THE beginning of the end for slavery in Pennsylvania came in 1780 with the passage of an "Act for the Gradual Abolition of Slavery." Born of the Quakers' long-standing hostility to slavery, the libertarian doctrines of the American Revolution, and economic reasons, the act provided that no child born thereafter should be a slave, except that a Negro or mulatto child born to a slave mother would be a servant until twenty-eight years of age. Further, the act required the master to register and record his name, occupation, place of residence, and the name, age, and sex of his slave. Slave owners were given until November 1, 1780, to comply with these provisions or suffer forfeiture of the slave. This remarkable document was the first statutory action against slavery in the United States.

Slave masters, however, soon developed some subtle methods of circumventing the law. They would, for example, sell their slaves into other states or send pregnant female slaves into a slave state so that the child would not be born into freedom. Consequently, in 1788 the legislature amended and clarified the original act with more elaborate restrictions on slavery. The births of slave children now were to be registered, pregnant female slaves

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10 Pa. Stat. at Large 69, 70.

were not to be sent out of the state, and slave husbands and wives were not to be separated by more than ten miles without their consent.\footnote{13 Pa. Stat. at Large 54.}

A most significant feature of the original act lay in judicial procedures prescribed for Negroes. Thenceforth, the crimes and offenses of Negroes or mulattoes, whether they were slaves, servants, or freemen, were to be "inquired of, adjudged, corrected and punished in like manner" as those of any other inhabitants of the state. With the exception that a slave could not bear witness against a freeman—a restraint repealed in 1847—this section opened the courts of the Commonwealth to the Negro on equal footing with whites.\footnote{10 Pa. Stat. at Large 70.} In consequence of future developments, this was to be a useful corollary to the often shadowy concept of gradual abolition. Indeed, while the Act of 1780 laid the basis for the eventual disappearance of slavery from Pennsylvania, the judiciary of the state also played a vital role in its eradication. Exploiting technicalities in the law, court decisions gave freedom to countless slaves either long before their condition was to end, or to slaves who had been held to service long after it should have ended for them. In addition, the enunciation and force of the decisions reverberated throughout the state and freed many slaves without recourse to the judicial process.

The Negro, whether slave, servant, or freeman, now was armed with the protection of legal rights. Beginning in 1789, and continuing well into the next century, the Negro's first significant use of this protection came in a long series of cases involving technicalities in the registration procedures.

In \textit{Respublica v. Betsey} (1789),\footnote{Dallas 469.} the first test case regarding the registration procedures, there was an indication of the direction the Supreme Court of Pennsylvania was to follow, and an example of the sometimes divisive character of the question. The facts of the case were simple and uncontested: Betsey, a Negro, was born before the passage of the abolition act, and with her parents, was a slave for life. The owner had neglected to register the parents, and consequently they obtained their freedom. Betsey also had not been registered and similarly sought her freedom.
The owner demurred, arguing that the Negress could be retained as a servant until the age of twenty-eight despite the failure to register her. Thus the Court had to resolve whether this provision of the law overruled the directions for registration. By a three-to-one decision, the Court ruled that a Negro not registered agreeable to the requirements of the law could not be held as a servant, and was, in fact, absolutely free.

Chief Justice Thomas McKean, however, disagreed with the majority of his court. He was of the opinion that “the law favors liberty more than property,” but he relied on Section 6 of the 1780 act which stated that owners of slaves, though they not be registered, were responsible for their maintenance in case they became paupers. This implied an interest in the Negro, and McKean believed that it nullified the technicality of registration. He also was reluctant to free the slave as he believed that freedom would not improve her condition. “... [S]he cannot suffer so much by living with a good master, as being with poor and ignorant parents,” he concluded.7

The majority justices, William A. Atlee, Jacob Rush, and George Bryan, overrode McKean’s arguments of Section 6 and chiefly based their decision on the narrow grounds of the owner’s failure to register his slaves. Further, Justice Atlee argued that if the legislature had intended that all slaves born before the passage of the act should be servants until twenty-eight years of age, it would have said so in express terms. The servitude of twenty-eight years, he said, was “limited to those who are born of registered slaves, after it [the act] was passed, and to those only.”8 The preamble to the act of 1780 had referred to the unfortunate circumstances of slaves whereby husbands and wives were separated from each other and from their children, and clearly implied that such practices should cease. The majority held that the attempt to keep Betsey from her parents clashed with the intentions of the legislature, and that a decision in favor of freedom would best serve the designs of the law.9

