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PUBLIC SERVICES

OF

JACOB DOLSON COX

Governor of Ohio and Secretary of the Interior

BY

JAMES REES EWING

A DISSERTATION

SUBMITTED TO THE BOARD OF UNIVERSITY STUDIES OF
THE JOHNS HOPKINS UNIVERSITY IN CONFORMITY
WITH THE REQUIREMENTS FOR THE DEGREE
OF DOCTOR OF PHILOSOPHY,
FEBRUARY, 1899



WASHINGTON
THE NEALE PUBLISHING COMPANY
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PREFACE.

THESE pages form a portion of a monograph which attempts to point out the extent and value of the life services of JACOB DOLSON COX. His official life is here separated from a biographical essay which devotes attention for the most part to the military career of that distinguished citizen. The writer wishes to express his thanks to friends who have kindly assisted him, and especially to Professor P. V. N. Myers, of the University of Cincinnati, save for whom this sketch would never have appeared.

*Denison University Library,
Granville, Ohio, October 1, 1898.*

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1871



INTRODUCTION.

JACOB DOLSON COX was born October 27, 1828, in Montreal, Canada. On his mother's side he is descended from Elder William Brewster, of the *Mayflower*, the Allyns of New London and Groton, Connecticut, and the Kenyons, of Connecticut. On his father's side the Coxes were of the family of Koch from Hanover, Germany, of whom one Michael Cox (Koch) immigrated in 1702, settling in New York City in 1705, soon after the conquest of the province of New York from the Dutch. Jacob Dolson Cox, Sr., received his name Dolson from his mother, Mary Dolson, of a family of Dutch settlers of Dutchess County, New York.

Jacob D. Cox, Sr., became known as an important man in timber-farming by building a ship-house at Savannah, Georgia, for the navy yard of the United States. He was thereupon employed to go to Montreal, to frame the timber roofing of the Church of Notre Dame, which was for a long time the largest building of its kind on the American continent. His work also extended to the general superintendence of the construction of the building; therefore, he took his family there temporarily, and Jacob D. Cox, Jr., was born on foreign soil while his father was thus employed.

The childhood and youth of Cox were spent in New York City. He received the usual education in private schools of that time. In 1842, not expecting to be able to take a college education, in consequence of his father's business reverses resulting from the financial crisis of 1837 and 1838, he entered, as a law clerk, the office of Harrison and Ogden, equity lawyers of New York City. Mr. Harrison was comptroller of Trinity Church corporation, and chiefly occupied with the affairs of that corporation. Gouverneur Morris Ogden was a son of David B. Ogden, one of the most eminent jurists of New York City.

The law of New York then required, for admission to the bar, seven years' clerkship in a lawyer's office for everyone who had not a college education, and young Cox entered with that in view. Beginning at the age of fourteen, he would have been admitted

to the bar at the age of twenty-one, but after two years' clerkship he began to form plans to get a college education; and, with a view to this, changed his employment to the office of a broker and banker on Wall street, Anthony Lake, as that work gave short hours and left leisure for private study.

He obtained assistance from a friend who was a student in the Union Theological Seminary in New York City, who gave him lessons in the elements of Greek and Latin. He had already pushed his mathematical studies far enough to enter college in those days. Two years more were spent in this way. His father's family had by this time moved to Staten Island; and he went to business daily, back and forth, from Tompkinsville on the Narrows' side.

In July, 1846, he determined to go to Oberlin, Ohio, having become interested in the college there through the Rev. Charles G. Finney, the distinguished revivalist, who was then professor of theology and afterwards president of the college. He entered the preparatory department, in which he spent one year, and was graduated from the college in 1851, with the degree of A.B. He then removed to Warren, Ohio, where for two years he was superintendent of the schools of Warren and principal of the High School. Meanwhile, he was reviewing his law reading, and in 1853 was admitted to the bar. His first law partner was M. D. Leggett, later Commissioner of Patents, and during the war Major-General of Volunteers. On Leggett's leaving Warren, Cox became the partner of John Hutchins, who succeeded Joshua R. Giddings as member of Congress.

Mr. Cox's political affiliations were with the Anti-slavery Whigs, and he voted for General Scott for President in 1852. He was active in the negotiations which led to the fusion of the Whigs and Free Soilers, and in 1855 was a delegate to the convention at Columbus which organized the Republican party in Ohio.

COX IN THE STATE SENATE.

