

# GEORGE SHARSWOOD.

1810-1883.

BY

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GEORGE SHARSWOOD, a justice of the Supreme Court of Pennsylvania for fifteen years, during four of which he held the position of chief-justice, was born, of English descent, in the city of Philadelphia, upon January 10th, 1810. He entered the college department of the University of Pennsylvania as a sophomore, in the class of 1828, and was graduated at its head, delivering the Latin Salutatory on Commencement Day.

From two addresses delivered by him in 1856 and 1859, before the Alumni Society, may be gathered some notion of his habits and subjects of study during his college life. He speaks with warm appreciation of his fellow students and of "the venerable and beloved men who formed at the time the Faculty of Arts." He maintains the superiority of the old fashioned system of instruction, for the reason that its object was not so much to communicate knowledge as "to teach young men how to study and to excite them to love to study." In both addresses, as in his

advice to law students, he puts the greatest stress upon the necessity of thoroughness. A favorite quotation was, *multum sed non multa*. In speaking of Professor Thomson as one "who most carefully insisted upon an accurate knowledge of the grammatical structure of the languages, while, at the same time, he did not neglect in his prelections to lead the mind of the student to a discernment and relish of the beauties of the chaste models of poetry, history and eloquence, which, in turn, became the text books of his recitation-room," he added:

Beyond question it is in the slow, patient and constant exercise of the power of discrimination in analysis — in the consequent improvement of the most important of the mental faculties, the judgment — and in the formation of habits of concentrated and steady attention, that classical studies are most useful to the youthful intellect. While the memory is not over-burdened, every lesson tends to the gradual development of the intellectual strength. . . . The maxim, *multum sed non multa*, applies with peculiar force; and such was the leading feature in Professor Thomson's course. The recitation was short, but he exacted a perfect knowledge of it in every student. Pages could not express a higher eulogium upon him as a teacher of the true old stamp.

In his later address, he protested against the attempt to teach too much and too many subjects.

In the race to accomplish great things, we seem to have forgotten the good old motto, *Festina lente* — the unquestionable axiom that accurate knowledge of the first elements, well engrafted in the mind by frequent repetition, goes much farther in making a thorough scholar than lessons, recitations and lectures, intended to put the pupil in possession of everything that

ever was or is known. Voluble talkers may be thus manufactured, but not scholars or students. They may fancy that they are *savans*, but the world soon discovers them to be superficial *sciolists*. They forget all they were taught in less time that it took them to acquire it, and have failed to obtain what is the most important of all, a love of knowledge and the art of learning as things ought to be learned. . . . Read only few books, but understand them thoroughly. Let them be the standard works — the master pieces. Study but few subjects, but conquer such as you do study. . . . Accurate knowledge is that which is truly power. It has certainty, and therefore force. It gives assurance and confidence to the possessor. It makes him a close, logical thinker; he sees clearly his way, and his course is simple, direct and onward.

These views were copiously illustrated, and he closed by saying:

Thus I have endeavored, very imperfectly, I am aware, to illustrate and enforce a very old opinion, but still true, that there is no royal road to learning — that hurrying, and crowding, and cramming are injurious, if not fatal to the vigor of mind as well as of the body.

His exactness of knowledge in mature life, made it apparent that he had well improved his college days, and acquired habits of resolute and persistent application, which well qualified him to enter upon the study of law. He was registered as a student at law in the office of Joseph Reed Ingersoll, of whom he used to speak in after life as "my honored master." Mr. Ingersoll was the son of Jared Ingersoll, who had been for five years a student in the Middle Temple, and was named for President Joseph Reed, who

was also a student in the same place from 1763 to 1765,—it being quite usual, at that time, for Philadelphians to add at least two years of study in the Inns of Court to the regular period of instruction at home.

While pursuing their studies, they had every advantage which London could offer. Their fellow students were the future leaders at the English Bar and in public life, and many of the young Americans were welcomed in the best English society. When they came back, after such training and experience, they brought with them a range of learning and knowledge of books, a familiarity with the traditions of the bench and bar, and an acquaintance with the standards of learning and manner of debate prevailing in the English Courts and Houses of Parliament, which helped to form an ideal to which they felt themselves bound to conform and which they transmitted to their successors. The preëminence of the bar constituted by and of these men is a part of the professional history of the country. From the first, it was adorned by lawyers who were in no respect provincial, and it was because he regarded the bar of Philadelphia the strongest at that time in the country, that Chief-Justice Ellsworth advised Charles Chauncey to move to Philadelphia. Mr. William Rawle, who had himself been a student in the Temple, gave it as his deliberate judgment, that “at the Philadelphia Bar were men whom we would not have feared to oppose to an equal number from the

excellent Bar of Westminster Hall," and Mr. Binney was of opinion that "one and all of them would have been recognized as able men in Westminster Hall, and more than one of them would have stood at the height of that Bar, and their superiors have not, I think, shown themselves in any part of our land." It is of three of the members of that bar that we have most authentic and lifelike portraits in the sketch written by Horace Binney, entitled "The Leaders of the Old Bar," now accessible to the profession in the volume published by the Law Association of Philadelphia, as a memorial of its Centennial Celebration which occurred in March, 1902. One of the three was Jared Ingersoll, who had been Mr. Binney's own preceptor, and who was in the opinion of Judge Sharswood, "the most distinguished leader of the Philadelphia Bar in its palmiest days." He was the father and preceptor of Joseph Reed Ingersoll, and under such surroundings and influences, Mr. Ingersoll had been prepared for the bar, where he soon won a prominent position of his own, and after having served several terms in Congress, accepted a position as Minister to the Court of St. James. While in active practice, he received many students in his office, and among them Mr. Sharswood.

