REMINISCENCES OF THE UNITED STATES SUPREME COURT.

On motion of Reverdy Johnson, at one time Attorney-General and afterward Senator in Congress from Maryland, I was admitted to the bar of the Supreme Court in 1865. Salmon P. Chase was then Chief Justice, and the associates were James M. Wayne, Robert C. Grier, Noah H. Swayne, David Davis, Samuel Nelson, Nathan Clifford, Samuel F. Miller and Stephen J. Field. All of these, excepting Justice Field,* are now dead. I was in Washington at the inauguration of Franklin Pierce in 1853 and attended some of the sessions of the Supreme Court at that time. That court then consisted of Roger B. Taney, Chief Justice; John McLean, James M. Wayne, John Catron, Peter V. Daniel, Samuel Nelson, Robert C. Grier, Benjamin R. Curtis and John A. Campbell, associates, none of whom are now living. I never saw Taney, Catron or Daniel afterward, and have no very distinct impressions as to Catron or Daniel, but Chief Justice Taney was a noticeable man and his appearance is still daguerreotyped upon my memory. He was a tall, angular and exceedingly slim man. Apparently there was little or no flesh upon his bones and his face was deeply furrowed by the ravages of time. His eyes surmounted by shaggy eyebrows were deeply set under a remarkably low forehead. There was a rough and rugged distinctness about all his features. He was appointed Chief Justice in 1836 and died in office when he was 88 years old. He was 80 years of age when he delivered the opinion of the court in the celebrated Dred Scott case. Public sentiment and subsequent events have overruled that opinion, but it cannot be denied that it not only proves the great ability of its author, but that eighty years had not impaired in any sensible degree his intellectual faculties. While I differ decidedly from his conclusions, I cannot be blind to the perspicuity and strength with which he states his views, and without question that opinion is the most persuasive argument for

NOTE.—Through the kindness of Robert T. Platt, Esq., of the Portland (Oregon) Bar, a former Editor of the LAW JOURNAL, we are able to give to our readers the following reminiscences af the United States Supreme Court. Their historical value is increased by the charm of the personality of the author, now the Nestor of the Oregon Bar, and more than a quarter of a century ago a Senator of the United States, and President Grant's Attorney-General.

*These reminiscences were written before the death of Justice Field.

the extension of slavery under the old Constitution ever put upon record. Chief Justice Taney was gentle and gracious in his deportment and possessed all the suaviter in modo of an old-fashioned Southern gentleman. Marshall was Chief Justice thirty-four and Taney thirty-two years.

My relations with Chief Justice Chase, the successor of Taney, were something more than official. From about the time of his appointment until his death we were neighbors and social friends. Chase was a charming man with great faculties, enthralled by an overpowering ambition to become President of the United States. He was a victim of that "vaulting ambition which o'erleaps itself and falls on t'other side." He took little or no pride in the high office which he held, and its labors and duties appeared to be irksome to him. When spoken to about his exalted position he disdainfully declared that it was nothing, literally nothing. Like Haman of biblical fame, he could not be happy while he saw another sitting in the presidential chair. His distinction before he became Secretary of the Treasury was chiefly due to his anti-slavery sentiments, and the zeal and ability with which he opposed the enforcement of the fugitive slave law in Ohio. But after he became Chief Justice it was evident that he anchored his hope of becoming President upon the support of the Democratic party. He foresaw what has come to pass—that for a generation the presidential candidates of the Republican party would be taken from the generals of the Union Army. He made a tremendous effort to be nominated by the Democratic National Convention in New York in 1868, but failed, broken-hearted, if political disappointment ever broke the heart of a man. Chief Justice Chase, both in form and feature, was a handsome man, and in his manners combined dignity, elegance and refinement. He was assisted in his social duties by his daughter, Mrs. Senator Sprague, whose beauty and accomplishments were unequalled in Washington society.

