

JEREMIAH S. BLACK—THE ADVOCATE

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JEREMIAH SULLIVAN BLACK had served on the bench for fifteen years when, two days after President Buchanan's inauguration, he received word from the President out of a clear sky of his appointment as Attorney General of the United States. Though in need of a rest and about to embark for Europe, he cancelled his plan, resigned from the bench and went to Washington to engage in the duties of his new office. He was not to make the European trip until twenty-three years later.

Judge Black served as Attorney General for three years and nine months. Those were the days when Attorneys General actually argued cases, and indeed the greater number of the cases, for the Government in the United States Supreme Court. The results of Black's labors as Attorney General are found in the last five volumes of Howard's Reports. In that capacity he argued no less than thirty cases, winning twenty-five and losing five—certainly a very notable record.

Many of the cases involved questions as to the validity of Mexican land grants in California. In most of these cases the claimants had been successful in the District Court, but Black sustained his appeals in all but two of them. In many of them he was assisted by a leader of the Pittsburgh bar, destined to become his successor as Attorney General and to attain great fame as Lincoln's Secretary of War—Edwin M. Stanton. It is supposed that the title of the United States to land worth in the aggregate hundreds of millions of dollars was established by these victories of Black and Stanton.

It is unnecessary to comment on the other cases argued by Black as Attorney General except to say that one of them was the great case of *Ableman v. Booth*, in which the court, in a unanimous opinion by Chief Justice Taney, held that a state court, after a return by a United States Marshal to a writ of habeas corpus that a prisoner is in custody under the authority of the United States, can proceed no further on the writ or any other process issued under state authority.

Shortly after the election of Abraham Lincoln, Black rendered his famous opinion to President Buchanan denying the right of secession and asserting "the right of the General Government to preserve itself in its whole constitutional vigor by repelling a direct and positive aggression upon its property or its officers." In the following month, on the resignation of General Cass, Black became Secretary of State. In the last month of Mr. Buchanan's administration he nominated Black as a Justice of the United States Supreme Court. A combination of Republicans and Douglas Democrats defeated his confirmation by a single vote.

When Lincoln succeeded to the Presidency, Judge Black retired to private life, after nineteen years of public service. Overcome with grief at the prospect of civil war, almost penniless because the savings of about \$21,000 which he had accumulated in three decades of professional activity had been lost in the last few years, and doubtful of his ability to acquire a practice, he started a second time as a country lawyer, without an office or any professional or clerical assistance, at York, which had been his mother's birth-place.

At the commencement of the December Term, 1861, Judge Black was appointed Reporter of the United States Supreme Court. In this capacity he published, however, only two volumes, covering two terms of the court, because his fame as Attorney General shortly brought to him a practice before the United States Supreme Court exceeding in volume not only that of any of his Pennsylvania contemporaries, but also that of any of his predecessors at the bar of this State. He restored to Pennsylvania the leadership which Horace Binney had attained in the preceding generation, and anticipated the leadership which John G. Johnson and David T. Watson were to attain in the next generation.

As an attorney in private practice over a period of twenty-two years, he appeared in no less than fifty-eight cases in the United States Supreme Court, and in thirty-nine of these he was successful. Many of them, like *The Sutter Case*, one of the great California land cases; *Ex parte Milligan*, the leading authority on the law of war; *Georgia v. Stanton* and *Ex parte McCardle*, leading Reconstruction Act cases; *Rubber Co. v. Goodyear*, a great patent case; *The Pennsylvania College Cases*, involving the merger of Washington College and Jefferson College; *Blyew v. United States*, a great case under the Civil Rights Bill; and *The Slaughter-House*

Cases, the leading case under the Fourteenth Amendment, stand out among the leading cases in a considerable variety of fields of jurisprudence. Important engagements in other forums included the Vanderbilt will case, the Sickles murder case, membership in the Pennsylvania Constitutional Convention of 1873 and representation of Samuel J. Tilden before the Electoral Commission of 1877. Black's last appearance in the United States Supreme Court was in the last year of his life, and he won the case. He died on August 19, 1883, at his home near York, in his seventy-fourth year.

