



John Cadwalader

Born: April 1, 1805, in Philadelphia, Pennsylvania.
Died: January 26, 1879, in Philadelphia, Pennsylvania.

Federal Judicial Service:

Judge, U.S. District Court for the District of Pennsylvania
Nominated by James Buchanan on April 19, 1858, to a seat vacated by John K. Kane.
Confirmed by the Senate on April 24, 1858, and received commission on April 24, 1858.
Service terminated on January 26, 1879, due to death.

Education:

University of Pennsylvania, B.A. 1821
Read law, 1825

Professional Career:

Private Practice, Philadelphia, Pennsylvania: 1825-1855
Solicitor, Bank of the United States, Philadelphia, Pennsylvania: 1830
Vice Provost, Law Academy of Philadelphia: 1833-1853
Pennsylvania State Militia Captain, Harrisburg, Pennsylvania: 1844
U.S. Representative from Pennsylvania: 1855-1857

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Judicial Biography

*Judge John K. Kane was succeeded by John Cadwalader, who was selected as the seventh judge of the Court in April 1858, by President James Buchanan. Cadwalader, who was born in 1805, came from a distinguished Philadelphia family and was known to the President. His grandfather, also named John Cadwalader, had served as an officer under George Washington during the Revolutionary War. His brother, George, was a lawyer and a General in the Pennsylvania militia. After his graduation from the University of Pennsylvania in 1821, the future judge studied law under Horace Binney, who had declined an appointment by President Tyler to the District Court. Cadwalader's first wife was Binney's daughter. Following admission to the bar, he soon developed a lucrative practice. At one point he was a solicitor to the Bank of the United States. He was elected as a Democrat to the House of Representatives from Philadelphia and served one term (1855-1857). Choosing not to seek reelection, he returned to private practice, and a year later President Buchanan nominated him to the Eastern District. He was confirmed shortly thereafter.

In the years immediately prior to and following the death of Judge Kane, sectional rhetoric and strife continued to escalate at a quicker and quicker pace. In March 1857, the Supreme Court handed down its infamous *Dred Scott* decision, in which Chief Justice Roger Brooke Taney declared that a Black person could not be a citizen of the United States or any state under the Constitution. In 1859, John Brown and his small band of militant abolitionists raided the federal armory at Harper's Ferry, Virginia. They were quickly captured and then hanged. The election of Abraham Lincoln as the President of the United States in November 1860 precipitated the rupture between the North and South, and before that year had come to a close, South Carolina had seceded from the Union.

Against this ever more inflamed background, Judge Cadwalader, like his predecessor Judge Kane, encountered fugitive slave cases on his docket. In 1860, he had before him the criminal trial of Jeremiah Buck who had attempted to free a fugitive slave in the custody of Deputy United States Marshals.

At a prior hearing at the American Philosophical Society Hall where the Court was sitting at that time, Judge Cadwalader had issued a certificate under the Fugitive Slave Act which allowed a claimant to remove a fugitive slave from Pennsylvania. Once the judge had handed down his ruling in the packed courtroom where the Marshal had excluded virtually every Black person allegedly for security reasons, the fugitive was led out of the Fifth Street doorway of the building. He was placed in a carriage with several deputy marshals inside and a deputy marshal on the outside seat beside the driver. As the carriage moved north toward Chestnut Street, efforts were made by some of the gathered crowd to impede its movement. The horses pulling the carriage increased their speed and were able to proceed several blocks westward on Chestnut Street when Buck, "violently excited and exerting great strength" along with others, seized and

* The following material is excerpted from JUDGE HARVEY BARTLE, III, *MORTALS WITH TREMENDOUS RESPONSIBILITIES, A HISTORY OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA*, 3-12 (Saint Joseph's University Press, 2011). Reproduced with the permission of the author, Judge Harvey Bartle, III, and the publisher, Saint Joseph's University Press.

held the heads of the horses and forced them onto the sidewalk against an iron awning post. At that point, a little beyond Seventh Street and about sixty yards from the courthouse, Buck was arrested by a Philadelphia police officer.

Judge Cadwalader, after reviewing the relevant law for the jury, suggested that it should find Buck guilty of attempting to rescue a fugitive slave from official custody. Following the judge's suggestion, the jury did precisely that.