Justice Clifford was the Senior Justice by commission and therefore became Acting Chief Justice upon the death of Chase. From March, 1865, to March, 1871, I was a fellow boarder at the National Hotel with Justice Clifford, Justice Nelson, Justice Davis, and for a large part of the time with Justice Miller. Justice Clifford was a large man and the impersonation of the highest style of judicial decorum and propriety. He was proud of his official position, and the uppermost thought in his mind in the presence of others appeared to be "I am a Judge of the Supreme Court of the United States, and don't you forget it." He was not credited by the legal profession with abilities of the highest order, but he was a most in-

dustrious and conscientious judge. He prepared his opinions with great care. I have frequently seen him writing them, when most of the inmates of the hotel were wrapped in their midnight slumbers. One of his peculiarities was his implacable hostility to the articles of the English language. He was a justice of the Supreme Court for nearly twenty-four years, and delivered a great number of opinions during that time, but I do not believe a sentence can be found in those opinions commencing with the definite article "the" or the indefinite article "a" or "an." When one of his associates quizzed him a little about his studied disuse of the articles, it is said that he quite tartly replied: "Sir, my opinions are the opinions of the court, but their style is my own." One can see in reading his opinions that they are fashioned in the same mold, and so far as forms of expression are concerned, are as much alike as peas in the same pod. It is the invariable custom of the Supreme Court, at the beginning of each session, to call upon the President in a body, accompanied by the Attorney-General. It became my official duty to attend upon one occasion of this kind, with Clifford acting as Chief Justice, and the extreme punctiliousness with which he conducted that ceremony was interesting to behold.

Chief Justice Chase died May 7, 1873, and President Grant made the mistake of not nominating his successor until the meeting of Congress in the following December. This delay caused him great trouble. I was favorable to the appointment of Justice Miller, but the President was unwilling to discriminate between the judges on the bench and determined to adhere to precedent and take an outside man. Accordingly the appointment was tendered to Roscoe Conkling. To the great disappointment of the President, Mr. Conkling declined the office. He would have made a splendid Chief Justice, but he was just commencing a term in the Senate, and without doubt the White House was the goal of his ambition. Conkling's forensic abilities were great and he was great on the floor of the Senate, but he lacked coolness of judgment and self-control. He was proud, overbearing, impetuous and vain, but withal a friend to be loved and a foeman to be feared. Mr. Conkling's refusal to accept the office left the President in a sea of perplexity. Candidates were numerous and their friends importunate. Caleb Cushing was nominated, but an old letter that he had written to Jefferson Davis at the commencement of the Civil War was dug up and he was unceremoniously rejected by the Senate. No man of his day was better equipped than Caleb Cushing for any office. He was a scholar, statesman and lawyer of many and varied attainments. Whether justly or not I do not know, but there seemed to

be among many persons a lack of confidence in his integrity of character. He was slovenly in his habits and careless of his reputation. He lived chiefly to himself and the society of his books. President Grant, without my knowledge or consent, nominated me after the rejection of Mr. Cushing. I had no reason to expect any support from the Democrats in the Senate, because I had been during the war and was then their active and unsparing opponent, but I was surprised, and so was the President, at the opposition of some of the Republican Senators. I had been twice confirmed by the Senate, once for High Joint Commissioner to make the treaty of Washington, and again for Attorney-General, without the usual reference of my name to a committee. I shall not go into that matter at this time; suffice to say that the reasons for the Republican opposition to me in the Senate were not such as were given to the public by the newspapers. Finding that the Senate would not act upon my nomination, and after six weeks of suspense, I requested the President to withdraw my name, which he did with reluctance, and assurance, if I so desired, he would stand by me to the bitter end. Things had assumed such a shape with reference to this office at that time that a "dark horse"—to use a political expression—became a necessity. Morrison R. Waite, of Ohio, was supposed to be sufficiently obscure to meet the requirements of the occasion. One can readily imagine the supprise of Mr. Waite when I telegraphed to know if he would accept the office of Chief Justice. He had never dreamed of such a thing. He, of course, accepted, was nominated and confirmed.

