Volume 36
Issue 1 *Dickinson Law Review - Volume 36, 1931-1932*

10-1-1931

# John Banner Gibson

H. W.H. K.

# Notes

## JOHN BANNISTER GIBSON*

JOHN BANNISTER GIBSON (Nov. 8. 1780-May 3, 1853), jurist, was the son of Col. George Gibson [*q.v.*] and Anne West of Scotch-Irish descent. Born at Westover Mills, Pa., he passed his youth in that neighborhood, his early education being obtained from his mother, who, after her husband's death, lived on the homestead and built a schoolhouse, where she taught the children of the vicinity. In 1795 he entered the grammar school attached to Dickinson College, Carlisle, matriculating two years later at the latter institution. On leaving college he studied law at Carlisle with Thomas Duncan, subsequently a judge of the supreme court of Pennsylvania, and was admitted to the Cumberland County bar, Mar. 8, 1803. During the following two years his course was unsettled and he practised successively at Carlisle and Beaver, Pa., and Hagerstown, Md., but in 1804 returned to Carlisle. At the bar he achieved but a small measure of success. Lacking magnetism, he was an indifferent advocate, unable to convince a jury or impress a judge. When not engaged in conference or in court he was wont to practise on the violin in his office, in which occupation the majority of his business hours were spent, and he seems to have acquired a local reputation for indolence. In 1810, however, he was elected Democratic representative of Cumberland County in the state legislature, and in that arena displayed an activity which astonished his intimates and gave evidence of hitherto unsuspected ability. Serving only during the sessions 1810-11, 1811-12, he procured the passage of an act abolishing the right of survivorship among joint tenants, led the opposition to the impeachment of Judge Thomas Cooper, consistently advocated internal improvements on a large scale, and was during his last session chairman of the committee on the judiciary. He was named president judge of

*Reprinted from Dictionary of American Biography by permission of Charles Scribner's Sons, New York.

the newly organized 11th judicial district of the court of common pleas, July 16, 1813, by Gov. Snyder. The appointment was not warranted by his mediocre career as a practising lawyer, and the absence of records relative to his tenure of this office renders it impossible to generalize, but that he proved efficient may be surmised from his promotion, June 27, 1816, by Gov. Snyder to an associate justiceship of the supreme court of the state. This apparently aroused his ambition, drawing forth all his dormant intellectual powers, and during his subsequent thirty-seven years' continuous service on the supreme court bench he established himself as the dominating figure of the Pennsylvania judiciary, distinguished alike for his breadth of view, his independence and originality, and the masterful opinions wherein he displayed a facility for forcible exposition and an instinct for grasping the crucial points of the most difficult problems which marked him as one of the greatest jurists of his time. Appointed chief justice May 18, 1827, by Gov. Shultze on the death of Tilghman, he was confirmed in that office at the ensuing election of 1828. He resigned Nov. 19, 1838, immediately before the state constitution of 1838 went into effect, and was at once reappointed by Gov. Ritner, the effect of this move being that he was secured in the longest, instead of the shortest, tenure of his office under the new law, which provided for the expirations of existing judges' commissions at intervals of three years in order of seniority as of Jan. 1, 1839. His action was unquestionably open to the severe comment to which it was subjected by the press and he afterwards realized that he had made a mistake, though the high motives which prompted the inception of the scheme by his admirers and its acceptance by him were admittedly in the best interests of the state (see Roberts, post, 130-34). In 1851, when by virtue of a further constitutional amendment the entire supreme court bench was retired and new judges balloted for, "the old Chief," as he was familiarly termed, was nominated and elected as associate justice, although then over seventy years old and physically incapable of participating in the conflict. He died two years later in Phila-

delphia, and was buried at Carlisle, his home since 1805 with the exception of three years at Wilkes-Barre whilst on the common pleas bench.

His judicial record is written at large in seventy volumes of the Pennsylvania Reports from 2 *Sergeant and Rawle* to 7 *Harris*. Over six thousand cases came before him for hearing and he delivered reasons for judgment in upwards of twelve hundred, excluding circuit and *nisi prius* cases of which no record has been preserved. It is matter for regret that many of them are badly reported; nevertheless his decisive influence upon the development of the state law can be clearly traced. His opinions range over the whole legal field, but professional judgment accords the greatest respect and authority to those dealing with constitutional problems. Preeminent among these is *De Chastellux* vs. *Fairchild* (3 *Harris*, 18) where, thrusting aside precedent, he laid down the limits of the legislative power in phrases the accuracy of which has never since been challenged. "The legislature," said he, "has no power to order a new trial, or to direct the court to order it, either before or after judgment. The power to order new trials is judicial; but the power of the legislature is not judicial. It is limited to the making of laws; not to the exposition or execution of them. . . . It has become the duty of the court to temporize no longer, but to resist, temperately, though firmly, any invasion of its province, whether great or small" (*Ibid.*, 20-21). Two other cases affecting vital public interests were *The Commonwealth* vs. *Green and Others* (4 *Wharton*, 531), dealing with the Presbyterian Church troubles of 1837—his opinion in which was a masterpiece of cold unbiased dissection—and *Donoghue* vs. *the County* (badly reported in 2 *Barr*, 231), arising out of the Philadelphia riots of 1844, in which by his interpretation of the principle that every man's house is his castle, he settled for all time the common law of Pennsylvania as to riots, and, incidentally, effectively ended the lawlessness which had been sporadic for years in Philadelphia. Bred up, as he was wont to assert, in the school of Littleton and Coke, his mastery of the intricate technicalities of real