As a rule, the lawyers in active practice of that day had their offices in their dwellings, and devoted most of their evenings to professional work. Students were expected to give at least five evenings of the week to study, and it was usual for the preceptor to

direct their reading, to test their progress by frequent and systematic examinations, and to supervise their drafts of pleadings, conveyances and other legal instruments. This was the training which Lord Eldon thought invaluable, if not indispensable, and he ascribed his knowledge of equity pleadings to having copied everything he could lay his hands upon,<sup>1</sup> just as Judge Curtis ascribed his skill as a common law pleader to his having been in the habit of reciting Chitty's forms while walking the floor with a sick child in his arms.<sup>2</sup>

The close and constant intercourse in the office also resulted in many instances in intimate friendships, and students at that time grew up under social influences of the most wholesome and elevating character.

In a sketch of Mr. Ingersoll, written for the American Philosophical Society, Judge Sharswood thus described him as a preceptor:

It is a very high testimonial to the estimation in which Mr. Ingersoll was held as a lawyer and a man, that so many young men were placed under his direction by their own choice or that of their parents or guardians, to be trained for the bar. I have a list taken from his diary, commencing in 1826, of forty-five names: some eight or ten preceded that period. His course toward them was marked by great fidelity as well as kindness. He not only prescribed their course of reading, and examined them at short stated intervals as to their progress, and understanding of the subject—but took care by employing them in the preparation of pleadings and other legal papers—in making searches in the

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<sup>1</sup> Twiss, *Life of Eldon*, vol. I, 98.

<sup>2</sup> *Life of B. R. Curtis*, vol. I, 61.

offices, and occasionally attending before magistrates and arbitrators, that they should be initiated in the practice of their profession. He was always ready to resolve their doubts, or to explain what they could not understand in the course of their studies. He followed them after their admission to the bar, with advice and encouragement, associating them with him in the trial of causes, and manifesting in every way a deep interest in their success. Many of them have done honor to his instructions by eminence in their profession, and have concurred in cherishing and expressing on all suitable occasions, their confidence, respect and affection for him. To me it is a source of pride and gratification, that having been one of his students, and honored as I believe with his friendship and regard after leaving his office, I am permitted the privilege, on an occasion like this, to record my sense of the obligation under which he placed me, and to testify my reverence and gratitude. *An quicquam nobis tali sit munere majus?*

Of Mr. Ingersoll's students, Judge Sharswood was the most distinguished. He was admitted to the bar on December 15th, 1831; but fortunately he was able to continue his studies for some years longer before becoming immersed in ordinary work. It is only a part of the course of study which he himself pursued, that he afterwards outlined in the appendix to his Professional Ethics, and reproduced in a note to Blackstone's introductory chapters on the Study of Law in General. In his Professional Ethics, page 128, he quotes as worthy of most serious consideration, some remarks of Horace Binney, in his sketch of William Tilghman, as follows:

There are two very different methods of acquiring a knowledge of the laws of England, and by each of them, men have succeeded

in public estimation to an almost equal extent. One of them, which may be called the old way, is a methodical study of the general system of law, and its grounds and reasons, beginning with the fundamental law of estates and tenures, and pursuing the derivative branches in logical succession, and the collateral subjects in due order; by which the student acquires a knowledge of the principles that rule in all departments of the science, and learns to feel as much as to know what is in harmony with the system and what is not. The other is, to get an outline of the system, by the aid of commentaries, and to fill it up by the desultory reading of treatises and reports, according to the bent of the student, without much shape of certainty in the knowledge so acquired, until it is given by investigation in the course of practice. A good deal of law may be put together by a facile and flexible man, in the second of these modes, and the public are often satisfied; but the profession itself knows the first, by its fruits, to be the most effectual way of making a great lawyer.

Adopting this view of the proper method of preparation, he insists upon the reading again and again of Blackstone and Kent, and after adding a list of elementary works which should be well conned, he proceeds to prescribe certain order of subjects under eight heads or branches, and then gives a list of books to be read under these heads, including twenty-five works on real estate and equity, nine works on practice, pleading and evidence, nine on crimes and forfeitures, eleven on natural and international law, and the cases on this subject in the Supreme Court of the United States, ten works on constitutional law with the cases in the United States Supreme Court reports, nine works on the civil law, eighteen works on persons and personal property, and four works



on executors and administrators. He concludes by saying:<sup>3</sup>

I believe that the course which I have thus sketched if steadily and laboriously pursued, will make a very thorough lawyer. There is certainly nothing in the plan beyond the reach of any young man, with ordinary industry and application, in a period of from five to seven years, with a considerable allowance for the interruption of business and relaxation. One thing is certain,—there is no royal road to Law, any more than there is to Geometry. The fruits of study cannot be gathered without its toil. It seems the order of Providence that there should be nothing really valuable in the world not gained by labor, pain, care or anxiety. In the law, a young man must be the architect of his own character, as well as of his own fortune.

While following the course of study recommended to others, he went through a systematic course of reading upon economic questions and in the classics, and acquired a sufficient knowledge of French and Spanish to read those languages with facility. Before becoming occupied as an active practitioner, he began as an annotator, and in 1834, an American edition of Roscoe on Criminal Law appeared, under his supervision as editor, which subsequently ran through seven editions.

He was three times elected to the State Legislature, and once to the Select Council of the City of Philadelphia. In 1841, he wrote the Report of a Committee appointed by the stockholders to examine the affairs of the Bank of the United States, which is copied at length in Benton's *Thirty Years' View*.

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<sup>3</sup> Page 208.

It required a great deal of courage for a representative from Philadelphia to write such a paper at that time, and it was remarkable that one so young and with so little previous knowledge of practical affairs, should have been able to deal so effectively with the facts and figures of that stupendous insolvency.

He always regarded the knowledge of men and affairs which he had acquired as a legislator as of the greatest value to him in his services as a judge.

