When The Supreme Court Came To Michigan

By: Len Niehoff

It is an arcane and curious chapter in the history of the federal courts. Under the terms of the Judiciary Act of 1789, the members of the Supreme Court of the United States were obligated to travel around the country and hear cases that were brought before the lower courts in their assigned circuits. This resulted in what the justices condemned as a "painful and improper situation."

The situation was painful because it required the justices to spend months on the road, away from their families and the business of the Supreme Court, living in lodging houses and inns, largely at their own expense. In the earliest days, justices traveled on horseback, by stagecoach, and, only from the 1850s on, by railway.

The situation was improper because it meant that the justices sometimes sat on appeals from decisions they had made while riding circuit and because the justices funded their travel through the use of passes that were provided by the very railroads whose rights and liabilities they were often adjudicating.

No relief came until the end of the nineteenth century, when Chief Justice Melville Fuller brokered a political remedy through the Circuit Court of Appeals Act of 1891. Ironically, Fuller's energies in pursuing this reform may have been driven by his exhaustion. A few years before, he had remarked at the end of a term riding circuit that he was so tired he could hardly sit up.

Several Supreme Court justices spent a fair amount of time in the State of Michigan as part of their circuit-riding duties. None of them is a household name today. But they enjoyed outsized reputations in their time, their stories are remarkable, and they made their mark on the history of the federal judiciary and of this nation.

The first of those justices was John McLean, who served on the United States Supreme Court from 1829 to 1861. McLean was born in New Jersey but spent his formative years in that wild western frontier called Ohio. McLean worked as an apprentice to one attorney, read law with another, and in 1807 was admitted to the bar at the age of twenty-two.

McLean opened a printing office in Lebanon, Ohio, and began publication of a pro-Jeffersonian newspaper called the Western Star. In 1810, his brother assumed control of the printing business and the newspaper. In three years of hard work, McLean had accumulated the money and connections he needed to launch his career in politics.

Over the course of the next twenty years, McLean made good use of his formidable political instincts and ambitions. He served as an Ohio representative in Congress, an Ohio Supreme Court justice, Commissioner of the General Land Office, and Postmaster General of the United States. He performed his duties with extraordinary competence: for example, as Postmaster General he "converted an operational loss of more than $150,000 a year when he took office in 1823 to a net profit of $100,000 by 1827."

He cultivated connections with Andrew Jackson, to the consternation of President John Quincy Adams, who viewed McLean as a "double dealer," but who conceded that he "plays the game with such cunning and duplicity that I can fix upon no positive act that would justify the removal of him." In 1828, Jackson was elected President. On March 7, 1829, he rewarded McLean by naming him to the so-called "western seat" on the Supreme Court.

McLean served for more than thirty years, making his tenure one of the twelve longest in the history of the Court. And he was productive; he authored hundreds of majority, concurring, and dissenting opinions. But, as Paul Finkelman has noted, "he is about as obscure a Justice as there has ever been... Even the handful of majority opinions he wrote in important cases are relatively insignificant."
In his time, though, McLean was anything but obscure. He was viewed as a viable presidential candidate from the day he joined the Supreme Court bench. Indeed, "[v]arious groups and parties put forward McLean's name as a presidential candidate in 1836, 1848, 1852, 1856, and 1860." A nationally prominent religious figure, he became the leading Methodist layman in the United States, wrote articles on the Bible, and was named president of the American Sunday School Union.

He should be better known today. The infamous proslavery decision in *Dred Scott v. Sandford* is recognized as one of the greatest blunders in the history of the Court, and Chief Justice Roger Taney is remembered as its author. But few people recall that some justices dissented from the decision, that one of those dissents "confronted the deeply racist elements of Taney's opinion," that the author of this dissent had been a serious contender for the Republican nomination for President, and that the name of this justice was John McLean.

It has been observed that this "single dissenting opinion from his pen may have done more to direct the course of American history" than any of his political maneuverings, because "[w]hen the Civil War was won, McLean's dissent was virtually written into the Constitution as the Fourteenth Amendment." Still, McLean remains largely forgotten. Paul Finkelman offers this terse assessment of our national forgetfulness of McLean's contribution: "I deserve better."