property law was demonstrated in three outstanding cases: *Lyle et al.* vs. *Richards* (9 *Sergeant and Rawle*,322), *Hillyard* vs. *Miller* (10 *Barr*, 326), and *Hileman et al.* vs.*Bouslaugh* (1 *Harris*, 344). His opinion in this last case stands out as one of the very rare instances in the United States Reports where the Rule in Shelley's Case is dealt with, and he discusses its application with a clarity, boldness, and knowledge of all the authorities and commentators unequaled in American courts. At his best when the court was sitting *in banc*, he was less successful at *nisi prius*, and jury trials were always irksome to him.

In his opinions he avoided where possible any survey of precedents, seeking rather to found his decision upon principles. Couched in terse, vigorous language, startlingly epigrammatic at times, his reasons for judgment were distinguished by their clarity and brevity—and the longer he remained on the bench the briefer they tended to become. "He said neither more nor less than just the thing he ought . . . in language which could never afterwards be paraphrased" (Chief Justice Black, 7 *Harris*, 12). Beyond his reported opinions and an occasional anonymous review for the *American Law Register*, the only literary compositions which can be traced to his pen are "Some Account of the Rev. Charles Nisbet, first President of Dickinson [sic] College" (in the *Port Folio*, January, 1824), and a sketch of the life of Judge Thomas Cooper in the *Encyclopedia Americana* (vol. XIV, supplement, 1847, p. 203).

Apart from the law, his interests were extensive and his range of knowledge remarkable. A profound student of Shakespeare, he read widely in French and Italian literature in his leisure, and he had more than an amateur acquaintance with medicine and the fine arts. He was also a skilled mechanic, an expert piano tuner, and a competent dentist, devising a peculiar plate for his own teeth with complete success after professional assistance had failed him. Above all, however, his chief recreation was music, particularly the violin. He married, Oct. 8, 1812, Sarah Work, daughter of Col. Andrew and Barbara (Kyle) Galbraith of Carlisle, who, together with five of their eight children, survived him.

[The chief authority is Memoirs of John Bannister Gibson (1890), by his grandson, T. P. Roberts, which also contains an account of his ancestry so far as it is known. His professional record is exhaustively reviewed in W. A. Porter, An Essay on the Life, Character and Writings of John B. Gibson, LL.D., (1855) and S. D. Matlack, "John Bannister Gibson," in W. D. Lewis, ed., Great Am. Lawyers, III (107), 353, the latter being the more balanced appraisal. See also U. S. Monthly Law Mag.. Mar. 1851; D. P. Brown, The Forum, (1856) I, 418; G. J. Clark, Life Sketches of Eminent Lawyers (1895), I, 34; John Hays, "Address on Presentation of a Bust of Judge Gibson on behalf of his Grandson, Thomas P. Roberts, Esq.," Proc. Hamilton Library Asso., Carlisle, Pa. (1911). An unfavorable and severely critical estimate of Gibson will be found in Owen Wister, "The Supreme Court of Pennsylvania," Green Bag, Jan. 1891.] H. W. H. K.

## PUNCTUATION OF STATUTES

Section 1208 of the Vehicle Code of May 1, 1929,[1] provides:—"All civil actions for damages, arising from the use and operation of any vehicle, may, at the discretion of the plaintiff, be brought before any magistrate, alderman or justice of the peace, in the county wherein the alleged damages were sustained, if the plaintiff has had such damages repaired, and shall produce a receipted bill for the same, properly sworn to by the party making such repairs or his agent; or said action may be brought in the court of common pleas of said county * * *."

In *Orlosky v. Haskell*[2] it is held that the restrictive clause "if the plaintiff," etc., does not apply to actions brought in the common pleas. The decision was based, in part at least, upon the punctuation of the statute.

The Court said:—"Section 1208 is divisible by a semicolon. 'The semicolon is used to separate consecutive phrases or clauses which are independent of each other grammatically, but depend alike upon some word preceding or following.' Winchell on Punctuation. The two parts of section 1208 which are separated by a semicolon are inde-

1. P. L. 905, 75 P. S. 738.
2. 304 Pa. 57, 155 Atl. 112.