallace's Reports, 120 (1866), and Ex parte Garland, 4 Wallace's Reports, 333 (1866). His dissent was on the ground that the test oath in question was one which it was competent for the State to exact as a war measure.
34 Concurring opinion in re Butchers' Union Company vs. Crescent City Company, 111 United States Reports, 746 (1883). See also concurring opinions in Bradwell vs. the State, 16 Wallace's Reports, 130 (1872), and in Bartemeyer vs. Iowa, 19 Wallace's Reports, 129 (1873).
fifteenth amendments at least three important restrictions.

One was laid down in his opinion in Missouri vs. Lewis, in which he declared that the fourteenth amendment contemplated only persons and classes of persons; that it did not profess to secure to all persons within a state the benefit of the same laws and the same remedies, but only that no person or class of persons should be denied the same protection of the laws which was enjoyed by other persons or other classes in the same place and under like circumstances; therefore a state could provide different kinds of jurisdiction for different courts in different counties, provided that all persons within the territorial limits of their respective jurisdictions had an equal right, in like cases and under like circumstances, to resort to them for redress.

A second limitation of the scope of these amendments was established in Bradley's opinion in United States vs. Cruikshank, a case which arose in the Circuit Court for the District of Louisiana, and was subsequently affirmed by the Supreme Court of the United States in an opinion by Chief-Justice Waite. A great number of persons had been indicted under the so-called "Enforcement Act" of 1870, on the charge of having conspired to injure certain negroes in the exercise of specified rights, among which was

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35 United States Reports, 101 (1879).
36 1 Woods' Reports, 308 (1874).
37 United States Reports, 542 (1875).
the right to vote. The question was whether the indictment charged the commission of a crime against the United States. Bradley distinguished, in his opinion, between such rights and privileges as were secured in the Constitution only by a declaration that the states should not violate nor abridge them, and such as were secured by a statement in general terms that such rights and privileges should exist. An example of the former class was the prohibition of the states to impair the obligation of contracts; in that case Congress could not pass a law for the general enforcement of all contracts as among individuals. An example of the second class was the declaration that slavery should not exist in the United States; in that case Congress could enact legislation aimed directly at individuals within the states prohibiting them from holding persons as slaves. The right to vote, as secured by the fifteenth amendment, belonged to this latter class, but it was not the deprival of the right to vote that was prohibited by that amendment, but such deprival because of race, color or previous condition of servitude. Hence all that Congress could do was to pass legislation providing that there should be no denial of the right to vote on account of racial grounds; and as the indictment in this case did not show that the negroes were injured in their exercise of the right to vote merely because they were negroes, the Court held that the indictment was fatally defective.

A third and even more important ruling was that
enunciated by the Supreme Court in the famous Civil-Rights Cases, Bradley delivering the opinion of the court. In these cases the Civil Rights Bill was declared unconstitutional. That act provided that all persons within the jurisdiction of the United States should be entitled to the full and equal enjoyment of the accommodations and privileges of inns, public conveyances, theaters, and other places of public amusement, and that any person who should deny to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of such accommodations or privileges, should be subject to an action on the part of the person aggrieved thereby, or, at the latter's election, to a criminal penalty. The opinion of Justice Bradley was to the effect that the fourteenth amendment prohibited only a state from denying to any person the equal protection of the laws. He said:

It does not invest Congress with power to legislate upon subjects which are within the domain of state legislation, but to provide modes of relief against state legislation, or state action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of state laws, and the action of state officers executive or judicial, when these are subversive of the fundamental rights specified in the amendment. . . . Where a subject is not submitted to the general legislative power of Congress, but is only submitted thereto for the purpose of rendering effective some prohibition against particular state

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38 United States Reports, 3 (1883).
legislation or state action in reference to that subject, the power given is limited by its object, and any legislation by Congress in the matter must necessarily be corrective in its character, adapted to counteract and redress the operation of such prohibited state laws or proceedings of state officers.