With the Betsey case as a firm precedent, the state Supreme Court for the next two decades generally construed the registration

7 Ibid., 470, 471.
8 Ibid., 474.
9 Ibid.
and residence requirements most narrowly. For example, Negroes brought from Maryland to Pennsylvania after September, 1780, were free whether or not they had been registered.

In *Lucy v. Pumphrey*, an owner who had registered his slave with an incorrect Christian name was deprived of his property. Pumphrey had registered six slaves, one of them as Ruth. But she was really a slave who had been known as Lucy, and the Court ruled that the error in the name was crucial. If Lucy's claim to freedom were disallowed, the Court said, "fraud and perjury would be let in to defeat the purposes of the law, and make slaves of negroes really free. The fault lies with the master, and he must bear the consequences." Shortly thereafter, the Court freed a Negro who had been registered by a person other than the owner.

When the owner vaguely recorded the date of birth on the registry, the Court held this to be a failure to comply with the letter of the law. In *Commonwealth v. Issac Craig*, the state contended that the registration of a Negro boy as "born sometime in May last, or beginning of June" was imprecise proof of date of birth. Thereupon the Court discharged the Negro from further bondage, as it was unable to determine whether or not six months had elapsed from the date of birth until the registration. In the similar case of *Commonwealth v. Greason*, a master reported a mulatto as born "on, or about the 23d May," but the report recorded it as "born the 23d May 1792." The Court declared that the letter of the law had not been followed because of the "on or about" phrase and directed that the Negro be discharged. The Act of 1788 stipulated that the entry be made within six months from birth, and it was uncertain, from the entry, whether the registration had been made within the required time. "It lies upon the master," the Court said, "to prove, that the law had been complied with. . . ."

In *Alexander v. Stokely*, the Court faced the question of whether the daughter of a colored woman was a slave if she had been born after the mother became a free woman on account of a defect in

10 *John, a negro man v. Benoni Dawson*, 2 Yeates 449 (1799).
11 *Respublica v. Aberilla Blackmore*, 2 Yeates 234 (1797).
12 *Elson v. William McCulloch*, 4 Yeates 115 (1804).
13 1 Serg. & Rawle 23 (1814).
14 4 Serg. & Rawle 425, 426 (1818).
her registry. The Court entertained no doubts in this case; the mother was free when the child was born and accordingly, the child too was free.\textsuperscript{16} Five years later, an issue similar to that in the \textit{Stokely} case arose, and again the status of the mother determined that of the child.\textsuperscript{17} According to the will of the mother's owner, she ceased to be a slave upon his death, and became a servant for twenty years. Justice Thomas Duncan in his opinion carefully distinguished the difference between a slave and a servant for years. The will was binding that the mother was no longer burdened with "the curse of slavery," and that condition, Duncan concluded, "could not attach against her offspring born afterwards."\textsuperscript{18}

Sharp differences soon arose among the members of the Supreme Court, and often resulted to the disadvantage of the Negro litigants. Of particular interest, these differences of opinion were characterized by a split between two giants of early Pennsylvania legal history, Chief Justice William Tilghman and Associate Justice, later Chief Justice, John Bannister Gibson.

Tilghman was a native of Maryland, but had studied law in Philadelphia under Benjamin Chew, later a chief justice of the colonial court. In 1788, he entered the Maryland legislature and actively campaigned for the adoption of the federal Constitution. John Adams appointed him chief judge of the United States Circuit Court in Philadelphia, but as one of the "midnight judges," Tilghman lost his position when the Republicans repealed the Judiciary Act of 1801. He remained in Pennsylvania and in 1805 became president of the Court of Common Pleas in the First District. The following year, Governor Thomas McKean appointed him chief justice to succeed Edward Shippen.\textsuperscript{19}

