

HON. JACOB RUSH, OF THE PENNSYLVANIA
JUDICIARY.

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The name of Rush was long prominent in Pennsylvania in the annals of medicine, law and jurisprudence. Dr. Benjamin Rush, signer of the Declaration of Independence, eminent physician and philanthropist, filled a large place in the public affairs of his time. His younger brother, Jacob Rush, of whose life and official services it is proposed to speak, was one of the shining lights of the early Pennsylvania State Judiciary. Both were strong characters, zealous patriots during the stirring period in which they lived, tenacious of their convictions and of the high standard of individual duty which they set for others, and typified in themselves.

Jacob Rush was born November 24, 1747, in Byberry township, Philadelphia County, the family seat of his ancestors, who came from Oxfordshire, England, to America in 1683. John Rush, the immigrant, commanded a troop of horse in the army of Oliver Cromwell. Having embraced the principles of the Quakers, he was doubtless attracted hither by the inducements held out by Penn to the people of that faith for the founding of his newly acquired colony. He left numerous descendants, among whom, in the third generation, was John Rush, who married Susan Harvey, daughter of Joseph Hall, of Tacony, these being the parents of Dr. Rush and his brother Jacob. Losing their father at a very early age, their bringing up devolved upon the mother, who remarried, and, though of slender means and left with five children, procured for her two sons the benefits of a liberal education. The two youths were first sent to the school taught by Francis Alison,

at New London, Chester County, an institution under the care of the Presbyterian church. They next attended an academy at Nottingham, Cecil County, Maryland, the principal of which was the Rev. Dr. Samuel Finley, afterwards President of the College of New Jersey, who had married a sister of their mother.

Jacob Rush graduated from the College of New Jersey in 1765, in his eighteenth year, receiving at a later period the degree of Doctor of Laws, and chose the legal profession. At that day there were no law schools, and students usually prepared under the direction of some experienced practitioner. It is not known with whom he was thus associated, or for what period, but the date of his admission to the Philadelphia Bar is recorded as February 7, 1769. Going abroad for instruction, it appears from a letter written by him at London, to his brother Benjamin, in January, 1771, that he was then about entering as a student at the Middle Temple, and was pursuing his law studies with diligence and ardor. He also speaks of attending the sittings of the courts at Westminster.

Whilst Judge Rush began his law practice in Philadelphia, he extended it into other counties. The records show that he was admitted to the Bar in Berks May 10, 1769. It was the custom of the lawyers of that period to follow the courts upon their circuits, wheresoever they might be held. His name appears as proctor in a number of cases in the Pennsylvania Court of Admiralty, a tribunal established in 1776 and holding its sessions in Philadelphia. It passed out of existence upon the adoption of the Constitution of the United States, under which Admiralty jurisdiction was vested exclusively in the Federal Government.

Judge Rush was a warm supporter of the Revolutionary cause, and to some extent a participator in the patriot counsels. In a letter to his brother in October 1778 he says, that he had the honor of serving for a

time as deputy Secretary of Congress, during the temporary indisposition of the Secretary, Charles Thomson. Upon the British occupation of Philadelphia he retired to his farm, but resumed his practice when General Clinton evacuated the city.

He was contemporary and associated with a group of lawyers and judges of broad legal education and distinguished abilities, many of them graduates of the English Inns of Court. At the head of the Bar immediately prior to, or during the Revolution, were such eminent legal lights as Jasper Yeates, Benjamin Chew, James Wilson, Thomas McKean, John Ross, Edward Shippen, Jonathan Dickinson Sergeant, William Tilghman, Jared Ingersoll, William Rawle, John Dickinson, Francis Hopkinson and Joseph Read. By reason of the stirring events of the times there was then a greater individuality in the profession than at any former period. The educated class was less numerous, and the leadership of the trained practitioners was more distinctly felt. It was an epoch which produced strong characters, and it was from this school the young practitioner drew his inspiration.