I have compiled and appended herewith a complete list of the cases which he argued as Attorney General or in which he was otherwise engaged as counsel in the United States Supreme Court. As I have indicated, there are eighty-eight of them in all, and in sixty-four of them he was successful.

On December 18, 1883, the Bar of the Supreme Court of the United States met to pay respect to his memory and adopted the following resolutions, which, on the motion of Attorney General Brewster, himself a Pennsylvanian, were ordered to be entered on the minutes of the court:

Resolved, That the members of the Bar of the Supreme Court of the United States have received with a sense of profound regret the intelligence of the death of Jeremiah S. Black, of the State of Pennsylvania, once Chief Justice of the Supreme Court of that State, Attorney-General and Secretary of State of the United States, and eminently distinguished as a practitioner at this bar and as a jurist of unsurpassed ability.

Resolved, That the memory of the deceased deserves to be cherished with the utmost veneration by the members of this bar, as that of a lawyer profoundly versed in the science of the law and worthy to be ranked with the greatest and ablest of our age and country; a statesman illustrious for his public services, a ready scholar, a vigorous writer, unexcelled as a logician, and in all the relations of life an eminent and most worthy citizen.

It is said of Chevalier Bayard that he was a "knight without fear and without reproach." Jeremiah Sullivan Black deserves a higher title. He was a knight without fear, but the subject of great reproach, unjustly heaped on one who was erroneously supposed to be among the causes of the miseries of a civil war which

he had made great efforts to avoid. Through all difficulties and misunderstandings, however, as judge, statesman and practitioner, he rounded out in fifty-three years after his admission to the bar a public and professional career which has not been equaled since by that of any other Pennsylvanian. It is most appropriate, therefore, that this great county, in celebrating the completion of one hundred fifty years as a municipal subdivision of the Commonwealth, should choose to honor her most distinguished son.

CASES OF THE HONORABLE JEREMIAH S. BLACK IN THE
SUPREME COURT OF THE UNITED STATES

I. AS ATTORNEY GENERAL

- United States v. Cambuston, 20 How. 59 (1857).
- United States v. Breitling, 20 How. 252 (1857).
- United States v. Fossatt, 20 How. 413 (1857).
- Sampson v. Peaslee, 20 How. 571 (1857).
- United States v. Sutter, 21 How. 170 (1858).
- Belcher v. Lawrason, 21 How. 251 (1858).
- Brown v. Huger, 21 How. 305 (1858).
- United States v. City Bank of Columbus, 21 How. 356 (1858).
- Mason v. Gamble, 21 How. 390 (1858).
- United States v. Nye, 21 How. 408 (1858).
- United States v. Bassett, 21 How. 412 (1858).
- United States v. Fossatt, 21 How. 445 (1858).
- Converse v. United States, 21 How. 463 (1858).
- Ableman v. Booth, 21 How. 506 (1858).
- United States v. Garcia, 22 How. 274 (1859).
- United States v. Teschmaker, 22 How. 392 (1859).
- United States v. Pico, 22 How. 406 (1859).
- United States v. Vallejo, 22 How. 416 (1859).
- Dalton v. United States, 22 How. 436 (1859).
- Fuentes v. United States, 22 How. 443 (1859).
- Dubuque and Pacific R. R. Co. v. Litchfield, 23 How. 66 (1859).
- United States v. White, 23 How. 249 (1859).
- United States v. Noe, 23 How. 312 (1859).
- United States v. Gomez, 23 How. 326 (1859).
- United States v. Bolton, 23 How. 341 (1859).
- Castro v. Hendricks, 23 How. 438 (1859).
- Palmer v. United States, 24 How. 125 (1860).

United States v. Chana, 24 How. 131 (1860).
Belcher v. Linn, 24 How. 508 (1860).
Knight v. Schell, 24 How. 526 (1860).