American editions of Leigh's *Nisi Prius*; Stephen's *Nisi Prius* and of Russell on Crimes, with notes contributed by him, appeared between 1838 and 1844. Of the latter, nine editions were issued. His annotations were clear, apposite and adequate, but concise, and he had become so well known to the Profession that his appointment in April, 1845, as Associate Judge of the District Court of Philadelphia, was universally approved and confirmed by the unanimous vote of the Senate. When he took his seat, he was but thirty-five years of age, and thereafter he continued a member of that Court until his election to the Supreme Court in 1867. Upon the resignation of the President Judge in 1848, he was appointed his successor. Under the amendments to the State Constitution, all judges of the Courts of Pennsylvania were made elective, but while opposing candidates were nominated against others, he received the nomination of all political parties and was unanimously elected. His new term began in

January, 1852, and in October, 1861, during the excitement of the Civil War, he was again unanimously reelected to a second term of ten years.

During most of his years of service in the District Court, Judges Stroud and Hare were his colleagues. Judge Stroud, some years his senior, was a sound lawyer, with an exceptional memory, which enabled him to recall the name, volume and page of every important case in the Pennsylvania Reports. Judge Hare's unusual learning in every department of jurisprudence is well known to the profession through his editions of *Leading Cases and Commentaries upon the Law of Contract and Constitutional Law*.

It is no disparagement to his work as a member of the Supreme Court, to say that it was when presiding over a jury trial that Judge Sharswood's powers were displayed to the best advantage. In a letter to Mr. Webster, written a month after he had been engaged on the business of the Circuit Court, Judge Curtis wrote:

It has seemed to me that a far more difficult and useful field of labor, speaking generally, is the safe, prompt, judicious and wise controlling power of a Judge of the Circuit. I have no doubt that every quality and attainment of which a Judge is capable, may there find their fullest exercise and their most difficult work. I presume you will agree with me, that there is no field for a lawyer, which, for breadth and compass and the requisition made on all the faculties, can compare with a trial by jury; and I believe it is as true of a judge as of a lawyer, that in their actual application of the law to the business of men, mingled as it is with all

passions, and motives and diversities of mind, temper, and condition, in the course of a trial by jury, what is most excellent in him comes out, and finds its fitting work, and whatever faults and weaknesses he has are sensibly felt.

In this estimate of the qualities required for the successful conduct of jury trials, every lawyer of practical experience will concur, and it may be said deliberately, with a full apprehension of the force of the words used,—that never was there any English speaking judge the superior of Judge Sharswood at *Nisi Prius*.

The business of his Court was large and varied, embracing every phase of civil business, and he showed himself competent to deal with any question brought before him.

His grasp of the facts in a case was unusually rapid and distinct, his knowledge sure and exact, and his power of statement unequalled in its clearness and impartiality. He enforced the rules of evidence himself without waiting for objections; leading questions were checked, nothing was allowed in rebuttal that should have been offered in chief, and every question which arose upon the trial was ruled, and ruled squarely, without argument. His attention never flagged, and his own notes of testimony were a complete record of every case, and in his charges the facts were presented so fully, the evidence was marshaled so fairly, and the law applied with such clearness of exposition, that it was often said that no counsel ever fully understood his own

case till he had heard Judge Sharswood's charge to the jury, and the losing party went away satisfied that full justice had been done.<sup>4</sup> In the calling of the motion and argument lists his dispatch of business was even more striking. He seemed to detect at a glance the real point of a case, and to have at instant command the law which bore upon it. At the same time, if counsel had anything pertinent to urge he was a patient listener, and being absolutely free from pride of opinion, if convinced he was wrong, he would acknowledge his mistake without hesitation. In short, every one in the court room was made to feel that the sole purpose in view was to get at the truth, and that he, as the ablest and wisest of them all, was guiding and directing the whole proceeding to reach that end and that only. It never occurred, therefore, to any one to suggest that he was above bias, partiality, or influence, for no question of the kind ever occurred to any one in his presence. It was apparent that his mind was so constituted that it would have been impossible for him, if he had tried, to entertain an improper motive in the discharge of official service.

When he was appointed President Judge after three years' experience as Associate-Judge, he found over sixteen hundred cases on the trial list, and in a speech delivered at a dinner given on his retirement from the Supreme Court, he told how he had determined, with the concurrence of his associates, to

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<sup>4</sup> *Etiam quos contra statuit, aequos placatosque dimisit.*

make an attempt to break it down, and how, with the hearty coöperation of the bar, it had been accomplished. In six or seven years, the list was reduced to about six hundred, and remained there, though the suits on the appearance docket ran up from two thousand a year to six or eight thousand. He recognized that in driving trials so fast, injustice must have been done to suitors in many cases, but he added:

It was pretty hard work for three men, but with the hearty co-operation of the Bar, it was accomplished; in six or seven years the list was reduced to about six hundred and there it remained, though the business of the court had largely increased — suits on the appearance docket alone having run up from two thousand a year to six and eight thousand. I have sometimes been haunted with the fear that, in riding this hobby so hard — driving trials so fast — injustice must have been done to suitors in many cases. It was, however, a choice between two evils, for it is with the administration of justice as with everything else, there is nothing perfect under the sun. It is, indeed, a most difficult problem with any court to reconcile that speed as practically amounts to a denial of justice, with the care, study and deliberation required to arrive at the proper determination of important questions.

To dispose of the arrears of the court it was necessary to enforce the rule that a trial should be finished on the day it began, though it lasted until midnight, and this in a court which sat for ten months in a year.

At the Bar Meeting held upon the announcement of Judge Sharswood's death, Mr. Richard C. McMUTRIE, in speaking of his labors in the District Court said:

As to his administration in that court, it was, without exception, the most extravagantly laborious that I ever saw, and equal to the worst that I ever heard of, for labor that was put upon the bench. When he reached that court, he found the court in such a condition that under no circumstances could a case ever be heard for a year after it was brought. With the assistance of his Brother Stroud, who was as willing to work as he was, he introduced a system which was unquestionably a hard thing upon the Bar, but still harder upon the Judge — that a case begun on any day was to be finished on that day, last to what hour it might. On one occasion he remarked to me, "Never had I such a painful task to perform as yesterday. I began a case at ten in the morning, and at ten in the evening, Mr. Mallory, an aged man, who had been working with ten or fifteen minutes intermission, was so exhausted that he implored a delay to the next day; but I felt myself bound to refuse." He was the one man, I may say, of all the men I ever knew, that considered himself as much bound by the rules which he had the liberty of breaking at his own discretion, with nobody to find fault with him, as if he could be compelled to obey them.