Shortly thereafter, in early 1861, Abraham Lincoln, the President-elect, made his way by train from Illinois to Washington for his inauguration as the secessionist crisis beckoned. Taking a circuitous route through the Northern states, he stopped in a number of cities, including Philadelphia where he was warmly greeted. To great applause, he delivered a few remarks inside of Independence Hall before the members of the Select and Common Councils of the City on Washington's birthday, February 22. He then proceeded outside to raise an American flag. His remarks to the council members began:

I am filled with deep emotion at finding myself standing here in the place where were collected together the wisdom, the patriotism, the devotion to principle from which sprang the institutions under which we live.

Those institutions, which included the federal courts, would be challenged mightily after Lincoln took the oath of office on March 4.

In the early morning hours of April 12, 1861, Confederate batteries, under the command of General Pierre G.T. Beauregard, opened fire on Fort Sumter in Charleston Harbor. Major Robert Anderson and his small Union garrison surrendered thirty-three hours later. President Lincoln immediately called for the states to supply 75,000 militiamen to suppress the rebellion. He also proclaimed a blockade of southern ports, and as a result ships attempting to enter or leave those ports were seized. Actions were then instituted in the various federal courts sitting in admiralty to determine whether these ships and their contents should be condemned as prizes of the United States. The legality of the blockade, which was a major wartime strategy of the Lincoln Administration, would soon be tested.

In May 1861, within weeks after the blockade was proclaimed, a government frigate captured a vessel, *The Parkhill*, off the coast of Charleston, South Carolina, on a voyage from Liverpool. The vessel was brought to Philadelphia for a determination by Judge Cadwalader whether it should be condemned on behalf of the United States. The libel filed by the Government contended that the ship attempted to avoid the blockade and was "the property of insurgents, traitors, and public enemies." The owners, residents of South Carolina, sought the return of their property.

Judge Cadwalader, in his opinion, recited the recent history of the insurgency. He recounted that in December 1860, South Carolina at a convention had "proclaimed her independence of the constitutional government of the United States. This revolutionary attempt has been followed by similar acts of such conventions in 10 other states" and "[a] revolutionary constitutional confederation has been organized in them." He observed that the laws of the

United States were not presently enforceable anywhere in nine of the eleven Confederate states including South Carolina and were enforceable only in limited places in the other two, that is, in the Western District of Virginia and the Eastern District of Tennessee. His opinion proceeded to detail the English and American precedents on the seizure of vessels as prizes during times of war between nations as well as during civil wars and other hostilities.

Upon completion of his erudite review of the law, Judge Cadwalader held that the Government properly seized the vessel as a prize because of the existence of hostilities with South Carolina. Since *The Parkhill's* destination was Charleston, it did not matter whether the owners were loyal to the United States. He rejected the argument that the seizure was illegal because the Congress has “not legislated upon the existing war” and “the president alone had directed and regulated the prosecution of hostilities.” When the courts cannot function and the Marshal cannot execute process, he wrote, “a state of war exists” and the President has a duty “to take care that the laws be faithfully executed.” The Government retained *The Parkhill* and its contents as a prize, and the claim of the owners was rejected.

In the summer of 1862, Justice Robert Grier, sitting as the Circuit Justice in Philadelphia, sustained a decision of Judge Cadwalader which upheld the Government’s right to seize and retain as prizes ships and cargo belonging to citizens of states in rebellion even though the owners were not attempting to aid the rebellion. The *Philadelphia Public Ledger* reported that “Judge Grier’s opinion is the more important from the fact that it is the first given by a member of the Supreme Court.”

Thereafter, the constitutionality of the blockade reached the Supreme Court in four consolidated cases involving vessels condemned in the District Courts in Boston, New York, and Key West. It was Justice Grier who wrote the 5 to 4 decision in March 1863 which held that President Lincoln’s blockade of the Confederate ports during the insurrection was constitutional and that even if some defect existed as to what he had done, the blockade had been ratified by Congress. Some have considered the Supreme Court’s decision in the *Prize Cases* to be the most crucial that it rendered during the Civil War.