IN 1859 Mr. Cox was elected State Senator in the district comprising Trumbull and Mahoning counties, although he had not been a candidate for nomination, and knew nothing of it until the nomination was made. Upon taking his place in the Senate, he formed an early friendship with Salmon P. Chase, then Governor and United States Senator-elect, and with William Dennison, Governor-elect. He had already made the acquaintance of James A. Garfield, the head of the Disciples' College at Hiram, who, with Professor James Monroe, of Oberlin, was elected to the State Senate at the same time. In the Senate chamber the seats of these three men were together, and they were known as the "trio" of Western Reserve Republicans. Cox and Garfield lodged together at the house of W. T. Bascom, who was editor of the *Ohio State Journal*.

It was during this term in the Senate that John Sherman¹ was first elected to the United States Senate, although in the election itself, Cox, Garfield and Christopher P. Wolcott, Attorney-General, were managers for Governor Dennison, who was also a candidate, and at one time seemed likely to be elected. Other significant matters also came forward, and it is needless to say that the period was heavy with problems which were perplexing the American people. The tone and temper of the Ohio Legislature for the term ending at the outbreak of the Civil War were thoroughly tested by the variety and importance of the subjects brought before it. Slavery, woman's rights, and temperance were the three great problems of the time pressing for solution.

Slavery agitated the governments of state and nation at the same time. Senator Crittenden's Compromise Proposals in Congress were discussed in the General Assembly of Ohio, but no motion was carried to agree to them.² A resolution was passed to send five commissioners to the Peace Conference out of a "sincere

¹Senate Journal, 1861, p. 198.

²House Journal, 1861, p. 77.

desire to have all differences harmoniously adjusted," with the explicit understanding, however, that Ohio was not prepared to accept the proposition of Virginia.¹

A resolution was passed urging that application be made to Congress to call a convention, to amend the Constitution of the United States,² and later the General Assembly ratified the proposed Douglas Amendment to the Constitution.³

Massachusetts and other Northern States passed personal-liberty Acts, which were in the nature of retaliation for the Fugitive Slave Law of 1850.⁴ Ohio did not pass such an Act, although petitions were presented in the General Assembly for that purpose.⁵ Cox's attitude may be seen in the fact that he presented one of these petitions himself. There was debate over a proposal to register the colored population of the State to forbid any colored person, under a penalty, to enter the State with a determination to remain permanently. A law to punish child-stealing⁶ was passed in the interest of the colored race. A fortnight before the enactment one thousand dollars had been appropriated by the State to terminate the litigation, in Wayne county, Virginia, concerning four colored children out of eight of the Peyton Polly family, who had been seized in Lawrence county, Ohio, where they had been living in freedom, with a view to reducing them to slavery.⁷ On the other hand, a statute was enacted to prevent the amalgamation of the white and colored races.⁸

Slavery and woman's rights were connected in the consciousness of American women at this time, for they felt that their cause was in a certain way allied to that of the negro in the struggle for emancipation. In Ohio the subject was alive with interest. Ladies frequented the galleries of the legislative chambers in 1861, when woman's rights were under discussion; and some substantial advances were made, for a law was passed conferring upon married

¹Laws of Ohio, 1861, p. 177.

²Laws of Ohio, 1861, p. 181.

³Laws of Ohio, 1861, p. 190.

⁴Johnston's American Politics, p. 154 (Edition of 1884).

⁵Senate Journal, 1860, p. 105.

⁶Laws of Ohio, 1860, p. 85.

⁷Laws of Ohio, 1860, p. 149.

⁸Laws of Ohio, 1861, p. 6.

women enlarged legal rights, in relation to real and personal property.¹ To this end Senator Cox had presented a petition.

As became a descendant of Puritan ancestors of New England, educated in the Western Reserve District in Ohio, Cox was disposed, in the discussions which preceded a legislative enactment, to exercise firm common sense, and to observe a cautious, conservative policy in the heated times just before the outbreak of civil hostilities. His personal attitude towards the great moral problems, when they were precipitated out of the air into definite statements in bills and resolutions, is seen in the votes which he cast.

In respect to the resolution to send commissioners to Washington, to meet in the conference headed by Virginia, he offered a substitute, saying that it was the part of Congress to inaugurate the movement, "while we cordially reciprocate every desire on the part of Virginia to cure the present troubles."² On the resolution, as finally amended, he cast one of three dissenting votes. While he voted affirmatively on the bill to request Congress to call a convention³ to amend the Constitution, he afterward cast one of eight dissenting votes against ratifying⁴ the Douglas Amendment.

On the bill⁵ conferring woman's rights, Senator Cox cast an affirmative vote. He committed himself to a safe position by declaring that, while granting to woman the legal rights sought for, the simple and obvious truth of the indissoluble unity in the marriage relation would guard against possible unwise legislation.⁶ Senator Cox's share, in the legislative results of his term, was not inconsiderable. Four important bills⁷ which he introduced were enacted laws during his term of service.