This perspective is reinforced by a close look at the dozens of published opinions McLean authored while riding circuit in Michigan. The vast majority of those opinions deal with fairly mundane disputes and legal questions. McLean wrote opinions on issues of admiralty, conflict of laws, debtor's and creditor's rights, federal jurisdiction, patent, procedure, and property. These cases were, for the most part, ordinary and uninteresting.

What is striking about these cases, though, is the care McLean took to analyze them correctly and decide them fairly. A man of similarly titanic political aspirations, but less character and sense of duty, might have treated this caseload as a time-consuming distraction from a higher and more pressing agenda. But the opinions suggest that McLean treated every case as if it mattered and as if it warranted his best energies.

Consider, for example, the case of *In re The Pilot*. In that case, the steamboat Pearl collided with the schooner Pilot, resulting in substantial damage. The evidence indicated that the collision occurred because both the steamer and the schooner held their respective courses. The law favored the schooner; as a general rule, a vessel under power has a duty to avoid a vessel under sail. The district judge followed this well-settled principle and

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held for the schooner. Given the law, and that the district court adhered to it, a less attentive judge than McLean might have affirmed without a second thought.

At McLean noted that he had given the dispute ‘much reflection’ and was troubled by the fact that – the general rule notwithstanding – in this case the schooner made no effort to avoid the collision even though it could have done so without risk.39 Indeed, McLean seemed outraged over the schooner captain’s decision to elevate technical principles over common sense and safety: ‘The rules of navigation are addressed, not only to intelligent persons, but to persons supposed to be skilled in seamanship; and they are to be observed in such manner as not, willingly or negligently, to inflict an injury, under the pretense of observing a rule.’40 McLean reversed the district court’s decision on this basis.

United States v. Vansickle41 also provides some insight into the force of McLean’s legal reasoning and the depth of his commitment to justice. In that case, William Vansickle was indicted for interfering with a marshal’s efforts to serve a subpoena on a witness in connection with criminal cases in which Vansickle and others were defendants. Vansickle transported the witness – who had the Dickensian name of Remember Lummis – ‘from place to place while the marshal or his deputy was in pursuit of her.’42 Eventually, Vansickle’s libelations, bribes, and threats ceased to influence Lummis and she came forward to testify.

At Vansickle’s trial, an effort was made to discredit Lummis by asking another witness whether Lummis was generally known to be a ‘lewd woman.’43 The prosecution objected, arguing that the question had to be ‘limited to the general character of the person impeached as to truth and veracity; and whether the witness, from his knowledge of her character, would believe her under oath.’44 At trial, the questioning about Remember Lummis was conducted consistent with that limitation; the jury found the defendant guilty; and McLean affirmed.

McLean began his analysis by observing that there was “great contrariety in the decisions on this question.”45 He noted that the authorities universally agreed that such questioning had to relate to the character of a witness rather than their specific acts, on the theory that while “[e]very individual is supposed to be able, at all times, to establish or defend his general character” they may not be prepared to answer allegations about particular events or conduct.46 But he pointed out that the cases diverged on the breadth of the permissible inquiry; some cases allowed questions about character generally, others permitted an exploration of specific characteristics like chastity, and others limited the examination to the witness’s character for truthfulness.47

McLean made quick work of the first two approaches. He pointed out that opinions about what constitutes “general bad character” vary widely. He wrote, “Again, the question is asked, what shall constitute general bad character. In some communities a Mason or an anti-Mason, an abolitionist or anti-abolitionist, a man who plays cards or engages in horse racing, may be esteemed, as the opinions of the majority in the neighborhood may preponderate, to have an immoral or bad character.”48

McLean reasoned that this variation in community sentiments created an insoluble dilemma for using general character evidence to impeach a witness. If the specific bases for the generally bad reputation were not disclosed, then the jury would lack the information necessary to decide whether the community’s assessment of the witness’s character was fair and reasonable. But – as “all the authorities agree[d]” – if testimony about specific acts and events were allowed, then witnesses would find themselves in the unfair and unreasonable position of having to meet accusations they could not have anticipated.49 In just a few sentences, McLean dismantled a significant body of precedent that had allowed the impeachment of witnesses through vague and generalized attacks on their character. It was artfully done.