To the modern lawyer it is matter of wonder how thorough professional training could be attained in this country amid the dearth of the literature of the law at the period referred to. The lawyers of the day acquired their elementary knowledge from Plowden, the Year Books, Grotius, Vattel and Coke. At the close of the century, as it is said, the libraries of the best equipped members of the Bar contained, in addition to these, Comyn's Digest, Bacon's Abridgment, Hale or Hawkins' Pleas of the Crown, Blackstone's Commentaries, Lilly's Entries, and Saunders' Reports, with some brief works on Pleading and Practice. All of these—with the exception of Blackstone, the first American edition of which was published in Philadelphia in 1771—were imported from England, and some of them were but

vaguely adapted to the situations developed in the new country. It had not yet been authoritatively determined how many British statutes remained in force in Pennsylvania. The English common law was an equally uncertain field. Some thought, indeed, that it had been wholly abolished by the Revolution, together with the force of all the pre-existing statute law of England. Of American reports there was an entire destitution. The earliest authorized reports of the decisions of the State Courts, as is well known, were those of Dallas, the first volume of which appeared in 1790. The first digest of Pennsylvania statutes was that of Collinson Read, issued in 1800, which was not really a digest of the modern type, but a topical collocation of the laws arranged in chronological order. The lawyer's commonplace book, now gone out of fashion, recorded his briefs and such excerpts as he could gather from occasional sources.

But whilst there was less law to be learned there was more time to study it. Arguments were long, and judicial deliverances correspondingly prolix. Order was to be evolved out of chaos, and new rulings were required to meet new conditions. The difficulties which confronted the lawyers were reflected in the problems which perplexed the judges. The old Bar was an all day Bar; cases were fought inch by inch, and arguments consumed whole days upon points of law which would now be settled in as many minutes. In the construction of statutes the courts hewed to the line, and the pathway of practice bristled with technicalities.

In 1782 Judge Rush was elected as one of the members of Assembly from Philadelphia County, and was re-elected in the following year. This office he resigned March 20, 1784, upon his appointment by the Supreme Executive Council to the Supreme Bench, in the room of John Evans, deceased. Thomas McKean was Chief Justice, and George Bryan the other Associate. The

term was seven years. The salary of the Chief Justice was £750 Pennsylvania currency, and that of the Associates £600, with an allowance of four dollars per diem for traveling expenses while on the circuit. Official salaries in those days were far from being "adequate", but the State was obliged from force of circumstances to be severely economical. Before the Revolution there was no statutory requirement that the judges of the courts should be learned in the law, and they were compensated in part by official fees. In 1789 the Justices of the Supreme Court petitioned the Assembly relative to the depreciation of their pay, and that body passed a resolution to allow a special issue to be tried in the Common Pleas of Philadelphia to determine the question whether the Commonwealth was bound to make up to them the depreciation, and, if so, the amount thereof.

By virtue of his office of Supreme Court Judge, Judge Rush was a member of the High Court of Errors and Appeals, created in 1780 (abolished 1806), its composition including the judges of the Supreme Court, the presidents of the several districts of Common Pleas as then existing, and three other members specially appointed. It heard and determined appeals from the inferior jurisdictions, and also from the Supreme Court itself, whose decisions it usually affirmed and occasionally reversed. In addition to its appellate jurisdiction the Supreme Court held Courts of *Nisi Prius* (subsequently changed to Circuit Courts), in the several counties, for which service they were allowed their necessary expenses, in addition to their salaries. A single judge was deputed to hold the Court of Oyer and Terminer in the counties for the trial of all capital and other felonies not triable by the justices of the peace who constituted the county quorum, and whose jurisdiction was limited to the holding of the Courts of Common Pleas, Quarter Sessions and Orphans' Court.

Radical changes in the judiciary system of the State were made by the Constitution of 1790, by which the justices of the peace were no longer judges of the courts. By the Act of April 13, 1791, the State was divided into five circuits or judicial districts, in each of which a President Judge "of knowledge and integrity, skilled in the laws," was directed to be commissioned by the Governor, together with not less than three nor more than four Associate Judges in each county, all of whom collectively were authorized to hold the Courts of Common Pleas, Oyer and Terminer, Quarter Sessions and Orphans' Courts, as then constituted. The tenure was for life or good behavior. In 1806 the number of associates in each county was reduced to two. The terms of the appointees were to begin on the ensuing first of September, and by another Act of the same date the salaries of the President Judges were fixed at £500 per annum, the Judge of the Philadelphia Circuit to receive £600. This was the foundation of the present system of county law courts, all the judges of which are now elective.