The agitation of secession led to attempts to form a better organization of the militia in Ohio, and for that purpose Senator Cox was appointed a brigadier-general by the Governor. The move-

¹Laws of Ohio, 1861, pp. 54-55. On February 21, 1861, Senator Cox had presented a petition for a law conferring legal rights upon married women in relation to property.

²Senate Journal, 1861, p. 58.

³Senate Journal, 1861, p. 177.

⁴Senate Journal, 1861, p. 289.

⁵Senate Journal, 1861, p. 202.

⁶Ohio State Journal, March 20, 1861.

⁷Note at the end of the chapter.

ment, however, amounted to nothing more than a nominal enrolment, by towns and counties, of persons liable to military duty, so that Cox never appeared in uniform until the war began. He, however, devoted a considerable part of his leisure time during the two years of his term to the study of tactics and military history, with a half-consciousness that this knowledge would be needed. Having made arrangements in the last part of April, 1861, to return to the Senate at the proper time to cast his vote, he began under the instruction of Governor Dennison to put the State on a military footing.¹

NOTE.—The second session of the General Assembly, for the term, held on until nearly the middle of May, 1861, and it will be observed that Mr. Cox, while making the military preparations described below, was still a Senator.

About that time, Captain George B. McClellan, at the invitation of Governor Dennison, came to Columbus for consultation. Senator Cox escorted him from the depot to the State House, and was present when the two men met. The Governor offered to McClellan the command, to place Ohio on a military footing for the war, and he accepted it. The following day Senator Cox accompanied McClellan to the State Arsenal, which they found almost empty of the materials of war. On their return to the State House, a room was given them and they went to work.

On April 29 Senator Cox was ordered, by McClellan, to proceed to Camp Dennison, near Cincinnati, where a site had been selected for a camp of instruction. He took with him one full regiment and half of another. Captain Rosecrans came from Cincinnati as an engineer, and duly completed arrangements to accommodate ten regiments.

The Brigadier-Generals, besides² Cox, were J. H. Bates and Newton Sleich, and General Bates, who was the senior in rank, took command in McClellan's absence. McClellan had intended

¹Under the then existing law of the United States, the officering of all the troops of the first call was done by the Governors of States. Congress soon passed a new law, authorizing United States Volunteers for three years, and under it J. D. Cox was commissioned Brigadier-General of the United States Volunteers, to rank from May 17. His commission in the Ohio troops called into the national service dated April 23, 1861. See J. D. Cox, in *Battles and Leaders of the Civil War*, Vol. I, p. 89.

²King's History of Ohio, p. 370.

that the brigades in Camp Dennison should be permanent. However, Cox was the only one of the Brigadier-Generals who remained in the service after the ninety days' enlistment had expired, and he entered the service in command of regiments of which only one had been in his brigade in camp.

NOTE.—On January 21, 1860, Senator Cox introduced a bill regulating the responsibility of inn-keepers.¹ This is the well-known statute, now found all over the Union, which provides that an inn-keeper, who is furnished with an iron safe in his inn, shall not be compelled to compensate a guest for the loss of any articles, such as money, jewelry, *et cetera*, unless he had refused or neglected to deposit in his safe articles which a guest may have offered to him for safe-keeping.

On February 15, 1860, he introduced a bill relating to the action of a jury, in a case in which goods levied on are claimed by a third person, and on March 12 it became a law.²

It was enacted that if the jury found the property in controversy rightfully belonging to the claimant, the justice should order a judgment that the claimant might recover both the costs and the property itself. If, however, the jury found that the right to the property was not in the claimant, the justice was to issue an order that the party in the execution might recover the costs against the claimant.

¹Laws of Ohio, 1860, p. 15.

²Laws of Ohio, 1860, p. 31.

COX GOVERNOR OF OHIO.

THE limitations of this paper do not permit an account of the distinguished services of General Cox in the War of the Rebellion. This experience must, however, be taken into consideration for its effect upon his subsequent career. His marked executive ability brought him the approbation of military men, and he returned to civil life with the plaudits of his fellow-citizens. Having been already in public service, his experience was almost immediately placed in requisition.