During his twenty-two years of service in the District Court, he delivered written opinions in over four thousand cases, of which 156 were carried to the Supreme Court, and of these, 124 were affirmed. These opinions were many of them brief, but to a large extent, they shaped the practice of the courts throughout the state, and were constantly cited in other courts, including the Supreme Court itself, as a final authority. They were for the most part, of the nature of the oral judgments pronounced in the English Courts, rather than of the legal essays with which we are now familiar. One of his dissenting opinions, however, calls for special notice.

In the case of *Borie vs. Trott*,<sup>5</sup> the District Court was required to pass upon the constitutionality of the Legal Tender Act of 1862. The judgment of the Court was in favor of the validity of the law, but Judge Sharswood read a dissenting opinion. It was only fifteen pages in length, but within that brief compass, he presented one of the most cogent arguments to be found in the books, against the existence of the power of Congress to issue paper money, and to make it a legal tender for the payment of debts. As this opinion is to be found only in local periodicals and Reports, it is thought that a full abstract should be given, both as a valuable contribution to the subject, and as an illustration of Judge Sharswood's simple and direct manner of dealing with such subjects.

Starting with the postulates that the Constitution of the United States is a special grant or delegation of limited powers to the Federal Government, and that to sustain the constitutionality of an Act of Congress, authority for it must be affirmatively shown, he disclaimed any intention to revert to political and controverted grounds, and announced that he meant to take exclusively as his guide, the principles judicially settled by the Supreme Court of the United States in the leading case of *McCulloch vs. The State of Maryland*,<sup>6</sup>—namely—that “If the end be legitimate and within the scope of the Constitution, all

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<sup>5</sup> 5 Philadelphia Reports, 366.

<sup>6</sup> 4 Wheaton's Reports, 316.



the means which are appropriate, and which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect." To this he added the further limitation upon the discretion of Congress in the choice of necessary and proper means, as stated in that opinion, that a great substantive and independent power cannot be implied as incidental to other powers, or used as a means of executing them; or, in other words, that no one enumerated power can be incidental to another enumerated power.

He then proceeded to the construction of the grants of power which were supposed to give Congress the authority to issue United States notes, and to make them a legal tender in payment of all debts public or private. These were:

To regulate commerce;

To borrow money on the credit of the United States;

To coin money and regulate the value thereof; and of foreign coin, and to fix the standard of weight and measure.

As to the first, he pointed out that there was an express clause granting and defining the authority to create standards of value, and hence, Congress could not make another kind as incidental to the regulation of commerce.

As to the second, he argued that the power could not be found under the authority to borrow money, and to issue acknowledgments of debt in a negotiable form, and incidentally, make them a legal tender, because such acknowledgments would be securities

which *ex vi termini* were something different from money, whereby the "United States notes," to be issued under the Act, would be, in fact, bills of credit—things distinct and different from securities.

For this position, he cited *Craig vs. State of Missouri*,<sup>7</sup> and *Briscoe vs. Bank of Kentucky*;<sup>8</sup> and quoted a sentence from Chief-Justice Marshall:

To emit bills of credit conveys to the mind the idea of issuing *paper intended to circulate through the community for its ordinary purpose as money*, which paper is redeemable at a future day.

He concluded, therefore, that Congress could not, as incidental to the power to borrow, create any kind of money which will not stand the test of the express power which is granted on that subject.

For confirmation of this view, he referred to the proceedings of the Federal and State Conventions, finding his justification for so doing in the precedent set by Chief-Justice Marshall in *Craig vs. State of Missouri*, where in discussing the nature of a bill of credit, he had said:

The language of the Constitution itself, *and the mischief to be prevented, which we know from the history of our country*, equally limit the interpretation of the term.

Judge Sharswood called attention, therefore, to the proceedings of the Federal Convention, when the plan of the Constitution had been reported, with a clause authorizing Congress "to borrow money and emit bills on the credit of the United States," and

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<sup>7</sup> 4 Peters' Reports, 410.

<sup>8</sup> 8 Peters' Reports, 118.

upon motion of Mr. Gouveneur Morris, the words "and emit bills" had been struck out. He quoted also, the language of James Wilson—afterwards one of the justices of the Supreme Court of the United States and recently much misquoted as to the power of the Federal Government—to the effect that it would have a most salutary influence upon the credit of the United States "to remove *the possibility of paper money*," and of Luther Martin, to the Maryland Legislature, in which he complained that "not only were the States prohibited from emitting bills of credit without the consent of Congress, but the Convention was so smitten *with the paper money dread*, they insisted that the prohibition should be absolute."

He added to his citations, the declaration of Mr. Read, of Delaware, that such a power would stamp the Constitution "with the mark of the Beast in Revelations," and of Mr. Langdon, of New Hampshire, who declared "that he would rather reject the whole plan than retain the three words 'and emit bills.'"

On the other hand, he asserted that "in the discussions and objections which followed on the promulgation of the plan, before proceeding to vote on it in the State Conventions, as well as in the debates of those bodies, so far as they have been preserved and handed down to us, though every hole and corner of the instrument was ransacked to find objections, I am not aware that it was ever suggested that it might possibly contain so odious and unpopular a power."

He next took up the remaining clause "To coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures."

These words, in his judgment, sanctioned only coins or metallic currency. He found it taken for granted in the Federalist, and in Judge Story's Commentaries, and quoted the language of the Supreme Court, in the *United States vs. Marigold*,<sup>9</sup> in which the Court referred to "the trust and duty of creating and maintaining *a uniform and pure metallic standard of value* throughout the Union." Adverting to the promise of the notes to pay *dollars*, he asked the question—"What is a dollar?"—The true answer he found suggested in the words of Sir Robert Peel, that—"A pound is a definite quantity of gold, with a mark upon it to determine its weight and fineness,"—and so he contended that a standard of value must be of some actual value, and a dollar was a silver dollar of a specific weight and fineness.

