

Judah P. Benjamin: Part I: “THE LITTLE JEW FROM NEW ORLEANS”

By Judah Best¹

He was born in 1811 in the Virgin Islands and laid claim to both United States and (later) English citizenship. He died in 1884 and was buried at Père-Lachaise cemetery in Paris by his wife of some 50 years, who had been unfaithful to him throughout the marriage with the regularity of a metronome. In so doing (burying him, that is) she consigned him to obscurity by placing his body in the burial grounds of his beloved daughter’s in-laws and availing herself of only part of his proper name (and Gallicizing it at that as Philippe). The result was much as if you were to bury General Robert E. Lee with a gravestone memorializing “Edward Lee.” And so “Philippe” rested unrecognized for over fifty years. It would take the Daughters of the Confederacy until 1938 to find him, place his correct full name on the grave, and list his accomplishments. He had, after all, been a United States Senator from Louisiana, and had gone on to become, in this order, Attorney General, Secretary of War, and finally, Secretary of State of the Confederate States of America. As the Daughters also noted, he had been an astonishingly able and successful Queen’s Counsel in England. His full name is Judah Philip Benjamin, he was an active practicing member of the Supreme Court bar, and this is his story.

Judah P. Benjamin was born on 6 August 1811 in Christiansted on the island of Saint Croix, the second largest of the Virgin Islands. At that time the Virgin Islands were governed by the British as part of the continuing struggles of the Napoleonic Wars. His mother (maiden name: Rebecca de Mendes) had been born in Holland, and had grown up in England. Judah’s father, Philip Benjamin, was born in the West Indies. Both were of Sephardic stock: that is, they were Spanish Jews, and as such, were descendants of Jewish refugees expelled from Spain by Ferdinand of Aragon and Isabella of Castille some three hundred-odd years earlier. They were married in England, made an attempt to run a business there, failed, and moved the family to Christiansted only to meet with the same result. And so it was that the Benjamins, accompanied by their growing family (composed at that time of a daughter, Rebecca, and two sons, Solomon and Judah) determined in 1813 to seek a new life in the United States.¹

They journeyed to Wilmington, North Carolina, and later Fayetteville, to be with Mrs. Benjamin’s uncle, Mr. Jacob Levy, who was a moderately successful business man. However, as a result of the business failure of Jacob Levy in the aftermath of the panic of 1819, the Benjamins left Fayetteville and moved to Charleston, South Carolina. There, in a city which had the largest Jewish population of any

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city in the United States, Philip Benjamin scratched out a bare living for a family composed of his wife and children, now six in number.²

Judah Benjamin was an apt scholar, and received a sound early education, both in Fayetteville and in Charleston, where he attracted the attention of the president of the local Hebrew Orphans Society, who placed him in a private academy and paid for the special education.³ In 1825, at the age of 14, Judah was sent to Yale University. He was the youngest boy in his class. He had passed Yale's entrance exam in Cicero's *Select Orations*, Clark's *Introduction to the Making of Latin*, Virgil, Sallust, the Greek testament, Dalzel's *Graeca Minora*, Adam's *Latin Grammar*, Latin Prosody, and Arithmetic.⁴ In his first year Judah studied Livy, Adam's *Roman Antiquities*, and English Grammar and Arithmetic, and began Day's Algebra. Then, in the same year, he had Xenophon, Herodotus, Thucydides, Lysias, Isocrates, Morse's *Geography*, finished Day's Algebra and studied five books of Euclid.⁵ Judah continued his education, with high marks, until he left Yale suddenly at 16 in the middle of his junior year.