The several circuits were defined as follows: the first consisting of the City and County of Philadelphia and the counties of Bucks, Montgomery and Delaware; the Second of the counties of Chester, Lancaster, York and Dauphin; the Third of the counties of Berks, Northampton, Luzerne and Northumberland; the Fourth of the counties of Cumberland, Franklin, Bedford, Huntingdon and Mifflin; and the Fifth of the counties of Westmoreland, Fayette, Washington and Allegheny.

The appointees to the presidency of these several circuits, named by Governor Mifflin, were men of mature age, high character and eminent abilities, the majority of whom had already held judicial stations.

Judge Rush was commissioned President of the Third Circuit August 17, 1791, and selecting Reading as his

residence, continued to live there during his term of service. Periodical journeys to Easton, Sunbury and Wilkes-Barre were necessitated in the discharge of his official duties. These were performed usually on horseback, over roads at all times difficult and dangerous, and occasionally, in the inclement seasons, almost impassable. Upon these official pilgrimages his retinue usually included a number of itinerant practitioners who attended the sessions of the several courts of the circuit. The judges were personages of great importance in the eyes of the yeomanry, and their sittings were regarded as notable public events. The custom of meeting the President Judges by the Sheriffs and constabulary, upon their approach to the county seats, was at that day very general, though it varied in features in the different jurisdictions. In most instances the object seems to have been to safeguard their Honors rather than to afford a mere official pageant.

The attitude of the Bench was at that day undoubtedly more autocratic than after the period of the elective judiciary. Judge Rush was certainly not an autocrat in the capricious and offensive sense, but he entertained a high sense of the dignity of his office. By an early paragrapher he was characterized as "a rough diamond, unseemly in exterior but of great value," adding that "his manner was plain, perhaps slightly unamiable, and his temper was impatient of contradiction and subtlety when in the exercise of his official functions. Yet he was a wise judge and a good man."

Of Judge Rush's methods of administration we have but scant traditions. His contemporaries have handed down to us but little concerning those personal details which we would most like to know. Of those who wrote concerning him, the late David Paul Brown of the Philadelphia Bar, who as a very young man remembered the Judge personally, has paid him an elaborate tribute, which is found in his "Forum," published in 1856. In

it he says, in part: "Judge Rush was a man of great ability and great firmness and decision of character.

* * There are few specimens of judicial eloquence more impressive than those which he delivered during his occupation of the Bench. * * Some of his early literary essays were ascribed to Dr. Franklin, and for their terseness and clearness were worthy of him.

* * His charges to the jury generally, and his legal decisions, were marked by soundness of principle and closeness of reason. * * His uprightness of conduct and unquestionable abilities always secured to him the respect and confidence, if not the attachment of his associates, the members of the Bar and the entire community. * * He was one of the gentlemen of the old school, plain in his attire, unobtrusive in his deportment, and while observant of his duties towards others was never forgetful of the respect to which he himself was justly entitled." It was not uncommon in the period to which we are referring for the learned president judges to come into antagonism with their lay associates, especially where the latter were of the opposite political faith. The associates, though not required to be learned in the law, and expected to occupy subordinate relations as to the decision of purely legal questions, were nevertheless constitutionally clothed with equal authority with the presidents in their respective counties, which at times they had the disposition to assert. In a case arising in the Orphans' Court of Berks County in 1804, involving an application to set aside an inquisition upon the real estate of a decedent, on the ground of a gross underestimate of the contents, Judge Rush ruled against the motion, but the associate judges, Morris and Diemer, expressed themselves in favor of it, and ordered that the inquisition be quashed and a new one made. The losing counsel announced their intention to appeal to the Circuit Court. Thereupon the president is reported to have replied: "Yes,

do appeal. It is a monstrous and abominable decision, subversive of all justice, and calculated to throw everything into confusion. Every inquisition will be set aside now. Pandora's box will be opened by such proceedings. You better not appeal to the Circuit Court; appeal to the Supreme Court. You will have a full Bench there. I remember a case which I determined which was reversed by two judges of the Supreme Court, and not two men who had their heads on ever decided more absurdly." Much to the Judge's mortification, no doubt, on the appeal being taken to the Circuit Court, the decision of the associate judges was affirmed. Pending the disposition of the case, on another occasion, he openly and sharply criticised the Associates for not appearing promptly upon the Bench at the hour fixed for opening court. In the next year the Associates preferred charges against him to the Legislature, with the view of his impeachment, but the Committee on Grievances reported the charges to be unfounded. The Judge brought a counter complaint against the Associates, which was similarly disposed of, and also instituted a prosecution against the printer of a local newspaper for libel in making comments upon his administration alleged to be derogatory to his official character.