McLean’s dismissal of the second approach, which permitted questioning about a woman witness’s reputation for chastity, was even more powerful. He wrote: “If such a question be proper, shall it be limited to the character of a female? Must it not as well apply to the other sex?”50 And then he left these questions hanging and moved on. In just a few words, McLean invited the reader to ponder whether they cared to advocate for a rule that must either (a) discriminate unfairly against female witnesses or (b) subject male witnesses to the same indignity of impeachment through wide-ranging testimony about their reputation for sexual immorality.51 He apparently believed that to ask these questions was to answer them.

In light of McLean’s dissent in Dred Scott, the opinions he authored about slavery issues while riding circuit warrant particular attention.52 Giltnor v. Gorham,53 issued nine years before Dred Scott, seems representative of McLean’s approach to these cases. At a personal level, he abhorred slavery and strongly favored abolition; but, as a judge, he felt duty bound to honor the Constitution as he found it.54

The opinion in Giltnier largely consists of McLean’s charge to the jury in a case in which the plaintiff, a citizen of Kentucky, sought to recover the value of six slaves. Plaintiff’s agents (which included plaintiff’s grandson, one Francis Troutman) had located the slaves
in Marshall, Michigan. A crowd gathered and obstructed the taking of these individuals — who ultimately fled to Canada — allegedly with the aid of the defendants. The opinion conveys, in fascinating detail, the eyewitness accounts of the confrontations between the plaintiff's agents and the dozens of individuals — black and white — who protested the effort at recapture and who facilitated the escape.55

After recounting the testimony, McLean stressed that the jury's role was to apply the law to the facts and not to pass judgment on the institution of slavery: “However unjust and impolitic slavery may be, yet the people of Kentucky, in their sovereign capacity, have adopted it. And you are sworn to decide this case according to law.”56 Indeed, he pointedly cautioned the jury against nullification: “In no supposable case, has a juror a right to substitute his own views, and disregard established principles of law. A well instructed conscience is a proper guide for individual action; but when we are called upon to act upon the interests of others, we violate our oaths, and show ourselves unworthy of so important a trust, when we adopt, as a rule of action, our own convictions of what the law should be, rather than what it is.”57 The jury deadlocked and was dismissed, the case was retried, and at a succeeding term a verdict was given for the value of the slaves.58

It may strike modern sensibilities that McLean did not go far enough in describing slavery as “unjust and impolitic” and that he went too far in his efforts to dissuade the jury from using their authority to undermine a profoundly evil institution. But reading the opinion closely and in context may suggest a different assessment. This opinion probably says very little about McLean’s view of slavery, which he did not hesitate to oppose vigorously, even in such provocative contexts as the Dred Scott case. But the opinion does seem to say a great deal about McLean’s view of the rule of law and about fair treatment for those who labor to follow it.

The opinion notes that if the citizens of Marshall had gathered “to protect the rights of the colored persons in question from an illegal seizure” then their motives could not “be condemned.” But McLean points out that Troutman had informed the crowd that he wanted to take the individuals “before a justice, to prove that they owed service to [the plaintiff].”59 At that point, McLean suggests, opposition became lawlessness: “That man is a dangerous citizen, who follows his conscience in violation of the legal rights of others. Troutman, as the agent of the plaintiff, was in pursuit of a legal right — a right sanctioned by the fundamental law of the Union — and his conduct under the emergencies was characterized by forbearance and a respect for the law.”60

Indeed, McLean apparently felt such keen sympathy for Troutman’s plight that he all but instructed the jury to find him a credible witness. At one point in his charge, McLean observes: “It is proper that I should say of Troutman, the leading witness for the plaintiff, that considering the circumstances under which he was placed, he bore himself with moderation and excellent temper. To the taunts and abuse which were thrown against him and his associates, by inconsiderate individuals in the crowd, he made no reply, but sustained himself with manly firmness.”61 After this endorsement, the next line in the instruction must prompt a smile: “The credibility of witnesses rests with the jury.”62

Some will find McLean’s dedication to the rule of law an insufficient justification for his empathetic treatment of Troutman. “Inconsiderate” behavior toward slaveholders may not seem to us much of a vice. And, echoing McLean’s trenchant observation in the Pilot case, we might conclude that Troutman should not have been allowed “to inflict an injury” on those who had fled for their freedom “under the pretense of observing a rule.”63 But whether we regard McLean as a principled disciple of the rule of law, or as an abolitionist so moderate that he sometimes seemed the apologist, there is compelling evidence to conclude that he arrived at his positions thoughtfully, in good faith and intent on doing what was just and right.64 It is hard to ask more of any judicial officer.