Gibson's pre-judicial career was for the most part undistinguished. He was the son of Colonel John Gibson of Revolutionary War fame and was a native Pennsylvanian. He studied at Dickinson College, in Carlisle, and was admitted to the Cumberland County bar in 1803. Although he did not achieve much prominence as an attorney, the county elected him Democratic state repre-

\textsuperscript{16} 7 Serg. & Rawle 299, 301 (1821).
\textsuperscript{17} \textit{Scott v. Waugh}, 15 Serg. & Rawle 17 (1826).
\textsuperscript{18} \textit{Ibid.}, 19.
sentative in 1810. Perhaps his most noteworthy achievements as a legislator were his opposition to the impeachment of Judge Thomas Cooper and his consistent advocacy of internal improvements. In 1813, Governor Simon Snyder appointed him president judge of the Eleventh Judicial District of the Court of Common Pleas, and, apparently only for political reasons, elevated him to the Supreme Court in 1816. Despite these rather unpromising beginnings, John Bannister Gibson looms large as one of the great figures in American law.

The differences of opinion between Tilghman and Gibson were subtle, but chiefly rested in statutory interpretation of the registration provisions. Tilghman usually was satisfied by a perfunctory compliance with the law, while Gibson insisted upon construing the statute narrowly. Carrying the logic of their respective opinions further, Tilghman often emerged favoring property over liberty, while Gibson strove mightily to resolve any doubts in favor of the Negro litigants. Tilghman’s position often was ambiguous, as, for example, when he stated: “I know that freedom is to be favored, but we have no right to favor it at the expense of property.”

Gibson believed, on the other hand, that the legislature had intended a narrow interpretation of the act. He supported his views by pointing out that the act was one for freedom and accordingly must be so expounded by the courts.

Their first clash came in 1811, when Gibson was still a practicing attorney and made one of his rare appearances before the Supreme Court. The case, Commonwealth v. Blaiple, involved an obvious error in registration, whereby the defendant had, on June 26, 1807, registered a Negro child as being born on January 2, 1808, which clearly was impossible. Gibson, on behalf of the Negro, argued that the registry thus was void and urged that the act be construed strictly in favor of liberty. He also objected to the introduction of parole testimony to certify that the Negro actually was born in 1807. But Tilghman, for the Court, ruled

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21 Dean Roscoe Pound includes Gibson in his list of the ten most important American jurists; Pound, The Formative Era of American Law (Boston: Little, Brown, 1938), 4.
22 Marchand v. Negro Peggy, 2 Serg. & Rawle 18, 19 (1815).
24 Binney 186 (1811).
that the law had been complied with, inasmuch as the registration had been made within six months from birth, and that the owner had supposed that the correct age was in the affidavit. The registry then was considered valid and the Negro remanded to the defendant's custody.\(^{26}\)

*Wilson v. Belinda* highlighted the differences between Tilghman and Gibson, a year after the latter's appointment to the bench. The owner of a Negro named Belinda had been remiss on two counts when he registered the slave. First, he did not state his occupation, and second, he failed to specify Belinda as a male or female.\(^{26}\) Tilghman in his opinion contended that if there had been an honest attempt to comply with the directions for registrations, and a defect were found, “the construction should be liberal in favor of the master.” But as the law specifically required recording the sex, Tilghman believed that to construe it otherwise would contradict the statute, and he ordered Belinda discharged. In the course of his opinion, however, he commented that the omissions of the town and county of the master’s residence, and his occupation, did not void the registry.\(^{26}\) Although not reported at the time, later evidence showed that Associate Justice Duncan concurred in this part of the opinion.\(^{26}\)

Gibson concurred in the judgment to discharge Belinda, but took exception to some of Tilghman’s conclusions. Apparently, it was the Chief Justice’s willingness to overlook the omissions of occupation and residence on the registry that provoked Gibson. Unlike Tilghman, Gibson advocated that the courts “hold the master to a strict and formal execution for everything enjoined, except where express decisions of this court may have established contrary construction.” He believed that if the courts were to construe the statute any further against the slave, it would be “an unwarrantable liberty with the expressions of the legislature.” He concluded with a ringing affirmation of the presumption of liberty:

> As far as cases have already gone, I am willing to go; but not a jot further: and this too, not because I am

\(^{26}\) *Ibid.*, 189.

