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# Samuel L. Southard and the Origins of Gibbons v. Ogden

## **Abstract**

On January 12, 1815, the former Federalist governor of New Jersey, Aaron Ogden, wrote a brief letter to a young political antagonist, Samuel L. Southard, requesting Southard's "professional aid in a hearing before the Legislature, which I expect will take place on Tuesday next." Observing that he had the relevant documents organized so that Southard could get quickly acquainted with the facts of the matter at issue, Ogden added that "the cause will be entertaining and interesting, and as to compensation, you will please to name your own sum."

A good deal of history lay behind these remarks, and the "entertaining and interesting case" that Ogden had requested Southard to argue ultimately would create a good deal of history itself. Involved was a matter of monopoly rights and steamboats, an embroglio more than a decade in the making, and nearly a decade short of resolution. The hearing before the New Hersey legislature to which Ogden referred was one of a series of legal contests that culminated in the famous case of Gibbons v. Ogden, decided by the Marshall Court in 1824. At all stages of the case, the basic issue was the validity of legislative sanctioned transportation monopoly—a matter of increasing importance to a nation whose economic maturation depended on free and cheap modes of travel, communication, and trade. [*excerpt*]

## **Keywords**

Samuel Southard, Aaron Ogden, New Jersey, transportation monopoly, Supreme Court

## **Disciplines**

History | Legal | United States History

as he testified to his creditors on his first brush with bankruptcy in 1844; it was a demand for accuracy in color, impression, register, that, while it exasperated some of his apprentices and licensees, raised the standards of English color printing until the end of the century. His 20 or more separate impositions of color were not a technical *tour-de-force*, as were Knight's and Savage's, but an insistence on the delicate accuracy that one last touch could give.

Thomas Bewick's prophetic word in the last years of his life was amply fulfilled by Baxter. Of color printing by woodblock he wrote: "Though I felt much difficulty in my attempts at producing it, yet the principle is there, and will shine out under the skill and management of any eminent engraver on wood who is gifted with a painter's eye; and his work will be complete if seconded by a pressman of ability, who may happen to have a talent and fellowfeeling for the art."<sup>20</sup> Bewick did not expect to find all these qualities in one man. But in Baxter they were all present—an engraver and printer who was not merely a superb technician, but also a considerable artist, moved by a desire to meet a need for color and beauty in his society. That, in the final analysis, is the reason why his prints continue to be sought after and cherished.

<sup>20</sup> Thomas Bewick, *Memoirs*, ed. Iain Bain (London: Oxford University Press, 1975), p. 190.

## Samuel L. Southard and the Origins of *Gibbons v. Ogden*

BY MICHAEL BIRKNER

ON January 12, 1815, the former Federalist governor of New Jersey, Aaron Ogden, wrote a brief letter to a young political antagonist, Samuel L. Southard, requesting Southard's "professional aid in a hearing before the Legislature, which I expect will take place on Tuesday next." Observing that he had the relevant documents organized so that Southard could get quickly acquainted with the facts of the matter at issue, Ogden added that "the cause will be entertaining and interesting, and as to compensation, you will please to name your own sum."<sup>1</sup>

A good deal of history lay behind these remarks, and the "entertaining and interesting case" that Ogden had requested Southard to argue ultimately would create a good deal of history itself. Involved was a matter of monopoly rights and steamboats, an embroglio more than a decade in the making, and nearly a decade short of resolution. The hearing before the New Jersey legislature to which Ogden referred was one of a series of legal contests that culminated in the famous case of *Gibbons v. Ogden*, decided by the Marshall Court in 1824. At all stages of the case, the basic issue was the validity of legislative sanctioned transportation monopoly—a matter of increasing importance to a nation whose economic maturation depended on free and cheap modes of travel, communication, and trade.