The years of Bradley's career upon the bench, from 1870 to 1892, were characterized by a wonderful expansion of the country's commerce. In the decades following the Civil War, trade and industry increased enormously, and no problems presented themselves to the judiciary so frequently as did those of commerce and navigation. In every volume of the Supreme Court reports for these years are to be found great numbers of decisions marking off the relative powers of state and nation to regulate transportation and interstate traffic. The attitude of Justice Bradley toward these problems is distinct, clearly defined and usually consistent. No one was more aggressive than he in asserting the supremacy of the Federal Government in controlling interstate commerce. He looked upon his work on this subject as the most important of his activities upon the bench. In matters of foreign and interstate commerce there are, he proclaimed, no states. He considered all traffic crossing state lines as fully a national question as were matters relating to the currency, the patent laws, or the regulation of the nation's army and navy. From his concurring opinion in Ward vs. Maryland, 29 decided in the first year of his judicial service, to his

29 12 Wallace's Reports, 418 (1870).
dissenting opinion in Maine vs. Grand Trunk Railway Company, almost the last decision of the court in which he participated, there is scarcely a break in the long line of cases in which he protests against the powers claimed by individual states to tax interstate commerce or the instrumentalities of interstate commerce under any form or guise whatsoever.  

40 142 United States Reports, 217 (1891).
41 The exceptions are Bradley's opinions in (1) Railroad Company vs. Maryland, 21 Wallace's Reports, 435 (1874), in which he held valid a statute of Maryland granting to the Baltimore and Ohio Railroad Company the right to construct a branch road from Baltimore to Washington and imposing a tax on the gross amount received by it from the transportation of passengers over the road, which Bradley considered merely a charter stipulation that the company should pay to the state a bonus or portion of its earnings, and, as such, different in principle from the imposition of a tax on the transportation of goods or persons from one state to another; and (2) in Wabash, St. Louis and Pacific Railway Company vs. Illinois, 118 United States Reports, 557 (1886), in which Bradley dissented. In that case a statute of Illinois enacted that, if any railroad company should, within that state, charge for transporting passengers or freight of the same class the same or a greater sum for any distance than it did for a longer distance, it should be liable to a penalty for such unjust discrimination. The defendant company did thus discriminate in regard to goods shipped over the same road from Peoria, Illinois, and from Gilman, Illinois, to New York, charging more for the same class of goods from Gilman than from Peoria, although the former was eighty-six miles nearer to New York than the latter, this difference of mileage being in the length of the line within the State of Illinois. The Court, per Mr. Justice Miller, held the act unconstitutional, as being an attempted regulation of interstate commerce within the exclusive control of Congress. Bradley asserted that the state did not lose its power to regulate the charges of its own railroad companies in its territory, simply because the goods or persons transported had been brought from or were destined to a point beyond the state boundary, and that this was within the legislative power of the state until Congress acted thereon. "All local arrangements," he said, "and regulations respect-
Inclined as Justices Miller and Field undoubtedly were to a strengthening of the control of the National Government over interstate commerce, their decisions are far from being as radical in this direction as were those of Bradley, and no one else has contributed so markedly as he toward the placing of commerce on an impregnable and uniform basis and the freeing of it from those shackles of state interference, greed and jealousy which had bound it in greater or less degree from the days of the Articles of Confederation to the Civil War and even beyond it.

ing highways, turnpikes, railroads, bridges, canals, ferries, dams and wharves within the state, their construction and repair, and the charges to be made for their use, though materially affecting commerce, both internal and external, and thereby incidentally operating to a certain extent as regulations of interstate commerce, are within the power and jurisdiction of the several states." He argued that if it were not for the state the railroad company would not have the right to charge any fares or freight at all; therefore the state could regulate the charges which it alone had authorized, and although such regulations might incidentally affect and regulate commerce, it was within the power of the state until Congress acted. It would be a different question were there any discrimination against the citizens or products of other states, or were there an attempt to tax interstate commerce itself, instead of merely regulating the charges for services rendered by the railroad company.