In the same year that Judge Cadwalader decided *The Parkhill* seizure, he ruled on another case involving a military incident that had occurred in the South. Charles Greiner, a Philadelphian, was engaged in agricultural pursuits in Georgia. In January 1861, several months before the surrender of Fort Sumter, he was a member of an artillery company in that state which seized Fort Pulaski from the United States without resistance, garrisoned it for a time; and then turned it over to the state authorities. Within a few months thereafter, Greiner returned to Philadelphia to visit with his wife and child. While here, he was charged with treason by levying war against the United States.

Under the Constitution, an accused is entitled to a speedy trial by a jury in the state and district where the crime was committed. Because the federal court was not open in Georgia, Greiner could not be sent there for trial. Nor did anyone know in mid-1861 when it would again be functioning. The question before the Eastern District was whether Greiner should be held in custody until that future day arrived or instead be admitted to bail in the meantime. After consulting with Justice Grier, Judge Cadwalader allowed Greiner to remain free, although on bail

of \$10,000. Under the circumstances presented, where pretrial imprisonment could be lengthy, he expressed great concern that an order of commitment “would be a dangerous precedent.” The imprisonment of civilians during the Civil War was not always the result of judicial process. In late April 1861, shortly after taking office, President Lincoln, relying on his constitutional power as Commander in Chief of the Army and Navy, authorized General Winfield Scott or a subordinate officer to suspend the privilege of the writ of habeas corpus if necessary for the public safety “at any point on or in the vicinity of the military line which is now used between the City of Philadelphia and the City of Washington via Ferryville, Annapolis City and Annapolis Junction.”

The ancient writ of habeas corpus allows the courts to decide whether a person was being legally detained. The Constitution, recognizing its significance, provides that “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”

In August 1861, without specifically mentioning habeas corpus, Congress ratified all acts and orders of the President relating to the military since his inauguration. Lincoln thereafter suspended habeas corpus from time to time in various parts of the country. In early August 1862, Secretary of War Edwin M. Stanton, acting for the President, suspended the writ nationwide. In September 1862, the President himself issued a nationwide suspension order. It declared that “all persons guilty of any disloyal practice shall be subject to martial law.”

With the writ’s suspension, civilians were sometimes arrested and imprisoned without the involvement of the courts for speech that was viewed to be inimical to the war effort. Probably the most highly publicized incident arose out of the seizure of former Congressman Clement Vallandigham of Ohio. Another such incident occurred in Philadelphia in which Charles Ingersoll, a successful lawyer and leading citizen, was the target. He was the grandson of Jared Ingersoll, a signer of the Constitution and a former United States Attorney, and the son of Charles Jared Ingersoll, a renowned lawyer and a longtime member of Congress.

Charles Ingersoll, who was married to the daughter of a former Tennessee Senator, defended slavery and was an arch foe of the abolitionists. He blamed the intransigence of the North and the Lincoln Administration for the South’s secession and the Civil War. In August 1862, he spoke at a large rally in Philadelphia where he denounced the Lincoln Administration and its conduct of the war. He urged a vote for the Democratic ticket in the fall election and accused the Lincoln Administration of corruption and profiteering. Two days later, the local Provost Marshal arrested him. Upon being released on bail, he was taken into custody by the United States Marshal who held him pursuant to a standing order of the War Department which had authorized the arrest of anyone who, among other misdeeds, “give[s] aid and comfort to the enemy.”

Ingersoll petitioned Judge Cadwalader for a writ of habeas corpus, and Cadwalader thereupon ordered him to be brought before the Court for a determination as to whether he was being held lawfully. Counsel for the Marshal argued that he did not have to produce Ingersoll because the privilege of the writ of habeas corpus had been suspended. Cadwalader postponed the hearing for a day but warned the Marshal not to remove Ingersoll outside of the jurisdiction.

The Marshal, in the meantime, had been commanded to take Ingersoll to Washington for confinement in the Old Capitol Prison. Before any removal of Ingersoll had taken place and before any critical confrontation between the executive and judicial branches of government erupted, Secretary of War Stanton learned of the arrest and defused the situation by directing Ingersoll to be released. Consequently, Judge Cadwalader never had to resolve this potentially explosive issue.

