whence I have just returned. The kind expressions of old friends and associates are the best features of this appointment.

In itself, to undertake an office involving such labor & responsibility, at a time when I feel that I have earned immunity from the heavier burthens of life, presents a somewhat doubtful proposition.

I enclose, as you request, the President's letter. I expect now to go to Washington early next month, where, at all times, I shall be glad to see you.

Very Truly Your Friend,

George Shiras Jr

SHIRAS, George, 1832-1924. Associate Justice, 1892-1903.

To Hampton L. Carson.

Washington, D. C. Nov 26 1900

Hampton L. Carson, Esq:

My dear Sir:

My colleague, Justice Gray, is engaged in preparing an address on the life and services of Chief Justice Marshall, to be delivered before the Bar of the State of Virginia, at Richmond, on Feb 4th. In his researches he has come across an article on the Supreme Court that appeared in the "New York Review," Vol. ii, page 372, in 1838, and another article on Marshall, in vol. iii, page 328. 1838. In those articles Justice Gray has found some references to Chief Justice Marshall which he would like to refer to, if *he could learn the name of their author.* He has asked me to aid him in his emergency—and to whom can I go but to thee, for thou art the historian of the court?

It might have been Kent or Verplanck. In the sixty odd years that have elapsed since those articles appeared the name of their author or authors has been buried under the tide of oblivion. Still some or one of the old lawyers in Philadelphia or New York may be able to recall the fact. Can you help me out?

Sincerely Yours

George Shiras jr

STORY, Joseph, 1779-1845. Associate Justice, 1811-1845.

To Bushrod Washington.

Salem June 4. 1825

My dear Sir

Your Letter of the 30th of May reached me this morning. I believe the general impression of the Judges has been, that all acts req.[d] to be

done by the *Court*, are to be done in *term*. I have hitherto acted upon that construction of the Laws, though I confess myself not perfectly satisfied with it. I would distinguish between acts strictly judicial, & those which are ministerial. When the Law required "the Court" to do any act of the former kind, I have interpreted it to mean during a session of the court; when of the latter kind I should think the term "the Court" satisfied by interpreting them to mean the Judges composing the Court. I think the appointment of the Clerk a ministerial act; & I see no reason why it might not upon principle be done by the Judges in vacation as well as in term. There is great inconvenience in construing the act so that no appointment can be made except in term, because the process of the court may be arrested for a whole year, if the vacancy occurs in vacation. If the other Judges were inclined, I should hazard an appointment in vacation. But as my own construction has practically gone the other way, & as some of our Brothers will probably object for *peculiar* reasons I incline to yield to the opinion which you intimate, & leave the vacancy until next term to be filled. What is to done in the meantime in case of Mr. C[aldwell]'s death I know not.[5]

I was written to by Mr. R. B. Lee a short time ago for the appointment in case of a vacancy. I was surprised at the request, as I scarcely know him. He had previously written, as he stated, to Judge Duvall [i.e. Duval]. My answer was short, that I had already expressed an opinion in favour of another gentleman, but I did not state who that gentleman was.

Mr. Griffith will have my decided vote. I think the appointment of young Mr. Caldwell would be utterly unjustifiable. He has neither the learning, experience, nor talents requisite for the station. Mr. Griffith has all these. As to Mr. R. B. Lee I know little; and should imagine from that little, that he was not qualified at all. I am glad to find this is also your opinion.

My circuit is not yet over. There has been little business to be done, as far as I have gone. When it is over I shall write you a summary as usual.

I am very truly & affectionately

Your obliged friend

Moseph Story

The Hoñble

Mr. Justice Washington.

[Addressed on verso of last leaf:] To The Honorable Mr. Justice Washington Mount Vernon Near Alexandria Dis[t] of Columbia

[5] Elias Boudinot Caldwell, third Clerk of the Supreme Court, died in 1825, and was succeeded by William Griffith, who died on June 7, 1826, within a few months of his appointment. He was succeeded by William Thomas Carroll.

STORY, Joseph, 1779-1845. Associate Justice, 1811-1845.

To Benjamin B. Thatcher. The following letter was probably written in 1834 or early 1835, for Thatcher's *Traits of the Tea Party . . . with a History of That Transaction,* for which Story here supplies information, was published by Harper and Brothers in New York in 1835.