The origins of the *Gibbons v. Ogden* case and, less portentously, the legislative hearing in New Jersey in January 1815, lay in the 1780s, with the invention of a workable steam engine and a steamboat that could carry both passengers and freight.<sup>2</sup> The original

<sup>1</sup> Aaron Ogden to Samuel L. Southard, Jan. 12, 1815, Samuel L. Southard Papers, Princeton University Library (hereafter PUL).

<sup>2</sup> The standard work on the invention of the steamboat and its early history is James Thomas Flexner, *Steamboats Come True: American Inventors in Action* (New York: The Viking Press, 1944). Flexner's subtle and engagingly written book emphasizes the contributions of John Fitch, while concluding that Robert Fulton's technical expertise and skills as a promoter, combined with public readiness to accept steamboat travel by 1800, entitle Fulton to credit as the steamboat's inventor. In a purely technical context, however, the bulk of Flexner's evidence supports Fitch's claim. See also Frank D. Prager, ed., *The Autobiography of John Fitch* (Philadelphia: The American Philosophical Society, 1976).

inventor of the steamboat, John Fitch, succeeded in winning the rights from the New York legislature in 1787 to traverse New York waters. But Fitch did not carry through on this privilege, and in 1798, Robert R. Livingston, a figure of great weight in New York society and politics, won such rights for himself. In partnership with the inventor Robert Fulton, Chancellor Livingston pioneered in steamboat transport as a commercial venture. After having overcome initial technical difficulties, the two men profited handsomely from their vessels' operations—profited, that is, so long as they had unchallenged rein over steamboat traffic on the Hudson River.<sup>3</sup>

Believing that their initiatives in a risky enterprise entitled them to such exclusive rights, Fulton and Livingston had opposed the competition that inevitably arose as the steamboat became popular. On several occasions they litigated successfully to thwart competitors, and their sailing seemed clear until Aaron Ogden entered the picture in 1812.<sup>4</sup> Ogden, an enterprising politician and lawyer, who in late 1812 was elected governor of New Jersey after a hotly contested legislative election returned the Federalist party to power for the first time since 1801, sensed that there was considerable money to be made in transporting people between New Jersey and New York. Entering a partnership with an Elizabethtown inventor, Daniel Dod, Ogden acquired a boat named "Sea Horse," and began to carry passengers from New York City to Elizabethtown Point and back. He was soon blockaded as Livingston and Fulton demanded enforcement of their exclusive privilege on the Hudson. Undaunted, Ogden in 1813 used his influence in New Jersey to obtain a countervailing monopoly for steam navigation in his home state. Henceforth the Livingston-Fulton vessel, the "Raritan," would not be permitted to dock on the New Jersey side of the Hudson.<sup>5</sup> For the Livingston-Fulton interest, this was an unacceptable situation.

<sup>3</sup> Many sources trace the emergence of the Livingston-Fulton interest in steamboat commerce. Of these, most helpful are George Dangerfield, *Chancellor Robert R. Livingston of New York, 1746-1813* (New York: Harcourt Brace and World, 1960), pp. 403-422, and David W. Thomson, "The Great Steamboat Monopolies, Part II: The Hudson," *The American Neptune*, 16 (Oct. 1955), 270-280. Dangerfield is most insightful on the personalities, Thomson on the law.

<sup>4</sup> See, e.g., Livingston et al. v. Van Ingen et al., 9 *Johns* (New York, 1812), 507.

<sup>5</sup> For Ogden's petition to the New Jersey legislature, see Archives and History Bureau, Manuscript Collection, State Library, Manuscripts Collection, No. 451. See also *New Jersey Laws*, Feb. 12, 1813, Nov. 3, 1813; Thomson, "Steamboat Monopolies," pp. 274-275; and Theodore Thayer, *As We Were: The Story of Old Elizabethtown* (Elizabeth, N.J.: Grassmann Publishing Company, for The New Jersey Historical Society, 1964), p. 234.