He invoked also the authority of Mr. Webster, who had declared in his speech on the Specie Circular:

Gold and silver at rates fixed by Congress, constitute the legal standard of value in this country, and that neither Congress nor any State has authority to establish any other standard or to displace this. Most unquestionably there is and there can be no legal tender in this country under the authority of this Government, or any other, but gold and silver. This is a constitutional principle, perfectly plain and of the very highest importance.

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<sup>9</sup> 9 Howard's Reports, 560.

Judge Sharswood added:

I must confess, that upon a question of this magnitude — amid the conflict of opinion by which I am surrounded — my mind has rested with confidence and satisfaction upon this clear and decided conclusion of a great intellect.

He then answered the suggestions that Congress had the power of debasing coin, and that there was no difference between that and issuing paper money, depreciated below the value of coin, by pointing out, first,—that the debasing of coin would be an open, gross and palpable breach of faith, scarcely possible in the present age of the world; and second, the important difference between debasing of the coin and issuing paper money, that when an Act is passed debasing coin, all the mischief is done, whereas with paper money, it fluctuates from day to day, “there is no standard of value whatever.” He concluded with these emphatic words:

This was just what the men of the Revolution who met in the Federal Convention, who assembled in the State Conventions and ratified the constitution, had not merely heard with their ears, but seen with their own eyes, touched and handled with their hands, and felt in their own pockets. They had not the advantage of reading the same history repeated in a more rapid and aggravated form in the paper money of Revolutionary France. But they needed it not. They had quite enough in their own experience to make them determine to deal an effectual death-blow at paper money.

Of this argument, upon the latter point, Judge Hare, in his Commentaries on American Constitu-

tion and Law, says: "It was admirably stated by Judge Sharswood in *Borie vs. Trott*, and subsequent writers on the same side have done little more than put it in other words."

Notwithstanding the exacting requirements of his work in the District Court, Judge Sharswood accepted in 1850, the professorship of law in the Law School of the University of Pennsylvania, and the attendance upon his lectures was so encouraging that two others were added to the faculty in 1852, and thus the present school, which is now one of the most important in the country, may be justly said to have been founded by him, for, though originally opened by James Wilson, of the United States Supreme Court under favorable auspices, it was closed upon his retirement and, with the exception of a few lectures delivered in 1817 by Charles Willing Hare, never reopened until the election of Judge Sharswood.

His lectures were largely devoted to the peculiarities of the Law of Pennsylvania, and, with the exception of a small volume, made up for the most part of Introductory Lectures, and another entitled "Professional Ethics," were never published. The latter has gone through numerous editions and has recently (1907) received the remarkable distinction of being reprinted by the American Bar Association. It is a work of absorbing interest to the general reader as well as to the lawyer, and should be studied by every law student.

In a speech at a dinner tendered by the Philadelphia Bar after his final retirement from the bench, he expressed his pleasure at seeing many of his former pupils during the eighteen years that he was a professor in the Law Department of the University of Pennsylvania, and said:

That he should always recollect the years of his association with them as among the happiest of his life, and that he had watched the successful and honorable career of most of them with almost as much personal pride and pleasure as if they had been his own sons.

This feeling was reciprocated by his students, who looked up to him with filial regard and affection, and his memory is cherished by the members of a Law Club of the University of Pennsylvania bearing his name, at whose annual banquets an address has always been delivered commemorative of his virtues and services.

The immediate object of his lectures was to supplement the text books which the students of that day were expected to read. They were chiefly devoted to tracing the development of the law of the State in the decisions, and his written lectures were accompanied by informal talks upon topics suggested in the course of the examinations which were held from time to time. Furnishing a comment upon the current decisions of the day, the lectures and conversational discussions proved attractive to many already admitted to practice, and were largely attended by members of the Bar, as well as by students. He con-

tinued to serve as a professor until 1868, when he resigned upon his election to the Supreme Court.

In 1852 he published his first edition of "Byles on Bills" and the preface and notes of one of the later editions were incorporated by Mr. Justice Byles, in the 8th edition of his work, with a generous recognition of their value.

In 1853 he assumed the editorship of the English Common Law Reports, and added brief notes from the 66th to the 90th volume. His edition of Blackstone's Commentaries, which has since gone through many editions, was first published in 1859.

His preëminent fitness to be a member of the court of last resort, had been for years generally recognized throughout the state, but it was not until 1867 that he was nominated and elected an Associate-Judge of the Supreme Court. Though the opposing candidate was a judge of high reputation, the unanimous support of the Philadelphia Bar was sufficient to overcome the large majority for the other candidates of the Republican Party.

In reply to a speech of congratulation by Mr. Daniel Paul Brown upon the occasion of his leaving the District Court, in which Mr. Brown had said that he had been the candidate of both political parties, and that there was not a single member of the Philadelphia Bar but what had stood by him, Judge Sharswood said:

I came upon this bench comparatively a very young man and with very little experience. Practically, I had much to learn,



and much to unlearn. In the trial of causes there is always mental excitement, to which in my case there has often been super-added the irritation arising from bodily suffering. I feel conscious I have often made large drafts on your forbearance, but I have always found you willing to meet me. And now, looking over this large bar, allow me to declare that there is not a single member of it to whom I cannot with the most perfect sincerity hold out the right hand of fellowship and brotherhood.

When he took his seat, in 1867, on the Supreme Bench, the lists contained over 600 cases, of which 375 were disposed of, while the business of the court was rapidly increasing. To cope with the accumulating arrears, an hour's list was introduced in 1876, and was rigidly enforced, but the lists continued to increase until in 1879, when he became Chief-Justice, the number reached 1339, of which 860 were nominally argued. It is obvious that no important case could be fully discussed when only half an hour was given to each side, for in many cases, the opening counsel could hardly state the points and facts before his thirty minutes had expired. The system continued, however, with growing arrearages until 1895, when an intermediate court of appeals was created.

