

Judah P. Benjamin: Part II: The Queen's Counsel

By Judah Best

Let us set the scene. It is now the beginning of April 1865. Judah P. Benjamin has served in the cabinet of President Jefferson Davis, Confederate States of America, for four long years, first as Attorney General, next as Secretary of War, and, finally as Secretary of State. When we left him, he had just said farewell to the United States Senate, departed Washington, returned home to New Orleans to join in the celebration of secession from the Union. It was a heady time in New Orleans: full of sound and fury, signifying very little.

He was called to Montgomery, Alabama, the site of the new Confederate Government (provisional) to consult with the new President, Jefferson Davis. Benjamin had first become acquainted with Davis when they had served in the United States Senate. In fact, Davis, in their first contact, had been so acerbic and ill-tempered that Benjamin had felt his honor had been questioned, and called Davis out in writing to a duel.¹ When Davis received Benjamin's letter, he realized that he had gone too far and made amends on the floor of the Senate. In the aftermath of this incident they became fast friends: both, after all, were or had been plantation owners, and came from the adjoining states of Louisiana and Mississippi. Equally as important, they had lived and harmonized in the small capitol city of Washington, especially through the efforts of Jefferson Davis' elegant young wife, Varina. And so, Judah Benjamin packed, and bid all his American relatives an affectionate farewell, with the hope of returning, if but for a brief visit now and then. He could not know that he would never return to New Orleans, or that he would never see his sisters or brothers again.

In Montgomery, he was chosen Attorney General of the Confederacy by Jefferson Davis, who later stated that “Mr. Benjamin, of Louisiana, had a very high reputation as a lawyer, and my acquaintance with him in the Senate had impressed me with the lucidity of his intellect, his systematic habit and capacity for labor. He was therefore invited to the post of Attorney General.”²

If anything, Benjamin was over-qualified for the position, and with his capacity for work and efficiency, he soon had the Confederate Justice Department up and humming. What Jefferson Davis really wanted, it seems, was a close legal advisor (in modern terms: a Counsel to the President). Throughout Judah Benjamin's tenure in the Confederate Government (particularly when the government was moved to Richmond after Virginia seceded from the Union) that's what he

became. And when the Secretary of War resigned to become a Brigadier General, Judah Benjamin, on 17 September 1861, was appointed Acting Secretary of War (while remaining Attorney General as well).³

To put it bluntly, Judah Benjamin was a disaster as Secretary of War (he was confirmed in the post 21 November 1861). He managed to establish systems and controls within the War Department that had been sorely lacking, and that Department also hummed, but the greatest efficiency cannot produce overseas shipments of munitions and guns, which were ordered too late (before his tenure). Moreover, the best of initiative cannot prevent inadequacies in the diet of fighting troops, when food was always in short supply.⁴ He worked seven days a week, but it was not enough, and his great instincts and talents were out of place: first, he got into a quarrel with "Stonewall" Jackson that nearly resulted in that gifted general's resignation, and worse, he became involved in and thus was censured for the capture of Roanoke Island by Union forces. His role in the fiasco was this: He allowed himself to be positioned in the middle of an argument between a senior general officer and his junior on the issue of whether or not to provide additional fortification and ammunition for the fort on the island. When the senior officer, a West Point graduate, assured Benjamin that the island was adequately fortified, he supported him. He chose the wrong horse, and when the fort was lost, the Confederate Congress wanted him investigated for malfeasance.⁵ What the Congress did not know, is that there were no arms and ammunition available to send to the fort, and Benjamin could not tell a congressional committee how desperate the situation was without revealing this fatal information to the enemy.⁶

Twenty-five years later, at the unveiling of the Robert E. Lee monument in Richmond, Colonel Charles Marshall (who had served as aide to Lee) read an extract from an old letter of Benjamin's which revealed all this information. The letter revealed also that Benjamin had consulted with President Davis, had advised him of "my utter inability to supply the requisitions" and Davis had agreed to allow Benjamin to "submit to unmerited censure" rather than "reveal to a congressional committee our poverty."⁷ What Davis did was move him upstairs to Secretary of State before Benjamin's enemies in Richmond could successfully attack him.

