



John K. Kane

Born: May 16, 1795, in Albany, New York.

Died: February 21, 1858, in Philadelphia, Pennsylvania.

Federal Judicial Service:

Judge, U.S. District Court for the District of Pennsylvania

Nominated by James K. Polk on June 11, 1846, to a seat vacated by Archibald Randall.

Confirmed by the Senate on June 17, 1846, and received commission on June 17, 1846.

Service terminated on February 21, 1858, due to death.

Education:

Yale College, 1814

Read law, 1817

Professional Career:

Private Practice, Philadelphia, Pennsylvania: 1817-1824, 1836-1845

State Representative, Pennsylvania: 1824-1825

Attorney/Board Member, Chesapeake and Delaware Canal Company: 1825 –

City Solicitor, Philadelphia, Pennsylvania: 1828-1830, 1832

U.S. Commissioner to settle claims with France: 1832-1836

Attorney General, Commonwealth of Pennsylvania: 1845-1846

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Judicial Biography

*President James K. Polk, a Democrat, had taken office in March 1845, after having defeated Henry Clay, the Whig candidate. He chose John Kintzing Kane, as the sixth judge of the court, for the seat previously held by Judge Archibald Randall. Kane was born in Albany, New York, in 1795, the son of Elisha Kane, a successful merchant, and Alida Van Rensselaer, a member of one of New York's old Dutch patroon families. After her death when their son was four years old, Elisha moved to Philadelphia where he remarried. John Kane later took as his middle name the maiden name of his step-mother.

Following Kane's graduation from Yale College, he read law under Joseph Hopkinson before the latter became a federal District Judge. He was admitted to the Bar in 1817 and two years later married Jane Leiper whose father was prominent in Philadelphia business and political circles. Thereafter, Kane was elected to the Pennsylvania House of Representatives for a term, served as the City Solicitor of Philadelphia, and was chosen by President Andrew Jackson in the 1830's as one of the United States Commissioners to settle claims against France for attacks on American shipping during the Napoleonic era. At this time, his cousin Elias Kane was a United States Senator from Illinois. While originally a Federalist, John Kane had become an active member of the Democratic party and partisan of Jackson after John Quincy Adams and Henry Clay allegedly made a "corrupt bargain" to deprive Jackson of the Presidency when the election of 1824 was thrown into the House of Representatives.

During the 1844 presidential campaign, Kane was a strong supporter of and advisor to Polk. In 1845, Governor Francis Shunk appointed him the Attorney General of Pennsylvania. While holding this office, he prosecuted those who were arrested during the anti-Catholic riots in the Kensington District of Philadelphia during the mid-1840's.

In addition to his political activity and public service, Kane, like his predecessors, had a wide range of interests. He served for many years as an officer of the American Philosophical Society and as its president for the last year of his life. He also sat on the boards of a canal company and a bank, held various offices in the Presbyterian Church, and was a vice-president of the Pennsylvania Institution for the Instruction of the Blind. During the time he was a judge, he and his family lived in center city Philadelphia in the winter and in the summer at a home he had built in the outskirts of Philadelphia County called Fern Rock.

In the first part of the nineteenth century, nepotism was an accepted Government employment practice. At Kane's installation as a federal judge in June 1846, his commission was read by the Court Clerk, who was Francis Hopkinson, Esquire, the grandson and namesake of the first District Judge. He had been appointed to this position by his father, Judge Joseph Hopkinson. Not long thereafter, Kane took the same course and replaced Hopkinson as the Clerk with his own son, Thomas L. Kane. Consideration of family relationships was nothing

* 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.

new in the appointment of court clerks. In 1798, Judge Peters had hired David Caldwell as the clerk to succeed his father Samuel Caldwell after the latter's death.

The rules of conduct for judges were different then than they are now. The strict separation of judges from politics was not required in the mid-nineteenth century. At the urging of Vice-President George Mifflin Dallas, a fellow Pennsylvanian, Kane organized a rally in Philadelphia in 1847 on behalf of the Polk Administration to support the war with Mexico.

One of the first cases Judge Kane encountered on his docket was an unfinished criminal matter. A jury had found a seaman named Harding guilty of murder of the second mate on the barque *Cactus* at a trial before Justice Baldwin and Judge Randall, while two other seamen, Grimes and Williams, had been found guilty of manslaughter. The defendants had filed post-trial motions in which, among other arguments, they maintained that the evidence was insufficient for conviction. Before the Court could rule on the motions, Justice Baldwin had died. Judge Randall was about to decide the issue when he suddenly became ill and also died. Complicating matters further was the fact that there was no verbatim trial transcript. All that existed, according to Judge Kane, were notes of the prosecutor and "the columns of an irresponsible newspaper, that gives sometimes the language of the witness, sometimes its import, and sometimes the reporter's opinion of its value, these, and nothing more, are to form the basis of our judicial action."