\(^{26}\) 3 Serg. & Rawle 396 (1817).


\(^{26}\) Gibson confirmed this in *Jacob v. Pierce*, 2 Rawle 204, 206 (1828).
convinced of the propriety of those decisions, but because I am averse from disturbing anything like a settled rule. But most clearly, every other particular required by the act, must be strictly complied with; and for this single reason, that the act declares the slave shall be free, if it be not.29

The abolition act required the clerk of the peace to administer the oath in the registration of a slave, but an unanimous court in 1819 upheld the validity of the oath when administered by the deputy clerk.30 Gibson's silence pointed to some limitation on his strict interpretation of the statute.

Tilghman's preference for the master manifested itself again in Stiles v. Nelly (1823). Here the plaintiff challenged a registration because the clerk originally had recorded the birth as “about the 15th Nov. 1780” and later deleted the “about” qualification. Tilghman ruled that the registration was in strict form, that it did not contradict the original testimony of the owner, but merely corrected the defects. The chief justice acted on the presumption that the owner realized the defects and directed the clerk to correct them before he took the oath.31 At the time, it never occurred to plaintiff's counsel, nor to the judges, that Nelly was entitled to freedom because she was the child of a bound servant, not a slave.32 Quite naturally, holders of indentured servants tried to extend that condition through as many successive generations as possible. The practice was widely condoned, but in 1826 the Supreme Court resolved that no one but the child of a registered slave could be held to servitude for twenty-eight years. Tilghman pointed out that if the ruling were in favor of continued servitude, it would mean the legislature had established a new kind of slavery.33

The report of the Nelly case seemed to indicate that the decision was unanimous. But five years later, Gibson, now chief justice

29 3 Serg. & Rawle, 396, 400-401.
30 Commonwealth ex rel. Bell v. Greason, 5 Serg. & Rawle 333, 334 (1819). Some years earlier, Tilghman had held that a justice of the peace could administer the oath at registry despite the law's requirement that it be done by a clerk of the peace. Jack v. Eales, 3 Binney 100, 102 (1810).
31 4 Serg. & Rawle 366, 371 (1823).
32 Justice Kennedy pointed this out in Urie v. Johnston, 3 P. & W., 212, 220 (1831).
33 Miller v. Dwilling, 14 Serg. & Rawle 442, 443 (1826)
after the death of his predecessor, clearly expressed his dissatisfaction with that decision. In *Jacob v. Pierce* (1828), the Court again faced a situation where a clerk had cured a defect in the original record of a slave registration. Here Gibson pointed out that the relation of the plaintiff in error in the *Nelly* case to himself and Justice Duncan necessitated a decision by Tilghman alone. Further, he again stressed his position of the *Belinda* case that the law be construed in favor of the slave. But Gibson followed Tilghman’s lead in the *Nelly* case, thus adhering to the practice of *stare decisis*. It also was possible that he did not have enough support on the Court to overthrow the previous decision. That case, he said, “went to the world as a decision of the court in the last resort, and a rule of property, so that it would be pernicious in its consequence, and of bad example to overthrow it now, for a mere speculative error. No lasting mischief can arise from it in practice, as the species of property to which it relates must shortly be extinct.”

In an 1820 case, Justice Gibson gave full vent to his feelings on slavery. The case was not properly a suit for freedom, but instead involved a dispute between two townships as to which was entitled to recover maintenance costs from the former owner of a slave who had become a pauper. During the course of the proceedings, it became known that the Negro continued to be a slave until after the age of seventy-eight. Justice Gibson noted that the name of the slave on the original record of registry was illegible, hence it was doubtful whether the registry was complete and the slave should have been freed. But as he continued to be a slave until later years, the Court ruled that the master was bound to provide maintenance. In this instance Gibson did not allow a defect in registry to work for the advantage of the slave owner. To do so, he said, would be “to deprive the pauper of the miserable advantages of a state of legitimate slavery, if any slavery can be legitimate.”