And so, with this tumultuous background, on 17 March 1862, Benjamin assumed the only position in the Confederate Administration that his language skills and world picture would help him administer skillfully—except that it was too late: had he been appointed Secretary of State in early 1861, he might have established meaningful relations with England and France and so gained official recognition by each of these two powers for the Confederate States of America. There were already able Confederate Agents in England (James Murray Mason) and France (John Slidell). Both men had been in the U.S. Senate with Benjamin: Mason as Senator from Virginia, and Slidell as Senator from

Louisiana (and Slidell was Benjamin's closest political advisor back home in Louisiana). However, the timing was off; 1862 saw President Lincoln's issuance of the Emancipation Proclamation, 1863 saw, by July 4, the North's victory at Gettysburg and the South's surrender of Vicksburg. The political climate in Europe, particularly in France and England, turned irrevocably against the South. The next move, the rise of General Ulysses S. Grant and his assumption of control (together with General Meade) over the Army of the Potomac, and the drawn out war of attrition in Virginia between Grant and Robert E. Lee, with the fate of Richmond and Petersburg hanging in the balance, spelled the beginning of the end of the Confederacy. Add to this mix General Sherman's march through the South and General Sheridan's destruction of the Shenandoah Valley as the breadbasket for Lee's trapped army, and the end was in sight.

Judah Benjamin could see the end, certainly by late March of 1865. By that time the Confederate government had been quietly packing its valuable archives and removing them from Richmond. On April 1, 1865, General Lee informed Jefferson Davis that he could not hold out much longer, and would have to evacuate the Richmond defenses, which would turn Richmond into an open city for Union troops and agents. Thus, on April 2, 1865, Judah Benjamin was burning papers of the Department of State and papers related to the activities of the Confederate secret service, for in addition to his other responsibilities for Jefferson Davis, Benjamin was in charge of a number of shadowy projects which were underway in Canada and the Northern United States. Those papers were too sensitive to remain in a government office about to be overrun by Union troops.

Shortly after eleven o'clock that night, a train bearing Davis, Benjamin and other Confederate officials set out for Danville, Virginia.⁸ The fugitive government remained at Danville until word of Lee's surrender at Appomattox Courthouse on April 9 reached them. They then fled at night by train to Greensboro, North Carolina, and from there proceeded southward to Charlotte. Benjamin there advised Davis that surrender was the only option available to the Confederacy⁹. Davis would not accept this, and the Davis party continued their flight with the President of the Confederacy still resistant to surrender. Benjamin, more realistic, left them near Washington, Georgia on May 3 1865, and set out to escape, first disguised as a Frenchman traveling through the South on horseback.¹⁰ But let him tell his story as he later related it in writing to his sisters:¹¹

I started on my journey on horseback, and knowing it to be a hazardous one, I determined to disguise myself and assume a false name. I cannot begin to give you the details of my adventures. I found my most successful disguise to be that of a farmer. I professed to be traveling in Florida in search of land on which to settle, with some friends who desired to move from South Carolina. I got a kind farmer's wife to make me some homespun clothes

just like her husband's. I got for my horse the commonest and roughest equipment that I could find, and I journeyed as far as possible on byroads, always passing around towns and keeping in the least inhabited districts. My progress was necessarily slow, about thirty miles a day, till I reached central Florida.

He was then guided to the beautiful mansion of Major Robert Gamble near the Manatee River. Benjamin remained there until plans could be completed for his flight to the Caribbean. The stay, while idyllic, was not without potential peril, for Davis had been captured by this time and the hunt was on for Judah P. Benjamin. Captain Archibald McNeill, who was also sheltered in the mansion, was himself sought by Union soldiers. There was a surprise raid by Union troops on the mansion, and Benjamin and McNeill (accompanied by his dog) only just escaped into the dense thicket at the rear of the house where they hid in absolute silence while the soldiers searched the mansion and the surrounding land, including the thicket. Benjamin, McNeill and the dog (who was hugged by McNeill to keep him quiet) stayed there until darkness when the soldiers gave up the search.¹² It was time to move on, and we pick up Judah Benjamin's travails from his letters to his family:

I made my way, therefore, to the western coast of Florida, and was nearly a month in procuring a small boat and securing the services of two trusty persons to accompany me in the perilous effort to cross the Gulf of Mexico in a little open boat. I finally departed on the 23rd June, and after a voyage of about six hundred miles in a yawl-boat open to the weather, with no place to sleep, and exposed to frequent squalls, some very severe, I happily arrived at the Bemini Isles [sic] on the Bahama reef, on Monday the 10th instant. Here my risk of capture was at an end, and I deemed it safe to take passage in a small sloop, loaded with sponge, for Nassau.

