ENCYCLOPÆDIA

OF

CONTEMPORARY BIOGRAPHY,

OF

PENNSYLVANIA.

VOL. 1.

ILLUSTRATED WITH PORTRAITS ON STEEL.

NEW YORK.
ATLANTIC PUBLISHING & ENGRAVING COMPANY.
1889.

DANIEL AGNEW.

HON. DANIEL AGNEW, of Beaver, Beaver County, Pa., an eminent jurist, formerly President-Judge of the Seventeenth Judicial District of Pennsylvania, and Chief-Justice of the Supreme Court of that State, was born in Trenton, N. J., January 5, 1809. On the paternal side he is of Irish ancestry, and on the maternal of Welsh. His grandfather, Daniel Agnew, emigrated from County Antrim, Ireland, to the province of New Jersey in 1764. He settled in Princeton and was for a time in the Revolutionary army. Of his eight children, the eldest, James, was graduated at Princeton College in the class of 1795, studied medicine with Dr. Maclean, father of the late President of Princeton College, and after taking two courses of lectures at the Medical University in Philadelphia, was graduated May 31, 1800. He established himself in practice in Trenton, and, in January, 1806, married Sarah Bond, the eldest daughter of Major Richard Howell, a veteran of the Revolutionary War, and afterward Governor of the State of New Jersey, and Chancellor, holding the latter office for a period of nine years. He was descended from the Howells of Caerfille, in Wales. About the year 1810 Dr. Agnew determined to remove westward. He made a prospecting journey alone to the Mississippi Valley, and returned in 1813, riding on horseback all the way from Natchez to Princeton, and passing through the Indian country then known as the wilderness. In the following October he set out with his family to establish a home in Mississippi. His wife, however, became alarmed at the dangers of navigation as then rudely conducted, and declined to make the flat-boat voyage down the Ohio and Mississippi Rivers. Under these unexpected circumstances, on reaching Butler County, Pa., Dr. Agnew concluded to settle in that vicinity, and shortly afterward located in the city of Pittsburgh, where he continued to reside until his death in 1840. Two States may, therefore, claim an interest in the honors that have fallen to Judge Agnew, that of his birth and that of his accidental adoption and subsequent distinction. Dr. Agnew gave his son the best educational advantages of the day, including a full course at the Western University at Pittsburgh. After being graduated, Daniel began the study of law under the direction of Messrs. Henry Baldwin and W. W. Fetterman, and was admitted to practice in 1829, when but twenty years old. He at once opened an office in Pittsburgh, but believing that a smaller place would offer superior inducements to a young lawyer, he removed to Beaver a few months later, and there, although originally intending to remain only a year or two at most, made his permanent home, under the encouragement of an unlooked for success at the bar. Impressed by the vast amount of litigation growing out of the unsettled condition of titles to land in a newly populated region, he applied himself at the outset of his professional career, to the mastery of the intricacies of this species of causes. As a land lawyer he made a progress in his business and reputation that was all the more notable because of his youthfulness, and he soon came to be recognized as a young man of singularly acute mind, phenomenal memory and rigid application. In 1833 he connected himself with the newly organized Whig party, and by reason of his natural gifts of oratory soon advanced to the position of a leader. Three years later his abilities commanded such a degree of respect that, while only twenty-seven years of age, he was elected a member of the Constitutional Convention which assembled in 1837, holding sessions both in Harrisburgh and in Philadelphia, and framing a series of amendments to the Constitution of 1790, which subsequently became parts of it. He was the author of that important amendment regulating the appointment and tenure of the judiciary, which through its introduction by his colleague, Mr. John Dickey, became known as "Dickey's Amendment," and was in force until modified by the amendment of 1850. Upon the expiration of this service he resumed his practice and pursued it until the Presidential campaign of 1840, when he took the stump in the interest of General Harrison and delivered many effective speeches. Fascinating as were the excitements and associations of a political campaign, and conspicuous as his abilities had rendered him, he resolutely declined to be considered in any light an aspirant for public office. His practice had reached large proportions, and he was unwilling that any considerations should deflect him from the proper management of it. In the campaign of 1844 he was again prevailed upon to take the stump, and he then labored earnestly for the success of Henry Clay. In 1848, despite his known aversion to political office, he was made a Presidential Elector on the Taylor and Fillmore ticket and, urged by appeals he felt unable to resist, to canvass