Justice Robert C. Grier, who had replaced the deceased Justice Baldwin as the Circuit Justice, deferred to Judge Kane with respect to the post-trial motions. In his opinion, Judge Kane explained that "To my mind, the principle of the law is clear. The defendant, before sentence can be pronounced on him, has a right to the judicial determination of his guilt by the Court, as well as by the jury. If the verdict does not satisfy the conscience of the judge, the prisoner is entitled to a new trial."

While there was some indication about how Judge Randall had intended to rule if he had lived, Judge Kane rejected the notion of relying on what he had learned in this regard. He reasoned that "a judge's opinions became operative only when they are solemnized by their assertion from the bench." After reviewing the American and English precedents, Judge Kane, with the concurrence of Justice Grier, exercised the Court's discretion to grant a new trial for all three defendants. At the retrial, Harding and Grimes were convicted of manslaughter and Williams was acquitted.

There are times in the life of a judge when he or she is called upon to enforce a statute or adhere to a Supreme Court decision which is unpopular with a significant segment of the community. Judge Peters presided over prosecutions under the Sedition Act of 1798, a statute with which he was in sympathy. Some 50 years later, Judge Kane faced an even more controversial and challenging set of circumstances.

As sectional antagonism increased over slavery in the later 1840's, Congress ultimately enacted a series of statutes, signed by President Millard Fillmore, known as the Compromise of 1850. Among this legislation was the Fugitive Slave Act, which was designed to placate

Southern slave owners who wanted more effective assistance from the federal government to recover their slaves who fled to the North and freedom.

Judge Kane sat in a particularly difficult milieu in Pennsylvania with its history of hostility to slavery. There was a strong Quaker presence which had long opposed human bondage. As previously noted, in 1780, taking the lead among the states, Pennsylvania had enacted a law, drafted by William Lewis, that provided for the gradual abolition of slavery in the Commonwealth. In 1826, the General Assembly approved an Act making it a crime, punishable by a mandatory minimum term of imprisonment of seven years and a maximum term of twenty-one years as well as confinement at hard labor, for taking or carrying away by force and violence any Negro or mulatto to a place outside the Commonwealth with the intent to sell, detain or keep such person as a slave. In 1847, after the United States Supreme Court had declared the 1826 law unconstitutional, the General Assembly enacted the Liberty Law which, among other provisions, made a slave free once he or she stepped onto Pennsylvania soil. Yet, many leading citizens of Philadelphia had married into Southern families and had commercial ties with and sympathy for the South. The textile industry in Philadelphia depended on Southern cotton. While the Underground Railroad existed in Philadelphia, bias against free people of color was commonplace among the general population.

The Fugitive Slave Act provided for the appointment of commissioners to aid in the arrest, capture and return of runaway slaves. It authorized owners to obtain arrest warrants for their slaves and to seize and arrest them without a warrant if it could be done without breach of the peace. The slaves were then to be taken before a judge or commissioner whose duty it was to hear and determine the case of a claimant in a summary manner and upon satisfactory proof “by deposition or affidavit.” Once the Court issued a certificate of ownership, a claimant was allowed to use “such reasonable force and restraint as may be necessary” to return the slaves to the state or territory from which they had fled. Significantly, the fugitive slaves were not allowed to tell their side of the story at any trial or hearing. The statute specifically prohibited their testimony from being admitted into evidence.

With respect to compensation, the commissioners and Deputy United States Marshals were to be paid more if the fugitive was returned to slavery after a hearing than if the claimant-slave owner was unsuccessful. Finally, the Act made it a crime for anyone to prevent the arrest of a fugitive, to harbor or conceal a fugitive, or to refuse to aid the government when called on by a Deputy United States Marshal in procuring an arrest of a fugitive.

The fugitive slave cases defined the remaining years of Judge Kane’s tenure on the bench. One of the most highly publicized cases arose out of an incident that occurred in Christiana, Lancaster County, Pennsylvania in September 1851. A slave owner from Maryland named Gorsuch had obtained from a United States Commissioner a warrant to arrest certain of his slaves who had fled across the border to Christiana. Gorsuch arrived with a number of others, including a Deputy United States Marshal, at the house where they were being harbored. The slaves refused to come out despite a “promise” they would be treated fairly. While in the vicinity, the defendant Castner Hanway, a Caucasian, explicitly rejected the request from the Deputy Marshal to assist in the apprehension of Gorsuch’s slaves. He asserted that the slaves had a right to defend themselves and that he was opposed to the Act of Congress under which

they were being seized. Ultimately, the slaves, together with some of a group of about 150 Blacks who had gathered, fired weapons at those who attempted to seize them. A gun battle erupted and Gorsuch was killed. Numerous indictments followed both in the federal and state courts.