Actually, that was not the end of this adventure, because the sloop leaked, the sponges expanded with water and burst the seams of the sloop, and Benjamin had to be rescued at sea by an English Brig that landed him back at Bimini, where he acquired yet another sloop for the trip to Nassau. Upon arrival, he immediately left for Havana, and from there, to St. Thomas to catch the steamer for England.¹³

Five hours after departure, the steamer caught fire and returned to St. Thomas, and the fire was put out through concentrated dousing by all the other ships in the harbor. Two days later, Benjamin set out yet again and finally reached England on 30 August 1865.¹⁴ After the initial exhilaration of escaping and arriving in England, he settled some last business for the Confederacy, counseled with James Mason in England, and proceeded to France to visit with John Slidell, but more important, to be re-united with Natalie and Ninette. While in France, Benjamin was told that if he wished, he could obtain "an honorable and lucrative position in the financial circles in France."¹⁵ But he had decided that his future lay in becoming a London barrister.

Three problems needed to be addressed: (1) Would he be recognized as an English citizen? (2) How was he to arrange to work and learn under a senior barrister and how was he to join a legal Inn? And finally, (3) How was he to support himself and his family in the United States and in Paris while all this was taking place? The last question was the first solved, at least temporarily: During his time in the Confederacy, Benjamin had been in the practice of purchasing bales of cotton and sending them by blockade runners to Liverpool for sale. The practice was risky, for it was questionable whether cargoes could avoid Union blockade and reach Liverpool.

Communication between Richmond and Liverpool had been fragile and irregular; but now that he was in England Judah Benjamin found out that of the 700 or so bales of cotton he had sent abroad, some 100 bales had landed, and he had about \$20,000 waiting for him. Moreover, as a result of a timely, short-term investment, he had made another \$10,000.¹⁶ In short, it seemed as if he had enough money for his family and to sustain himself while he prepared for the Bar. Months later, his plans were set awry by the failure of the English banking firm where he had placed a large part of his funds. Judah Benjamin's response was to get a job with an English newspaper writing a weekly by-line on international matters at five pounds an article. He was so successful that he was offered a regular full-time position as sub-editor. He declined the opportunity because it would have interfered with his plans to become a barrister. He was reduced to living on bread and cheese, but never told any of his relatives of his straitened circumstances.¹⁷

On 13 January 1866, he entered as a student at Lincolns Inn, and shortly afterward was admitted to "read law" under the instruction of Charles Pollack. Charles Pollack was the son of the Chief Baron of the Exchequer, Sir Frederick Pollack, who "suggested" to his son that Benjamin study under him.¹⁸ At Lincoln's Inn, as at all Inns of Court, Benjamin (in theory) was required to attend for twelve terms (three years) simply by eating a certain number of dinners in the hall of the Society or Inn, that is to say six dinners in each term. The young men who came up to London to eat their dinners in Hall that term "saw a grizzled man, old enough to be their father, who had, after four years of the fiercest fights, unremitting labour, and the exercise of great power, just escaped with his life, and now sat quietly down to qualify himself to earn his bread."¹⁹

On May 22, 1866, Benjamin presented a petition to the Masters of the Bench of Lincoln's Inn reciting the terms of his birth in St. Croix while that island was under English rule, and the petition recognizing his English citizenship was granted. The London *Times* sets forth succinctly what happened next:

By the influence of Lords Justices Turner and Giffard, of Page Wood (Lord Hatherly) and Sir Fitzroy Kelly, the secretary of the Confederacy was dispensed from the regular three years of unprofitable dining, and called to the Bar in Trinity term (June 6) 1866. Thus, at the