In criminal cases, especially, Judge Rush was expeditious in his methods, and no time was wasted in his court upon technicalities. In the notable case of Richard Smith, tried before him in Philadelphia in 1816, for the murder of Captain John Carson, when the prisoner was brought up for sentence, his counsel filed an unusually long list of objections, one of which alleged that the president had formed his opinion and written his charge before he had heard the prisoner's defence. The Judge disposed of them thus: "The Court thinks this is not a proper time to refute several things alleged in that paper. It is sufficient to say they

are not only false, but utterly without foundation," and thereupon he immediately proceeded to pass the sentence of death.

It was Judge Rush's lot to preside over the courts of the district in times of high political excitement. During the administration of Washington the French Revolution broke out. As our former ally against England in the War of the Revolution, a strong feeling of sympathy was evinced in this country with France, and secret political societies were formed similar to the Jacobin Clubs, in the French interest. Liberty poles were erected in token of this sentiment. Red, white and blue cockades were worn by the French sympathizers, black cockades being displayed by the Federalists. The Alien and Sedition laws passed during the Adams administration to counteract the schemes of the foreign partisans served only to increase the public excitement, which culminated in a political revolution, resulting in the election in 1799 of Thomas McKean to the Governorship of Pennsylvania, and in the following year to the election of Mr. Jefferson to the Presidency.

Judge Rush was a Federalist of the straightest sect. To him federalism and patriotism seemed synonymous. The other judicial appointees of Governor Mifflin were of the same political faith. He presided at a meeting of Federalists at Reading in 1788 to celebrate the anniversary of John Adams' birth, at which toasts were drunk and cannon fired. In 1798 he was chairman of a Federalist meeting which adopted resolutions condemning foreign influence, and pledging support to the Administration.

In August 1798, after diplomatic relations with France had been severed, he delivered a lengthy address to the Grand Jury of Berks County, congratulating them upon the dissolution of the political ties which had bound us to the French nation. "Thank God," said he, "the Gordian knot is at last cut, and we are separated

I trust forever. Upon the seventeenth day of July Congress by law solemnly disannulled our treaties with that country, and declared them to be no longer binding upon the United States. * * Let the voice of joy and gratitude be heard throughout our land. The dissolution of our ties is a declaration I trust of our independence of France, and perpetual exemption from the baneful effects of her morals, her religion and her politics."

The entire address was a remarkable utterance, partaking of the character both of an elaborate state paper and an impassioned political arraignment. Whilst it doubtless suited the Federalists, it must have given offence to the opposition. It was published at the request of the grand jury and widely circulated through the medium of the Federalist newspapers of the day.

In 1794, during the disturbances in Western Pennsylvania known as the "Whiskey Insurrection," Judge Rush took occasion in his charges to condemn the course of those concerned in the outbreaks in opposition to the excise tax. In the height of the John Fries insurrection against the house tax, in April 1799, he delivered a charge to the grand jury of Northampton County, the scene of the disturbances, firmly enjoining obedience to the law which was the subject of the revolt. The Alien and Sedition laws passed during the John Adams administration also came in for a vindication at his hands. All these subjects, it will be observed, concerned the laws of the Federal Government, and were therefore exclusively within the jurisdiction of the Federal Courts. Had he presided in the western section of the State, Judge Rush might not have escaped impeachment proceedings such as those of which Judge Addison was the victim, for the opinions and utterances of the two distinguished jurists upon public subjects were closely identical. Impeachments were the order of the day at that period. Judges were proceeded against, not for "high

crimes and misdemeanors," but for alleged arbitrary methods of administration. The popular jealousy of the life tenure of their appointment undoubtedly had much to do with the opposition to the judiciary as a class, independently of partisan considerations.