Bradley's decisions in Coo v. Errol, 116 United States Reports, 517 (1885); Turpin v. Burgess, 117 United States Reports, 504 (1885), and Brown v. Husted, 114 United States Reports, 622 (1884), were not to the effect that interstate commerce could be taxed, but that in these cases there was no question of such commerce involved, the interstate journey either not having started or having been completed when the tax was imposed. The last named case is interesting as involving Bradley's statement that "a duty on exports must either be a duty levied on goods as a condition, or by reason of their exportation, or, at least, a direct tax or duty on goods which are intended for exportation."
Upon denying to the individual states the right to interfere with railroads and steamship lines doing an interstate business, Bradley was especially insistent. In his last opinion on this subject, his dissenting opinion in Maine vs. Grand Trunk Railway Company, above referred to, speaking of the decision of the court, which was rendered by Mr. Justice Field, he says:

It comes to this: a state may tax a railroad company upon its gross receipts in proportion to the number of miles run within the state, as a tax upon its property, and may also lay a tax upon these same gross receipts in proportion to the same number of miles, for the privilege of exercising its franchises in the state! I do not know what else it may not tax the gross receipts for. If

In this connection should also be mentioned the fact that Bradley conceded that the states, and their agents the municipalities, had the right to impose wharfage charges on vessels discharging or receiving freights on or from wharves provided by such states or municipalities, and that, no matter how exorbitant or unreasonable such charges might be, nor what profits to the state or municipality they might involve, the only redress was, in the absence of action by Congress, in the state courts; nor would the federal courts look beyond the face of the statute or ordinance itself to determine the real character of the charges, as to whether they were wharfage charges or duties of tonnage. Transportation Company vs. Parkersburg, 107 United States Reports, 601 (1882); Onachita Packet Company vs. Aiken, 121 United States Reports, 444 (1886). On the other hand Bradley dissented from the opinion of the Court in Morgan's Steamship Company vs. Louisiana Board of Health, 118 United States Reports, 455 (1886), in which, in an opinion by Mr. Justice Miller, the Court held that a requirement of the State of Louisiana that each vessel passing a quarantine station in the state should pay a certain fee for examination as to its sanitary condition and the ports from which it came, was a compensation for services rendered to the vessel, and not a tonnage tax, and that such legislation belonged to that class of regulation of interstate or foreign commerce which the states might establish until Congress acted in regard thereto.
the interstate commerce of the country is not, or will not be, handicapped by this course of decision, I do not understand the ordinary principles which govern human conduct.

The court in this case had sustained the constitutionality of a state statute which required every corporation, person or association operating a railroad within the state to pay an annual tax for the privilege of exercising its franchises therein, to be determined by the amount of its gross transportation receipts, and further provided that, when applied to a railroad lying partly within and partly without the state, or to one operated as a part of a line or system extending beyond the state, the tax should be equal to the proportion of the gross receipts in the state, to be ascertained in the manner provided in the statute. It was Bradley’s contention that although the tax professsed to be one for the privilege of the railroad company exercising its franchises in the state, it was, in fact, a tax on the gross receipts of the company which came partly from interstate commerce, and that fact was sufficient to render it, in Bradley’s opinion, unconstitutional, without the necessity of a more searching analysis. He had similarly pronounced unconstitutional an attempted tax upon the gross receipts of a steamship company derived from the transportation of persons and property between different states, in his decision in Philadelphia Steamship Company vs. Pennsylvania,42 which was the first case to take a decided position on this subject and to

42 United States Reports, 326 (1886).
overrule the previous leading case to the contrary. So far did he go in denying to the states the right to legislate in such manner as would, even remotely, affect interstate carriers, that he dissented, in Smith vs. Alabama,44 from the opinion of the court sustaining the validity of a state statute which required locomotive engineers within the state to be examined and licensed by a board of inspectors, and which applied also to the case of engineers on trains crossing the state from without it to another point without the state.