Judge Waite at the time of his appointment had never held a federal office, had never argued a case in the Supreme Court, and was comparatively unknown in Washington. He had, however, been an assistant of Cushing and Evarts before the Geneva tribunal to adjust the Alabama claims, had an excellent local reputation, and was regarded by those who knew him as a careful, painstaking and conscientious lawyer. Greater men, no doubt, have been judges, but no better man than Morrison R. Waite ever graced the bench of the Supreme Court. I knew him intimately after he came to Washington, and I believe that those who knew him best loved him most. He was a plain, practical, sensible man, and conducted the business of the Supreme Court in an efficient and business-like manner.

When I commenced practice in Washington Samuel Nelson, of New York, had for many years been a Justice of the Supreme Court. He was the Chesterfield of the august body. His long, flowing hair, white as silver, gave to him a venerable appearance, but

there was an elasticity in his movements which a more youthful man might envy. Having been a fellow boarder with him for several years, I had an opportunity to observe his unofficial life. He was an elegant old gentleman, with manners that a cavalier of the olden time might be supposed to have, and as a lady's escort he was without a peer in the official circles of Washington. We were together members of the High Joint Commission to make the treaty of Washington, and I saw him almost every day for three months while that commission was in session. Though he was a Judge of the Supreme Court of New York for fourteen years, a Justice of the Supreme Court of the United States for twenty-seven years, and had many accomplishments, I cannot say that he appeared to me to be more or less than a dignified, courtly gentleman of respectable talents.

Noah H. Swayne was appointed Justice of the Supreme Court in 1862, and died in 1882. Judging from what I have seen and heard, I do not think his merits have been fully appreciated by his professional brethren. He was an eminent judge, with all that the term eminent implies. He was a large, well proportioned and fine looking man, and his presence alone was enough to impress one with the strength of his character. His opinions are models of clearness, force and brevity. They are epigrammatic in style. He did not leave the reader of what he wrote in any doubt as to his meaning. I think his opinions may be studied with profit by every lawyer who expects to be a judge. Justice Swayne was a very wealthy man and told me how he made his fortune. When he was a young man practicing law at Toledo, O., he received from New York a demand of about $3,000 for collection. He sued, obtained judgment, and caused the real estate of the debtor, adjacent to the town, to be sold on execution. He bid in the property for his clients, but they refused to take it, and compelled him to pay the amount of the judgment in money. He told me that he had sold one-half of that property for $500,000, and that the remaining half was worth not less than that sum.

I can speak of Justice Miller more knowingly than of his associates, because I was acquainted with him long before his elevation to the bench. He came to Keokuk, Ia., in 1850, where I was then Circuit Judge, and practiced before me for the ensuing two years. I at once recognized his abilities. He was not remarkable for his scholarly or professional attainments, but he had what was worth more than those for a position upon the bench—he had a natural aptitude for judicial business. He was a born judge. He had a sound, well balanced mind, full of good, hard sense and the capacity

to discriminate between the vital and inconsequential points of a case. He grappled the great questions growing out of the Civil War with strength and success, and his opinions stand like lighthouses along the boundary line between the delegated powers of the federal government and the reserved rights of the states. His opinion in the case of Watson v. Jones, 13 Wallace 679, defines with comprehension and clearness the correlative jurisdictions of civil and ecclesiastical tribunals in the United States, and is everywhere regarded as a leading authority upon that subject. Judge Miller was a very agreeable man socially, but in the later years of his life became somewhat impatient upon the bench. He was no orator himself and seemed to have an adversion to all attempts at oratory in court. I have seen him on more than one occasion disjoint with sharp questions a beautifully prepared speech with which an ambitious orator expected to charm and captivate the court. One midsummer day, as it is said, he was holding court in a western state, and a lawyer, whom we will call Brown, was addressing him in a long, rambling speech. The judge listened and fanned himself, and fidgeted around on the bench for some time, and finally, leaning over his desk, said in an audible whisper, "D—n it, Brown, come to the point!" "What point?" inquired the somewhat astonished lawyer. "Any point," responded the judge, and though the sequel does not appear, it is probable that there was a rapid condensation of talk in that court room after this short colloquy. A woman in Illinois claimed that under the Constitution of the United States she had a right to vote. The judges of the election and the state courts decided against her. She appealed to the Supreme Court, and employed Matt Carpenter. No one appeared for the defendant in error, and Carpenter commenced his speech by saying that a lawyer could not be expected to make much of an argument where there was no opposition. He proceeded, however, and very soon Judge Miller commenced to ask questions which Carpenter found it difficult to answer, but he floundered along an hour or two under a fire of interrogations from the judge, and concluded by saying, with a graceful bow, "I thank the court for the necessary opposition." Judge Miller was on the bench of the Supreme Court twenty-nine years, and his opinions during that period, if properly collated, would make an admirable treatise on many branches of American jurisprudence.