McLean passed away on April 3, 1861. McLean had told President Lincoln that he wished to be succeeded by his fellow Ohioan and close friend, Noah H. Swayne. Lincoln nominated Swayne to the Court in early 1862, and he enjoyed an easy confirmation.

Interestingly, one of Swayne’s principal contributions to American law — like McLean’s — was a dissent in a notorious Supreme Court case. Swayne “dissented sharply from the majority in the landmark Slaughter-House Cases of 1873,”65 which restricted the scope of the Fourteenth Amendment’s guarantee of the privileges and immunities of U.S. citizens [and] opened the way for states to curtail the civil liberties of blacks.”66

In 1881, suffering from poor health, Swayne resigned from the Court, having secured from Justice Noah H. Swayne at the time he was riding circuit in Michigan.
President Hayes a promise to appoint another Ohioan, Stanley Matthews, to succeed him. There is little record of Swayne's activities in the State of Michigan. Matthews's appointment to the Supreme Court did not unfold as smoothly as Swayne's. Matthews had enjoyed a legal career that was distinguished but controversial. Appointed by President Buchanan to serve as a United States Attorney for the Southern District of Ohio, Matthews had prosecuted a popular newsman for violating the unpopular Fugitive Slave Act. After returning to private practice, he successfully defended the Cincinnati Board of Education when it was sued by a group of angry parents over its decisions to end the practice of regular morning Bible readings. And, as a prominent railroad lawyer, he had served as counsel to "robber baron" Jay Gould of the Erie Railroad.

Matthews had a longstanding, if uneven, relationship with Rutherford B. Hayes, whom he first met while a student at Kenyon College. As he was leaving office, Hayes nominated Matthews to the Supreme Court. Congress did not act, Hayes's term ended, and newly elected President James Garfield, also an Ohioan, resubmitted the nomination.

The nominee's controversial career led to a long and heated debate in the Senate and a 7-1 vote against him by the Judiciary Committee. On May 12, 1881, the Senate approved the nomination of Stanley Matthews to the United States Supreme Court by a vote of 24-23. Matthews served the Court for less than eight years and in most respects "did not leave a significant imprint on constitutional jurisprudence."

Matthews did, however, write the opinion for the Court in the foundational Equal Protection case of Yick Wo v. Hopkins. In Yick Wo, the Supreme Court held that the sheriff of the City and County of San Francisco ran afoul of the Fourteenth Amendment when he enforced facially neutral laws regulating laundries only against Chinese business owners: "Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution." The Supreme Court has repeatedly cited Yick Wo as a seminal case supporting this principle.

Because Matthews did not serve long on the Court, we have only about a dozen opinions from his circuit-riding visits to the State of Michigan. As with McLean, these cases involved a rather unremarkable assortment of legal issues. For the most part, his opinions concerned matters of admiralty and maritime law, patent, and procedure and jurisdiction.

Matthews thus addressed some of the same substantive issues that came before McLean. And his opinions certainly share the thoroughness we find in McLean's. Unfortunately, however, the opinions of Matthews make for much less interesting reading. In part, this is a function of coincidence: the cases decided by Matthews tend to turn on technical, specialized, and outmoded principles of law. But, in greater measure, McLean's opinions are probably more engaging because of his affection for the grander turn of phrase.

McLean's opinions are peppered with philosophical digressions and rhetorical flourishes. In McLean's writing, an admiralty case becomes a vehicle for observing that to hold that a vessel of one country could not "do an office of kindness" to the vessel of another "would be a strange perversion of those laws of commercial intercourse which characterize the civilized nations of the world." And a case involving conflict of laws becomes an occasion for noting that "Principles are sometimes evolved from the exigencies of society, and grow into favor from their adaptation to the fitness of things. No one can say that both the common and the civil law have not been ameliorated and improved by such means. But we are to look to established principles and not to theories in considering the case before us."

Of course, McLean came to the bench from a career in politics and harbored presidential ambitions. So it should not surprise us that his opinions have a rather statesmanlike quality and reflect a tendency to ruminate about first principles and public policy. The more workmanlike prose of Matthews suffers in comparison.