the western portion of the State in its support. In this campaign he was compelled to meet the strong opposition of the anti-slavery men, led by Joshua R. Giddings, and was the only speaker in his region familiar with their arguments and able to answer them. In the summer of 1851 Governor Johnston appointed him President-Judge of the Seventeenth Judicial District of Pennsylvania, then composed of Beaver, Butler, Mercer and Lawrence Counties, to fill a vacancy, and in the election of the following October the people of the district testified to his high standing, professional fitness and personal worth by electing him to the position for the full term of ten years. This term of service was, in the main, free of events of a public character. But as it was drawing to a close the rumblings of the approaching conflict between the two sections of the country attracted all classes to the consideration of the loyalty of their judiciary. Unionists felt that much of the ultimate triumph of their cause would depend upon the firmness of the judges before whom many complicated and unusual questions would be brought. In the case of Judge Agnew there was nothing in his words or actions that could yield the least pretext for alarm. He had administered his high office with wise discretion, and had abundantly proved the courage of his convictions. Not only the people of his district, but the officials of the State felt a secure confidence in his integrity and patriotism, and, although he would have been personally gratified with the opportunity for retirement, it seemed settled by common consent that he should be retained in the position, rather than that it should be occupied by an untried man. As a result, Judge Agnew was without opposition re-elected in 1861 for a further term of ten years. The spirit of secession manifested itself in his district early in that year. As soon as its presence was determined, Judge Agnew assumed the task of organizing a Committee of Safety, of one hundred trusty citizens, and became its chairman. Off the bench his views on the situation were given with no uncertain ring, and his actions in the various patriotic movements in his district comported with his strong Union utterances. On the bench it was his privilege to establish his loyalty as early as the month of May. He was the first of the State judges to take cognizance of the aiders and abettors of rebellion around him, and to enforce the necessity of strict obedience and the paramount duty of unswerving fidelity to the Federal Government. In charging the grand jurors of Lawrence County he instructed that treason was a crime, and all who had any lot or part in it were criminals before the law. He combatted with great lucidity the doctrine held by many of the Northern allies of rebellion, that aid to the enemies of the United States, which the Constitution defines to be treason, meant foreign enemies only; and charged specifically that where a body of men were actually assembled for the purpose of effecting by force a treasonable purpose, all those who performed a part, however minute and however remote from the scene of action, were actually leagued in the general conspiracy, and were to be considered traitors. Furthermore, he took up the claim that the Federal Government had no power to defend and maintain itself against domestic assault, in an elaborate address on "The National Constitution in its Adaptation to a State of War." This address was so timely, so powerful in argument, and so positive in conclusions, that it drew wide-spread attention to its learned author. Its delivery was repeated in Harrisburgh in February, 1863, by special request of the Legislature, and the Union League Club of Philadelphia published two large editions of it, and scattered it throughout the loyal States in pamphlet form. That it immeasurably strengthened the Union cause cannot be questioned, neither that it was one of the really great documents of that trying period. In the critical days of 1863, when all possible means were being taken to add weight to the State ticket which his eminent services demanded that the Hon. Andrew G. Curtin should head, the Republican party turned instinctively to Judge Agnew, and gave him the nomination for the position of Judge of the Supreme Court of the State. The personal character of the ticket, and the momentous principles it represented, carried the day by a majority of 15,000. In this office of exalted trust, Judge Agnew was called upon almost immediately to decide a question of law of vast National importance. The former bench had by a majority vote pronounced against the constitutionality of the draft law, and the question recurring to the new court, whereof the senior members were divided in opinion, it became his duty to render a decision. In a carefully prepared opinion he maintained that the Federal Government had a right to suppress rebellion and enforce obedience to the laws of Congress, and concluded by affirming the constitutionality of the law under consideration. A still graver question arose shortly after this, involving a construction of constitutional provisions, the principles of marine insurance, and the status of the seceded States. The record shows that it grew out of the capture of the merchant vessel, "John Welsh," by the Confederate privateer "Jeff Davis," and the question at issue was whether the letters of marque of the latter and the nature of the service in which she was

