

# THE AUTOBIOGRAPHY of A PENNSYLVANIAN

By Samuel W. Pennypacker  
Pennsylvania's Most Zealous  
and Energetic Governor

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## CHAPTER V (Continued)

AT A dinner, October 1, 1888, Justice Miller, of the Supreme Court of the United States, gave such an interesting narrative of a crisis in American history that I wrote it out in full at the time, as follows:

October 1, 1888.

Today Justice Samuel F. Miller, of the Supreme Court of the United States, delivered the opening address to the law class of the University of Pennsylvania, and at 7 o'clock he sat down to a dinner at the Rittenhouse Club, No. 1811 Walnut street, tendered to him by the faculty of the law department of the university. There were at the dinner C. Stuart Patterson, George Harding, Wayne MacVeagh, Dr. William Pepper, Judge T. K. Finletter, Samuel W. Pennypacker, Dr. Jayne, Judge Henry Reed, A. Sydney Biddle, Judge William Butler, Morton P. Henry, Judge James P. Mitchell, George Tucker Bispham, Justice Miller, Richard C. McMurtrie and Judge William McKenna.

After wine had to some extent enlivened the party, the turn taken by the conversation made it a most interesting event. The Justice said that during the war the most strenuous efforts were made to use the court in such a way as to embarrass the Government in its conduct of operations by endeavoring to get decisions upon such questions as the right of Mr. Seward to confine obnoxious persons in the forts, the right of Mr. Stanton to confiscate property of citizens in the rebellious States, etc. One lawyer from Mississippi spent about two years in endeavoring, in various ways, to get a decision upon some case of this kind. Once upon an application to advance a habeas corpus case the court seemed inclined to take the action. The Justice took occasion to see a friend of Justice Nelson and tell him that it would depend upon how Nelson voted as to whether the case should be advanced upon the list, and since it was a matter simply of the methods and administration of the business of the court, it did not seem improper to talk to him about its effect on public affairs. Nelson afterward voted against the advancement. The Justice did more to prevent interference by the court than perhaps any other member of it. This brought up the subject of Jeremiah S. Black. The Justice said: "Black, as a man, was simply abominable, but there was no one who appeared before the court to whom it was so agreeable to listen. In hearing him you felt that you did not care a damn whether he was talking about his case or about any other case, but there was a wealth of illustration, a knowledge of the Bible and of Shakespeare wrought into his arguments which made you feel that you would like him to go on forever. On one occasion he had a case arising under the Civil Rights Bill from South Carolina, in which, characterizing the position of the other side, he said that there was no decision in any court in Christendom which would justify it. He then reached into his pocket for his silver tobacco box, which was always there, took it out slowly, put into his cavernous jaws a mass of the tobacco and, as if it had just occurred to him, continued, "Yes, there is one case which may apply. It is that of Dido vs. Carthage. There, you remember, the land was bought by hides and the amount was determined by so many covering the grounds. It occurred to one casuist there that the hides might be cut in strips and more land be got under them in that way. Now that case may be an authority for the other side.

"He never was a sound lawyer. When he first came down to Washington he had only been in the habit of getting ten and fifteen dollar fees, but he soon found that he could get almost any sum and he afterward charged enormous fees.

"Toward the latter part of the time he used to argue for the listeners and pay less attention to the law and would maneuver so as to postpone his cases until there were hearers. We humored



The United States Supreme Court which was entertained by the Philadelphia bar during the Constitutional Centennial celebration. From left to right are Justices Joseph Bradley, Stephen J. Field, Samuel F. Miller, Nathan Clifford, Chief Justice Morrison R. Waite, N. H. Swaine, David Davis, W. Strong and Ward Hunt. The photograph is from the collection of Hampton L. Carson.

him, more or less, in the matter. After the report of the Electoral Commission he, for the purpose of abusing us, appeared before the Commission. He said the most dreadful things. If it had been a court he would have been locked up for contempt. I would have locked him up for contempt within ten minutes after he began. Judge Strong, who had been a great friend of his, refused, afterward, for more than a year, to recognize him. At length, when Strong was going to Europe, Black wrote to me saying that what he had said was in a public capacity, that I had not taken personal offense at it, and asking me whether I would not see Strong and endeavor to present it to him in this light. I did so, and they became reconciled. The more outrageous things Black said never were printed.