Justice Field was appointed in the same year with Miller, and is the only Justice now on the Supreme bench who was there while I was in the department of justice. He might fitly be addressed as Webster addressed La Fayette, "Venerable man, you have come

down to us from a former generation." Justice Field has a fine mind, thoroughly educated and trained for the legal profession. His opinions excel in literary merit, and are characterized by vigor and sometimes pungency of expression. He is an independent thinker and writer. With him the unexpected often happens. He is a Democrat in politics, and he vigorously dissented from the decision of the court, though made by Republicans, in the celebrated slaughter-house cases, on the ground that they went too far in the direction of state's rights. His residence is in California, where there are more Chinese and more clamor and prejudice against that race than in any part of the United States, but he dissented in a spirited manner from the decision of the court affirming the Geary law. Most of the cases as to Mexican land grants in California, and all, or nearly all, of the mineral land cases and many of the cases as to railroad grants, have been referred to Judge Field to write the opinions of the court, and these opinions have not only reflected credit upon their author, but have been of great benefit to the country in settling questions involving vast amounts of property. Judge Field is now a very old man, but neither age nor custom has dimmed the brightness of his intellect.

Robert Grier was appointed a Justice of the Supreme Court in 1846 and resigned on account of ill health in 1870. He was a man of rugged characteristics. He knew what he wanted to do and was not afraid to do it. He had what a good many judges need—judicial back-bone. I have heard this story about him: There was a case in his court in which the owner of a farm sued to recover its possession from an intruder. The title of the plaintiff was perfect, but the counsel for the defendant denounced the plaintiff as rich and grasping; claimed that his client was a poor man with a large family and so worked upon the prejudices and sympathies of the jury that they returned a verdict for the defendant. Judge Grier said: "Mr. Clerk, you may receive that verdict and enter an order setting it aside. I want it understood that it takes thirteen men in this court to steal a man's farm. Myra Clark Gaines claimed to be the illegitimate daughter of one Clark, and that she was entitled, as his heir, to a large part of the city of New Orleans. The Supreme Court at first decided against her, but afterwards a majority of the judges decided in her favor. Judge Grier dissented from this last decision in "thoughts that breathe and words that burn."

William Strong, of Pennslyvania, was appointed a Justice of the Supreme Court in 1870 and resigned in 1880. My impression is that in the technical learning of the law he had no equal, certainly no superior, on the Supreme bench. He was a state and federal

judge for many years, and retired to private life with the universal plaudit of "Well done, good and faithful servant." To my inquiry why he resigned while his health and mental powers appeared to be as good as they ever were, he answered: "I would rather go when everybody would be glad to have me stay than to stay until everybody would be glad to have me go."

Ward H. Hunt, of New York, was a Justice of the Supreme Court from 1872 to 1881. He was a gentleman of culture and refinement. After Hunt's appointment, some one asked Judge Black, of Pennsylvania, what he thought of the new justice. The old judge, changing his quid of tobacco from one cheek to the other, smiled significantly and remarked: "He is a very lady-like personage."