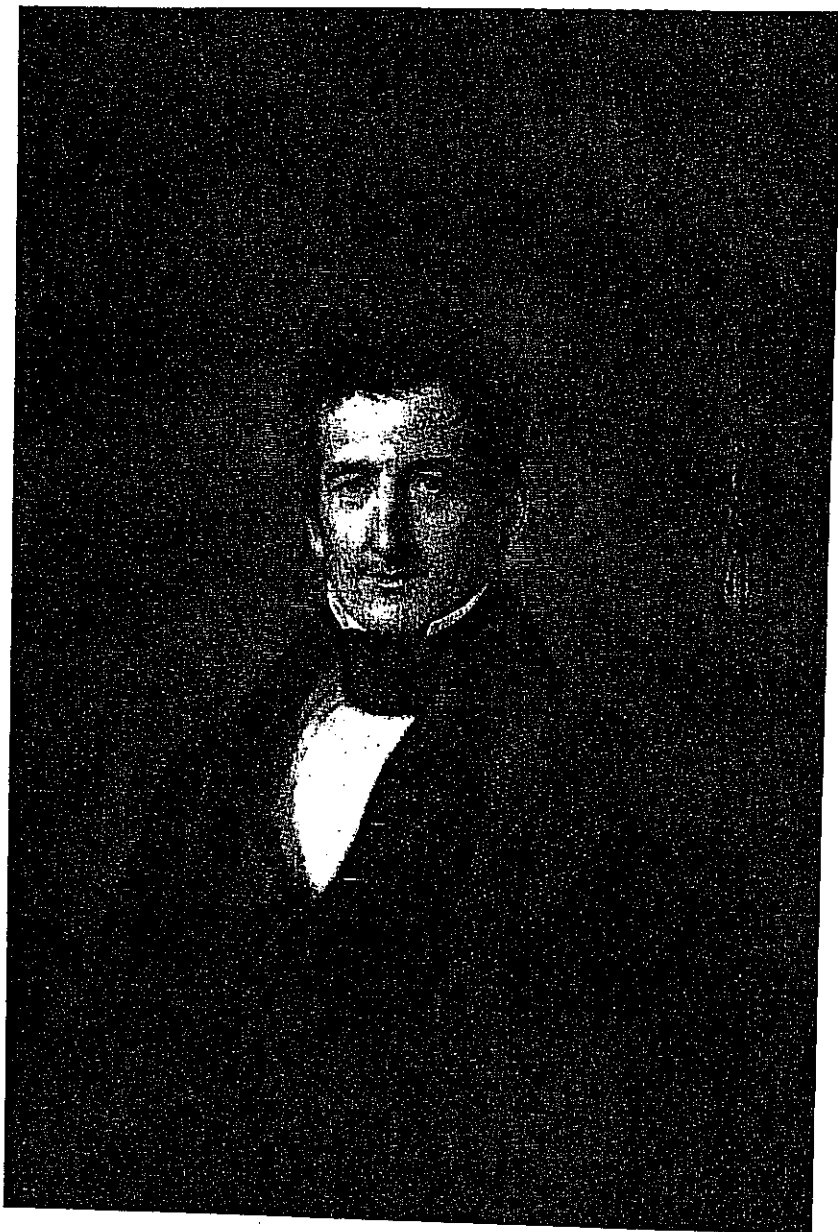
At first Livingston and Fulton confined their protests to plaintive correspondence with New Jersey Republican leader and Supreme Court Justice Mahlon Dickerson. Livingston reminded Dickerson that he had invested considerable capital on the steamboat venture when no one else could or would do so. If the New Jersey law of November 1813 stood, he said, he would be out a good deal of money. Given his initial risk and his conviction that Ogden's partner, Daniel Dod, had made no material improvement on Fulton's steamboat design, Livingston considered the situation to be patently unfair.