### Judge Strong and Wayne MacVeagh

This brought up MacVeagh, who said with an assurance which is natural to him; "Strong felt it because he could not rid himself of the idea that he was sitting as Judge of a Court, which was a great mistake. You took the sensible view of it. You always recognized that you were not there as a Judge at all." "I was there," replied the Justice, "as if I were a Judge to decide the matter as nearly according to the law as it could be done and to do justice." "There is no use in disguising the fact," said MacVeagh, "that the Commission was in no sense a Court. The Commission decided in favor of Hayes, and when I went down to New Orleans at the head of the MacVeagh Commission I overruled them." "What is your view of the law of the matter, MacVeagh?" inquired the Justice. "When I went down there," said MacVeagh, "I found that everything, in fact, was under the control of the Nichols government. When a child was born he was registered by an officer under Nichols. When he died, probate was granted by an official appointed by the Nichols government. Marriage certificates were taken out in its name. I established it de jure as well as de facto. With a grim and resolute President like Grant, with a Secretary of War like my brother-in-law, not overscrupulous, with an army officer like Sheridan, with a returning board not overscrupulous, if the Republicans could not get a majority of more than eight thousand, there was not much in their position."

The Justice said: "The Constitution of Louisiana provided years before that there should be a returning board empowered to count the votes and determine the result. It seems to have been foreseen that there might come a time when force might be used in an election, and this was the means provided for meeting it. We considered that this was a subject within the control of the State. To permit Congress to determine the vote would have resulted in the destruction of the Government. That body never acts judicially. It would be like their determination upon the rights to seats, which are invariably decided in favor of those in sympathy with the majority. So it would be in the case of a President. There was no doubt fraud in Louisiana, as there was also the use of force. But our view was that the State must regulate the casting and the counting of the vote. It had developed this plan and had the power to do it. We saved the country at that time from anarchy, and there has been little recognition of our service. The Democrats abused us, and the Republicans have never come to our defense.

"Many Democrats have thanked me since for preserving this right to the States. There is more appreciation of it among the Democrats than among the Republicans. But unquestionably it was a grave crisis happily surmounted."

MacVeagh's attack did not meet the approval of those present, and Judge Mitchell said, hardly in undertone: "I have a good deal of patience, but it provokes me; it is as much as I can stand to sit here and listen to MacVeagh talking his Independent Republican politics."

The Constitution of the United States having been adopted in a convention held in Philadelphia in 1787, and from the national point

of view this being the most important event in our history, it was determined to celebrate the centennial anniversary in a fitting manner in 1887. J. Granville Leach offered a resolution in the Law Academy that the Chief Justice and the Associate Justices of the Supreme Court of the United States be entertained by the bar of the city. The project took shape. McMurtrie was made chairman, Joseph B. Townsend, treasurer, and Pennypacker, secretary, of a committee to carry out the plan, but Leach and I did all the work. We gathered in the subscriptions by personal solicitation at \$10 each, and made the arrangements. We gave the Justices a breakfast in the foyer of the Academy of Music on the 15th of September, at which the Chief Justice, Morrison R. Waite; Richard C. McMurtrie, Judge J. I. Clark Hare, president judge of the Court of Common Pleas No. 2; Justice Edward M. Paxson, of the Supreme Court of Pennsylvania; the Honorable W. S. Kirkpatrick, Attorney General of Pennsylvania, and John Sergeant Wise, of Virginia, made speeches. Society ladies sat in the adjoining room and ate, drank, chatted and listened.