In addition to the important constitutional question involved, this case illustrates the often close web of personal relationships that existed among the leading families in Philadelphia in this era. Judge Cadwalader, Ingersoll, Ingersoll's father, and one of Ingersoll's attorneys Peter McCall were all fellow parishioners at Philadelphia's Christ Church.

The Ingersoll case also had a familial twist for Judge Cadwalader. A year or so before the arrest of Ingersoll, the Judge's brother George Cadwalader, a Philadelphia lawyer and a Brevet Major General, had played a leading role in a similar habeas corpus matter. In May 1861, shortly after Lincoln had authorized the suspension of habeas corpus in the area between Philadelphia and Washington, John Merryman was arrested at his home north of Baltimore for "acts of treason" as a Lieutenant in the rebel forces. He was taken to Fort McHenry which happened to be under the command of Brevet Major General Cadwalader.

Attorneys for Merryman sought and obtained a writ of habeas corpus from the aged Chief Justice Taney, an appointee of President Andrew Jackson. The writ was served on General Cadwalader who was ordered to produce Merryman in court. Cadwalader, through a representative, respectfully requested a postponement until he received further instructions from the President. Refusing to defer, Taney again ordered Merryman to be produced. Cadwalader refused to do so.

In a Baltimore courtroom in which both Cadwalader and Merryman were absent, Taney, describing himself as "Chief Justice of the Supreme Court of the United States at chambers," quickly proceeded to hand down his decision. He declared that only Congress could suspend habeas corpus and that the President had violated the Constitution in doing so without Congressional approval. Taney directed that Merryman be freed. Lincoln and Cadwalader declined to comply.

Nonetheless, like Ingersoll, Merryman was released at the direction of the Secretary of War, but in his case after a few weeks of confinement. Although Merryman was then indicted for levying war against the United States, he was granted bail and the charges were ultimately dismissed.

The intervention of the Secretary of War in the Merryman case and later in the Ingersoll case averted a serious clash between the President and the federal courts over habeas corpus. In particular, it enabled Judge Cadwalader to avoid the need to decide whether to follow Chief Justice Taney's ruling in *Merryman* in which the judge's brother was a principal player. On a personal level, a potentially difficult issue between Judge Cadwalader and his brother was obviated.

Habeas corpus as a significant constitutional issue faded from view in the Eastern District as of March 1863, when Congress ratified the President's suspension of the writ of habeas corpus and empowered him to suspend the writ anywhere in the nation "during the present rebellion . . . whenever, in his judgment, the public safety may require it." On the same day in March 1863, Congress also enacted a national draft. Cases involving conscription, enlistment, and desertion thereafter appeared on Judge Cadwalader's docket.

He discharged one soldier, James Burke, on petition of his mother, because the soldier had enlisted at the age of seventeen without her consent. Frederick Stingle, a married man over thirty-five years old who had been drafted in violation of law, was also released from military service. In another case, Cornelius McCall had allegedly been drafted and had failed to appear at the Montgomery County Courthouse for induction at the appointed time. He was charged with desertion. Judge Cadwalader freed him after finding that the military enrollment list had misstated his first name.

In *Antrim's Case*, W.H.H. Antrim claimed he was entitled to a draft exemption as the only son of a widow dependent for support on his labor. He lost before a three-person local commission, known as the Board of Enrollment. After he reported for duty and received his uniform, he filed a habeas corpus petition before Judge Cadwalader in which he sought to be discharged. The Board which had decided against Antrim consisted of three members: its president who was the Provost Marshal of the district with the rank of a Captain of Cavalry; the local surgeon whose duty it was to examine those drafted to determine whether they were fit to serve; and a citizen-at-large. The crucial question was whether the Court had jurisdiction in a habeas corpus proceeding to decide whether the decision of a local Board of Enrollment denying a draft exemption could be reviewed by a court when the draft law provided that the Board's decision was final. Judge Cadwalader held that he did have jurisdiction. Interpreting the law to give the Board's decision finality without judicial review, said Judge Cadwalader, would render it unconstitutional as vesting judicial powers in a body whose decision-makers were not judges appointed by the President and confirmed by the Senate. Finally, he rejected the argument that the writ of habeas corpus had been suspended with respect to draft cases such as this.