Implored by Livingston to explain New Jersey's position to Fulton, Dickerson responded that the New Jersey law was aimed less at Fulton than at New York state, which, he noted, was claiming jurisdiction over all waters between the two states and, moreover, granting an unwarranted monopoly to Livingston and Fulton. Both acts denied New Jersey's fair rights. "What they [the New Jersey legislators] have done," Dickerson observed, "is to counteract a law of your state, which they deem illiberal & unjust as it respects the citizens of this state." Should New York relent on its claims, Dickerson suggested, so would New Jersey.<sup>6</sup>

Dickerson's temperate analysis did not much soothe the New York partners. Frustrated at losing the income from the Raritan's operation, Livingston and Fulton awaited the results of the 1814 legislative elections in New Jersey and, once that campaign concluded with a Republican triumph, decided to take their case before a legislature dominated by Aaron Ogden's political foes. A hearing scheduled for late January 1815 permitted each side to assign advocates to argue its case. At this point Aaron Ogden wrote to Samuel Southard, 27 years old and largely untested at the bar.

On first appearance, Ogden's invitation to Southard made little sense. A graduate in 1804 of the College of New Jersey (as Princeton was called), Southard, after receiving his legal training and carrying on a desultory initial practice in Fredericksburg, Virginia, had only in 1811 entered into law practice in New Jersey. Prac-

<sup>6</sup> See John R. Livingston to Mahlon Dickerson, Nov. 17, Dec. 14, 1813, and Mahlon Dickerson to Robert Fulton (draft), Nov. 29, 1813, Mahlon Dickerson Papers, The New Jersey Historical Society. The boundary dispute over waters between New Jersey and New York had its origins deep in colonial American history, and contributed to the smaller state's anger at New York's efforts to monopolize water transportation between New York and New Jersey. On this subject, see *Report of the Commissioners on the Controversy with the State of New York Respecting the Eastern Boundary of the State of New Jersey*. (Trenton: Wilson and Halsey, 1807), and *Autobiography of Aaron Ogden of Elizabethtown* (Paterson, N.J.: The Press Printing and Publishing Co., 1893), pp. 16-17.



Engraved portrait of Samuel L. Southard with his engraved signature  
Southard Papers

ticing primarily in Hunterdon, Sussex, and Morris Counties, Southard had made a modest reputation for himself, but his youth and his meager experience in major cases militated against his selection in a hearing of this magnitude.<sup>7</sup>

On the other hand, Southard had an important asset that Ogden no doubt recognized. Southard was a staunch Republican, the son of one of the founders of the Jeffersonian-Republican party in New Jersey, Henry Southard, and a rising man in the ranks of New Jersey Jeffersonians as well. In 1814 he had worked intensively and quite successfully to keep Ogden and the Federalists from regaining power in New Jersey. Given Ogden's awareness that Jeffersonian legislators might make an unsympathetic audience for his case, Southard might have been a ploy for a fairer hearing. Of course, if Southard could not meet the challenge of arguing against the well-known New York attorney Thomas Addis Emmet, this calculation would be worthless, even harmful, to Ogden's cause.

On Friday afternoon, January 26, 1815, before a "vast assembly of people, which continually increased until it very much exceeded any thing which you ever witnessed in Trenton," as one contemporary put it, Southard was put to the test.<sup>8</sup> The third speaker, he followed Thomas Emmet, who put the case for Livingston and Fulton, and Aaron Ogden himself, who introduced evidence and argued that Robert Fulton was not the original inventor of the steamboat. In his remarks, Emmet emphasized the importance of protecting those who risked capital on behalf of the public interest. Unless the New Jersey legislature agreed to repeal the Ogden monopoly, Emmet said, "you will become infamous for the invasion of the rights of private property, of genius and invention. Repeal this law, or you will become infamous as the abettors of villainy—you will make your state an asylum of thieves and robbers."<sup>9</sup> In the course of his well-crafted performance, Emmet went on to attack the New Jersey law because it granted a monopoly.

<sup>7</sup> Southard's early legal career can be traced in the Samuel L. Southard Papers, PUL, Boxes 1, 83, 115, and in Michael Birkner, "Politics, Law, and Enterprise in Jacksonian America: The Career of Samuel L. Southard, 1787-1842," doctoral dissertation, forthcoming, University of Virginia.