There is a mystery surrounding his departure which is exacerbated by two venal letters sent to Northern newspapers some 30 years later when he had become part of the government of the Southern Confederacy: those letters accused him of having stolen from other students while at Yale. It is a matter of fact that he was a brilliant student at Yale. It is a matter of fact that Judah's father was behind in paying tuition and that other sources of revenue previously available for that purpose seem to have dried up. It is also true that Judah Benjamin, as a mature man, retained Northern counsel to file suit when those letters were published, only to be told that it was inadvisable to do so, probably because the poisonous climate in the North toward the newly formed Southern Confederacy would prevent a fair trial.⁶ At all events, what is clear is that he returned home to Charleston, visited his parents, and in 1828, at the age of seventeen, decided to pursue his destiny in the bustling city of New Orleans, Louisiana. It is said that when he arrived in New Orleans, he had five dollars in his pocket.⁷

After a series of temporary jobs, he went to work for a notary public, and thus entered into the world of formal commercial documents. This job had the additional benefit of introducing him to potential future clients.⁸ While he worked, he studied for admission to the bar. In December of 1832, he was admitted to the bar. Judah had tutored local residents in English during his studies: it was his way of learning French while making some small additional income. In this role, he met Natalie St. Martin, the 16 year old daughter of a wealthy Creole (French) family. They were married in February 1833 three months after he was admitted to the bar: he was twenty-one, she was five years younger. The young married couple lived with the bride's family in New Orleans while Judah grew his practice. It would be an understatement to say that it was not a happy, successful marriage. He was well-educated: she had little education. He was devoted to his law practice: she was bored (the only child to grow past infancy,

Ninette, was born ten years after they were married). Further, New Orleans was changing from a French town to an American city. And so it was that Natalie Benjamin consoled herself in other ways, and finally took their child with her to Paris, where she would remain (except, of course, in the summertimes, when she would take the waters at fashionable resorts). Judah Benjamin visited her every summer as his practice permitted.

His marriage something of a disaster, Judah Benjamin turned to building his practice. Three months after his admission to the bar, he carried an appeal from the state District Court, *Florence v. Camp*, to the Louisiana Supreme Court, “the first of several hundred he was to argue before that tribunal”.⁹ He won his first case. At this time he set about compiling a digest of Louisiana appeals cases. In 1834, he and his co-author, Thomas Slidell, published the Digest of the Reported Decisions of the Superior Court of the Late Territory of Orleans and the Supreme Court of the State of Louisiana. It was an instant success, and accelerated Benjamin’s assimilation into the Louisiana Bar.¹⁰ By 1839, Benjamin’s name appeared frequently in the cases before the State Supreme Court. By 1846-47, he or his firm appeared in forty-nine of the appeal cases reported in the current volume of the Louisiana Law Reports.¹¹

The great port of New Orleans kept commercial litigators busy and profitable. Judah was now adept in French and English. Moreover, he was teaching himself Spanish and was obtaining cases from California. He worked hard on his cases. And in 1848, he became a member of the bar of the Supreme Court of the United States. He was thirty-seven years old at the time.¹²

In the meantime, this energetic, affable lawyer had turned to politics in his home state: he joined the Whig party, the party of Clay and Webster. After some initial failure, he ran for election to the lower house of the state legislature and won. He then became (not without some difficulty) a Whig delegate to the 1844 Louisiana Constitutional Convention.¹³ His call to Washington, D.C. began with nomination in absentia (he was away visiting Natalie and Ninette in France) to the Louisiana State Senate. Benjamin had hardly been elected to the State Senate when it became clear that he was “in play” for the United States Senate, and he was elected to the U.S. Senate after a vote on the floor of the Louisiana State Senate. Not quite forty-two, he would serve in the United States Senate from March 4, 1853, first as a Whig, and later as a Southern Democrat.¹⁴ From the time of his first election to the U.S. Senate until his departure he was offered two appointive positions by two separate Presidents: first as Justice of the Supreme Court of the United States and second as U.S. Minister to Spain. As Charles Warren reports,¹⁵ Justice John McKinley (the Circuit Justice for Louisiana and Alabama) had passed away July 19, 1852, and President Millard Fillmore was in a quandry because two nominees of his had each been rejected by the U.S. Senate because they were not residents of Louisiana.