Unsatisfactory as was the curtailing of the time of argument to counsel, who were denied the opportunity of presenting their cases fully, it was not less so to the Court, since it became necessary to deal with the greatly increased number of cases with the aid only, for the most part, of printed briefs. Judge Sharswood's habit of concentrated attention and swiftness of perception enabled him to seize at once

upon the controlling points of the record, and with his vast and varied learning, and trained judgment, he reached the right result; but his opinions were less elaborate and instructive than they, doubtless, would have been, if there had been more time for their preparation. As a rule, they were brief and direct, giving the conclusion of the court, without much discussion of general or collateral matters; and absolutely free from thought of display; no citation or allusion being made except for the pertinent illustration of the matter in hand. Thus, in his opinion in *Borie vs. Trott*, it was only incidentally, and because illustrative of the views for which he was contending, that he made use of his knowledge of the political history of the country, and of his familiar acquaintance with economic questions.

In *Palairet's Appeal*,<sup>10</sup> when the power of the legislature to authorize the compulsory extinguishment by the owner of the land, of a ground rent, under the right of eminent domain, was under consideration, he alluded to "a favorite theory with many political economists, that small farms are injurious to the community, prevent the full development of the agricultural resources of a country, and ought therefore, as speedily as possible, to be united and formed into large ones." It was only, however, as a *reductio ad absurdum*, and he added a reference to the Vineyard of Naboth.

His opinions will be found, therefore, devoid of

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<sup>10</sup> 67 Pennsylvania Reports, 479, 488.

ornament, and free from any superfluous exhibition of learning or rhetoric. Simple, straightforward and business like, they exhibit the mastery of one familiar with his subject, who was mainly concerned to state, with clearness, the conclusions of the Court, without always tracing the steps by which such conclusions had been reached.

His long acquaintance with questions of practice, is exhibited in *Commonwealth vs. Vandyke*,<sup>11</sup> in a discussion upon the right of the sheriff to indemnity, and of the question whether the insufficiency of the indemnity offered, would be a defense to an action for a false return.

The liability of trustees, conveyancers and directors for less than supine negligence, was considered in *Neff's Appeal*;<sup>12</sup> *Watson vs. Muirhead*,<sup>13</sup> and *Spering's Appeal*.<sup>14</sup> In the latter case, he discusses the point, "by no means well settled," of what is the precise relation which directors sustain to stockholders, and having referred to the leading English and American cases, concludes "That they ought not to be judged by the same strict standard as the agent or trustee of a private estate;—that they were not liable for mistakes of judgment, even though they may be so gross as to appear to us absurd and ridiculous, provided they are honest, and provided they are fairly

<sup>11</sup> 57 Pennsylvania Reports, 34

<sup>12</sup> 57 Pennsylvania Reports, 91.

<sup>13</sup> 57 Pennsylvania Reports, 161.

<sup>14</sup> 71 Pennsylvania Reports, 11.

within the scope of the powers and discretion confided to the managing body."

The case of Commonwealth vs. Pittsburg & Connellsville Railroad Co.,<sup>15</sup> was a *quo warranto* to forfeit the charter of the Railroad Company. The State of Maryland was interested in the defence of the charter, and Messrs. John H. B. Latrobe and Reverdy Johnson, with Mr. George Shiras, Jr., afterwards of the Supreme Court, appeared for the State of Maryland; James E. Gowen and Attorney-General Brewster for the State of Pennsylvania.

It was claimed that the Company had forfeited its charter under the laws of Pennsylvania, by procuring a charter from the Commonwealth of Maryland, and that such an act was inconsistent with the allegiance due to the sovereign who created it—that it was *crimen læsæ majestatis*—a species of treason.

The question was one of interest, but it was disposed of by Judge Sharswood in a single page. He points out that the corporation could not transfer its allegiance and thereby throw off its obligations under its original charter, and therefore, the act could, in no way, harm the Commonwealth of Maryland.

The tenant forfeits his estate who attorns to a stranger; because he thereby disclaims holding under his landlord, the very subject of the grant. It is the doctrine which gave the lord a right to resume it when the tenant denied his title; but a tenant might

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<sup>15</sup> 58 Pennsylvania Reports, 26.

have as many different landlords as he had acres of land, and owe fealty and service to each in respect to the subjects of grant.

Another alleged ground of forfeiture was the institution of proceedings in the Circuit Court of the United States, but, while conceding that it might be safely admitted that a corporation which undertook to drag its sovereign before the power of the tribunals of another sovereign, violated its duty, the Circuit Court of the United States was not the court of another sovereign.

The Federal Constitution is the constitution of this state, having been ratified and adopted by the sovereign act of the people in Convention, December 12th, 1787. They made it irrevocably their own by their entering into a solemn compact with the peoples of their sister states — binding them for all time — unalterable in any other mode than that pointed out by its own terms.

The last question was as to constitutionality of the Act of the legislature revoking the charter under a reserved power to repeal. The Act was declared unconstitutional upon the ground that the property of the Company could not be taken without compensation, and that the Act which provided that as full compensation for all damages and injury done, they should receive payment for expenditure made upon the lines of the said railroad, and the Governor should appoint three appraisers to value the expenditures so made, which, when appraised, should be paid to the defendant by any corporation thereafter authorized to construct a line of railway upon the original route, did not furnish a sufficient remedy. The

rule of valuation and appraisement was inadequate and unjust, and that the defendant should be turned over for the damages even thus inadequate, to an action against some company thereafter to be incorporated, was an illusory remedy and necessarily accompanied with unreasonable delay.