The Republican State Convention of Ohio met¹ at Columbus on June 21, 1865, to place in nomination candidates for State offices. General Cox, having served with distinction through the whole period of the Civil War, was well known and popular in the State. His name, when presented before the convention, was received with enthusiasm, and his nomination for Governor was made by acclamation.² He was duly elected, in October,³ but in the summer,⁴ while he was still a candidate, two gentlemen of Oberlin, Ohio, signing themselves the Oberlin Committee,⁵ addressed to him a letter of inquiry. He was asked if he was in favor of conferring the elective franchise upon the colored people. General Cox had not attempted to conceal his views on the subject, yet the surprise with which unconfirmed rumors had been received in his early home provoked the inquiry. He answered immediately⁶ with a carefully prepared solution of the problem. He advocated a peaceable separation, of the white and black elements of the population, the black race being assigned to a definite area of the American soil. From such a solution he looked for a three-fold consequence:

¹ Joseph P. Smith's History of the Republican Party in Ohio, Vol. I, p. 202.

² Joseph P. Smith's History of the Republican Party in Ohio, Vol. I, p. 205.

³ October 10.

⁴ July 24

⁵ Ohio State Journal, July 26, 1865.

⁶ Ohio State Journal, July 26, 1865.

The black man would be invested with all political rights; the representation of the Southern whites would be reduced to their own numbers; and the common interest and identity would be secured by the permanent peace of the Government. He did not subsequently change these views on negro suffrage, which were commented on by the press throughout the State and had a bearing on his relations to the Republican party, but when the amendment to the Constitution conferring the elective franchise on the freedman had passed¹ he then advocated, in the campaign of 1867, amending the Ohio Constitution, so as to accord with the National, on the ground that since negro suffrage had been forced on the Southern States, where it was really dangerous, the people in the North were bound to accept it, where it was a matter of comparatively small moment.

Governor Cox was inducted into office on January 8, 1866, and in his inaugural address² he formulated maxims of government in which were expressed his views of reconstruction. Conquest does not rightfully give unlimited sway over the persons and the property of the conquered. Military government is despotic, and if continued after the cessation of hostilities is opposed to republicanism.

Respecting the general situation of President Johnson's quarrel with Congress, it may be remarked that Governor Cox's friend, ex-Governor Dennison, had been Postmaster-General in the latter part of Lincoln's term, and held over for some time under Mr. Johnson. Through information obtained from ex-Governor Dennison, as well as from other sources, public and private, Governor Cox knew that the so-called Restoration Policy of Mr. Johnson was in all essential particulars that of Mr. Lincoln, and that Johnson was not striking out in a new course of action of his own. Governor Cox's predilection was toward Mr. Lincoln's plans, and he did not doubt that with his sagacity in carrying out such plans or modifying them to suit circumstances he would have been allowed by Congress to carry out his own plans, but Mr. Johnson as a new man was more open to the antagonism of such leaders as Thaddeus Stevens, and his combative manners made him open to defeat. On February 26, 1866, Governor Cox was in Washington, and read

¹June 13, 1866.

²Executive Documents of Ohio, part 1, 1865, pp. 305-312.

a letter¹ to the Representatives in Congress from Ohio which was sent to Hon. George B. Wright, chairman of the Ohio Republican Central Committee at Columbus.

Cox also had interviews with President Johnson and with various leaders in Congress, and had striven to pave the way for a reconciliation between them. In the letter Governor Cox said that President Johnson had tried to fall in with the plan which Lincoln would have adopted. He desired the earliest possible restoration of peace on the basis of loyalty. Governor Cox's acquaintance with President Johnson led him to think well of his general honesty and patriotism, and he tried to soften the antagonism between him and the Congressional leaders. On the other hand, when the extreme views of Stevens and Sumner had been modified, a little later, in the Acts actually passed by Congress, Governor Cox urged the President to yield as a measure of compromise, and not to veto the bills. President Johnson had, however, become committed to a bitter conflict and declined to do so, and Governor Cox withdrew from further efforts to influence him.

The same year was remarkable for the calling of four national conventions.² The selection of Representatives and Senators in the States for Congress was the movement which engaged in competition the friends and opponents of the Administration, and the most stirring interest in such a political act would naturally be found in the States themselves, but the excitement expanded into expressions by the nation, as well. One of the national conventions was held at Pittsburg, and the delegates³ were soldiers and sailors. Governor Cox⁴ was unanimously chosen permanent chairman of the convention. He had earlier in the year withdrawn from President Johnson, whose stubbornness and pugnacity threw him into awkward and critical attitudes, and the clear depths of his address before the convention showed the strong convictions which anchored him. He said that it was "unpleasant to recognize the truth that it is in the minds of some to exalt the executive department of the Government into a despotic power, and to abase the

¹Ohio State Journal, February 27, 1866.

²Twenty Years in Congress, Vol. 11, pp. 220-230-232.

³About 25,000 delegates were present.