The contemporaneous local newspapers of the day, upon which sources I have largely drawn in illustration of the judicial career of Judge Rush, furnish a number of incidents concerning his methods of administration during this stormy political period.

Upon the return, in April, 1799, of the military sent to quell the insurrection in Northampton County by John Fries and his associates, a troop of horse commanded by Captain Montgomery, of Lancaster, passing through Reading, seized the publisher of a local German newspaper for some reflections upon their exploits in cutting down liberty poles and took him before the captain, who ordered him to be publicly whipped in the market place, which was done, though the punishment was but lightly administered. For this, three of the troopers were prosecuted, pleaded guilty in Judge Rush's Court and were fined ten dollars each. The lightness of the sentence occasioned as much of a sensation among the anti-Federalists as the offence itself, and the Court was sharply criticised for its action, which was ascribed to partisan sympathy with the offenders. Judge Rush subsequently in a private letter said he was disposed to make the sentence much higher, but was overruled by his associates—a circumstance of which as a matter of course he could make no public explanation.

An apprentice boy pulled a Federalist cockade from the hat of another lad, who retaliated by hitting him with a stone. Prosecutions followed; the apprentice pleaded guilty and the stone thrower was convicted. The judge expatiated upon the enormity of the crime of pulling a cockade off the hat of another, and lectured

the youth severely. The stone thrower was fined one cent, and the apprentice eight dollars. A man who had made use of hostile expressions against the Federal officers was arrested and taken to prison and the next day brought before the Court, who, after hearing the evidence, bound him in the sum of five hundred pounds for his appearance at the next term of the United States District Court to answer for violation of the Sedition Act.

Such was the heat of party feeling at this time that Albert Gallatin, then a member of Congress, and subsequently President Jefferson's Secretary of the Treasury, was the object of a peculiar demonstration while stopping over night at a tavern in Reading upon his journey in his private conveyance to his home in Western Pennsylvania. The *Reading Weekly Advertiser*, of September 15, 1798, a strong Federalist sheet, gives the following unique account of the occurrence:

On Wednesday September 5th 1798, about 6 o'clock in the Evening, arrived in this town Albert Gallatin, Esq, a Member of Congress from the Western Counties in the State of Pennsylvania, with his Lady &c, on his journey from New York, &c, for his home, and lodged at the Federal Inn, the sign of President Washington, which is kept by Mr. Jacob Baer. About, or rather before 8 o'clock, all at once, all the Bells of this Place (of the two Churches and Court-house) began ringing—Numbers of People were alarmed, supposing it indicated Fire; but as no Fire was to be seen, the People collected about the Court-house and before the Federal Inn, to inform themselves of the Cause of this Disturbance, when also the Cannon (a little Swivel) was fired—the People were informed that this was done by some of Mr. Gallatin's Friends, as a Token of their Friendship for him. Soon after a Number of the Enemies of Gallatin collected, and among them a Number of the Reading Volunteer Blues, with a Drum and Fife, playing the Rogues March, and marching before the Federal Inn. And as some of Gallatin's Enemies expressed threats of personal Abuse against him, Mr. Baer, the Innkeeper, (a very Stout and resolute Man) posted himself on the inner Stairs, to guard his guest. Soon after the Swivel was silenced; and as it was agreed on to silence the Bells likewise, a number went to the Churches, finding the Ringers had locked themselves in to prevent coming to them, calling and threatening them that, unless they would cease ringing all the Windows would be broke, and they Stormed, put an immediate stop to the Ringing—after having lasted for near half

an Hour, in which time the Swivel was four or five times discharged. The Evening was spent with very much virulent Talk and Exclamations, yet without any Blows. The next morning before Mr. Gallatin sat out on his Journey, a number of the Reading Blues collected at the Court-house, marched regularly up and down past the Federal Inn, playing the Rogues March, and before and while he helped his Lady in the Carriage, they burned his effigy within a few yards off the Carriage, one exclaiming "*Stop de Wheels of de Government,*" and others "*Let them go on.*" The Carriage drove off without Mr. Gallatin in, for as he travelled on horseback he preferred mounting back at the Stable, and taking the Alley to get out of Town to join his Carriage at the lower end of it, and by this means to avoid being escorted by the Reading Blues. A Number of People from the Vicinity of this place, coming to town, complained very much at the Alarm and Fright they had received last night, supposing Fire in Town; as some of them on foot and on horseback had been on the Road to assist, until they were better informed."