One of Bradley's most important dissents in this line of cases was that contained in Pullman's Palace Car Company vs. Pennsylvania.45 The state of Pennsylvania had imposed a tax upon the capital stock of all corporations engaged in the transportation of freight or passengers within the state, taxing the Pullman Company, a foreign corporation engaged in running railroad cars into, through and out of the state, and having at all times a large number of such cars within the state, by taking as the basis of assessment such proportion of its capital stock as the number of miles of railroad over which its cars were run within the state bore to the whole number of miles in this and other states over which its cars were run. The Supreme Court held this act constitutional on the ground that the cars of the Pullman

43 State Tax on Railway Gross Receipts, 15 Wallace's Reports, 284 (1872).
44 124 United States Reports, 465 (1887).
45 141 United States Reports, 18 (1890).
Company were situate, even though merely temporarily, within the state, and were therefore subject to taxation by the state. Bradley's dissent proceeded on the theory that "the states of this government are not independent nations," that they cannot tax all the property within their limits—certainly not property merely carried through them; that property acquires a *situs* for taxation in a state when permanently located within it, even though its owner might live elsewhere, and that it might be taxed in the state where its owner lived as well; but that cars, vehicles of commerce, interstate or foreign, and intended for its movement from one state or country to another, and having no fixed or permanent *situs* or home, except at the residence of the owner, cannot, under the Constitution, be taxed in the places where they only go or come in the transaction of their business; that it was the same with cars as with ships, and that certainly a ship traveling from England to New York ever so regularly could not be taxed by the state of New York, nor could a ship traveling from New York to New Orleans be taxed by the intermediate states through whose waters it passed. The opinion of the court, Bradley claimed, would lead to a course of spoliation and reprisals that would endanger the harmony of the Union.

Another example of the same trend of thought and reasoning is to be found in his opinion in Leloup vs. Port of Mobile, where the Western Union Tele-

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127 United States Reports, 641 (1887).
graph Company, which had accepted the provisions of, and was acting under, the telegraph law of Congress of 1866, and whose business consisted in transmitting messages to all parts of the United States, was required by the City of Mobile, upon establishing an office there, to pay to the city an annual license tax. Bradley stated the law to be that telegraphic communications are commerce, as well as in the nature of postal service, and if carried on between different states they are interstate commerce, and within the power of regulation conferred upon Congress, free from the control of state regulations, except such as are strictly of a police character; and any state regulations by way of tax on the occupation or business, or requiring a license to transact such business, are unconstitutional and void. A general license tax on a telegraph company affects its entire business, interstate as well as domestic or internal. The property of a telegraph company permanently situated within the state may be taxed by the state as all other property is taxed, but its business of an interstate character cannot be thus taxed. Therefore the ordinance of the city of Mobile was, so far as it related to this company, null and void.

Not only should protection, in Bradley's opinion, be extended to carriers engaged in interstate or foreign traffic, but he was equally solicitous in preventing any state from discriminating against the products or citizens of other states in transacting business within such state. Indeed even if there were no dis-
crimination he invariably protested against any and all state legislation which impeded the free sale of the products of one state within the boundaries of another. When the court held, in Ward vs. Maryland,\textsuperscript{47} that a statute of Maryland, making it a penal offence in any person not a permanent resident in the state to sell in the state any merchandise other than that manufactured in Maryland, without first obtaining a license, for which a certain sum had to be paid, was unconstitutional, because it imposed a discriminating tax upon non-resident traders, Bradley concurred in the court's decision, but added that the law would, in his opinion, have been invalid even though it would not thus have discriminated, because such a law would prevent the manufacturers of some states from selling their goods in other states unless they established commercial houses therein, or sold to resident merchants who chose to send them orders, and any act imposing such a burden, whether in the shape of a tax or a penalty, even though levied equally upon residents and non-residents, was flagrantly opposed to the Constitution. It was Bradley who delivered the opinion of the Court in Walling vs. Michigan,\textsuperscript{48} holding unconstitutional a state statute which imposed a tax on persons who, not residing or having their principal place of business in the state, engaged there in the business of selling or soliciting the sale of intoxicating liquors to be