In connection with the same celebration, the learned societies of Philadelphia, including the University of Pennsylvania, the Historical Society of Pennsylvania and the American Philosophical Society, gave a dinner in the Academy of Music on the 17th of September which was perhaps the most imposing function that ever occurred in the United States. The subscription price was \$25 a plate. The menus were entirely etched and cost \$3 each. Dr. William Pepper, provost of the University of Pennsylvania, appeared the most conspicuously and Frederick D. Stone furnished the motive power. I was chairman of the executive committee. The President of the United States, Grover Cleveland; the Vice President, the Chief Justice, the Secretaries of War and of the Navy, the general of the army, Philip H. Sheridan; the English Ambassador, Sir Lyon Playfair; the French Ambassador, the Marquis de Chambrai; the Governors of many of the States, with Senators, Congressmen, men of science and of letters, thoroughly representing the activities of the whole country, took part in the dinner. Mrs. Cleveland, who had been recently married and who was in the pride of her youthful beauty and popularity, held a reception in the corridors, where ladies and gentlemen listened to the proceedings, watched the movements and decorations and wished for the terrapin. I wrote little books describing these banquets, and both of them were subsequently printed. My connection with these affairs and the correspondence necessarily conducted brought me temporarily into almost intimate association with the Chief Justice and other members of the Supreme Court. Waite was a dark-eyed, good-looking man, well groomed, with much courtesy of manner, but he made no other impression on me.

As it happened, a few months later, for the first time in my life, I had three cases in the Supreme Court of the United States, and I went down to Washington, having arranged with a friend at our bar to move for my admission. He failed to appear. Seeing General Benjamin F. Butler, of Massachusetts, looking old, stout, weather-beaten, but sturdy, with his twisted eye fastened on a brief, I went over to him and said:

"General, you do not know me, but you did know my cousin, General Pennypacker, who fought in your command on the James. I have been disappointed in not finding a Philadelphia lawyer here whom I had expected to see and I should be much pleased, as well as honored, if you would move for my admission."

He turned that eye on me a little aghast and said a little gruffly: "But the rule requires a personal acquaintance. Do you know no one here?"

"Oh, yes; I know all of the court."

Just then the Justices filed in and each of them in turn nodded to me with a smile, a recognition unusual in court and accorded to no other man there.

"I shall be glad to make the motion," said the General, and at Pennypacker's Mills, along with the papers and letters that

related to the two banquets, is the parchment scroll that certifies my admission to practice in the Supreme Court of the United States—on the motion of Benjamin F. Butler, Esq.

## CHAPTER VI Litterateur and Bookhunter

MY GREAT-GRANDFATHER, Matthias Pennypacker, had a reputation for vigorous and apt expression. Since his day the faculty has manifested itself in a number of his descendants. Judge Henry C. Conrad, of Wilmington, Del.; Charles H. Pennypacker, the Burgess of West Chester; Elijah F. Pennypacker, Canal Commissioner of Pennsylvania, with Thaddeus Stevens; Dr. Nathan A. Pennypacker, member of Assembly in 1866, and my father have shown the gift of speech in more than the ordinary measure. My brother, Isaac R. Pennypacker, who wrote the accepted life of General George G. Meade, has written poems which caught the attention of Longfellow and were included in his "Poems of Places" and other verse which Edward Clarence Stedman said was superior in merit to his own efforts.

I began to write in my childhood and to make speeches in my early youth. At twenty-four I wrote an epic poem upon the war, giving in somber and gloomy tones the incidents of the sad careers of Josiah White and his sweetheart, with the scene laid at Phoenixville along the French Creek and the Schuylkill River. I give below a piece of early occasional verse; a tribute to My Mother; and a sonnet to Lloyd Mifflin, written within the last few years. Some of my translations of German hymns may be found in Brumbaugh's "Christopher Dock," in my "Pennsylvania in American History," and a translation from the German verse of Pastorius was set to music by the Orpheus Club of Philadelphia and sung two winters at the Academy of Music.