<sup>8</sup> Lucius H. Stockton, *A History of the Steamboat Case, Lately Discussed by Counsel Before the Legislature of New Jersey, Comprised in a Letter to a Gentleman at Washington* (Trenton: Privately printed, 1815), p. 10. Manuscripts Division, Princeton University Library.

<sup>9</sup> *Ibid.*, pp. 3-4.

As one witness, Lucius H. Stockton, reported, "he said that monopolies had ever been considered odious in law and justice, and that they ought to be particularly discountenanced in free countries." This on behalf of two men who had repeatedly employed injunctions to undermine challengers to their own monopoly in New York!<sup>10</sup>

Following Emmet's discourse and a break for lunch, Southard rose to reply. Two major sources reconstruct this speech which would win Southard considerable acclaim as an advocate, and, within ten months, propel him to the state supreme court. The first is Lucius H. Stockton's pamphlet, *A History of the Steam Boat Case, Lately Discussed by Counsel Before the Legislature of New Jersey, Comprised in a Letter to a Gentleman at Washington*. Historians studying *Gibbons v. Ogden* have rarely used this fifty-two page document written by a legal and political ally of Ogden.<sup>11</sup>

Yet, the Stockton pamphlet, for its account of the arguments made in Trenton from January 26-29, particularly those presented by Southard and his coadjutor in the case, Joseph Hopkinson—biased as it is in favor of Aaron Ogden—vividly presents an important juncture in American legal history. Fortunately, the Samuel Southard papers at Princeton contain Southard's notes on his speech. They corroborate the Stockton account at virtually every point, leaving in doubt less what Southard said than the force and effect with which he said it.<sup>12</sup>

Reporting Southard's argument, Stockton indicated his concern that the young lawyer might be overmatched in this situation. His youth, inexperience, and "delicate" health all seemed to militate against his success. Fortunately, Southard "had not spoken five minutes, before [Stockton] was relieved from all anxiety on his account, and was satisfied that he would equal the warmest wishes of his friends."<sup>13</sup>

Southard's argument before the legislature took up nearly a full

<sup>10</sup> Ibid.

<sup>11</sup> Cited above, n. 8. The only major treatment of the background to *Gibbons v. Ogden* which uses the Stockton pamphlet is Thomson, "The Great Steamboat Monopoly." In his volume on the case, *The Steamboat Monopoly: Gibbons v. Ogden, 1824* (New York: Alfred A. Knopf, 1972), which is probably the best single work on the subject, Maurice Baxter takes note of the 1815 hearing, but gives no evidence of having read Stockton's work, and does not mention Samuel L. Southard at all.

<sup>12</sup> Samuel L. Southard Papers, PUL, Box 126. In reconstructing Southard's argument before the legislature I have quoted directly from the briefs in these papers.

<sup>13</sup> Stockton, *History of the Steam Boat Case*, pp. 10-11.

day (Friday afternoon and Saturday morning), and he delivered it in the manner of the time, full of flourishes and asides. Yet its kernel, as reproduced in Stockton's reportage and Southard's extant notes, reduced to several central points.

First, Southard argued, one cannot understand the law being defended—Ogden's monopoly grant—without understanding "each and every step which preceded it both in our own state and the state of N[ew] Y[ork]." He pointed to the 1808 New York law granting Robert R. Livingston and Robert Fulton "exclusive right" (i.e. monopoly privilege) to the waters of New York. This grant Southard called, with some exaggeration, the most extensive monopoly ever given two individuals by a government, a monopoly "destructive to the interests of her citizens and dangerous even to the regular movements of the Gov[ernment]t itself."