\textsuperscript{47} 12 Wallace's Reports, 418 (1870).
\textsuperscript{48} 116 United States Reports, 446 (1885).
shipped into the state from places without it, but did not impose a similar tax on persons selling or soliciting the sale of intoxicating liquors manufactured in the state; and in Robbins vs. Shelby County Taxing District, in which an act of Tennessee, which provided that all drummers and persons not having a regular licensed house of business in a specified taxing district, offering for sale or selling merchandise therein by sample, should be required to pay a certain tax for such privilege, was pronounced invalid so far as it applied to persons soliciting the sale of goods on behalf of persons doing business in another state, Bradley again remarking that it was immaterial that no discrimination was made by the act in favor of domestic as against foreign salesmen, because interstate commerce cannot be taxed at all, even though the same amount of tax should be laid on domestic commerce or that which is carried on solely within the state; and the negotiation of sales of goods which are in another state for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce. And it was Bradley who, in Crutcher vs. Kentucky, held that an act of Kentucky, which provided that the agent of a foreign express company could not, under penalty of a fine, carry on business within the state without first obtaining a license, to be granted only upon the

49 120 United States Reports, 489 (1886). Affirmed and followed in Corson vs. Maryland, 120 United States Reports, 502 (1886), and Asher vs. Texas, 128 United States Reports, 179 (1888).
50 141 United States Reports, 47 (1890).
agent's proving that his company was possessed of a certain minimum capital, was repugnant to the Constitution, and used the following vigorous language:

To carry on interstate commerce is not a franchise or a privilege granted by the state; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States. . . . It has frequently been laid down by this court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce. Would any one pretend that a state Legislature could prohibit a foreign corporation,—an English or a French transportation company, for example,—from coming into its borders and landing goods and passengers at its wharves, and soliciting goods and passengers for a return voyage, without first obtaining a license from some state officer, and filing a sworn statement as to the amount of its capital stock paid in? And why not? Evidently because the matter is not within the province of state legislation, but within that of national legislation. . . . And the same thing is exactly true with regard to interstate commerce as it is with regard to foreign commerce. No difference is perceivable between the two.

It is not necessary to cite other decisions and excerpts from his opinions to illustrate the views of Bradley upon the power of regulation of interstate and foreign commerce, and the need, for true commercial development, of maintaining such intercourse untrammeled by the action of the individual states.51 He not only exercised incalculable influ-

51 Among his other opinions on this subject might be mentioned Willamette Iron Bridge Company vs. Hakeh, 125 United States, 1 (1887); Voight vs. Wright, 141 United States Reports, 62 (1892); and Neilson vs. Garza, 2 Woods' Reports, 287 (1876).
ence in nationalizing the power of commercial regulation, but he rendered decisions construing the maritime law which were of the greatest importance. For this particular field of jurisprudence he was keenly gifted because of his broad learning and his studies in comparative history and law. An instance of this is to be found in Insurance Company vs. Dunham, 53 almost his first reported case in the Supreme Court, in which all the ancient writers of numerous countries on maritime law are cited, and the whole history of maritime insurance reviewed, including a lengthy analysis of the English and American cases. And in such cases as Norwich Company vs. Wright; 54 The Lottawanna; 54 The North Star; 55 and The Scotland, 56 he showed his immense learning, breadth of view, and practical nature, by building up a code of principles of maritime jurisprudence which was adapted to the needs and customs of our country, rather than slavishly based upon the dogmas of general maritime law.

For decisions upon questions of patent law he was also peculiarly equipped because of his fondness for mechanics and other scientific studies. Indeed to every branch of the law he loaned his wonderful powers of research and the results of his continued years of study, and no phase of law was left un-

52 11 Wallace's Reports, 1 (1870).
53 13 Wallace's Reports, 104 (1871).
54 21 Wallace's Reports, 358 (1874).
55 106 United States Reports, 17 (1882).
56 115 United States Reports, 24 (1885).
touched by his opinions on the Supreme Court bench, nor was any single opinion handed down by him that did not show similar indications of patient study, careful thought, and accurate expression.  