But the opinions of Matthews have a simplicity and focus of purpose that also has much to commend it. Without overstating matters, Matthews’s opinions possess just the sort of direct language and practical orientation one might expect, or at least hope for, from a judge who had enjoyed a brilliant career as a practicing lawyer. And, perhaps not coincidentally, such an approach probably also limited the potential for controversy, of which Matthews had seen more than enough by time he joined the Court.

What are we to make of this history? Certainly, attempting to draw from it any broad conclusions about the Supreme Court of the United States or the federal courts in Michigan seems contrived and misguided. But it may be worth pondering whether
we lost something valuable when we abandoned the circuit-riding experiment—“painful and improper” as it may have been.

After all, in two ways the circuit-riding obligation contributed to the legitimacy of our highest court. First, it resulted in at least some geographic diversity among the justices.65 The loss of that diversity may have helped foster the image of the Court in the popular imagination as an undemocratic, unrepresentative, and elitist institution.

Second, and perhaps more importantly, the circuit-riding requirement brought the members of the Supreme Court of the United States into everyone’s backyard. But this did not simply provide opportunities for greater personal communication and interaction. It also served to remind the justices of what it is like to decide cases as they come before the lower courts. And this is critical because the lower courts are, after all, the vineyard where most legal principles are cultivated and where those who would gain a deep understanding of the nature of justice should spend at least some time laboring. ■

End Notes

6Shareholder, Butzel Long, P.C., and Adjunct Professor of Law, University of Michigan Law School. The author thanks the Hon. Avern Cohn of the Eastern District of Michigan for suggesting the subject of this article and providing guidance regarding many useful resources and Kincaid Brown of the University of Michigan Law Library for his invaluable research assistance.


2. Schwartz, supra note 1, at 19.

3. Id. at 19, 153-153.

4. Id. at 102.


6. Schwartz, supra note 1, at 177.

7. Other justices did as well, but the vast majority of Michigan decisions were written by the two justices discussed in this article.

8. McLean was preceded by Robert Trimble of Kentucky, who served on the Court for only two years (1826-1828), and Thomas Todd of Kentucky, who served for nineteen (1807-1826). Todd was appointed after Congress amended the Judiciary Act of 1789 to create the district that included Tennessee, Kentucky, and Ohio. Michigan became a state in 1837.


11. Id. at 102.

12. Id.

13. Id. at 102-103.

14. Id. at 103.

15. Id. at 103.

16. Id.


18. Id.

19. Id.

20. Id. at 529.


23. In Dred Scott, the Court held that (1) blacks could not be citizens of the United States (even if they were citizens of the states in which they lived) and so could not sue in diversity; (2) Congress could not pass laws to regulate the territories; and (3) the ban on slavery in the Missouri Compromise was unconstitutional because it amounted to a taking of private property without due process of law. For an overview of the case, see Finkelman, supra note 14, at 539-546. For an overview of the historical criticism of the decision, see Stephen G. Breyer, A Look Back at the Dred Scott Decision, 35 J. Sup. Ct. Hist. 110, 116-118 (2010) [hereinafter Breyer].


25. Id. at 564.

26. In the immediate wake of the decision, Justice Curtis’s dissent received greater publicity than did that of Justice McLean, probably for two reasons: first, Curtis’s voluminous dissent was considerably longer; and, second, Curtis was generally understood to be pro-slavery and so his dissent was more notable and politically useful than that of the abolitionist McLean. Id. at 562. The pattern of paying greater attention to Curtis’s dissent than to McLean’s persists. For example, a recent retrospective on Dred Scott by Justice Stephen Breyer discusses Curtis’s dissent in some detail but ignores McLean’s. See Breyer, supra note 20, at 112, 116.

27. Anderson, supra note 6, at 105.


29. McLean probably wrote additional opinions that he did not sign. This article focuses on substantive opinions that we can with confidence attribute to McLean.

30. See Buzzard v. The Petrel, 4 F. Cas. 932 (C.C.D. Mich. 1855) (No. 2261) (affirming district court judgment dismissing a claim based on a collision between a schooner and a scow); In re The John Richards, 13 F. Cas. 707 (C.C.Ct. Mich. 1856) (No. 7361) (affirming district court’s disposition of competing liens on a vessel); In re The Sailor’s Bride, 21 F. Cas. 15-9 (C.C.Ct. Mich. 1859) (No. 12,220) (allowing half compensation to a tug boat owner who unsuccessfully attempted to rescue a schooner that had run aground).