Gibson’s passion for a precise interpretation resulted in another split in *Commonwealth v. Vance* in 1826. Here the Court de-
cided that the use of the title "esquire" after a name on the registry adequately established the owner's occupation as that of a judge, though he also was a farmer. Justice Duncan, joined by Tilghman and Associate Justice Charles Huston, cited the Belinda decision as support for his proposition that the "courts have not required a rigid adherence to the letter in the description of the master. . . ." Duncan commented that the registration provisions merely were intended to identify the master and the Negro, thus assailing Gibson's position of a stringent interpretation in favor of the slave.\(^9\) For himself and Associate Justice Molton C. Rogers, Gibson recorded a silent dissent to the Court's decision.

The registration cases probably were the most important that the courts decided in this period. But the abolition acts opened a Pandora's box of related problems and questions which ultimately required judicial settlement.

The legislative pronouncement of 1780 coincided with an increased demand for labor in the state. As the slave markets in the state were dried up, it became common practice to bring young slaves from the South, manumit them, and in turn indenture them as servants to residents of the state until they were twenty-eight. While some charged this as violating the spirit of the abolition act, the Supreme Court, in Respublica v. Gaoler, in 1794, upheld the practice as legal. The decision primarily rested upon the reasoning that such a condition of servitude actually served the cause of liberty, inasmuch as the former slaves eventually attained the freedom which otherwise would have been denied to them.\(^9\)

The Court's generosity apparently was abused, because in the 1830's it sharply retracted its doctrine. In Commonwealth v. Cook, the Court nullified an indenture, in consideration of manumission, of a foreign slave.\(^1\) Here a master had taken his slave to Pennsylvania from the District of Columbia and then bound her to indenture for seven years. This indenture then was transferred to George Cook. Justice Rogers, in his opinion for the Court, declared that the case came within the intention of the legislature as expressed in section 2 of the 1788 act which provided that a

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\(^1\) Watts 155 (1832).
slave brought from another state, with the purpose of permanent settlement, was to be free. If, then, the slave were free at the time the indenture was made, the contract automatically was null and void. In a companion case, the Court invalidated a similar indenture despite the fact that it was made in pursuance of a parole agreement entered into in the District of Columbia.

The act of abolition provided freedom for any slave from abroad who had been retained in Pennsylvania for more than six months. Correspondingly, only Negroes whose masters resided in Pennsylvania for six continuous months could bring suits for freedom. This provision, however, specifically excluded the slaves of members of Congress. In 1814, the Court dealt with a case involving a slave of a South Carolina congressman who attended the family while they temporarily resided in the state. The suit was a habeas corpus proceeding to free a Negro named Lewis who had absconded from his master's service.

Chief Justice Tilghman swept aside objections that the immunity to congressmen was not applicable because it referred to members of Congress under the Confederation. The object and foundation of Congress remained the same, but he added, somewhat obtusely, that it was "as necessary that the members from the southern states in the present congress should be attended by their domestics, as it was for the members of the old congress." It would have been inconvenient to force Southern congressmen to relinquish their residence in the state during a recess of Congress, he said, and it was inconceivable that the state legislature would have intended to pass a law which consequently would have forced Congress to leave the state. The Court ordered the slave remanded to his master.

In addition to the exceptions for congressmen, the abolition act granted immunity to slave owners passing through or sojourning in the state. If, however, the sojourner retained his slave in Pennsylvania for six continuous months, then the slave was free.

The abolition laws did not apply directly to fugitive slaves, and
such slaves were subject to recapture without resorting to the legal process. But in the case of a slave who had absconded from Maryland, resided in Pennsylvania for two years, and then gave birth to a child, the Court ruled that the child was free. Tilghman viewed the fugitive slave law as applicable only to those persons who had fled their masters. Although the abolition act provided for compliance with the federal law, Tilghman pointed out that this proviso did not “extend to the issue of the absconding slave, nor is there any necessary implication by which it must be extended to issue begotten and born in Pennsylvania. . . .” Again Justice Gibson was more forceful. In his opinion, the tenth section of the 1780 law guarded “against all construction unfavorable” to Negroes. Whether the case of the relator was to be considered a hard one or not, he concluded, “will depend much on the temper with which the mind may contemplate the positive and artificial rights of the master over the mother, on the one hand, on the other, the natural rights of the child.”