New Jersey had no complaint with this grant, Southard observed, except in the context of New York's concurrent claim to *all* waters between the two states, to the "high water mark on the Jersey shore." Under New York law, Robert Fulton and Robert R. Livingston (and later John R. Livingston) had the right to seize any New Jersey vessels coming into New York—an act which prevented Aaron Ogden from conducting a business between Elizabethtown and New York City.

What happened next, Southard explained, was perfectly understandable. "When the Legis[lature] perceived that N[ew] Y[ork] had granted the use of her waters for certain purposes to two of her citizens and that under it the citizens of New Jersey were injured, she naturally inquired[,] is this right—shall I suffer my citizens to be injured—and offer no redress?" Quoting the legal authority Vattel, Southard argued that citizens of one jurisdiction have a right not merely to the middle of waters but "over the whole River." Without this right "the purposes of navigation and mutual intercourse would be destroyed." Given New York's violation of Vattel's precept and her injury to New Jersey commerce the question became, how could New Jersey best protect its own rights? The answer lay in the passage of a law "countervailing" the New York monopoly.

On behalf of his clients Thomas Emmet had charged that the New Jersey law was mere "retaliation" and hence odious. But, Southard insisted, "retaliation" could operate only on an innocent person. What New Jersey had passed was a "countervailing or retorting system," not a retaliatory one. Aware that his audience

might perceive this as a distinction without a difference, Southard quickly moved on, reminding it that no New Jersey citizen had complained about the grant to Aaron Ogden. Rather, it was the "great monopolists of N[ew] Y[ork]," who, "placing the interests of their own f[ellow] c[itizens] under their feet prepared to trample without remorse on the right of yours." Hence the attack on Ogden and Dod and the effort to induce New Jersey to repudiate its grant to them. Ogden, Southard said, was not a monopolist. He merely sought an exclusive grant as a tool "to induce N[ew] Y[ork] to retract, or to place our citizens on an equality" with New York. At bottom, Southard said, Ogden wanted merely "to be permitted to approach New York unmolested"—that is, to be part of a free and open steamboat traffic between the two states. Southard, in brief, was defending New Jersey's monopoly grant to Aaron Ogden as a measure intended to open commerce and encourage steamboat travel. Because of his position as an advocate for the New Jersey monopoly, Southard could not employ the legal arguments which Daniel Webster would advance before the Marshall Court in 1824.

Having made his main points, Southard, in the charged atmosphere of the legislative hall, ended his argument with an appeal to New Jersey pride and an insistence on the smaller state's dignity and equality in dealings with its sister. "Does she [New York] permit your citizens to approach but not to touch her shores," Southard asked. "[Now] mete out to her the very same measure—yield not to her one single inch of your unquestionable jurisdiction." New Jersey, he concluded, was willing to be reasonable and flexible if New York would treat her as she deserved to be treated—as an equal, sovereign state. "But if she tenders benefits as to an inferior reject them with disdain—if she grants your rights under the threat of power, retort them with the indignation which becomes Jerseymen." This peroration, and the argument as a whole, had great impact. "At the conclusion of his [Southard's] speech, Lucius Stockton reported, "a universal testimony of applause issued from a crowded auditory, manifested by the clapping of hands, which was with great difficulty suppressed by the presiding officer, and exceeded any thing of the kind which I ever witnessed in New Jersey."<sup>14</sup>

Southard's speech, Stockton observed in a burst of enthusiasm,

<sup>14</sup> *Ibid.*, p. 18.

would be remembered, "while the love of brilliant genius, real eloquence, profound erudition, and manly patriotism remain in the minds of Jerseymen." The hearing, however, had not ended. Both Joseph Hopkinson, for the Ogden-Dod interest, and Thomas Emmet, in rebuttal, spoke at length, arguing many of the issues Southard had dealt with. Hopkinson focused in particular on the matter of Robert Fulton's patent rights as "inventor" of the steamboat, forcefully arguing that "the merits of Mr. F[ulton] were those of a successful and enterprising capitalist, practically bringing into public operation the labours of others," not those of an "original inventor" of the steamboat.<sup>15</sup>