⁴General John A. Logan had been the first choice, but in his absence Governor Cox was selected.

representative portion of our Government into the mere tools of despotism. We know that the will of the people has been expressed in the character of the existing Congress. We have expressed our faith that the proposition which has been made by Congress for the settlement of all difficulties in the country (14th amendment) is not only a wise policy, but one so magnanimous that the world stood in wonder that a people could in such circumstances be so magnanimous to those whom they had conquered."

In his first annual message to the General Assembly of Ohio, Governor Cox made five important recommendations, which were definitely and promptly responded to by affirmative legislative action. He urged that the financial laws of the State be revised¹ to secure a correct estimate of taxable real and personal property. On March 16, 1867, a law was passed empowering the Governor to appoint a board of commissioners to revise all the laws of the State relating to the assessment and taxing of property.² On March 30 and May 8, laws were passed in accordance with the recommendations of the commissioners.³ He recommended the founding of a reform school for girls.⁴ On April 30, 1868, a committee was appointed by the General Assembly, authorized to examine sites for the establishment of a reform school for girls,⁵ and in 1869 the school was founded.⁶

He recommended the creation of a State Board of Charities, to act in an advisory capacity to the Legislature, and to supply information relating to the improvement of public charities.⁷ On April 17, 1867, a law was passed authorizing the Governor to appoint a committee of five persons constituting the State Board of Charities, who should annually make such suggestions to the Legislature as might be deemed wise.⁸ He recommended the creation of Boards of Health in cities and villages, whose duty it should be to enforce regulations in regard to cleanliness, the sale of unwhole-

¹Executive Documents, part I, 1866, p. 265.

²Laws of Ohio, 1867, p. 61.

³Laws of Ohio, 1868, pp. 38, 166, 171.

⁴Executive Documents, part I, 1866, p. 270.

⁵Laws of Ohio, 1868, p. 298.

⁶Senate Journal, 1869, pp. 556, 722, 744.

⁷Executive Documents, part I, 1866, p. 270.

⁸Laws of Ohio, 1867, p. 257.

some food and the care of the sick and the poor.¹ On March 29, 1867, a law was passed that the City Council of any city shall have power to create a board of health,² and later another law was passed that the Council of any incorporated village could, according to the Act for Cities, create a board of health.³ He recommended the ratification of the proposed 14th amendment to the Constitution.⁴ On January 11, 1867, the General Assembly ratified the amendment on the part of Ohio.⁵ Governor Cox exercised the functions of Chief Executive of the State of Ohio with credit to himself and satisfaction to the people.

His views on the solution of the negro problem⁶ and his vindication of President Johnson, in which he strove to soften the antagonism between the President and Congress, placed him in questionable favor with the Republican party in the State. Although he was urged at last to permit his name to be presented to the convention for renomination, he firmly declined, having several months previously expressed a determination not to be a candidate a second time.

¹Executive Documents, part 1, 1866, p. 270.

²Laws of Ohio, 1867, p. 76.

³Laws of Ohio, 1867, p. 147.

⁴Executive Documents, part 1, 1866, p. 281.

⁵Laws of Ohio, 1867, p. 320.

⁶Letter of Sherman to Grant, *North American Review*, Vol. 143, p. 83.

COX SECRETARY OF THE INTERIOR.

WHILE General Grant was acting as Secretary of War *ad interim*, Mr. Stanton having been suspended by President Johnson, a suggestion for his successor was made by General Sherman. The latter thought that the restoration of Mr. Stanton would not be acceptable to the President and the Army, and he believed that Governor Cox of Ohio, whose term would close in a short time, would be confirmed by the Senate as General Grant's successor. He did not know that the position would be acceptable to Governor Cox, if it were tendered to him. Senator Reverdy Johnson, with whom he talked, joined with him in approval, and the next day saw the President. Several Senators whom General Sherman addressed encouraged him in the idea. General Grant assured General Sherman that both he and the Army would agree to Governor Cox. When General Sherman obtained an interview with the President, the latter informed him in answer to his inquiry that Senator Reverdy Johnson had seen him in regard to Governor Cox, but the President gave General Sherman no further assurance than that he had a good opinion of him.¹

When General Grant became President he was already familiar with Mr. Cox's ability and the excellent services which he had rendered during the war. He, therefore, tendered him the Secretaryship of the Interior, and the position was accepted.

The annexation of San Domingo was the first important aim of President Grant in his first Administration.² To this the Cabinet, as well as Congress was "consistently opposed." The discussion of the subject at Cabinet meetings had been free, and the members were agreed with Mr. Fish, Secretary of State, that the Administration should adopt "a cordially friendly attitude to the actual government³ in San Domingo, with decided discouragement to all

¹North American Review, Vol. 143, pp. 83-84.