I will add, in speaking of Judge Black, that I never came in contact with a more agreeable man. He was a bed-rock Democrat, and I was a red-hot Republican when we came together, but he seemed to be pleased with our acquaintance. So sometimes he would devote a quiet hour to conversation with me. I can see the old gentleman now, with the eye of memory, composedly holding his bright steel tobacco box between the thumb and fingers of his left hand and twirling it with his right, while from his lips flowed a sparkling stream of wise and witty sayings. He was equally at home in the Bible, Blackstone and Shakespeare, and his memory was stored with felicitous illustrations and humorous anecdotes. He was one of the great men of his day.

Justice Bradley's appointment was concurrent with that of Judge Strong. I think I am safe in saying of Justice Bradley that he was the most scientific man ever upon the bench of the Supreme Court. I made a social call upon him one evening and found him in his library pouring over immense sheets of paper covered with arithmetical characters, and as I queried about their meaning he gave me to understand that as a sort of recreation and pastime he was calculating the transit of Venus. Most of the patent cases while he was on the bench, and especially the most complicated and difficult ones, were referred to him to write the opinions of the Court, and he wrote them with a fountain pen of law as well as of science. He was accustomed to sit during an argument with his eyes closed, as though he was asleep, but his ears were wide awake and his evident object was to secure concentration of thought by shutting out distractions of sight. Justice Bradley was a small, quiet, modest man, with depth and strength reserved for all the demands of official duty.

David Davis was appointed a Justice of the Supreme Court in 1867 and resigned in 1872, when he was elected a Senator in Congress from the state of Illinois. He was a man of large physical

proportions, great wealth and good mental capacity, but it always seemed to me that he did not take that interest or pride in his judicial office exhibited by some of his associates on the bench. Day dreams of glory in other departments of the government haunted his imagination. When he became Senator his ambition to become President deprived him of that position and influence in that body to which his abilities entitled him, and with all his aspirations and efforts he turned out to be a political failure. I do not mean to say that Justice Davis was not an able and upright judge. I only express my belief that he did not reach that position in the judicial history of the country which he might have attained if he had consecrated his life wholly to that end.

James M. Wayne was appointed a Justice of the Supreme Court in 1835 and resigned in 1867. He was a Jacksonian Democrat. He was in Congress when Jackson throttled nullification, and voted to strengthen the hands of the President. During the War of the Rebellion, though his state seceded, he remained loyal to the Union, and his record is that of a good man, a wise judge and true patriot.

I have now mentioned all of the Justices of the Supreme Court before whom I had the honor to appear while I was officially connected with the government, and, taken together, they embodied in a worthy manner the dignity and power of the most important judicial tribunal in the world. The Supreme Court consists of nine justices—the Chief Justice and eight associates. They are appointed by the President by and with the advice and consent of the Senate, and hold their office during good behavior—that is to say, they cannot be removed from office otherwise than by impeachment. The salary of the Chief Justice is $10,500, and the associates each $10,000 per annum. There is but one term of the court in a year, beginning in October and ending generally in May. The daily session of the court commences at noon and continues until 4 o'clock p. m. Saturdays are consultation days. When the court is in session the judges are robed in long, flowing black silk gowns. All persons present rise and stand as the justices enter the court room. No noise or reading of newspapers or talking is allowed save that of the counsel addressing the court. When a case is called for argument each justice is furnished with a printed copy of the record with the briefs of counsel attached. These he takes to his residence and upon their examination determines for himself how the case ought to be decided. When all the judges are ready they meet in consultation, and the conclusions of the majority, if they do not all agree, make the decision of the court. The Chief Justice desig-

nates one of the associates to write the opinion, or if he chooses, writes it himself. The sittings of the court are in the old Senate chamber. Here is where Webster, Clay and Calhoun made their great speeches. Here is where the mighty men of the law meet in forensic combat. Here is where great constitutional questions are discussed and decided, and here is where "the pen is mightier than the sword." Sitting in the capital, midway between the two houses of Congress and independent of both, the exalted and serene tribunal holds the balances of the government with a firm and equal hand. It guards the Constitution and protects the rights of the states. The citidel of the nation's unity is in the Supreme Court of the United States.

GEORGE H. WILLIAMS.