Several opinions upon the law of partnership are noteworthy. In *Slemmer's Appeal*,<sup>16</sup> the facts entitled the complainant to a dissolution and there was nothing in the articles of partnership to take the case out of the rule established by Lord Eldon, that each partner was entitled to a sale of the property, but the fact that a valuable business had grown up by the general labors and contributions of all, and that to appoint a receiver and direct a sale of the whole and the winding up of the business, would destroy this value, without benefiting either party. A decree was entered directing that the estate and assets of the partnership should be assigned and transferred to the partner who should offer to pay or secure to be paid, within a reasonable time, the highest price for the same.

The status of real estate owned by a partnership, is fully discussed in *Lefevre's Appeal*,<sup>17</sup> and in *Foster's Appeal*,<sup>18</sup> where it was ruled that where land is partnership stock, it never becomes personalty, even during the continuance of the firm, so as to give one

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<sup>16</sup> 58 Pennsylvania Reports, 168.

<sup>17</sup> 69 Pennsylvania Reports, 122.

<sup>18</sup> 74 Pennsylvania Reports, 391.

partner power to dispose of the firm's interest in it.

The distinction which Lord Eldon himself spoke of as "extremely thin," was adopted in *Edwards vs. Tracy*,<sup>19</sup> where it was decided that a commission "equal to" a share of the profits did not make the recipient liable as a partner. Judge Sharswood had previously held at *Nisi Prius*, in *Lord vs. Proctor*,<sup>20</sup> that a loan of money at a rate to be made "equal to" one-fourth of the profits did not constitute the lender a partner, and he there discussed with more freedom, the distinction which Mr. Justice Story called "satisfactory," though Lord Eldon did not think it so.

A question recently under discussion in Congress, was considered in *Commonwealth vs. Green*,<sup>21</sup> where it was decided that the legislature could not abolish any of the courts mentioned in the Constitution of the State, nor divest them of their entire jurisdiction, but could transfer some of their jurisdiction to other courts from time to time established. It may be added that Chief-Justice Thompson delivered a dissenting opinion.

The liability of an irregular endorser of commercial paper, which had long been under debate in Pennsylvania, was very fully considered in *Schafer vs. Bank*,<sup>22</sup> The right to set off unliquidated damages arising *ex contractu* under the Pennsylvania Act

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<sup>19</sup> 62 Pennsylvania Reports, 374.

<sup>20</sup> 7 Philadelphia Reports, 630.

<sup>21</sup> 58 Pennsylvania Reports, 226.

<sup>22</sup> 59 Pennsylvania Reports, 144.

relating to set-off, was affirmed in *Hunt vs. Gilmore*.<sup>23</sup>

His opinions upon the construction of wills, all showed a thorough mastery of that branch of the law. A leading case in Pennsylvania, is that of *Horwitz vs. Norris*,<sup>24</sup> which arose under the will of Joseph Parker Norris, by which he had undertaken to devise two large bodies of real estate in the outskirts of the city, known as the Fair Hill and Sepviva estates. Judge Sharswood concurred in the decree, but not in the reasons given, and urged in support of his view:

It renders the testator's whole scheme of disposition consistent, equal and just, and saves him from sinning in his grave, which any man in my estimation does, who makes an unequal distribution of his property among his children or grandchildren, without some good reason for it. Upon the construction as now placed by the Court upon this will, it will follow that among the descendants of Mr. Norris — all with an equal share of his blood in their veins — most of whom he had never seen, and never could expect to see — without even distinguishing between those who should or those who should not bear his honored name — expressing as to his sons from whose loins they were to spring no preference of one over another — he is yet made arbitrarily and capriciously to include some and exclude others.

The Supreme Court was recently called upon again to consider the construction of this will, and adopted the view of the majority but without adding

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<sup>23</sup> 59 Pennsylvania Reports, 450.

<sup>24</sup> 60 Pennsylvania Reports, 261.



much, if anything, to the reason assigned by Judge Agnew.

His general views as to the construction of wills, are expressed in *McCullough vs. Fenton*;<sup>25</sup> *Provenchere's Appeal*,<sup>26</sup> and *Geyer vs. Wentzel*.<sup>27</sup> In the latter case, the will had been written in German, so that he began his opinion as follows:

Besides that the will of Henry Geyer is an instrument inartificially drawn, we have to labor to reach its meaning through the medium of a translation, which, as is well remarked by Cervantes, is like the wrong side of tapestry, where though we can distinguish the figures, they are confused and obscured by ends and threads.

An interesting question arose in *Van Dyke's Appeal*,<sup>28</sup> where the testator had given legacies to his daughters which absorbed the bulk of his real estate in Pennsylvania, and by the same will, gave his real estate in New Jersey to his sons. It was not so executed, however, as to pass real estate in New Jersey, and upon a bill filed, the daughters were put to an election—the English rulings being criticized and disregarded.

A case between the tenants in common of the Cornwall Ore-banks, under the name of *Coleman's Appeal*,<sup>29</sup> has become a leading one, settling the measure of damages at the value of the ore in place or

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<sup>25</sup> 65 Pennsylvania Reports, 418.

<sup>26</sup> 67 Pennsylvania Reports, 463.

<sup>27</sup> 68 Pennsylvania Reports, 84.

<sup>28</sup> 60 Pennsylvania Reports, 481.

<sup>29</sup> 62 Pennsylvania Reports, 252.

ore-leave, as the just basis of account. It was also ruled that the agreement between the parties that the ore-banks should remain undivided, established a permanent tenancy in common, and partition could not be had without violating the covenant which ran with the land; and that as a tenant in common had under his title, no means of obtaining his share, other than by taking, at the same time, the shares of his fellows, he was at liberty to mine, accounting to his co-tenants at the value of the ore in place.