Dear Sir

In reply to your letter of the 22d instant, which I recieved only a day or two ago, I beg to say that my father (the late Doctor Elisha Story) was certainly one of the Tea Party. The fact was often stated by him to me in my youth; & is well known to my mother. My father had a list of all the Party concerned; which since his death (about 30 years since) I have never been able to find. The late Mr. Melville of Boston has often spoken to me on the subjest. I think Mr. Thomas Hichborn of Boston was also one. My impression is, that the late Mr. Alexr. Hodgdon was an officer of the Tea Ship at the time; & that he was then addressing my father's sister. On my father's going on board he warned him to go below & remain there, if he wished for safety. He did so. But my father did not suppose that he had the slightest notion who he was. I may, however, be under some mistake as to this supposed fact in regard to Mr. Hodgdon; as after such a lapse of time I may have confounded it with some other Transaction about that period. But that my father was one of the Indians (the Tea Party) I am entirely satisfied. My mother is now living; & when I next see her I will endeavour to ascertain whether she knows any other circumstances respecting the affair.

I am very truly & respectfully
Yours

Joseph Story

B. B. Thatcher Esq

[Addressed on verso of last leaf:] To B. B. Thatcher Esq Counsellor at Law Boston

STRONG, William, 1808-1895. Associate Justice, 1870-1880.

To President Grant. The following letter was written about February 7, 1870, for Strong's nomination as an Associate Justice was transmitted to the Senate on that date.

To his Excellency, U. S. Grant President of the United States.

Dear Sir,

I cannot refrain from sending you a line to express in some feeble degree my sense of the great obligation you have conferred upon me, by nominating me for an Associate Justice of the Supreme court. You have done me great honor. I shall ever gratefully remember your kindness. A

seat in the Supreme court would satisfy all my ambitions, except ambition to discharge its duties well. Please accept my thanks.

With the highest respect I am,

Very faithfully yours

W. Strong

TAFT, William Howard, 1857-1930. Chief Justice, 1921-1930.

To James M. Beck.

Supreme Court of the United States,
Washington, D. C.

Monday morning
April 10, 1922

Dear Mr. Solicitor General,

I have taken advantage of your kind willingness to go before the Judiciary Committee of the House to urge the passage of H. R. 10479[6] introduced by Mr. Walsh of Mass. to relieve the Supreme Court of the burden of hearing unimportant cases unimportant from a public standpoint and to revise the now bewildering provisions as to its appellate jurisdiction as well as those relating to the jurisdiction of the Circuit Ct of Appeals. Mr. Walsh said the Committee would be glad to hear you as the representative of the Government in such matters because the Committee is anxious to hear from the Govrnment before acting in such a matter.

I hope that you and Mr. Walsh can get into touch with one another and settle the time, with a view to the convenience of both yourself and the Committee.

I enclose two copies of a general review of the Bill for the use of the Judiciary Committees. We have a detailed comment on each section of the Bill with references to all existing legislation but is not useful for your purpose, I think. Still I send it to you. I prepared the general review and believe it to be accurate.

With thanks and grateful appreciation of your proffered assistance in a matter in which all the members of the Court have the deepest interest and in which your aid is of capital importance

believe me,

Sincerely your

Wm H Taft

Hon. James M. Beck

Solicitor General of the United States.

[6] The bill died in Congress.

TANEY, Roger Brooke, 1777-1864. Chief Justice, 1836-1864.

To Thomas S. Alexander.

Washington, Novr. 17, 1833

Dear Sir

I send you herewith the appointment of Jas. Moyer as umpire. In relation to the question whether a specific legacy payable at a future day would carry interest, I had formed an opinion & regret now that I did not as I had intended write it out while the subject and authorities were fresh in my mind. But my impression from recollection without referring to the notes is—that my opinion was that a specific legacy did not necessarily carry interest—that it is always a question of *intention*—& whether interest was or was not intended to be given is to be collected from the relation in which the testator & legatee stand to each other or from other circumstances where there is nothing in the will to assist the enquiry—but that in this case there was enough on the face of the will to authorize the conclusion that these legacies were not entitled to carry interest—& that the testator did not intend that they should. The effect of Mr. Bowie's affidavit on his claim was a point not decided—nor can I at this moment undertake to say what opinion I had formed on it.— Differing as we did in the leading point we came to no agreement on several other—And the nature of Mr. Bowie's affidavit and the facts connected with it are not sufficiently in my recollection to enable me to express an opinion on it now. It is an open question.

In relation to my own affair I am quite sensible that an interview with you will be necessary. At this moment the near approach of the session of Congress where the business of the year is to be adjusted, my time is constantly occupied & my attention necessary.— In the early part however of the winter when the press of business is a little over I hope to be able to come over & give you the necessary explanations.— At present I cannot well leave Washington—nor indeed conveniently spare time to examine my papers and accounts.