Taking cognizance now of the sentiment demanding a candidate resident in the Circuit, but being unwilling to appoint either George Eustis of Louisiana or Solomon W. Downs, the Senator from that State, both of whom, as Unionist Whigs, had received strong Endorsement, he offered the position to Judah P. Benjamin, and on the latter's declination owing to his recent election as Senator from Louisiana, he nominated Benjamin's law partner, William C. Micou, on February 24, 1853.¹⁶

Five years and a different president later, President James Buchanan offered Benjamin, by letter of 31 August 1858, the appointment of Minister to Spain:

I write for the purpose of tendering you the appointment of Minister to Spain & expressing a strong desire that you may accept it. I feel satisfied that the Country will unite with me in opinion that this is an appointment eminently fit to be made. Indeed I am not acquainted with any gentleman who possesses superior, if equal, qualifications to yourself for this important mission. Such being the case I think your Country has a right to the benefit of your services.***¹⁷

One can only marvel at the prospect of a Sephardic Jew returning, in the role of a Minister Plenipotentiary, to a country that had expelled his ancestors. Benjamin turned down this offer as well: his work in the Senate and his private law practice required his presence in the United States, and specifically in Washington. Benjamin, as noted earlier, specialized in commercial cases. In Washington, he specialized in commercial appeals before the Supreme Court. In the December 1856 term of the Supreme Court, he appeared in eight cases. In the December 1857 term, he appeared in ten. In the words of Pierce Butler, a Benjamin biographer: "He was not only a debater, but also a most active and efficient worker in the Senate, and at the same time was carrying out his practice, frequently going from a political argument in the Senate to address the Supreme Court as an advocate."¹⁸

Former Senator George G. Vest of Missouri, in an article in *The Saturday Evening Post* about Judah Benjamin,¹⁹ notes that as a professional "although comparatively a young man, he had no superior in the United States, and, above all the men I have known, he excelled in clear analytical statement."

Senator Vest goes on to relate an instance of Benjamin's professional excellence:

The late Associate Justice Field of the United States Supreme Court told me that the first time Benjamin appeared in the Supreme Court his opponent was Jerry Black, of Pennsylvania, unquestionably one of the most eminent lawyers in the United States. The case was a very important one, from New Orleans, and the amount in controversy very large. When Benjamin, who represented the plaintiff in error, arose to open the case it was but half an hour before the noon recess, and he said that he should content himself by simply stating his case and should reserve his argument of the legal questions until his opponent had been heard in the afternoon. Justice Field declared that he had never listened in all his experience to a statement so lucid, comprehensive and convincing as that made by Benjamin, and when the Judges filed off the bench at one o'clock for the ordinary one hour's recess he said to Black, as he passed him, "You had better look to your laurels, for that little Jew from New Orleans has stated your case out of court."²⁰

The short of it was that Benjamin as a lawyer was recognized as the “consummate master of stating his case; he proceeded on what is *** conceded to be the wise plan of making out his own case rather than picking flaws in his adversary’s.”²¹ In *McDonogh v. Murdoch*, 15 Howard 367 (December Term, 1859), a case involving a will contest between the relatives of a wealthy testator and the cities of New Orleans and Baltimore which had been the beneficiaries of what was then an immense fortune, Benjamin had been successful in overturning the will for the relatives in the United States Circuit Court. Now, ably assisted by Reverdy Johnson²² of Maryland, he was defending that decision in the Supreme Court. A newspaper reporter, present at the argument, said that “whoever was not in the Supreme Courtroom this morning missed hearing one of the finest forensic speakers in the United States.” He went on to note that Benjamin’s address was “refined, his language pure, chaste and elegant; his learning and reading evidently great; his power of analysis and synthesis very great.”²³ As it sometimes happens it was to no avail: Justice Campbell who wrote the majority opinion, praised the “great power and ability” of Benjamin and Johnson (15 How. at 402), but determined that the law was against their clients, and found for the two cities.

Benjamin devoted as much time and detailed attention to his Senatorial duties as he did his courtroom assignments. By the time of his re-election as Senator in 1858, he was serving on the important Senate Judiciary Committee and was promoted to the chairmanship of the Committee on Private Land Claims. Senator Vest notes that some months after he became a member of the United States Senate, “I asked Dennis Murphy, who had been official reporter of the Senate for nearly forty years and was himself a lawyer of considerable ability and one of the best-informed men on all subjects I have ever known, who, in his judgment, was the ablest and best-equipped Senator he had known during his service as a reporter. He replied, without hesitation, Judah P. Benjamin.”²⁴