Best/ Judah P. Benjamin-Part 2

age of 55, Mr. Benjamin became an English barrister, joined the old Northern Circuit, and immediately got briefs from Liverpool lawyers, who knew from their American correspondence what a word of power was the name of Judah Benjamin in New Orleans, Washington, and Richmond.²⁰

So, less than a year after setting foot in England, Judah Benjamin was a working professional again. There was in fact, some early business: for instance, an old established ship insurance club was desirous of having its Rules, which were very lengthy, remodeled. The annual meeting of the club was at hand, and as Charles Pollock writes, "the time remaining was so short that two experienced counsel, who had for some years past acted for it, declined the service, although some considerable fee was marked on the papers."²¹ Benjamin's name was mentioned and the instructions were sent to him late one evening. Benjamin undertook the assignment:

the very next morning, commencing after an early breakfast, and never pausing for a midday meal, he worked on steadily, and shortly before eight, the hour at which he usually dined, the rules were complete, written out in his own neat hand,***with scarce an alteration or correction from beginning to end, as if he had been composing a poem.²²

Still, he was not all-consumed with work. As Justice Ruth Bader Ginsburg points out in her perceptive lecture at Loyola University School of Law in February 2002, "Repeating his Louisiana progress, Benjamin made his reputation among his new peers by publication."²³ He turned author in 1867 and had in preparation (as he put it in a letter to his family in New Orleans) "a law work which will be ready for publication in November or December next, and will bring me into more prominence with the profession***." Judah Benjamin's law work, "Benjamin's Treatise On The Law Of Sale Of Personal Property, With References To The American Decisions, And To The French Code And Civil Law," commonly known as *Benjamin on Sales*, was an instant success, both in England and in the United States. In fact, it still is used. Reportedly, it is now in its 7th Edition.²⁴ *Benjamin on Sales* "was almost immediately recognized as a legal classic and filled a need long felt by the British bar."²⁵ As the London *Times* put it, "It was a reasoned and orderly presentation of the law, a discussion of its principles, accompanied by illustrations from the best of the reported cases, and a merciless rejection of those which were repugnant to general rules."²⁶ It is said that some judges in England would not take their seat without their personal copy of the work beside them on the bench.

Charles Pollock, who had the opportunity to observe Benjamin throughout his career in England, noted, in an article published posthumously, "Reminiscences of Judah Philip Benjamin", that "one great and early advantage held by Benjamin as a lawyer was this—that he was a native of, and educated within, the State of Louisiana, which was one of the French colonies ceded to England, and therefore, the law taught and administered within it was that which took its origin in Best/ Judah P. Benjamin-Part 2

the Code of Justinian, and was afterwards adopted by the nations of Europe, and continued to be the law of France until the Code Napoleon. The principles and practice of this great system of law Benjamin knew and appreciated thoroughly, and he was at all times ready to point out its leading features, and how they differed in principle from English law.”²⁷ The special significance of this advantage, as Pollock pointed out, was that this gave Judah Benjamin “a distinct position superior to his brother advocates when arguing, before our Judicial Committee of the Privy Council, appeals from those of the English colonies of French origin which were ceded to England before the Code.”²⁸

In the middle of this breakout period in Benjamin's life as a barrister, author and bon vivant in England, he did not forget the struggles of Jefferson Davis; the former President of the Confederacy had by now been released from military prison by use of the writ of habeas corpus and placed on bond awaiting trial on criminal charges (which trial was never to take place). His health impaired, Davis took the opportunity to travel to England to recuperate and see what financial opportunities might be presented, and to begin writing his memoirs. Benjamin met with Varina and Jefferson Davis in London. It appears to have been an edgy meeting, with the former President concerned with the past and attacks on his reputation, and with the former Secretary of State living in the present and planning for his growing professional future. Davis was particularly infuriated by the accounts of the war and of Davis himself set forth in a book by Edward Pollard, the former editor of the Richmond *Examiner*. He asked Benjamin's advice on answering the charges in the book. Benjamin's advice was consistent with his reaction to all matters involving the war:

If you publish the statement you will find it impossible to remain silent under the replies, and your existence here will be poisoned by the necessities of engaging in a newspaper warfare at every disadvantage against hosts of unscrupulous enemies. The book you notice, I never heard mentioned, and it will drop still-born into oblivion, unless advertised by your notice of it.²⁹

Davis took Benjamin's advice. They would communicate in writing over the next fifteen years and see each other on five other trips Davis took to Europe, but never with the collegiality and closeness that they had enjoyed during their time together in the Confederacy.