I am Dr. Sir very respectfully
Yrs

R. B. Taney

Thos. S. Alexander Esqr.
Annapolis

Franked and [addressed on verso of last leaf:] Free R. B. Taney Thos. S. Alexander Esquire Annapolis Maryland

THOMPSON, Smith, 1768-1843. Associate Justice, 1823-1843.

To Bushrod Washington.

Summary of cases heard in the United States Circuit Court for the Second Circuit, Vermont, Connecticut and New York, September Term, 1825, followed by a letter dated January 7, 1826.

Smith
ad
J[ackson] ex dem. Allyn[7]

Application for a mandamus, directed to the district Court of the northern district of this State [New York], requiring that Court to vacate certain rules, which had been entered, amending a Judgt which had been entered some time past, and on which a writ of error had been brought—The application denied. On the ground that the Circuit Court had no authority to issue the mandamus except to compel the Court to render Judgt, so that it may be reviewed by writ of error or appeal, but has no control over proceedings in the progress of the cause.

J[ackson] ex dem. Allyn
ad
Smith[8]

Motion to set aside a judgt of reversal, taken ex parte—on the ground of irregularity in serving an order to stay proceedings according to the practice of the Sup. Court of this State [New York]. Decided. That the State practice did not control the practice of this court—but as there had been a misapprehension as to the practice, the judgt would be set aside on terms, if any merits were shown—which lead to an inquiry into the merits. Which led to an examination of the powers of the court over amendments, at common law & under the act of Congress, and decided 1st. That at common law the power to amend ended with the term when final Judgt is entered, the proceedings bening no longer *in fieri*. 2. That all the 32 section of judiciary act except last clause, relate to amendments in matters of form, and may be made in the appellate court as well as in court below. That last clause may reach amendments in substance, and relate to the process & proceedings—and are made on such terms as court may direct—but such application to amend must be before final Judgt—and the amendments in this case having been made several terms after final Judgt and in matters of substance—motion denied.

J[ackson] ex dem. Havan [i. e. Havens]
vs
Sprague[9]

Ejectment—question as to location of a deed. The only question of law decided was. That on a deficiency of land, altho the grantor might own the adjoining land a court of law had no authority to extend the deed, when the boundaries were certain & unambiguous—and doubted as to power of a court of Chancery to give relief in that way—The remedy would be in the covenants in the deed.
Case of Delonguemare[10]—Motion for attachment. D. had become security in a bond for the appraised value of goods seized on *land* in 1813 The goods had been libelled in District court of northern district of this State [New York] and proceedings carried on according to the course of the admiralty. The cause was removed into this court under certain laws of Congress the judgt having been counsel in cause. An amdendment had been allowed turning the libel into an information in rem according to the course of the exchequer. And condemnation for want of a claim. Decided—That the security was not discharged by lapse of time or any proceedings that had taken place—and that he might be proceeded against in a *summary way* as well when the proceedings were by information in rem, as if they had been on the admiralty side of the court.

And that altho the bond could not be considered as taken under the duty act yet it was a stipulation that might be enforced in this court in a summary way.

The United States vs Pearson & others[11] Indictment for endeavoring to make a *revolt*. The offence defined to assist in endeavoring to excite others to resist, and throw off the lawful commands of the officers of the vessel. And that a combination to refuse to do duty, and thereby putting it out of the power of the officers to navigate the vessel was an offence under the act. And prisoners convicted, and moderate fine imposed.

Griswold vs Hill[12] The Deft. died during the term. And at a subsequent day, an order was entered dismissing the Complainants bill. And the motion was to set aside this order as irregular, having been entered after the death of the party. decided—That order was irregularly entered as at common law the suit abated by the death of a party—but was inclined to the opinion that the court could direct the order to be entered as of a day in term prior to the death of the party. The complainant having avowed his intention to abandon the cause. That according to the practice of the English Chancery when a party dies after the hearing of a cause and whilst it stands over for Judgt. the decree will be entered as of a day prior to the death and as the complainant had abandoned his cause the reason of that rule applied here, altho the order was taken ex parte. But the Deft s counsel having the letters of administration in Court, it was deemed most advisable to admit the admr[s] to become parties under the act of Congress, and proceed immediately to a hearing he being ready and wanting no continuance. And a continuance was denied to opposite party. decree entered ex parte again

Hull vs Lee & Hopkins[13] This was a case (in the Connecticut Circuit) for violation of a patent. The only question of law decided was—That when there is a defective specification, which was made by *mistake*, and without any suspicion of fraud. The patent may be surrendered to the Secretary of State, and a new patent issued for the residue of the term of 14 years, unexpired, This had been done in this case. I had decided this question in the same way two years ago in the New York Circuit. It is I believe a new question, Am not aware of its having arisen in any other of the Circuits. The recovery was under $500, and there is a question yet undecided whether Pl[aintif]f can recover costs.