Benjamin’s term of office was to expire in 1865, but Louisiana seceded from the Union on 26 January 1861 and on 4 February Benjamin and John Slidell withdrew from their seats in the Senate. Benjamin’s parting speech was made to a hushed chamber. Whatever their position on secession, Senators shook hands with Benjamin and Slidell, with tears in their eyes. Benjamin then left the Senate and bade farewell to Washington. We shall resume our study of Judah P. Benjamin in the last days of the Confederacy just before Robert E. Lee’s surrender at Appomattox Courthouse. By that time, Judah has served as Attorney General, Secretary of War, and Secretary of State of the Southern Confederacy, and at 54 years of age, is a fugitive fleeing from Union soldiers and agents. He has little money, he is the support of relatives in the United States and France, and there is an ocean between him and England. All he has is his imperturbable little smile and his will. We will see that he survives and flourishes. But that is for another day.

¹ See the discussions of the travels of the Benjamin family in Eli N. Evans, “Judah P. Benjamin: The Jewish Confederate,” *The Free Press*. 1988, pp. 3-6 (hereafter “Evans”).

² Rebecca, Judah, Solomon, Hannah, Judith, and Joseph Levy Benjamin (named after his great-uncle), “Judah P. Benjamin, Confederate Statesman,” Robert Douthat Meade, *Louisiana Paperback Edition*, 2001, pp. 6-13 (hereafter “Meade”). A seventh child, Penina (called Penny), was born in 1824.

³ Mead, p.19.

⁴ Yale Catalogue, Nov. 1825, reference in Meade, p. 21.

⁵ Matriculation Book in Yale Records, Meade, p. 21.

⁶ See, Pierce Butler, “Judah P. Benjamin,” *George W. Jacobson Company* 1907. Pp. 27-31 (hereafter “Butler”)

⁷ Butler, p. 34.

⁸ See Butler, pp. 35-37.

⁹ Miller’s Louisiana Reports, Eastern District, v, 1832-1833. pp. 280-81, cited in Meade, notes, Chapter III n. 24.

¹⁰ Butler, pp. 37-38; Meade, pp. 37-38. Thomas Slidwell was the brother of John Slidell, who served in the U.S. Senate with Judah Benjamin, and is later responsible for Judah being offered the position of Minister to Spain, which Benjamin declined. (see ante at p__). Thomas Slidell also profited from the publication of the Digest. He later published a revised edition in 1850 (Meade at 37), and eventually served as Chief Justice of the Louisiana Supreme Court.

¹¹ Meade, p. 39.

¹² See list of attorneys and counselors admitted during December Term 1848, 7 Howard viii (1849)

¹³ See e.g., Butler, p. 74 et seq.

¹⁴ Meade, p. 77 et seq.

¹⁵ *The Supreme Court in United States History* by Charles Warren, revised edition, Little, Brown & Company 1935, p. 241 (“Charles Warren”)

¹⁶ Charles Warren, p. 345. Micou was not confirmed. Id.

¹⁷ As quoted in Meade, p. 113.

¹⁸ Judah Philip Benjamin by Pierce Butler, Ph.D., contained in “Great American Lawyers: A History of the Legal Profession in America” Vol. VI, 1901, p. 278. (hereafter “Great American Lawyers”)

¹⁹ “A Senator of Two Republics, Judah P. Benjamin” by G. G. Vest, *Saturday Evening Post*, 3 October 1903 p. 2.

²⁰ Id. p. 2-3

²¹ *Great American Lawyers*, Vol. VI, p. 268.

²² Reverdy Johnson was a member of the Maryland Bar. He served as U.S. Senator (Whig) 1845-49, Attorney General of the U.S. (1849-59) and again as the U.S. Senator (Democrat) 1863-68. Arthur T. Downey, “Civil War Lawyers” ABA Publishing 2010 at 313. Reverdy Johnson was the winning counsel in the Dred Scott case, assisted as defense co-counsel for Jefferson Davis in the criminal prosecution and served as senior defense counsel for Mary Surratt in the trial of the Lincoln Assassination defendants (id. at 263, 313, 330). See especially, id. at 265-66.

²³ *Washington Union*, as quoted in the *Picayune*, Feb. 2, 1854. See Butler, p. 139.

²⁴ *Saturday Evening Post*, 3 October 1903, p. 3.