Next in importance to his faith in Federalism, Judge Rush believed in the maintenance of social order by the literal and rigid enforcement of the Act of 1794, against vice and immorality—contemptuously referred to as the Blue Law—passed during his administration. It prescribed summary conviction for various offences, among them Sabbath breaking, profane swearing, intoxication, cock-fighting, games of hazard, unlawful sales of liquor, harboring minors, challenges to fight, etc. The Judges of the Supreme and Common Pleas Courts and justices of the peace were required to proceed against offenders, who were to be punished by fine and imprisonment. Each one of the misdemeanors enumerated was made the subject of a charge to the grand jury by Judge Rush, and every crime in the Decalogue was likewise defined and expatiated upon at length. These charges collectively form a series of remarkable homilies, in which the law and the gospel are set forth as of equal civic obligation. To carry out the mandates of the Act of 1794, the Judge gave instructions to the magistrates and constables in the different counties of his district to be vigilant in apprehending offenders. He also addressed a circular letter

to the clergy of Reading, asking them to aid him in checking the irregularities of the youth of the town which had fallen under his observation. Under his instructions little boys were arrested by the constables and imprisoned for several days for ball playing in the public streets on Sundays. He was without doubt a terror to evildoers, big or little. By many he was regarded as a moral censor of the severest school. Perhaps it is charitable to conclude that in his methods of social reform his zeal outran his discretion.

Of his perfect sincerity of belief and purpose there cannot be the slightest doubt. In his view its was sufficient to point to the provisions of the law, whether human or divine, to justify its wisdom and enforce its obligation. *Ita lex scripta est* was his maxim, and reverence for authority his controlling principle. A volume of his charges on moral subjects was published in 1803, at the request of the leading Presbyterian clergy of Philadelphia. With the collection is incorporated the text of the Act of 1794, the letter to the clergy of Reading, and his Remarks to a condemned murderer in passing the sentence of death upon him in 1797. The latter is a pious appeal, in the fashion of the times, to the criminal for repentance and preparation for his approaching doom, worthy of the zeal of a spiritual confessor.

Of several of the Judge's charges, both published and unpublished, I have the original manuscripts, upon which are noted the dates upon which they were delivered in the different counties of his district. Apart from their moral exhortations they contain the usual instructions to the jury as to the performance of their duties in general, as well as with reference to matters of local concern, and conclude invariably with a repetition of the phraseology of the grand jurors' oath. In loftiness of conception and stateliness of diction they suggest a close resemblance to the grandiloquent lec-

tures on law by James Wilson, with which they were, in part at least, contemporaneous. It is needless to add that the common practice in the earlier days of making the charge the vehicle for all sorts of topics and opinions, whether relative to the administration of justice or not, has passed entirely out of fashion. The judges of our time wisely and safely confine themselves in their charges to grand juries to instructions strictly germane to their official duties.

In 1806 an act was passed reorganizing the judicial circuits, by which the City and County of Philadelphia was made a separate district. In March of that year Judge Rush was commissioned its president, in the place of William Tilghman, who was appointed Chief Justice of the Supreme Court. In 1811 the District Court of Philadelphia was established, with jurisdiction in all cases where the sum in controversy exceeded one hundred dollars. It absorbed the most important legal business of the County, and correspondingly lightened the labors of the Court of Common Pleas. Judge Rush served upon the Bench of the latter until his death on January 5, 1820, occasioned by an apoplectic seizure, in the seventy-third year of his age, having completed nearly thirty-six years of continuous judicial service. He left surviving him four daughters, but no male descendant, his wife, Mary Rench, to whom he was married in 1777, preceding him in death August 31, 1806. The Bars of the several counties in which he had presided paid suitable tributes of respect to his personal character and official worth, and his memory is perpetuated in some of these localities in the designation of townships named in his honor.