On one occasion, Tilghman and the court neatly skirted the federal fugitive slave law. Johnson, a Negro slave, was a runaway from Maryland. His master had sent an agent to recover him, but as the slave had committed fornication and bastardy in Pennsylvania, the state held him until security could first be given for the support of the child. The child must be maintained, Tilghman declared, “and it is more reasonable that the maintenance should be at the expense of the person who has a right to the service of the criminal, than at that of the people of [Philadelphia] . . ., who have no such right.” He also denied that the existing fugitive slave laws and the federal constitution required Pennsylvania to surrender the slave. The Constitution, he argued, did not exempt runaway slaves from the penal laws of a state.

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5 Prigg v. Pennsylvania, 41 U.S. 539 (1842).
49 Commonwealth v. Holloway, 2 Serg. & Rawle 305 (1816).
50 Ibid., 306.
51 Ibid., 309. The tenth section provided that “no man or woman of any nation or color, except the negroes . . . who shall be registered . . . shall at any time hereafter be deemed, adjudged or held within the territories of this commonwealth, as slaves or servants for life, but as free men and free women.” Excepted were slaves of congressmen, foreign ministers and consuls, and sojourners. 10 Stat., at Large 71.
53 Ibid., 5, 6.
Whatever his intentions and motives, Tilghman at least hit upon an ingenious method to prevent the forced return of certain runaway slaves.

While the state's abolitionism had run its course by the time that the national antislavery movement had gained momentum, Pennsylvania's attitude toward the Negro concurrently grew more ambiguous. Clearly now, the state had abolished slavery within its borders, and its official and unofficial hostility toward the recovery of fugitive slaves was well known. In the 1830's, however, public and private discrimination against the Negro increased, and the judiciary played a vital part in the denial of political and social rights. The key case was Hobbs v. Fogg, in 1837, when the Supreme Court ruled that a Negro was not a freeman in the political sense, and hence not entitled to vote under the existing constitution of the state.\(^4\) Chief Justice Gibson spoke for an unanimous court, and a specific prohibition in the new state constitution of 1838 confirmed the decision.

Discriminatory actions against the Negro increased after the suffrage decision, and by the Civil War, Pennsylvania had established the rudiments of a segregated society, albeit much of it by individual or group action rather than by statutory force.\(^5\) But significantly, the courts refused to allow any serious diminution of the Negro's legal rights, an attitude clearly manifested in Foremans v. Tamm.\(^6\) Tamm, a Negro, had settled vacant lands but was ejected by Foremans, who claimed that as a Negro was not a citizen, he thus could not be covered by the legislative act providing for the settlement of vacant lands. The Negro sued for redress, and in 1853 the Supreme Court held that a free colored man could acquire a pre-emptive right to land, and as such, was entitled not only to be reinstated upon the land, but also permitted to sue for damages sustained.\(^7\) This case, had the Court ruled the opposite, could have produced serious repercussions and arrested all the progress toward greater civil rights that the Negro had made prior to this time. The real issue here was the question of whether the Negro was entitled to equal legal rights when he had no political rights in the Commonwealth.

\(^4\) 6 Watts 553.
\(^8\) 1 Grant 23 (1853).
The judiciary's denial of political and social rights probably reflected the dominant attitude of the state's white population. Altogether, from the time of the passage of the abolition act down to the Civil War, the Negro achieved a rather mixed record of success in the state courts. Conforming to the legislature's aim, the courts worked for the gradual abolition of slavery, but not for political and social equality. They rigorously interpreted the registration clauses, encouraged a release from slavery to indenture status, construed fugitive slave laws narrowly, and inclined to a generous treatment of the offspring of slaves—all for the purpose of hastening the demise of slavery. Above all, then, the law and the expansiveness of the judges firmly established the Negro's right to personal freedom. And underlying all this, the major victory of the Negro was that he acquired a firm title to equal legal rights. He could acquire, own, and convey real and personal property, make and be included in wills, bring suit in any court for a tort or crime committed against his person or property, and be subject to the same laws as any white freeman. The Negro's recourse to the courts protected, preserved, and advanced his freedom, and, in another century, is proving to be his most potent weapon in the quest for equality.