Meanwhile, his reputation and practice were growing: in a letter dated 15 October 1871 to his family in New Orleans, he noted that financially he had "really 'turned the corner' at last"³⁰ and by 10 August 1872, he informed them that he had had “high professional promotion lately”.³¹ By early 1870, Benjamin had been made Queen's Counsel for Lancashire County only, which was necessary for Liverpool business.³² It would be important for him to be made Queen's Counsel for

all of England. In the Spring of 1872, Benjamin had argued *Potter v. Rankin* in the House of Lords, and his argument had moved Lord Chancellor Hatherley to recommend to the Queen a patent of precedence.³³ The Queen consented and issued her warrant directing that such a patent should be granted to him. He now had rank above all future Queen's Counsel. As he put it in his family in New Orleans:

I received it in person from the Lord Chancellor at his own house, and he gave it to me with some very flattering expressions. I need hardly say that as the law journals and the Times have contained some articles on the subject it will be of immense value to me in my profession in various ways, both in increased income and in greater facility of labor, for you must know that a "leader" who has a patent of precedence has not half as hard work as a "junior," because it is the business of the junior to do all the work connected with the pleadings and preparation of a cause, and the leader does nothing but argue and try the causes after they have been completely prepared for him ***.

I now have to wear a full bottomed wig, with wings falling down on my shoulders, and knee breeches and black silk stockings and shoes with buckles, and in this ridiculous array, in my silk gown, to present myself at the next levee of Her Majesty to return thanks for her gracious kindness³⁴.

Benjamin's rank as leader dated from 1872 for all legal assignments and for all of England. The extraordinary nature of his receipt of the patent of precedence resulted in a wealth of favorable publicity from the press and the legal journals. He literally had more work than he could handle. He was now restricting himself more and more to practice in London and limiting himself even there to appearances at the House of Lords and the Privy Council. His linguistic ability was attuned to the dominion cases in Privy Council, for he was fluent in English and French, understood Latin, and could read Spanish. In Volume Three of the Appeals Cases for 1877-8, he is listed in 30 of the 65 cases. These include an appeal from the Supreme Court at Shanghai, another from the Supreme Court of South Australia, two from Canada, and one from the British Supreme Consular Court of Constantinople.³⁵

All this while, he continued sending money to his family in New Orleans and maintaining his wife and daughter in France. On 7 September 1874, Ninette Benjamin was married in Paris to Captain Henri de Bousignac of the French Army. It was a lavish wedding, and Benjamin settled a substantial dowry upon his daughter. Later, he engaged in the construction of a formidable mansion in Paris as he contemplated his retirement. However, by 1882, heart trouble was compounded by a chronic diabetic condition. He nevertheless continued to take cases and argue them. At Christmas 1882, Benjamin had a severe heart attack and was forced to retire from his profession. He formally announced his retirement and returned the briefs and the money advanced as retainers. As he later wrote to his sister: "A letter from the Attorney General informs me that he has received a requisition signed by more than eighty Queen's Counsel, and by all the leading

members of the bar of England, desiring him to offer me a public dinner in order to take a "collective farewell" of me and to testify their high sense of honor and integrity of my professional career, and of their desire that our relations of personal friendship not be severed. The correspondence will be made public. This is the first time that such an honor has been extended to a barrister on leaving the profession."³⁶ The banquet took place in the hall of the Inner Temple, on Saturday evening, June 30, 1883. The Attorney-General introduced Benjamin, who was cheered throughout his remarks, and concluded as follows:

[F]rom the Bar of England, I never, so far as I am aware, received anything but warm and kindly welcome. I never had occasion to feel that any one regarded me as an intruder. I never felt a touch of professional jealousy. I never received any unkindness; on the contrary, from all quarters I received a warm and cordial welcome, to which, as a stranger, I had no title, except that I was a political exile, seeking by honourable labour to retrieve shattered fortunes, wrecked in the ruins of a lost cause.³⁷

With cheers of the Bar ringing in his ears, Judah Benjamin left England for France, never to return. On 6 May 1884, he died in his seventy-third year at his mansion in Paris. He was buried in Père- Lachaise cemetery in grounds marked only for the families of St. Martin and Bousignac. The report of the death of this extraordinary man covered three columns in the *London Times* on 9 May 1884.