engaged divested her capture of its piratical character. Judge Woodward, the Chief Justice of the State, sustained her capture as an act of war by a *de facto* government. Judge Agnew denied Judge Woodward's conclusions. His opinion asserted that secession and confederation were nullities; that the United States was the supreme government both *de jure* and *de facto;* that while its functions were temporarily suspended in certain districts, its actual existence continued everywhere within its rightful jurisdiction, coupled with actual possession of important posts in every seceded State, necessarily excluding all other sovereignties; and that a rebellion or attempted revolution by a portion of a people, taking the form of a government, but leaving the true government *in esse*, actively and successfully asserting its rightful authority, with important possessions, did not constitute a *de facto* government, for the reason that it in no sense represented a nation in fact nor exercised its sovereignty. He, therefore, denied Judge Woodward's conclusions of an accomplished revolution—the position of an independent power *de facto*—and the abrogation of the Constitution in the seceded States, leaving them under the laws of war and of nations alone. Again: Pennsylvania was the third State in which the constitutionality of the Act of Congress, authorizing the issuing of treasury notes and making them lawful money and a legal tender for debt, was called in question. New York and California were the first two, and their courts had sustained the act. Holding that a specific contract for payment in coin was not payable in treasury notes, and that the latter were receivable only for debts payable in lawful money, Judge Agnew, with Judges Strong and Reed, overruled Chief Justice Woodward and Judge Thompson, and brought the Supreme Court of Pennsylvania into line. Judge Agnew had in fact decided the same question in the same way while in the Court of Common Pleas of Butler County. His opinion was published in the Legal Journal of Pittsburgh. During his service on the Supreme Court bench, Judge Agnew rendered many other important decisions, and interpreted many principles of law which have become recognized as standard authority, not only in his own but in other States. Among these the gravity of the questions involved and the influence of his opinions, give an appropriateness to the mention of three cases in this connection. The first was the case of Speer vs. Blairsville. In this the vital question was that touching the right of a State to raise money by taxation to pay bounties for enlistments. When the case came before the Supreme Court, ex-Chief Justices Black and Lowrie argued in opposition to the power to tax; but Judge Agnew settled the legality of the act imposing the tax in an opinion which placed the question beyond future controversy. The second, in brief, involved the right of deserters from the military service to vote at State elections. Two cases came before the court for the adjudication of the one principle, that of Huber vs. Reilly and McCafferty vs. Guyer. In the former a majority of the court held that the electoral franchise of a deserter from military service could not be taken away by an Act of Congress without a conviction of desertion by a court martial, and that a board of election officers was incompetent to try the fact. Judge Strong, who wrote the opinion, put the decision on this ground, conceding that the Act of Congress was not an *ex post facto* law, and that Congress had power to pass it. Judge Agnew, however, maintained that the question before the election board was in no sense a trial for a penalty, but an inquiry into a personal privilege claimed by one offering to exercise it, and the real question was one of fact only, desertion, triable as any other fact, in relation to citizenship, by the election board; the consequence being declared by Congress, whose right to declare it was not denied by Judge Strong. In the second case, which was presented under a State law authorizing the board of election officers to try the fact of desertion, Judge Agnew took the ground that the whole question was resolved into the single inquiry: Is a deserter, proscribed by Act of Congress, a *freeman* under the election clause of the Constitution? In his decision he established the status of a freeman by tracing the origin of the term from the earliest historical periods down to the insertion of the word in the State Constitutions of 1790 and 1838, and proved that a proscribed deserter was not a freeman within the meaning of the word in the Constitution. He, therefore, concluded that as the election board was authorized by a statute to determine the fact, the appellant was rightfully denied a right to vote. The third case arose before the adoption of the XIVth amendment to the Federal Constitution and before the passage of the Pennsylvania act defining the rights and privileges of negroes within the State limits. The latter act made it an offence for a railroad company to discriminate between passengers on account of their race or color. In 1867, when the case in question reached the Supreme Court, public opinion ran high in favor of the rights of colored people. A lower court had decided against the right of a railroad company to direct a negro woman to take a different seat from the one she was occupying. In considering the point made in the first decision, that the other seat was "one in all respects as comfortable, safe, convenient, and one not in-