Reference has frequently been made to Bradley's scholarly equipment, but his learning was so profound that it would be difficult to exaggerate this phase of his nature. From childhood he had a passion for books, and he not only bought them but he read them, and read them again and again, and so extensive were his researches and so wonderfully retentive his memory that he came to have an expert's knowledge of the most abstruse and difficult subjects. His chief study was mathematics, but he delved deeply into astronomy as well, and likewise theology, languages, hieroglyphics, literature, art, science and political economy. While sitting in church he was wont to follow the reading of the Bible in a Greek text which he kept in his pew, observing the literalness of the translation as he proceeded. Hebrew and Arabic he studied, to say nothing of the leading modern languages. He calculated eclipses, studied the transit of Venus, made calendars for determining on sight the day of the week of any date for forty

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57 Among his more interesting decisions and opinions are those concerning the power of the Supreme Court to review the judgment of a lower court upon habeas corpus proceedings: *Ex parte Parks*, 93 United States Reports, 18 (1875); *Ex parte Siebold*, 100 United States Reports, 371 (1879); and that involving a discussion of the right of the federal courts to interpret state law independently of the decisions of the state courts; *Burgess vs. Seligman*, 107 United States Reports, 20 (1882).
centuries and the time of the new moon in any month of any century past or future. Practical engineers and college professors alike wrote to him soliciting his advice and his judgment on mechanical problems and scientific devices and methods. "The lawyer ought, indeed, to know almost everything," he once said in a lecture to the students of a university law school,\(^{58}\) "for there is nothing in human affairs that he may not, some time or other, have to do with." In his miscellaneous writings, published after his death by his son, there are essays on politics, history, philosophy, philology and sociology, a treatise on the "Recurrence of Ice Periods in the Northern Hemisphere," on the "History of the first Steam-Engine in America," on "Noah's Ark," explaining the dimensions and shape of the structure and the probable plan of distribution of the animals therein; then there is an article on the "Force of Water as used in Hydraulic Machinery in Mining," followed by "Esoteric Thoughts on Religion and Religionism." These studies were not "fads" of Bradley, nor mere superficial results of an affectation of learning, but real inquiries, conducted with patience and perseverance, intended to elicit the truth, which alone could satisfy his mind, and designed also to satiate his intense craving for continuous labor. Often he would work far into the dawn upon some self-imposed problem, and not infrequently spend days following up an investigation, just for the sake of con-

\(^{58}\) University of Pennsylvania; Lecture on Law (1884).
quering the difficulties which it presented. And the knowledge thus gained was assimilated and made a part of himself, so that it could always be applied by him when demanded.

It is almost needless to say that with such proclivities for general study, Bradley was likewise a profound student of the law,—not only English, but also Roman law, the Code Napoleon, and the laws of Continental Europe. Being assigned, upon his elevation to the bench, to the fifth circuit, consisting of the States of Georgia, Florida, Alabama, Mississippi, Texas and Louisiana, he had to administer the civil law in the last named state, and the semi-Spanish law of Texas, and it was not long before he had become so proficient in these as to command the admiration of the lawyers practicing in those jurisdictions. He knew the cases. "No lawyer," said John G. Johnson, "no matter how thorough his research in any particular case, was able to present to him an authority of which he was ignorant, or a principle of law which was new to him." He was a patient listener to the arguments of counsel, pondered carefully over the question involved, examined diligently the briefs submitted to him, ransacked his library for all possible authorities, wrote a draft of his opinion, laid it aside for future consideration, returned to it and rewrote it, and finally molded it in this way into a finished production. Sometimes judges are

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59 Memorial exercises in the Supreme Court on the death of Mr. Justice Bradley.
extremely laborious and painstaking during their first years of service, but afterwards tend to become careless, and to write shorter and less thoughtful opinions. But from Bradley the habits of the scholar never departed. As late as 1889, in a case in the Circuit Court for the District of New Jersey, Baeder vs. Jennings, 60 he wrote an opinion which constitutes a valuable historical paper on the land titles of New Jersey which could have been the product only of the most diligent toil. He was a student to the end.