Following the lawyers' presentations, the legislature, in committee of the whole, debated the proposed repeal of the 1813 law favoring Ogden and Dod. That the fervid and often learned oratory the legislators had heard influenced their ultimate judgments in the case is doubtful; their votes ran almost exclusively along party lines. In fact, every Federalist voted to sustain Ogden and the 1813 law. Every Republican but two, David Thompson and Nicholas Mandeville of Morris County, voted for repeal. Hence by a margin of 21-18 in the Assembly, and 7-6 in Council, the Legislature voted for repeal.<sup>16</sup> Politics, not law, had influenced the decision. Ogden's tactical gamble on Samuel Southard as his chance to win Republican votes was, in this context, shrewd but not quite enough for a victory.

The ramifications of the legislative decision were considerable. Aside from its consequential legal implications (for this hearing was but one step along the road to the *Gibbons v. Ogden* verdict and its dramatic effect), the hearing in Trenton greatly influenced the lives of Aaron Ogden and Samuel Southard. Unwilling to take his defeat passively, Ogden journeyed to Albany to lobby the New York legislature to change its own monopoly policy and, after barely failing in this effort, reached an agreement with the Livingston interest that gave him a license to run the Sea Horse from Elizabethtown to New York City. By 1815, Ogden had entered into a partnership with a wealthy planter and lawyer, Thomas Gibbons, who had moved to Elizabethtown from Savannah, Georgia some years earlier. Gibbons soon broke with Ogden over a personal matter, established a rival steamboat line and, finally,

<sup>15</sup> *Ibid.*, *passim*.

<sup>16</sup> *Votes and Proceedings of the 39th General Assembly, Second Sitting* (1815), 182-183.



Samuel Lewis Southard, silhouette from life by William H. Brown (1844)  
Surdna Foundation Fund Purchase

challenged the concept of monopoly grants over interstate commerce.<sup>17</sup>

In the case of *Gibbons v. Ogden*, heard before the Marshall Court in 1824, William Wirt and Daniel Webster argued for Gibbons against the monopoly. Thomas Emmet and Thomas Oakley argued for Ogden (and the Livingston interest) on behalf of the monopoly. Webster's central theme, that the federal Coasting Act of 1793 mandated congressional, not state, regulation of interstate commerce, was adopted by Chief Justice John Marshall, who struck down the New York monopoly on this ground. Politically cautious, Marshall did not flatly rule that interstate monopolies were unconstitutional. But under the terms of the decision, Gibbons and free commerce had won, and the prevailing antimonopoly sentiment in America at a time of vigorous commercial growth reinforced Marshall's somewhat ambiguous opinion. *Gibbons v. Ogden* was a landmark case in American law, not merely because it was the first commerce case brought before the Supreme Court, or the first challenge to a state monopoly which had reached the Court, but because it had such wide-reaching implications for American economic development.<sup>18</sup>

For Aaron Ogden, who had initiated the proceedings that ultimately led to the Court's decision, *Gibbons v. Ogden* was a severe personal setback. The prolonged legal struggle bankrupted him and led him briefly to debtor's prison—an inglorious reward for a man whose initial aim was the widening of steamboat enterprise.

For Samuel L. Southard, the denouement of the steamboat hearing was much less protracted and much more gratifying. Although the press reported his argument rather less effusively than Lucius Stockton, the Stockton pamphlet circulated widely and benefited Southard's reputation.<sup>19</sup> Capitalizing on this recognition, as well

<sup>17</sup> This story is recounted in Thayer, *As We Were*, chap. 12, and Wheaton J. Lane, *From Indian Trail to Iron Horse: Travel and Transportation in New Jersey, 1620-1860* (Princeton: Princeton University Press, 1939), pp. 185-190.

<sup>18</sup> Baxter, *The Steamboat Case*, offers the fullest explication of arguments before the Supreme Court and the court's decision. Also helpful in setting the case in a legal context is Morton Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge: Harvard University Press, 1977), chaps. 3 and 4.