ferior to the one she left," Judge Agnew realized that as the Constitution and precedents stood when the case arose, it was impossible to deny with honesty that the legal status of the negro, both civil and political, differed from that of the white man; and that the social status was even more dissonant, that the rights of carriers and the repugnance of races necessarily involved a reasonable power of separation of passengers, as a part of the carrier's duty in the preservation of the public peace and the proper performance of his public obligations. Of all the judges who heard the argument, Judge Reed alone dissented. In 1873 Judge Agnew became Chief-Justice of the Supreme Court of Pennsylvania, and served in that office until 1879. During the whole period of his service on the bench he worked constantly, and each Monday morning the sessions of the court had a full budget of his decisions, while his vacations were given up to the unravelling of more than usually difficult points. Shortly after he became Chief-Justice, a majority of the Convention called to propose amendments to the State Constitution, to be voted upon by the people, conceived that its powers were not restricted by the call under which it was convened; and, claiming absolute sovereignty, undertook to displace the existing election laws in the city of Philadelphia by an ordinance, without any previous submission of the new constitution to the people, as required by the laws under which the Convention was called and authorized. The case came before the Supreme Court on a proceeding to enjoin the Convention's appointees from interfering with the lawful election officers. There was at first a disposition on the part of some members of the court to dismiss the bill on the ground of want of jurisdiction; but the Chief-Justice prepared an opinion, which has been considered the ablest of his entire judicial career, during the night following the argument, and upon this the court unanimously agreed to meet the question on its merits, and enjoin appointees of the Convention from interfering. This opinion was supplemented by another by Judge Agnew in what is known as "Wood's Appeal," in which the claim of absolute sovereignty was discussed upon fundamental principles, and the same conclusion reached. It was an interesting fact, developed by the ruling of Judge Cox in the selection of jurors for the trial of President Garfield's murderer, that Judge Agnew was the first judge in Pennsylvania and one of the earliest in the country to modify the rule which excluded jurors who had formed opinions in capital cases, and admit them if their opinions were not so fixed but that they could still try the prisoner on the evidence alone. In a murder case, in 1874, Chief-Justice Agnew considered at length the plea of insanity as a defense, and laid down such clear rules in relation thereto, that his most pertinent remarks are worthy of repetition here. He held that, "The danger to society from acquittals on the ground of doubtful insanity demands a strict rule. Mere doubtful evidence of insanity would fill the land with acquitted criminals. To doubt one's sanity is not necessarily to be convinced of his insanity. A person charged with crime must be judged to be a reasonable being until a want of reason positively appears. Insanity as a defense must be so great as to have controlled the will and taken away the freedom of moral action. When the killing is admitted, and insanity is alleged as an excuse, the defendant must satisfy the jury that insanity actually existed at the time of the act; a doubt as to the sanity will not justify the jury in acquitting." On the expiration of his term of service as Chief-Justice, Judge Agnew retired to his home in Beaver, with a name respected everywhere and a fame that will live in the judicial annals of the Nation. He was full of honors, and although full of years also, was then and still is, in a large enjoyment of physical health and mental activity. Since his retirement he has frequently appeared in public and the familiar courts of law. He delivered the address of welcome of the citizens of Pittsburgh to General Grant upon his return from the memorable trip around the world. He supported with his voice, his vote and his influence the candidacy of General Garfield; was employed by Allegheny County in the cases growing out of the great railroad riots of July, 1877, prepared the address to the Legislature, and argued the question of the county's liability before the Supreme Court of the State, and more recently argued the case of Kelly vs. the city of Pittsburgh in the United States Supreme Court. In the latter case his brief was an elaborate statement of the purpose of the XIVth amendment to the Federal Constitution, and a vindication of individual fundamental right, and the jurisdiction of the court in a case of unlawful taxation, infringing upon the right of property without due process of law. While all of his decisions as a judge bear the stamp of profound statesmanship, those rendered during and immediately after the war period will doubtless have the greatest permanent value. These, with the consequences probable had they never been given, have been thus succinctly summed up: "Without the power to draft, the military arm of the government would be powerless. Without money to carry on the war it would be ineffectual. Without the power to pay bounties, the hardships

of war would fall on classes least able to be spared. With a *de facto* standing of the Confederate Government it would have been entitled to recognition by European powers; its prize court decisions would be recognized as a valid source of title; its ports would be opened by foreign powers, and various obstacles thrown in the way of the United States to prosecute its lawful authority. With a right to vote by deserters, the whole policy of the State might be changed and its safety endangered." In the year 1880 the Constitutional Temperance Amendment Association of Pennsylvania was formed, and Judge Agnew became its first President. He entered into the work actively, making addresses throughout the State, and contributed largely to the passage of the amendment through the House of Representatives, by a majority of nearly two to one. It failed in the Senate, but active measures were continued by the Association, Judge Agnew giving his personal efforts, and making an address before the Assembly in 1883, which was published and largely circulated. To that Association, aided by other temperance organizations, much of the success of the Amendment in the session of 1887 is attributable. Judge Agnew's part was active and influential. Judge Agnew was married in July, 1831, to Miss Elizabeth Moore, daughter of General Robert Moore, a leading lawyer and Representative in Congress. Six children were born of this union, two of whom, the eldest son and the eldest daughter, are dead. The latter was the wife of Col. John M. Sullivan, of Allegheny City, and died in 1874. Of the others there are two sons, both lawyers; the elder, F. H. Agnew, lately a member of the State Senate, is practising in Beaver, and the younger, Robert M. Agnew, in Lancaster, Pa. One of the daughters is the wife of Hon. Henry Hice, of Beaver, President-Judge of the Court her father presided over so long and worthily. The other daughter is the wife of Rev. Walter Brown, of Cadiz, Ohio. Judge Agnew's wife died after a lingering illness, Oct. 1, 1888, in the seventy-ninth year of her age. Judge Agnew has been honored with the degree of LL.D. from two sources, first Washington College and then Dickinson. To-day he is universally recognized as one of the best and soundest lawyers that ever wore the ermine of the Keystone State.