Reflecting the temper of the times and the passions that the Christiana Riot, as it came to be known, had generated, Hanway was indicted for treason and tried before Justice Grier, Judge Kane, and a jury. Thaddeus Stevens, the Whig and later Radical Republican Congressman from Pennsylvania, headed the defense team. The prosecutors included not only John W. Ashmead, the United States Attorney for the Eastern District of Pennsylvania, but also James Cooper, one of Pennsylvania's senators. Because of the insistence of Maryland's Governor, the Maryland Attorney General, Robert J. Brent, also actively participated in representing the federal Government. Attending the trial in the crowded courtroom was Lucretia Mott, the Quaker abolitionist and a leader of the nineteenth-century women's rights movement.

The indictment charged that:

Hanway, wickedly intending and devising the peace and tranquility of the United States to disturb, and prevent the execution of the laws thereof, to wit, "An act, &c.," and another act, supplementary to the same, passed on the 18th September 1850, did on the 11th of September 1851, wickedly and traitorously intend to levy war against the United States.

In the charge to the jury, Justice Grier, with the concurrence of Judge Kane, expressed the Court's view of the facts "without desiring to invade the prerogatives of the jury in judging the facts of this case." The Court conceded that Hanway's conduct did not constitute treason by levying war against the United States. On the other hand, it was quick to advise the jury that it disapproved of resistance to the Fugitive Slave Act:

The act of 1850, passed to secure them [the people of Maryland] in the enjoyment of their acknowledged rights, had been received with a shout of disapprobation, in certain parts of the country. Meetings had been held in many places in the North, denouncing the law, and advising a traitorous resistance to its execution; conventions of infuriated fanatics had incited to acts of rebellion, and even the pulpit had been defiled with furious denunciations of the law, and exhortations to a rebellious resistance to it. The government was perfectly justified in supposing that this transaction was but the first overt act of a treasonable conspiracy extending over many of the Northern states to resist by force of arms the execution of this article of the constitution and the laws framed in pursuance of it. In making these arrests, and having this investigation, the officers of government have done no more than their strict duty. The activity, zeal, and ability which have been exhibited by the learned attorney of the United States in endeavoring to bring to condign punishment the perpetrators of this gross offence, are deserving of all praise.

The jury accepted the Court's view of the evidence and found the defendant not guilty of treason. The abolitionists were elated and the partisans of slavery were outraged.

In another high profile case, John Wheeler, a North Carolinian and the United States Minister to Nicaragua, was passing through Philadelphia to New York in 1855 with his slave Jane Johnson and her two children. While they were on a steamship awaiting departure from Philadelphia, one Passmore Williamson, a Quaker and an abolitionist, boarded the vessel. He inquired of Johnson whether she desired to be free and received an affirmative answer. He then separated her and her children from Wheeler, took them ashore, and released them. A habeas corpus proceeding followed in which Judge Kane ordered Williamson, a friend of Kane's son Thomas, to produce the bodies of the slaves. When he failed to do so, Judge Kane jailed him for contempt at Moyamensing Prison. After much legal wrangling, Williamson was freed but only after 100 days of confinement. This decision to imprison Williamson caused much public uproar and even calls for Kane's impeachment.

In one of his opinions in this case, he expounded at length his views, undoubtedly commonly held at the time, about slavery. He began with the proposition that the United States Constitution recognized slaves as property. According to Judge Kane, it secured the rights to slave property to the same extent as it protected other property. He then acknowledged, "We revolt in Pennsylvania, and honestly no doubt, at this association of men with things as the subjects of property . . . " Yet, he noted that even in Pennsylvania Blacks were denied political rights. Quoting from the late Justice Baldwin, he wrote that the right of the master to the services of a slave was no different than the right of a parent to the services of his minor children. If it was unjust and oppressive to have property in human beings for life, "the sin is on the makers of laws which tolerate slavery" and not on those who honestly acquire slaves. To blame the latter is "the rankest injustice towards our fellow men." Judge Kane's ambivalence about slavery was evident, but in the end he adhered to the principle that the law must be obeyed, however distasteful:

The only permanent danger is in the indulgence of the humane and benevolent feelings of our nature, at what we feel to be acts of oppression towards human beings, endowed with the same qualities and attributes as ourselves, and brought into being by the same power which created us all; without reflecting, that in suffering these feelings to come into action against rights secured by the laws, we forget the first duty of citizens of a government of laws, obedience to its ordinances.

In November 1855, after his release, Williamson lost no time in suing Judge Kane in the Court of Common Pleas of Delaware County for damages for false imprisonment. The case was still pending when Kane died several years later and only then was it dismissed. The federal government had rebuffed all of Kane's efforts to obtain reimbursement from it for the expenses of his defense.