But Bradley was more than a student. A person may be learned and yet helpless in the workaday world around him, pedantic and yet not wise. Bradley was practical. He utilized his resources. He had great reasoning powers. His legal opinions are not mere recitals of precedents nor storchesous of imbibed information, but are logical considerations of the principles involved, fortified by a citation of authorities. The truth was what Bradley wanted, and not merely what others had thought to be the truth. Law is logic as well as precedent; is precedent only, with great judges, when the precedent and logic are one. From the opinions of others Bradley sought what was best, and from law books he sought not facts but principles.

He once said: 61

60 40 Federal Reports, 109.
The law is a science of principles, by which civil society is regulated and held together, by which right is eliminated and enforced, and wrong is detected and punished. Unless these principles are drawn from the books which a student reads, and deposited in his mind and heart, his much reading will be but a dry and unprofitable business. On the contrary, if these principles are discovered beneath the dry husks of the text-books and reports, if they are extracted, mastered and retained, it will not be so much the number of the books studied, as the success with which this digesting and assimilating process is pursued in studying them, which will make the great and successful lawyer.

The service of Bradley as a member of the Electoral Commission in 1877 subjected him for a time to much unpopularity and hostile criticism; it was said that his first opinion on the questions involved was opposed to the contention of the Republican candidate, but that he was persuaded, through the pressure brought to bear upon him by politicians of that party and by Mr. Justice Miller, to cast his vote with the other Republicans on the Commission. Inasmuch as Bradley was wont to reconsider and rewrite most of his opinions, the mere fact that he altered this one would not be significant as to the purity or sincerity of his motives in so doing. The Electoral Commission was, as an institution, most unfortunate; its members all voted according to their political proclivities, disguised in the garb of judicial utterances. Bradley certainly was no more open to censure than any of the other members of the Commission, and there is no reason for believing that, however unconsciously his views may have been prejudiced, he de-
liberately subordinated his real opinion to the effecting of a desired political result.

Bradley was always a great worker. Toil, absorbing and unending, was his delight. In the summer time he traveled on circuit in the south, holding court in Galveston, San Antonio, Houston, Dallas, New Orleans, Jackson, Mobile, Jacksonville, Savannah or Atlanta. After he had been on the bench for ten years, and upon Mr. Justice Strong's retirement, he was transferred from the fifth to the third circuit, consisting of the States of New Jersey, Pennsylvania and Delaware. Almost the last public act of his life was to preside at the organization of the Court of Appeals in that circuit, in June, 1891. He died, January 22d, 1892, at Washington, where he had lived ever since his appointment to judicial office, having attained almost to the completion of four-score years.82

It is rare, if ever, that a judge attains great popularity. Favor with the populace is reserved for warriors, executives and legislators; it is based upon brilliancy of deed rather than upon merit of accomplishment. To the people the work of the judiciary is, in general, of neither romantic interest nor historical significance. Bradley could scarcely be said to have been one who was an exception to this rule. He did not evoke demonstrations of public affection or re-

82 Bradley married, in 1844, Mary, the youngest daughter of Chief-Justice Hornblower of New Jersey. His wife and four children survived him.
gard. His scholarly nature, his reserved temperament, his undemonstrative manner, tended to remove him from the masses. He never condescended either to levity or familiarity. Neither had he a commanding presence, for he was a man below the medium height, of slight build and frail constitution. But his keen eye, thin, compressed lips, and thoughtful countenance bespoke the mental capacity of the man. In manner he was kindly and democratic, and not nearly as stern or imperious as was Miller, but grave and sedate, inclined sometimes, it is true, to petulance and to demonstrations of an irascible temper, but quickly repentant of any offense created by hasty word or action. His dignity was the dignity of simplicity, his strength the strength of quiet power. Men learned to trust him, both as a lawyer and as a judge, for his preparation was thorough, his equipment complete. He could well afford to scorn attempts at displays of brilliancy; it is the volume and not the ruffled surface of the ocean that makes it the most potent force of nature. And while American public life has produced men of remarkable ability, scholarship has not been so common a virtue of our statesmen that Bradley’s fame is apt to be dimmed by comparisons. Many as were his other attainments, his legal erudition alone would entitle him to a preeminent rank in that long line of jurists who have made the Supreme Court of the United States the greatest judicial tribunal in the world.