My Dear Sir

The foregoing are the principal cases decided in my last Circuit, which are susceptible of an abridged statement thtat will make the case intelligible. Many more cases were before the Court but the questions of law decided were not new in principle, and so involved with the facts, that I must pass them over. I have received your kind favor of the 22[nd] ult. containing a

note of your decisions, and concur with you in most of them, and indeed would not be understood as departing from any of them but would barely enter a query as to one, U. S. *vs* Snyder. The principle decided, as to the Defts discharge I think correct, the only doubt I have is whether this ought not to have been submitted in the first instance to the Treasury Dep[t] and and if then rejected it would have been admissible as matter of Defence in Court. The policy of the acts of Congress in relation to all public debtors seems to be required the accounts to be settled at the Treasury—and protecting the rights of the debtor in case any thing should be illegally rejected to set up such matter as a defence in a suit to be instituted against him. If my recollection serves me, there is an express provision in one of the acts of Congress—that no claim shall be allowed, that has not been presented to the Treasury and rejected there, except in some few specified cases. Perhaps, however, I do not understand the facts of this case sufficiently to judge whether it comes within the law to which I have alluded. Jany. 7[h]. 1826

With very great respect
& esteem
I am your obd[t] Servt

Smith Thompson

[Folded, and addressed on the outside:] The Honb[le] Mr Justice Washington Of the Sup. Court U. States Mount Vernon Virg[a]

[7] 1 Paine 453.
[8] 1 Paine 486.
[9] 1 Paine 494.
[10] The United States *v.* Four Part Pieces of Wollen Cloth, 1 Paine 435.
[11] Not in Paine.
[12] 1 Paine 483.
[13] Not in Paine.

WAITE, MORRIS REMICK, 1816-1888. Chief Justice, 1874-1888.

To Samuel F. Miller. The following letter almost certainly refers to Cook *v.* Pennsylvania, 97 U.S. 566, in which the opinion of the Court was delivered by Miller. If that is the case the letter was written in 1878.

1717 R. I. Av.
Oct. 30 [1878?]

My dear Miller,

I have been so much in the habit of accepting your opinions almost as a matter of course, that when I hesitate about yours in the auction case I feel that I must be wrong. But I put the enquiry, in all sincerity, whether you are willing to hold that a state law imposing a duty upon the sale of foreign goods at auction is void, if it imposes the same duty on American

goods. Then again, if you intention is to limit the disability to the sales in the original packages, whether you have been sufficiently guarded in your language.

It is quite clear that if the Maryland Law had required all merchants to take out a license, that it would have been decided, in Brown vs. Maryland, that the license fee charged the importer was a tax upon his goods? Is not the question of tax on imports one of intention, and if there is no discrimination against foreign goods, and the charge is uniform upon the business, will it not be presumed that the intention was to tax the business and not the goods. The discrimination proves the intent to place the burden upon the goods and not upon the business.

Very sincerely yrs,

M. R. Waite

Mr. Justice Miller

WASHINGTON, Bushrod, 1762-1829. Associate Justice, 1798-1829.

Promissory note.

Philad.ª March 22.ᵈ 1782

I promise to pay James Wilson Esq.ʳ or order on demand one hundred Guineas—His fee for receiving my nephew—Mʳ Bushrod Washington—as a student of Law in his office.

G:° Washington

[Endorsed:] Received 23ᵈ July 1782 from his Excellency General Washington one hundred guineas in full of the within Note.

James Wilson

[Docketed by Washington:] Recᵗ N.° 135 James Wilson Esqʳ 100 Guineas 23.ᵈ July 1782. W

WASHINGTON, Bushrod, 1762-1829. Associate Justice, 1798-1829.

To an unnamed correspondent.

Mount Vernon Jany 16. 1816

Sir

I have at length received a promise from Mr. Morion to deposit immediately in one of the Alexandria Banks, the amount of the principal & interest of the bond due by my nephew. I shall inform him tomorrow what will be the amount, and I presume that in 8 or 10 days I may calculate upon being ready to pay you. You will please forward the bond to your agent in Alexandria together with a deed duly executed & attested by 3 Witnesses acknowledging the receipt in full of the whole debt secured by the deed of Trust mentioning the names of the Trustees & the date of the deed & releasing to Alexander Morion all your right title interest & estate

in the Land so conveyed. If you have the deed of Trust with you, it would be better to write the release on the back of it, & send with the bond.