²For the account of the San Domingo affair, I have used the article by J. D. Cox, in the Atlantic Monthly, August, 1895, pp. 165-167.

³Cabral, at the head of an insurrectionary force in the island, was the rival of Baez, who was the leader of the established government.

intervention and filibustering." The asserted desire of the Navy Department that the United States should have the Bay of Samana, in the eastern part of the island, as a coaling station, having been brought to the attention of the Cabinet by a casual observation of the President, was followed by Grant's declaration that he would send Colonel Babcock¹ in a confidential way to inspect the bay. It was understood in the Cabinet that the preliminary investigation was known only to the intimate circle around the President, but events occurred² before the departure which proved that the project had acquired a degree of publicity. When Babcock's return was announced by the press, Secretary Cox repaired to the Department of State. When they were alone, Secretary Fish turned to Cox and said: "What do you think! Babcock is back, and has actually brought a treaty for the cession of San Domingo; yet I pledge you my word he had no more diplomatic authority than any other casual visitor to the island." The two Secretaries agreed at the end of their discussion that the wisest policy, when the President next met the Cabinet, was "to insist upon burying the whole in oblivion as a state secret." In the meantime, the Cabinet members had expressed themselves in agreement with Mr. Fish's suggestion. It now rested upon the Secretary of State to present this item of his portfolio, when called upon by the President in regular Cabinet meeting. The President, "contrary to his custom, took the initiative," when they next met. "Babcock has returned, as you see," he said, "and has brought a treaty of annexation. I suppose it is not formal, as he had no diplomatic powers, but we can easily cure that. We can send back the treaty, and have Perry, the consular agent, sign it, and as he is an officer of the State Department, it would make it all right." After a moment of embarrassing silence, Secretary Cox said: "But, Mr. President, has it been decided, then, that we *want* to annex San Domingo?" The direct question evidently embarrassed General Grant. He colored and smoked hard at his cigar. He glanced at Mr. Fish at his right, but the face of the Secretary was impassive, and his eyes were fixed on the portfolio before him. He turned to Mr. Boutwell on his left, but no

¹Assistant Private Secretary to the President.

²Some merchants trading with the island offered Babcock free passage on one of their vessels, and it was reported that a United States Senator was to accompany him.

response met him there. As the silence became painful, the President called for another item of business, and left the question unanswered. The subject was never again brought up before the assembled Cabinet.

Secretary Cox was at the head of the Interior Department, when a new era was entered, in the policy of the National Government, toward the Indians.¹ He saw the satisfactory results of President Grant's "peace policy," and interpreted the definite movement as an attempt to secure "co-operation between the Government and the active benevolence of the people in the work of civilization."² The policy of the Government had for a long time been that Indian tribes in the vicinity of white settlers should live upon definite reservations.

The conditions of travel were suddenly changed in 1869, when the Pacific Railroad was completed. "Instead of a slowly advancing tide of immigration making its gradual inroads upon the circumference of a great interior wilderness, the very centre of the desert had been pierced."³ The white population had been slowly but surely inclosing and invading the Indian settlements, and now, when the numbers of the white people suddenly increased, the tendency was accordingly aggravated. A remedy appeared to lie in a change in the Indian territories. Instead of assigning a separate reservation to each tribe, as the National Government had been accustomed to do "in most instances," Secretary Cox advocated the aggregation of tribes upon large reservations.⁴ He also was in favor of allotting land in severalty when the Indians were prepared for it.⁵

During this Administration the people of the United States became aroused over the need of removing the abuses of the Civil Service, and Secretary Cox, in his annual report for 1869, expressed a hope that there would be reform in the near future. He advocated raising the standard of qualification for appointment, making merit the ground of promotion, and securing permanence of tenure of office to the incumbent who should prove efficient.⁶ The useful-

¹The Indian Office was included under the Interior Department.

²International Review, Vol. 6, p. 630.

³Report of the Secretary of the Interior, 1869, p. 7.

⁴Report of the Secretary of the Interior, 1869, p. 8.

⁵Report of the Secretary of the Interior, 1869, p. 9.

⁶Report of the Secretary of the Interior, 1869, p. 24.

ness of an efficient clerk he regarded as increased by the increasing duration of his incumbency. He later added the conviction that the standard of qualification would be raised by admitting to the Civil Service aspirants by competitive examination open to all.¹

The vast army of officers of the Government ranking below the members of the Cabinet, and their functions being purely clerical, their selection should be made irrespective of their political affiliations. He believed that thus an advantage would be gained by the growth in the personnel of the National Government of a feeling that they were the servants of the people.²

In August, 1870, a formal notice was served upon Secretary Cox that Justice D. C. Humphreys, of the Supreme Court of the District of Columbia, would hear a motion for contempt of an injunction. It was not asserted that the motion could be against the Secretary of the Interior, but Secretary Cox in his course of action assumed such to be the fact. The stage of the case hinted at by the notice of the Court grew out of certain past events.