The true function of a preliminary injunction was considered in the leading case of *Audenried vs. Philadelphia and Reading Railroad Co.*,<sup>30</sup> and the right to issue a mandatory order upon an interlocutory application was denied. Commenting upon Lord Eldon's remarks in *Lane vs. Newdigate*,<sup>31</sup> Judge Sharswood said:

That is acknowledging that he could not, according to the principles and practice of the court, order the defendant in direct terms to restore the stop-gate and repair the works, the injunction should be so drawn that, although on its face restrictive only, it will, in order to comply with it, compel him to do these very things. This is not a precedent which ought to be followed in this or any other court. A tribunal that finds itself unable directly to decree a thing, ought never to attempt to accomplish it by indirection. Injunction as a measure of mere temporary restraint is a mighty power to be wielded by one man. It would extend far beyond all safe and reasonable bounds to permit it to go farther.

In *Kane vs. Commonwealth*,<sup>32</sup> he maintained that

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<sup>30</sup> 68 Pennsylvania Reports, 377.

<sup>31</sup> 10 Vesey Junior's Reports, 193.

<sup>32</sup> 89 Pennsylvania Reports, 522.

in criminal cases, the jurors were judges of the law as well as of the facts, a view which has since been rejected by the Supreme Court of the United States.

Without multiplying citations, a perusal of the cases referred to, will more than suffice to give the reader an understanding of Judge Sharswood's strong common sense, sound and mature learning, practical wisdom and high sense of justice. Always impersonal, single-minded and direct, there is no hint or suggestion from first to last that it had ever occurred to him to make any exhibition of his learning, or his skill or power in debate, or that any thought of self had ever intruded upon the consideration or treatment of the question in hand.

The habit of his mind was conservative. Upon constitutional questions, he held to the rule of strict construction, and was not willing to go a hair's breadth beyond the limits marked off by the Supreme Court in the days of Marshall. He was a believer in the wisdom and value of the Common Law, and regarded it as the highest duty of a Court to obey and follow out the maxim of *stare decisis*. Whatever might be his individual opinion as to any particular rule, it was not, in his view, the duty or right of the Court to make changes in the law, which changes would necessarily be retrospective in their effect and work inevitable injustice.

In judging his opinions, it should be remembered that during his later years, Judge Sharswood endured such incessant suffering, that he once re-

marked, that for years, he had never known a waking hour without the consciousness of pain. Even this pain was, at times, a welcome relief to his anxiety for an only son, a young lawyer of great promise, who died of consumption, after a lingering illness of some years, shortly before Judge Sharswood's retirement from the bench.

He was registered as a law student in 1828, and including the years of preparation, which proved to have been virtually appropriated to the public—for, as he was about to begin to earn a remunerative income, he was appointed to the District Court—he had spent more than half a century in the service of the Commonwealth. From his appointment to a seat upon the District Court in 1845, to the end of 1882, at the close of his term as Chief-Justice, he had devoted himself exclusively and unremittingly to his judicial duties. At the Bar meeting held after his death, in May, 1883, Mr. Eli K. Price related that Judge Sharswood had once consulted him as to the best method of disposing of a tract of real estate in the suburbs of the city, which had come to him by inheritance. Mr. Price advised him to sell it out in building lots, reserving ground rents, to which he replied: "That I can not do—that would take time and attention which belongs to the public. This I have never permitted myself to do." Mr. Price added that he accepted the wholesale price and invested in City loans.

In the discharge of his duties as Judge, he recog-

nized that the members of his bar were co-workers with himself, without whose coöperation he could not succeed. In one of his speeches at a Bar meeting, in speaking of the bench and bar, he used the expression: "We are all one brotherhood," and this thought was always a controlling one.

When in the District Court, he knew every member of the bar by name, and took a personal interest in every young man of promise. If an application were made to him to enforce discipline, he made it a rule to send for the accused, and to give him an opportunity, if at fault, to make good, and by his kindly admonition, he saved more than one from professional ruin. Ready to encourage and counsel every lawyer because he was a member of his bar, there were others bound to him in terms of close friendship as with hooks of steel. Hospitable and companionable, he was the most gracious of hosts, and the most welcome of guests. Fond of talk, his fund of anecdotes, his store of traditions, his fullness of knowledge upon every subject, made him a charming and instructive companion, and whenever he appeared at any social gathering, or when receiving his friends at his own house, he was always the center of interest. He kept in touch with young men and their pursuits, until the exactions of the Appellate Court made it necessary for him to husband his strength.

He never lost his relish for general reading, nor his concern in public questions. He was a firm be-

liever in the theories as to the true function of government, which had been developed by Adam Smith and Thomas Jefferson, and which have more recently been enforced by Herbert Spencer. The prosperity created by legislation, was, in his opinion, always fictitious, and a favorite illustration was the fact that the assessed value of the property in the counties through which the State canals had been constructed, declined after their completion, below what it had been before the canals were begun.

He was opposed to any interference with the liberty of the individual and the freedom of trade, by tariffs for the sake of protection, or other similar legislation. He looked upon the creation of irredeemable paper currency as the most mischievous of economic mistakes, as well as an unconstitutional usurpation of the power by Congress.

Such views were, at one time, unpalatable to many of his fellow citizens, but still find favor with some.

He gave such time as he could spare to other interests. He was President of the Board of the Deaf and Dumb Asylum, and Trustee of the University of Pennsylvania; an elder in the Presbyterian Church, Trustee of the General Assembly and Director of the Princeton Seminary—and for some years, Vice-President of the American Philosophical Society.

He once acquired a reading knowledge of Hebrew to assist a clerical friend who had lost his sight, and for years conducted a Bible class, where his

familiarity with the original texts made his teachings peculiarly interesting.

For some years he was a fairly regular attendant at the readings of the Philadelphia Shakespeare Society.

Subsequently, he acceded to the request of some of his friends, and joined in a course of reading in Political Economy, and in the course of a few years, the members read and discussed all of the more important text books, from Adam Smith down. His real life, however, was in the law, and in the men of the law; and upon them his personality made an impression that still endures. They looked up to him as their exemplar and ideal. To them he was more than his works, and his character was more than his attainments.

The influence exerted during his life, apparently operates unspent and with undiminished force to the present day, and there seems reason to anticipate that for generations to come, his character and career may continue to inspire the members of the Pennsylvania Bar, with something of his own sense of duty.