II. NOT AS ATTORNEY GENERAL

Curtis v. County of Butler, 24 How. 435 (1860).
Clark v. Hackett, 1 Black 77 (1861).
United States v. Knight's Adm'r, 1 Black 227 (1861).
United States v. Wilson, 1 Black 267 (1861).
United States v. Vallejo, 1 Black 283 (1861).
United States v. Neleigh, 1 Black 298 (1861).
Cleveland v. Chamberlain, 1 Black 419 (1861).
United States v. Knight's Adm'rs, 1 Black 488 (1861).
White's Adm'rs v. United States, 1 Black 501 (1861).
United States v. Vallejo, 1 Black 541 (1861).
United States v. Castellero, 2 Black 17 (1862).
United States v. Galbraith, 2 Black 394 (1862).
King v. Ackerman, 2 Black 408 (1862).
Griffing v. Gibb, 2 Black 519 (1862).
Bronson v. R. R. Co., 2 Black 524 (1862).
Malarin v. United States, 1 Wall. 282 (1863).
United States v. Halleck, 1 Wall. 439 (1863).
White v. United States, 1 Wall. 660 (1863).
United States v. Gomez, 1 Wall. 690 (1863).
United States v. Estudillo, 1 Wall. 710 (1863).
Romero v. United States, 1 Wall. 721 (1863).
The Sutter Case, 2 Wall. 562 (1864).
The Fossat Case, 2 Wall. 649 (1864).
Peralta v. United States, 3 Wall. 434 (1865).
United States v. Circuit Judges, 3 Wall. 673 (1865).
United States v. Gomez, 3 Wall. 752 (1865).
Ex parte Milligan, 4 Wall. 2 (1866).
Sparrow v. Strong, 4 Wall. 584 (1866).
De Haro v. United States, 5 Wall. 599 (1866).
State of Georgia v. Stanton, 6 Wall. 50 (1867).
State of Georgia v. Grant, 6 Wall. 241 (1867).
Millingar v. Hartupee, 6 Wall. 258 (1867).
Thompson et al. v. Bowman, 6 Wall. 316 (1867).
Ex parte McCardle, 6 Wall. 318 (1867).

- The Floyd Acceptances, 7 Wall. 666 (1868).
Roland v. United States, 7 Wall. 743 (1868).
Clark v. Reyburn, 8 Wall. 318 (1868).
Rubber Co. v. Goodyear, 9 Wall. 788 (1869).
Slaughter-House Cases, 10 Wall. 273 (1869).
Smith v. Stevens, 10 Wall. 321 (1870).
Pennsylvania College Cases, 13 Wall. 190 (1871).
Blyew v. United States, 13 Wall. 581 (1871).
Slaughter-House Cases, 16 Wall. 36 (1872).
Township of Pine Grove v. Talcott, 19 Wall. 666 (1873).
Clarion Bank v. Jones, 21 Wall. 325 (1874).
Phillips and Colby Construction Co. v. Seymour, 91 U. S. 646 (1875).
Gaines v. Fuentes, 92 U. S. 10 (1875).
Miller v. Dale, 92 U. S. 473 (1875).
Central R. R. and Banking Co. v. Georgia, 92 U. S. 665 (1875).
South-western R. R. Co. v. Georgia, 92 U. S. 676 (1875).
Leavenworth, etc. R. R. Co. v. United States, 92 U. S. 733 (1875).
Missouri, etc. Ry. Co. v. United States, 92 U. S. 760 (1875).
Stark v. Starr, 94 U. S. 477 (1876).
McGarrahan v. Mining Co., 96 U. S. 316 (1877).
Jackson v. Ludeling, 99 U. S. 513 (1878).
Vicksburg, etc. R. R. Co. v. Jackson, 99 U. S. 513 (1878).
Missouri v. Lewis, 101 U. S. 22 (1879).
Kountze v. Omaha Hotel Co., 107 U. S. 378 (1882).