Not all cases before Judge Cadwalader during the Civil War involved war-related issues. In 1861, for example, he decided a lawsuit brought by the well-known actress Laura Keene who claimed certain rights in the British comedy *Our American Cousin*. Unbeknown to him or anyone else at the time, both the actress and the play were later to make a cameo appearance on the stage of American history. On the evening of April 14, 1865, President and Mrs. Lincoln were attending a performance of *Our American Cousin* featuring Keene at Ford's Theater when John Wilkes Booth fired his fatal shot.

According to Judge Cadwalader's findings in the lawsuit before him, the play was written in England in 1852 by a man named Tom Taylor. In 1858, after a rewriting of the manuscript, Taylor transferred all rights to it to Keene, who at the time was a lessee and proprietor of a theater in New York. It was first performed there in October 1858, where it met with great success. Although Keene was willing to grant the defendants William Wheatley and John Sleeper Clarke the right to perform the play in Philadelphia for a fee, they decided to go forward without any agreement with her. They asserted in their defense that they had legally obtained a

copy of the play from the former wife of an English actor. Defendants repeatedly performed the play thereafter in Philadelphia with profitable results.

Judge Cadwalader first decided that Keene had no federal statutory copyright in the manuscript. Nonetheless, he exercised his “general equitable jurisdiction” as the citizenship of the parties was diverse. He ruled that Keene had literary proprietorship in *Our American Cousin* and was entitled to a decree against defendants. After the matter of damages was referred to a master, she was ultimately awarded \$500.

During this period and up until July 1, 1863, the American Philosophical Society Hall continued to be leased for the use of the Eastern District, although the Court had vacated the premises before that time. The minutes of the Society reflect that in June the Court sought permission to remove its papers from the Hall’s “N.E. attic.”

In February 1863, in the midst of the Civil War, a new Post Office and Courthouse costing \$60,000 was dedicated. It was located on the south side of Chestnut Street east of Fifth Street, less than a block from the American Philosophical Society Hall and next to what had been the Second Bank of the United States. A wing extended south to Library Street. The new structure contained marble floors and steam heat and was the first building constructed in Philadelphia specifically to house a federal court. Many dignitaries including Postmaster General Montgomery Blair, Secretary of Interior John Usher, and Governor Andrew Curtin, were present for the festivities which featured a band, a dinner, and the unfurling with great fanfare of an American flag from a rooftop staff. The second floor of the wing that bordered on Library Street provided accommodations for the Court, which moved into that space in May 1863. A contemporary newspaper article commented, “The whole arrangement tends to the comfort and will meet the wants of the Post Office as well as the United States Courts, in an admirable manner, there being convenience within the structure for both departments.” It was here that Judge Cadwalader sat for his remaining years on the bench.

In the fall of 1868, he was called upon to decide who was the rightful United States Attorney for the Eastern District of Pennsylvania. In doing so, he was confronted with the then highly publicized Tenure of Office Act, which the Radical Republican Congress had passed over the veto of President Andrew Johnson in 1867. It was designed to curb the power of the President by limiting his right to dismiss certain high level government officials, including cabinet members, without the advice and consent of the Senate. When Johnson “suspended” Secretary of War Edwin M. Stanton without the Senate’s approval in the summer of 1867, Johnson’s conduct in allegedly violating the Tenure of Office Act was made one of the subjects of the Articles of Impeachment voted against him by the House of Representatives. Johnson’s trial in the Senate, which resulted in his acquittal by one vote, had ended in May 1868.

In April 1868, while the Senate was in session, President Johnson had nominated John P. O’Neill as the new United States Attorney. The Senate adjourned in July without acting on the nomination. In August, Johnson gave O’Neill a recess appointment to the position with his commission to expire at the end of the next session of the Senate.

Charles Gilpin, who had previously been appointed the United States Attorney by President Lincoln, contested O'Neill's right to the office. Gilpin's four-year term had come to an end on March 15, 1868, but he had continued to serve. Gilpin contended that his term as the United States Attorney was extended under the Tenure of Office Act since the Senate had not concurred in his being replaced. Judge Cadwalader rejected the argument on the ground that the Act specifically exempted from its grasp those offices for which the law provided a specific term.