In 1868 William McGarrahan,³ alleging himself to be the purchaser of a claim of land in California, filed a petition in the Supreme Court of the District of Columbia for a mandamus commanding the Secretary of the Interior to issue to him a patent for the land.

The Court ordered Secretary Browning to show why the mandamus should not be issued; he answered that the Court did not have jurisdiction over the subject-matter of the case. However, a mandamus was issued directing Secretary Browning or his successor in office to convey to McGarrahan the land in question. Four months before, Secretary Browning had been succeeded in office by Mr. Cox, and the mandamus was served upon Secretary Cox. The latter sued out a writ of error against McGarrahan and removed the case into the Supreme Court of the United States.

The Court rendered the following in its decision: "A judgment in mandamus ordering the performance of an official duty against

¹North American Review, Vol. 112, p. 98.

²North American Review, Vol. 112, pp. 105-106.

³Wallace's Reports of the Decisions of the Supreme Court of the United States, Vol. 9, p. 298, *et seq.*

an officer as if yet in office, when, in fact, he had gone out after the service of the writ, and before the judgment, is void; such a judgment cannot be executed against his successor."

"A mandamus to compel either the Commissioner of the General Land Office or the Secretary of the Interior to issue the patent cannot be sustained under the statutes as now existing. The granting of a patent for lands in cases where proof, hearing, decision are required, and where the exercise of judgment and discretion is thus necessary, is not a matter wherein the action of the Department of the Interior is subject to re-examination by the Supreme Court of the District."

Secretary Cox was proceeding with the application of the New Idria Mining Company for a patent for land in California, and McGarrahan brought suit for injunction against the company and against Secretary Cox for contempt of injunction. Secretary Cox addressed to Humphreys a letter¹ asking if the Secretary were trenching upon the jurisdiction of the Court in executing the trust committed to him, or whether the Court were not trenching upon the Secretary's jurisdiction, if the injunction were intended to obstruct the order of business before him. Assuming that the Department of the Interior had been made a party to the record, and that an injunction had been asked for, as it had not, to forbid their proceeding with application of the New Idria Mining Company for a patent for land, the Secretary further asked if the Court could have interfered by injunction to prevent him from acting upon the application. Secretary Cox defended his own position successfully by presenting the decision of the Supreme Court of the United States in the case to which he was himself a party against McGarrahan. He removed the opportunity of a reply from the opposite side by proving that the duties involved were not merely ministerial,² but discretionary, and that there was no

¹ Letter of Honorable J. D. Cox, Secretary of the Interior, to Honorable D. C. Humphreys, Associate Justice of the Supreme Court of the District of Columbia.

² The Supreme Court of the United States, in *The Secretary of the Interior vs. McGarranan*, decided that the Secretary's duties in McGarrahan's case were discretionary.

distinction between proceeding for a mandamus and an injunction.¹

Secretary Cox was almost the only member of the Cabinet who retained his position for a longer duration than the first year of the Administration, and before Grant's first term had half expired every original member of the Cabinet, with the exception of Boutwell, had been succeeded by another. Some of the resignations were, in fact, due to causes disconnected with the Administration, and whatever embarrassment was felt it was consistent with the situation that it should not have been borne wholly by anyone. But the resignations which occurred when the President and his advisers had for some time been together at the head of the Government arose out of different conditions. The San Domingo² affair had unfortunate effects in the Cabinet, and the persistent efforts of Grant to bring his annexation scheme to a successful issue in the confirmation of it by the Senate illustrate his lack of fitness at that time for civil business.

President Grant, in military fashion, conceived in his mind an object to be attained and instinctively regarded every officer of the Government as a subordinate who should acquiesce in the commands of a chief. Mr. Fish, Secretary of State, who stood in cordial relations with Senator Sumner, an ardent opponent of the annexation, found his attitude toward the Senator open to the false interpretation of duplicity, and was persuaded only by strong personal influences and a sense of duty from resigning.

Attorney-General Hoar made a modest and courteous avowal of his willingness to yield his Cabinet position to meet any need of President Grant for the success of his Administration, and found his official connection with the President curtly ended when the latter resorted to a bargain with Southern Senators for their support of the annexation scheme.