32. See Sudeyam v. Beals, 23 F. Cas. 472 (C.C.Ct. Mich. 1845) (No. 13,653) (holding that transfer of property to avoid judgment was fraudulent and ordering sale of property) and Wilkinson v. Yale, 29 F. Cas. 1272 (C.C.Ct. Mich. 1853) (No. 17,678) (dismissing creditor’s suit to satisfy judgment that claimed assignments of assets had been fraudulently made).


34. Pitts v. Edmonds, 19 F. Cas. 751 (C.C.Ct. Mich. 1857) (No. 11,191) (holding that defendant’s invention violated plaintiff’s patent on a planing machine).

35. Weed v. Snow, 29 F. Cas. 572 (C.C.Ct. Mich. 1843) (No. 17,347) (holding that standard had not been met for granting a new trial); Williams v. Sinclair, 29 F. Cas. 1401 (C.C.Ct. Mich. 1843) (No. 17,737) (setting aside a nonsuit); Wyman v. Fowler, 30 F. Cas. 7 (C.C.Ct. Mich. 1844) (No. 18,114) (holding that an action assumed was adequately pled); and Stafford v. Ritten, 22 F. Cas. 933 (C.C.Ct. Mich. 1847) (No. 13,244) (refusing to set aside a default judgment).
36. West v. Davis, 29 F. Cas. 714 (C.C.D. Mich. 1847) (No. 17,422) (refusing to set aside sale of property based on alleged inadequacy of sale price); United States v. Williams, 28 F. Cas. 674 (C.C.D. Mich. 1849) (No. 16,721) (allowing mortgage to proceed for foreclosure); United States v. Williams, 28 F. Cas. 674 (C.C.D. Mich. 1850) (No. 16,720) (rejecting defense of usurious interest and allowing entry of judgment on mortgage foreclosure); Walcott v. Almy, 28 F. Cas. 1352 (C.C.D. Mich. 1853) (No. 17,052) (finding a deed void because the property had been fraudulently conveyed); and Yates v. Little, 30 F. Cas. 790 (C.C.D. Mich. 1855) (No. 18,128) (allowing a case to proceed to correct a "flagrant injustice" resulting from a mistake made by land appraisers).


38. Id. at 692.

39. Id. at 693.

40. Id.

41. 28 F. Cas. 361 (C.C.D. Mich. 1840) (No. 16,609).

42. Id. at 361.

43. Id.

44. Id.

45. Vansickle, 28 F. Cas. at 361.

46. Id.

47. Id.

48. Id. at 362.

49. Id.

50. Id.

51. Anticipating a counterargument, McLean noted that "we do not mean to say that the chasteness of the witness may not become a proper question on an indictment for rape, or in a case which may be supposed; but that it is not a proper question, under ordinary circumstances, to discredit a witness." Id.

52. See Finkelman, supra note 14, at 528 (discussing circuit cases from Ohio in which McLean upheld the Fugitive Slave Act). See also Anderson, supra note 6, at 102 (discussing a state court case in which McLean acknowledged that he favored emancipating slaves "according to the immutable principles of natural justice").

53. 10 F. Cas. 424 (C.C.D. Mich. 1848) (No. 5433). In his opinion, McLean notes that this was "the first one of its kind which has been prosecuted in this state." Id. at 432.

54. The tension in McLean's role as abolitionist and judge are explored in detail in Robert M. Cover, JUSTICE ACCUSED 243-249 (1975) [hereinafter Cover].

55. [Ed. Note: This trial and the events surrounding it are discussed in detail in the November 2004 issue of The Court Legacy: Michigan and the Fugitive Slave Acts by David C. Chardavoine.]

56. Id.

57. Id. at 432-433.

58. Id. at 433.

59. Id. at 430.

60. Id.

61. McLean's opinion also reflects a deep skepticism about the capacity of mobs to exercise forbearance: "Impelled to action by the most reckless, the crowd lose [sic] sight of individual responsibility, and are led to commit atrocities from which, as individuals, they would shrink with horror." Id.

62. Id. at 431.

63. Id.

64. For a discussion of contemporary criticism of McLean as engaging in "ready subservience to slaveholders," see 2 Charles Warren, THE SUPREME COURT IN UNITED STATES HISTORY 272-273 (1926).