To the verse above mentioned I select another to be included in this narrative. The Haslibacher hymn, written in the sixteenth century and published in the *Aebund*, a hymn book of the Mennonites which has gone through eight editions in America and is still used among the Amish of Lancaster County, always made a strong impression upon me because of its dramatic power and simplicity. It has many of the features of the ballad literature and of the *Nibelungenlied*. I translated it from the German when at Harrisburg in the midst of my first session of the Legislature as a sort of relief from the onerous pressure of new and difficult duties. The translation preserves the rhyme, meter and versification, and to a certain extent maintains the spirit of the original.

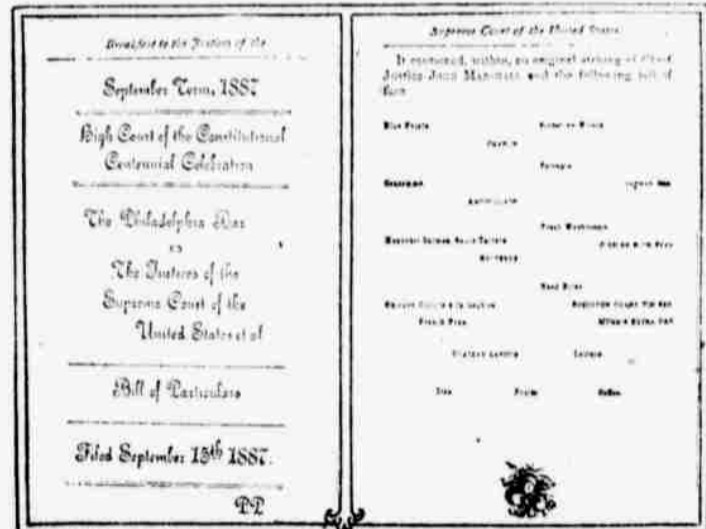
### XANTHIPPE\*

(Sola)

The tea of yaris that cured my mother must  
Have lost its virtue, opeklode don't  
Appear to do no good, and what betwixt  
The rheumatiz and Socrates I feel  
A-worried nigh to death. He is the most  
Provoking man alive I do believe.  
While I am down upon my knees, and me  
All stiff and crippled, scrubbing off the floor  
And trying hard to keep things neat and clean,  
He's gone with Aleibades and them  
Old loafers wandering around the streets  
To talk about philosophy. There's lots  
Of work to do in Athens he might get,  
If he would only try, and give up these  
Ridiculous notions. Then we might live just  
As nice as other folks. There has been just  
A carpet on this floor for seven years,  
And when I tell him, as I sometimes do,  
He says, "The gods regard no carpet and,  
Nanthippe, we but imitate the gods."  
As if that consolation were for me!  
What use it is to dream about old books  
And such like rubbish when the flour's all gone  
And me and his poor children have not got  
A decent thing to wear, I do not see.  
Now here's Epaminondas' pants. If I  
Have patched them once, I've patched them forty times  
Until the stuff's so thin the thread won't hold,  
And yet he goes a-sneaking through the house,  
His eyes half shut, his thoughts intent upon  
Elysium or some other place, and can  
Not see the boys' ashamed to turn his back  
Toward any one. No wonder that I scold,  
But 'tain't a bit of use. He pays no more  
Attention than a post. I might as well  
Be pouring water in the Hellespont.  
He all the while that soft and sheepish smile  
Will wear upon his face and count the flies  
Along the wall until I stop to get  
My breath, and then he walks away without  
A word. I get so mad, it makes me feel  
As if I were Erymanus. 'Tother day,  
When I for fully half an hour had been  
A-telling him about the ham we want,  
He stared and slowly said, "Yes, Critias,  
The cycle system must be right." I up  
And snatched the basin of hot water that  
I had to wash the dishes with and poured  
The slops upon his old bald head. He wiped  
His face and muttered, "When the thunders cease  
Then comes the rain." He'll be the death of me  
I know.