This, however, did not mean vindication for O'Neill. Cadwalader ruled that he too was not entitled to the office because the Constitution allows the President to make recess appointments only when the vacancy occurs while the Senate was not in session. At the time Gilpin completed his four-year term on March 15, 1868, the Senate was sitting. Nonetheless, Cadwalader recognized O'Neill's right to act, not as the United States Attorney as such, but rather under the instructions and authorization of the Attorney General.

The Civil War, among many other consequences, had severely disrupted everyday commercial activities between the North and the South. Once the conflict ended in the spring of 1865, federal courts were often called upon to untangle what it had wrought. In 1847, a man named Henry Bird, a resident of Virginia, had purchased an insurance policy on his life from the Penn Mutual Life Insurance Company in Philadelphia. He had dutifully paid the annual premiums until 1861 when hostilities prevented him from continuing to do so. Penn Mutual declared the policy lapsed, and in correspondence with the policyholder after the war refused to change its position. Bird brought suit in the Eastern District for an order to allow him to pay the unpaid premiums, to have the policy declared in force, and to obtain an accounting of any dividends due. Based upon equitable considerations due to impossibility, Judge Cadwalader found in his favor and ordered reinstatement of the policy on payment of the premiums and an accounting with respect to dividends.

In the years after the Civil War, the calendar of Judge Cadwalader contained a wide variety of other cases reflecting the fact that Philadelphia was a major railroad and banking center as well as an important port. In 1876, the nation's centennial year, it was estimated to have a population of 817,000 and was the second largest city in the United States behind New York.

The railroads were no strangers to the courtroom. Taxation of banks and the right to engage in banking also came before the Court. Disputes continued to arise in admiralty. Among them were cases involving the licensing of a vessel, the delay in the delivery of a cargo of goat skins originating in Trieste, and the delivery of a wet potato shipment after a long tumultuous voyage.

Harkening back to the days of the Whiskey Rebellion and Judge Peters, the Government instituted a proceeding before Judge Cadwalader to seize equipment used for the production of distilled spirits. It did so because of the failure of the distiller to pay certain taxes due on his whiskey. This time, however, the flames of rebellion were not ignited.

One of the most far-reaching results of the Union victory in the Civil War was the ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution. These amendments abolished slavery, declared former slaves to be citizens, prohibited a state from depriving a citizen of life, liberty, or property without due process or of the equal protection of the laws and from denying the right to vote on account of race, color or previous condition of servitude. The Fugitive Slave Act, which Judges Kane and Cadwalader had expended so much time and energy to enforce, was now a dead letter. Congress undertook the Reconstruction of the South and expanded the reach of the federal government in the process. From now on, it would be the United States is, not the United States are.

During Reconstruction, Congress granted the federal trial courts for the first time general jurisdiction over cases arising under federal law. No longer would such suits be relegated to the state courts. As Felix Frankfurter and James Landis wrote many years ago, the Judiciary Act of 1875 now made the federal courts “the primary and powerful reliances for vindicating every right given by the Constitution, the laws, and treaties of the United States.”

Judge Cadwalader died in Philadelphia in January 1879, less than four years later and after almost twenty-one years on the bench. He had lived through and had weathered the most momentous events in American history since the creation of the federal courts. A newspaper article at the time of his death recorded, “He was loved and respected by all with whom he came in contact, and he dies leaving an illustrious name.” A marble tablet, containing a bronze frieze of his profile, was commissioned and remains to this day on the third floor of the present courthouse. It reads:

JOHN CADWALADER
JUDGE OF THE DISTRICT COURT
OF THE UNITED STATES
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA
FROM APRIL 24TH 1858
UNTIL HIS DEATH JANUARY 26TH 1879

PACE AC BELLO
INTER CIVES ET INTER GENTES
SALVA JUSTITIA PATRIA SALVA
JUS DIXIT

(ENGLISH TRANSLATION:)
IN PEACE AND WAR
BETWEEN CITIZENS AND BETWEEN NATIONS
SAVE JUSTICE SAVE COUNTRY
THE LAW SAID