I am Sir
Yr. mo. ob. Servᵗ.
Bush. Washington

WASHINGTON Bushrod, 1762-1829. Associate Justice, 1798-1829.

To William Tilghman.

Mount Vernon June 29th. 1826

My dear Sir

Yesterday afternoon I recᵈ your favour of the 16th. mentioning Mr Chew's wish to become a candidate for the office lately rendered vacant by the death of Mr Griffith.[14] Within a day or two after the demise of that gentleman, I was applied to by a particular friend to whom I promised my vote, and accompanied it by letters of recommendation to my brethren. I think I cannot have received, since that time, fewer than 30 or 40 similar applications from others. I feel althogether at a loss to form any opinion as to the probable success of either of the candidates, & should therefore be unwilling to discourage the efforts by the friends of Mr Chew in his favour. There is no circumstance known to me which can militate against this gentleman, rather than against any other of the applicants, unless it may be the late period at which he has come forward. I think it quite probable that when the Judges meet, no two of them will, in the first instance, be in favor of any one person. With great regard

I am
My dear Sir
very sincerely yrs

Bush. Washington

[Addressed on verso of last leaf:] The Honbˡ Mr Chief Justice To the care of Benj Chew Jr Esq 4 Street Philadelphia

[Addressed by Tilghman:] Judge Washington—29 June 1826 Recᵈ 18 July on return from Circuit Concerning B. C's applicatⁿ for office of clerk of S. C. of the U. S.

[14] See Note 5 above.

WAYNE, James Moore, 1790-1867. Associate Justice, 1835-1867.

To Messrs Childs & Peterson, Philadelphia.

Washington October 5.ᵗʰ 1855

Gentlemen

I have recently received here both of your letters forwarded from Savannah, where I have not been for more than four months. I regret that they were not received sooner.

I thank you for Sheppard's Constitutional Text Book,[15] and with my esteem for the author, I concur fully with my friend Mr. Justice Grier, in recommending it as a "practical and thorough work upon the subject, peculiarly calculated as a text book for schools."

I do not mean though to confine its use to school teachers of Constitutional Law. It may well be put into the hands of our countrymen in all of the States of the Union, to give exactness to their knowledge of Our institutions, and to strengthen their determination to Maintain them.

I am Gentlemen
respectfully
Your Obdt Servt

James M. Wayne
Associate Justice
Sup Court U. States

Messrs Childs & Peterson
Publishers &c &c
124 Arch Street
Philadelphia

15 Furman Sheppard, *The Constitutional Text-Book*, Philadelphia, Childs & Peterson, 1855.

WILSON, James, 1742-1798. Associate Justice, 1789-1798.

To Thomas Johnson. Draft of letter in answer to Johnson's letters of January 9 and March 1, 1792, published in 2 *Legal Historian* 87.

Yours of the 1st inst I had not the Pleasure of receiving till last Saturday the 10th inst. At the last Supreme Court no new Regulations were made concerning the Circuits. Of Course, I believe, the Southern Circuit will be presumed as falling to you with Mr. Iredell. It gives me Pain to learn that your Prospect is so discouraging. Circuits indeed afford, by no Means, a favorable one. This, is one Part of the judiciary System in which a Change is, on many Accounts, highly, I might say indispensably necessary. But there seems no Reason to hope that the many other Alterations of Moment will soon take Place.

I should have answered your former Letter; had I not expected the Pleasure of seeing you at the Court. Your Robes are made.

13.th March 1792

Hon. T. Johnson Esq.

WOODBURY, Levi, 1789-1851. Associate Justice, 1845-1851.

To George Lunt.

Portsmouth, N. H.
28th. Oct. 1849

Dear Sir,

In reply to your of this date, I would observe, that I have always considered, that two separate Courts in the same District cannot be holden at one & the same time by the Judges of the Circuit Court. Hence I never hear questions of law even much less try cases to a jury, while Judge Sprague is trying a cause in the circuit court—unless both parties consent & waive any objection.

But I shall be very happy, with such consent, to hear or try any cases next week before Judge Sprague finishes the present one—& will at once come up on notice of such consent.

Respectfully

Levi Woodbury

George Lunt Esqr.
Dist. Atty.

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