\*Written by request in early life for a public entertainment given at Phoenixville at which were represented a number of historic women.

More songs and poems written by Governor Pennypacker will appear in tomorrow's installment. (CONTINUED TOMORROW)



The title page and bill of fare of the menu at the luncheon given to the United States Supreme Court in the Academy of Music on the morning of September 15, 1887, during the Constitutional Centennial celebration.

# RAINBOW'S END By REX BEACH

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CHAPTER XXIII (Continued)

O'REILLY knew that although Matanzas was a prison and a pesthole, a girl like Rosa would suffer therein perils infinitely worse than imprisonment or disease. It was a thought he could not bear to dwell upon.

Signs of life began to appear now, the travelers missed small garden patches and occasional cultivated fields; they encountered loaded carts bound into the city, and once they hid themselves while a column of mounted troops went by.

CHAPTER XXIV

LOOK! Jacket clutched at O'Reilly and pointed a shaking finger. "More beggars! Cristo! And those little children!" The boy tried to laugh, but his voice cracked nervously. "Are they children or ghouls with legs under them?" O'Reilly looked, then turned his eyes away. He and Jacket had reached the heart of Matanzas, and were facing the public square, the Plaza de la Libertad. It was called O'Reilly knew the place well; every building that flanked it was familiar to him, from the vast, rambling Governor's Palace to the ornate Casino Espanol and the Grand Hotel, and time was when he had been a welcome visitor at all of them. But things were different now. Gone were the customary crowds of well-dressed, well-to-do citizens; gone the rows of carriages which at this hour of the day were wont to circle the Plaza laden with the aristocracy of the city; gone was that air of cheerfulness and substance which had lent distinction to the place. Matanzas appeared poor and squalid, depressingly wretched; its streets were foul and the Plaza de la Libertad—grim mockery of a name—was crowded with a throng such as it had never held in O'Reilly's time, a throng of people who were, without exception, haggard, listless, ragged. There was no afternoon parade of fiery, no laughter, no noise; the benches were full, but their occupants were silent, too sick or too weak to move. Nor were there any romping children. There were, to be sure, vast numbers of underfed figures in the squares, but one needed to look twice to realize that they were not pygmies or wizened little old folks. It was not strange that Jacket

had compared them to ghouls with legs, for all were naked, and most of them had bodies swollen into the likeness of pods or calabashes. They looked peculiarly grotesque with their spidery legs and thin faces. O'Reilly passed a damp hand across his eyes. "God, he looked!" "She—she's one of these!" He had not penetrated even thus far into the city without receiving a hint of what conditions must be, for in the outlying streets he had seen sights and smelled odors that had sickened him; but now that he was face to face with the worst, now that he could scarcely credit what he saw, a stench, indescribably nauseating, assailed him and Jacket as they mingled with the crowd, for as yet their nostrils were unopened to poverty and filth. It was the rancid odor that arises from unclean, unhealthy bodies, and it testified eloquently to the living conditions of the prisoners. Hollow eyes and hopeless faces followed the two newcomers as they picked their way slowly along.

The reconcentrados overran Matanzas in an unclean swarm; streets and plazas were congested with them, for no attempt was made to confine them to their quarters. Morning brought them streaming down from the suburban slopes where they lived, evening sent them winding back; their days were spent in an aimless search for food. They snatched at crumbs and combed the gutters for crusts. How they managed to exist, whence came the food that kept life in their miserable bodies, was a mystery, even to the citizens of the city; no organized effort had been made to care for them and there was insufficient surplus food for half their number. Yet somehow they lived and lingered on.