65. The deference to the rule of law that McLean exhibited in this case is fully consistent with his approach toward enforcement of the Fugitive Slave Act generally. See Cover, supra note 54, at 260-265. See also Judge McLean's Views on the Fugitive Slave Law, DETROIT FREE PRESS, October 18, 1850 (newspaper editorial quoting McLean at length regarding the primacy of the rule of law).


68. Ed. Note: In his concurring opinion in McDonald v. Chicago, the Chicago handgun control ordinance case decided June 28, 2010, Justice Thomas cited Swayne's dissenting opinion in the Slaughter-House Cases, writing as follows: "A separate question is whether the privileges and immunities of American citizenship include any rights besides those enumerated in the Constitution. The four dissenting Justices in Slaughter-House would have held the Privileges or Immunities Clause protected the unenumerated right that the butchers in that case asserted. See id., at 83 (Field, J., dissenting); id., at 111 (Bradley, J., dissenting); id., at 124 (Swayne, J., dissenting). Because this case does not involve an unenumerated right, it is not necessary to resolve the question whether the Clause protects such rights, or whether the Court's judgment in Slaughter-House was correct."


70. Id. at 228.

71. Id. at 229.

72. Id. at 226, 229.

73. Id. at 229.

74. Id.

75. Id. The appointment of Matthews "was received by a large part of the press with a storm of disapproval," but "later events proved Matthews to be a wise and upright jurist, and he 'lived to hear his detractors sound his praise.'" 2 Charles Warren, THE SUPREME COURT IN UNITED STATES HISTORY 623 n.1, 622-23 (1926).

76. Id.

77. 118 U.S. 356 (1886).

78. Id. at 373-374.


80. See In Re The E. V. Mundy, 22 F. 173 (C.C.D. Mich 1884) (reversing district court judgment dismissing claim to recover for materials and labor used to repair a vessel that was later sold); Sonsmith v. The J.P. Donaldson, 21 F. 671 (C.C.D. Mich. 1884) (reversing district court decision that had rejected claim to recover value of barges cast off by a steam-propelled vessel during a storm); and Wallace v. Thames & Morsey Ins. Co., 22 F. 66 (C.C.D. Mich. 1884) (allowing plaintiffs to recover on policies of maritime insurance).


85. The demand that Justices ride circuit necessitated at least some geographic diversity in Supreme Court appointments. "Because so much of the business of [the] lower federal courts required a knowledge of the law of the state in which the court sat, it was considered essential that the Supreme Court justice for that circuit have familiarity with the law of at least one of the states of that circuit, the sort of familiarity that could have been acquired only by practicing law in that state." William H. Rehnquist, THE SUPREME COURT 139 (1987). This rigorous geographic diversity vanished with the abolition of the circuit-riding mandate. Id.
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☐ Professional/Member  $25.00
☐ Sustaining/Patron  $100.00
or more

Please make checks payable to:
Historical Society – U.S. District Court – E.D. Michigan

Mail to Historical Society, c/o David A. Gardey, U.S. Attorney’s Office, 211 West Fort Street, Floor 25, Detroit, MI 48226
Email: david.gardey@usdoj.gov
Telephone: (313) 226-9591; Fax: (313) 226-3263

Membership contributions to the Society are tax deductible within the limits of the law.

Name: ________________________________
Address: ________________________________
City: ____________________
State/Zip Code: _______________________
Phone: ____________________

This membership is a gift from: _______________________

--- This Form May Be Duplicated And Submitted With Your Membership Fee ---

The Historical Society
U.S. District Court
Theodore Levin U.S. Courthouse
Detroit, Michigan 48226

QUESTIONNAIRE

We would like to know about your interests and skills. Please fill in this questionnaire and mail it with your membership.

Legal practice area (if applicable):______________________________

Special interests in the field of legal history:

__________________________________________________________________________

Yes, I would like to assist and/or actively participate in the following of the Society’s activities (Check as many as may apply):

☐ Writing articles for the Society newsletter
☐ Conference planning
☐ Oral history
☐ Research in special topics in legal history
☐ Fund development for the Society
☐ Membership recruitment
☐ Archival preservation
☐ Exhibit preparation
☐ Educational programs
☐ Other (please describe): ______________________

Suggestions for programs or projects:

__________________________________________________________________________

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