“Arms and the man I sing, who first from the shores of Troy
 came destined an exile to Italy and
 the Lavinian shores, a man much buffeted on
 land and on the deep....”
 Virgil³⁸

¹ See, e.g., Meade at pp. 116-117.

² Davis, “Rise and Fall of the Confederate Government, I, p. 242.

³ Meade at p. 179.

⁴ See, e.g., Meade pp. 189-196.

⁵ See Eli N. Evans, Chapter 7, 115-136 (“The Unprepared Warrior”); Meade, pp. 214-219.

⁶ See Meade, p. 228.

⁷ Id. at p. 229; Evans at p. 147.

⁸ Evans pp. 292-297. Evans notes (see p.295) that Benjamin had been issued \$1500 in gold from the Confederate Secret Service account

⁹ Meade at p. 317.

¹⁰ Meade at p. 319.

¹¹ Letter to Mrs. John Kruttschnitt, Butler at pp. 363-364. Benjamin also notes in the 23 July letter that he had left nine hundred dollars in gold for “sis and Harriet” (sisters Rebecca and Harriet) in passing through Georgia. (Id at p. 365.)

¹² The Gamble Mansion was purchased in 1924 by the Judah P. Benjamin Chapter of the United Daughters of the Confederacy (Meade, p. 409 n. 33).

¹³ Id. at pp. 364-370.

¹⁴ Id. at pp. 370-371.

¹⁵ Meade at p. 326.

¹⁶ Id. at p. 327; Evans at p. 329.

¹⁷ Id. at p. 328-329.

¹⁸ Evans at p. 332.

¹⁹ The London *Times*, 9 May 1884, p. 10, column 2.

²⁰ Id.

²¹ Charles Pollack, “Reminiscences Judah Philip Benjamin” in “The Green Bag,” Vol. 11, No. 9, 1889, p. 398 (hereafter “Pollack”).

²² Pollack, *op.cit.*

²³ Ruth Bader Ginsberg, Associate Justice Supreme Court of the U.S., “Four Louisiana Giants in the Law”, Judge Robert A. Ainsworth, Jr. Memorial Lecture, Loyola University School of Law, New Orleans, 4 February 2002.

²⁴ Author’s conversations with Q.C.s and judges in the U.K.

²⁵ Meade, p. 337.

²⁶ The London *Times*, 8 May 1884, p. 10, Column 2.

²⁷ Pollack, *op. cit.* at 398.

²⁸ Id.

²⁹ Meade at p. 345.

³⁰ Butler at pp. 396-397.

³¹ Butler at p. 398.

³² Queen’s Counsel (Q.C.) only emerged into eminence and integrity in the early 1830’s. Q.C.s were traditionally selected from barristers. Typically, barristers were promoted only after ten years’ experience by the Lord Chancellor. As Q.C.s, they specialize in the trial or appeal of cases, and earn higher fees and receive precedence in court appearances. A Q.C. wears a “silk” gown, whereas a junior barrister wears a “cotton” gown. A “patent of preference” denotes the date from which a Q.C. has authority over all barristers and all Q.C.s junior to him.

³³ The London *Times*, 9 May 1884, p. 10, Column 2.

³⁴ Letter of August 10, 1872 to sisters, Butler at 398-400.

³⁵ Law Reports Appeal Cases, vol. III, Pt. 1, 1887-8, reported in Meade at p. 363.

³⁶ Butler at pp. 413-414, emphasis in original.

³⁷ The London *Times*, 2 July 1883.

³⁸ *Aeneid*, Book 1 lines 1-3, Publius Vergilius Maro (Virgil)