Of course the city was not entirely peopled by the starving—as a matter of fact, they formed scarcely one-fifth of the normal civil population—and the life of the city went on in a good deal of usual order. Stores were open, at least, there was a daily train from Habana, and the barracks were full of Spanish troops. It was from the wreckage of this normal population that these 15,000 prisoners were forced to live. Even this wastage was woefully in-

adequate, merely serving to prolong suffering by making starvation slower. At the time of O'Reilly's arrival the same prospect by these innocent victims of war was appalling; it roused in him a dull red rage at the power which had wrought such crimes and the man who permitted it to continue. Spain was a Christian nation, he reflected; she had set up a perfect model of justice, and yet he beheld here the man who had butchered more people than all the nations of the earth combined. This monstrous, coldly calculating effort to destroy the entire Cuban people seemed to him the blackest infamy of all, and he wondered if it would be allowed to succeed.

Fortunately for the two friends, General Retancourt's generosity served to relieve them from any immediate danger of starvation. After making a few purchases and eating with the utmost frugality, they began their search. Later, they stretched themselves out to sleep on the stones beneath the portals of the railroad station.

O'Reilly slowly withdrew his hand from his pocket. "Yes! It's Rosa's money. But—come! I can't endure this!" He led the way back to the Plaza of Liberty and there on an iron bench they waited for the full day. They were very tired, but further sleep was impossible, for the death-wagon rumbled by on their way to collect the bodies of those who had died during the night.

### Cobo Once More

It so chanced that one day he and Jacket found themselves in the miserable rattle which assembled at the railroad station to implore alms from the incoming passengers of the Habana train. Few people were traveling these days, and they were, for the most part, Spanish officers to whom the sight of starving country people was no novelty. Now and then there did arrive visitors from whom the spectacle of so much wretchedness wrung a contribution, parting to allow the passage of a great, thick-set man in the uniform of a colonel of volunteers. The fellow was unusually sturdy and he wore a single moustache upon his face, while a long puckering scar the full length of one cheek lifted his mouth into a crooked sneer and left exposed a glimpse of wolfish teeth.

O'Reilly was at a loss to fathom this sudden alteration of attitude, the whistle of indrawn breaths, and the whispered curses, until he heard some one mutter the name, "Cobo." Then indeed he started and stiffened in his tracks. He fixed a fascinated stare upon the fellow.

Colonel Cobo seemed no little pleased by the reception he created. With his chest arched and his black eyes gleaming maliciously he swaggered through the press, clicking his heels noisily upon the stone flags. When he had gone Jacket voiced a vicious oath.

"So that, is the butcher of babies!" exclaimed the boy. "Well, now, I should enjoy cutting his heart out."

O'Reilly's emotions were not entirely unlike those of the old Varona home. His lips became dry and white as he tried to speak.

"What a brute! That face—ugh!" He found himself shaking weakly, and discovered that a new and wholly unexpected feeling of discomposure had settled upon him. He tried manfully to shake it off, but somehow failed, for the sight of Rosa's arch-enemy and the man's overbearing personality had affected him queerly. Cobo's air of confidence and authority seemed to emphasize O'Reilly's impotence and bring it forcibly home to him. To think of his lustful persecution of Rosa Varona, moreover, terrified him.

That afternoon found the two friends among the miserable hovels which encircled the foot of La Cumbre, about the only quarter they had not explored. Below lay San Severino, the execution place; above was the site of the old Varona home. More than once on his way about the city O'Reilly had lifted his eyes in the direction of the latter, feeling a great hunger to revisit the scenes of his last farewell to Rosa, but through fear of the melancholy effect it would have upon him he had thus far resisted the impulse. Today, however, he could no longer fight the morbid desire and so, spite of Jacket's protest at the useless expenditure of effort, he set out to climb the hill. Of course the boy would not let him go alone.

Little was said during the ascent. The La Cumbre road seemed very long and very hard to swing up it! The climb had never before tired him as it did now, and he reasoned that if he differed the last time O'Reilly had made the ascent, he was short of breath and rested frequently. O'Reilly saw that the boy's bare, brown legs had grown bony since he had last noticed them, and he felt a sudden pang at having brought the little fellow into such a plight as this.

"Well, hombre," he said when they paused to rest. "I'm afraid we came too late. I'm afraid we're licked."

(CONTINUED TOMORROW)