<sup>19</sup> Because of the wide interest in the case, a noted legal reporter, William Sampson, contracted with a New York publisher to reproduce the arguments offered in Trenton in January 1815. Southard, however, seems to have helped undermine this venture, since he neglected to furnish Sampson with his brief despite repeated requests. See William Sampson to Southard, Feb. 9, March 23, April 5, Oct. 21.



as his father's name and his own efforts on behalf of the Republican cause in several previous elections, Southard was elected to the state legislature in the autumn of 1815. Less than a month later, when Mahlon Dickerson resigned from the state supreme court to take a seat in the United States Senate, Southard, then 28, was named to replace him. It is difficult to believe he could have gained such preferment without having first demonstrated his legal skills in Trenton the previous January.

1815, and Southard to Sampson (drafts), Feb. 17, March 27, 29, May 29, Nov. 18, 1815, Southard Papers, PUL. Two years later Jared Ingersoll of Philadelphia, an attorney for Robert Fulton's heirs, requested Southard's notes on the steamboat hearing. Southard declined to produce them, pleading that he had lost or misplaced his notes. At all events, he said, "if I had them I fear they would furnish no intelligible information. My habit, while at the Bar, was to rely much on my memory, and to take very loose and very short notes, sufficient to remind me of the evidence but useless to anybody else. And altho' I attempted to argue this case at some length, I relied on a brief not much longer than this letter. The trial also was very irregular, and the evidence was not, nor could not be, subjected to the usual rigid rules." Jared Ingersoll to Southard, Dec. 23, 1817; Southard to Jared Ingersoll (draft, Jan. 6, 1818), Samuel L. Southard Papers, PUL. The papers preserved in the Southard collection at Princeton University suggest that Southard, for whatever motives, was not entirely candid with his correspondent. Though unpolished, his notes indicate clearly the lines of Southard's argument, as the above reconstruction suggests. In addition to several versions of his brief, the notes include Southard's notes on Thomas A. Emmet's argument before the legislature, anticipated and actual arguments against Ogden's monopoly grant, and replies to these arguments.

## Library Notes

SINCLAIR HAMILTON  
1884-1978

*On August 28, 1978, Sinclair Hamilton died at his summer home in Edgartown, Massachusetts. A longtime resident of New York City, he was a member of the Class of 1906, an avid book collector, and a benefactor to the University, especially the Library. We are pleased to print here a talk he had prepared for a gathering of bibliophiles in 1972 but was unable to deliver. It is followed by two tributes from close friends which were made at a memorial service held in the Madison Avenue Presbyterian Church, New York City, on October 19, 1978.*

Some 50 or 60 years ago, someone rashly presented me with a copy of W. J. Linton's book *The Master of Woodengraving*. It is an enormous tome, and I opened it at an almost life-sized reproduction of Dürer's "Flight into Egypt" from his "Life of the Virgin" series. At that point I didn't really know what a woodcut or wood engraving was and Dürer's print fascinated me. I looked with awe at all the trees bowing humbly before the Holy Family—all, of course, save the aspen which still trembles and quakes to this very day. I promptly sought for and secured an impression of the print. It was not too good a one for it had a crease right down the middle but that didn't bother me much at that point. In fact it doesn't bother me very much today, for, shocking as the confession is, I fear that I am one of those despicable beings who think that we lay too much emphasis in this country on condition, and find that I can enjoy a print even when it has practically no margin whatever. Well, shortly after securing my Dürer, I saw listed in a London print dealer's catalogue a copy of a woodcut by Lucas Cranach—"The Rest on the Flight into Egypt"—at what seemed an extraordinarily reasonable price and promptly wrote for it. When it came, I was so elated at getting a print by such a famous artist at such a price that I proudly carried it down to the Metropolitan Museum where Bill Ivins was then the Curator of Prints. He had the reputation for a caustic wit which