The records of the Eastern District reflect that Judge Kane presided over numerous other fugitive slave cases during his years on the bench. Sometimes the fugitives were returned to the South and other times they were not. In some instances the identification of the slave was a

thorny issue as in the case of one Henry Garnet. In all instances, moral issues were clearly present. He wrote to one of his sons that in Pennsylvania the Fugitive Slave Act “has been carried out firmly and honestly.”

During the time Kane sat as a federal judge, his son Robert Patterson Kane was a practicing attorney. The court records identify him as representing parties in lawsuits over which his father presided. He was defense counsel for some of the Blacks in state trials arising out of the Christiana Riot and also represented the fugitive slave Henry Garnet in another case. No one seemed to have raised any concern about the close familial relationship between the Judge and the lawyer for a litigant before him.

Judge Kane had appointed another son Thomas Kane not only as the court clerk but also as a commissioner under the Fugitive Slave Act. Thomas soon resigned the latter position as an act of conscience. He, like his brother Robert, was a vocal opponent of slavery and on the eve of the *Hanway* trial delivered “six superior turkeys” and a pound cake to the prison for Hanway and other prisoners to enjoy. He even went so far as to aid runaway slaves by using the family home at Fern Rock as a way station. Incensed by his son’s indignant letter of resignation as a United States Commissioner, the judge ruled him in contempt and sentenced him to prison, but Supreme Court Justice Grier quickly overturned the order. The record is unclear whether Thomas Kane ever served any time behind bars.

In addition to issues concerning fugitive slaves, Judge Kane presided over a trial of a sea captain named Darnaud who was indicted for engaging in the slave trade on the high seas, a capital offense. In his charge to the jury, Kane explained that unlike piracy which was against the law of nations and punishable by all countries regardless of the citizenship of the pirates, trading in slaves on the high seas was legal under the laws of many countries, although not under the laws of the United States. Consequently, the defendant could be convicted only if the vessel involved was owned in whole or in part by an American citizen or the sea captain himself, was an American citizen and had the intent to engage in the slave trade.

The indictment charged that Darnaud had captained the *Grey Eagle* which had picked up Blacks on the coast of Africa and had confined them with the intent to sell them as slaves. Because the evidence was equivocal on the ownership of the vessel and there was strong evidence that Darnaud was a French rather than an American citizen, Judge Kane cautioned the jury particularly in light of the “awful and solemn consequences to the defendant” that it may only find the defendant guilty if it did so beyond a reasonable doubt. The jury returned a verdict of not guilty.

Until 1854, the County of Philadelphia consisted of more than two dozen townships, boroughs, and districts in addition to the City of Philadelphia whose boundaries at that time encompassed only the area between Vine and South Streets from the Delaware River on the East to the Schuylkill on the West. In 1854, the Pennsylvania General Assembly consolidated the City and County, making the two jurisdictions co-terminus.

With this consolidation, the District Court moved out of Independence Hall where it had sat since 1830. In June 1854, the Government leased for the Court the ground and second floors

of the Hall of the American Philosophical Society situated immediately south of Philadelphia's City Hall on the west side of Fifth Street. The space had previously housed the offices of the City's Mayor, among others. Undoubtedly, Judge Kane was instrumental in bringing about this contractual arrangement since at the time he was also the vice-president of the Society. In 1856, the government offered to purchase the Hall and its lot for the Court for \$78,000, but because of a deed restriction, the United States Attorney General refused to approve the acquisition. This space continued to be leased for the Court until 1863.

Judge Kane died in Philadelphia in February 1858 some three years before the beginning of the Civil War. His judicial career was the subject of much controversy. His decision to jail Williamson for contempt had inflamed a large segment of the community in the North. According to a local newspaper, "The manner in which he discharged his judicial duties has caused much excited discussion, and Judge Kane has been denounced as tyrannical and arbitrary. But of his legal acquirements, there could not be two opinions. He was both a ripe scholar and an able lawyer. In the social relations he was perfectly exemplary . . . His manners were those of a finished gentleman." Another newspaper commented, "His judicial career was chiefly distinguished by a decision which excited, at the time it was given, the keenest controversy, and the principles involved in which, applied on a larger scale, are now agitating the whole country to its very foundation."

Judge Kane did not live long enough to know about the later achievements of his sons Thomas and Robert. For a time, Robert served as Acting United States Attorney for the Eastern District and became a Colonel in the Union Army during the Civil War. Thomas was also commissioned a Union officer. He was wounded twice, taken prisoner, exchanged, cited for gallantry at Gettysburg, and finally breveted a Major General. Francis Fisher Kane, the judge's grandson and Robert's son, would be appointed by President Woodrow Wilson in 1913 as the United States Attorney for the Eastern District of Pennsylvania.