The quality which specially fitted Grant for a superior military commander reacted with injurious effect when he carried on the affairs of the state. His Cabinet officers felt that they were deprived

¹ Announced in the decision of the Supreme Court of the United States, in *Litchfield vs. The Register and Receiver of the Land Office at Fort Dodge*.—Wallace's Decisions of the Supreme Court of the United States, Vol. 9, pp. 576-577.

²J. D. Cox, in the *Atlantic Monthly*, August, 1895, pp. 164-173.

of the tie which bound them to the President when they could not serve him with a cordial and confidential interchange of opinion. Secretary Cox could not be reconciled to retain his portfolio, and resigned in November, 1870.¹

¹Secretary Cox made three recommendations which received affirmative legislative action in Congress. He recommended the creation of a court in Washington, D. C., "for the summary trial of minor offenses." Acting upon this suggestion, Congress enacted, June 17, 1870, that there should be established in the District of Columbia a court to be called The Police Court of the District of Columbia, with jurisdiction over misdemeanors. He recommended, also, that the penitentiaries in the Territories be put under the charge of United States Marshals. Congress agreed to this and to the erection of a new jail in the District of Columbia. See Report of the Secretary of the Interior, 1869, p. 24; 1870, p. 20, 22; United States Statutes at Large, Vol. 16, pp. 153-157; p. 398, Vol. 17, p. 211.

COX IN CONGRESS.

MR. COX'S nomination by the Republicans of the Toledo district for Representative in the Forty-fifth Congress was tendered to him unexpectedly on his part, and he accepted the honor, which he had not sought. He was duly elected, and took his place in a Congress which was distinguished for placing the country again on a bi-metallic basis, and for witnessing the operation of the resumption of specie payments. By this time a reactionary sentiment against the Resumption Act had arisen for various reasons, and was having its effect in Congress. On October 31, 1877, in the special session a bill was introduced for the repeal of the third section of the Resumption Act. Among other amendments offered was one by Mr. Cox.¹ The distinctive features of the original law and of Cox's proposed amendment were that the Resumption Act required for every issue of national bank notes eighty per cent. of the legal tender notes to be retired, while, by Cox's proposed amendment, legal tender notes were redeemed, with the regular increase of the value of the paper dollar one-half per cent. semi-annually, until its value was at par with coin.² The legal tender notes in excess of three hundred millions of dollars were redeemed by the Resumption Act, with the contingency of re-issue, while by Cox's proposed amendment they were canceled after redemption.

The Resumption Act left open the question of the re-issuing of the three hundred millions of dollars of notes after their redemption. The proposed amendment settled the disputed point by keeping the notes in circulation. Mr. Cox affirmed that his amendment would avoid a forced contraction by gradually reducing the premium on coin, while the holder's confidence in his currency would be increased, and there would be no temptation to hoard the legal tender notes.

Paper money enough, he believed, would be floated to gauge the actual volume of business.³ When it was decided by the passage

¹Congressional Record, 45th Congress, 1st Session, p. 257.

²Beginning at the ratio of 97 to 100 on January 1st, 1878.

³Congressional Record, 45th Congress, 1st Session, pp. 266-269.

of the Resumption Act to resume specie payments, interest began to be aroused as to whether a single or double standard would be issued to redeem the legal tender notes, and when the Bland bill was introduced, Mr. Cox voted¹ for it, as he did also when it was returned to the House with the Senate's amendment.²

He had declared himself previously in favor of bi-metallism; and his attitude did not at any time change except that, regarding the question as a purely practical one, he held that whenever the policy of the civilized world in this respect should become practically settled or evidently tending to a practical settlement, it would be right and wise to acquiesce in such settlement.

¹Congressional Record, 45th Congress, 1st Session, p. 241

²Congressional Record, 45th Congress, 1st Session, pp. 1284-1285.

CONCLUSION.

IN 1873, when Mr. Cox had in full resumed legal practice in Cincinnati, friends and clients of his in New York were the owners of a controlling interest in the stocks of the Toledo and Wabash and Western Railroad Company. The panic of that year, which began with the failure of Jay Cooke & Co., involved these gentlemen, and when the time for the annual meeting of the company came they had been obliged to part with portions of the stock after the closing of the stock-book prior to the election, according to law. They asked Mr. Cox to attend the annual meeting at Toledo and to manage their interests there, in view of an effort which they learned would be made to prevent their voting upon the stock as it stood upon the transfer book. They anticipated that injunctions might be asked for to interfere with the course of the meeting. Mr. Cox attended, therefore, as their counsel, with their proxies, and became chairman of the stockholders' meeting. The hostile efforts were, in fact, made, but the course which he pursued was in the main successful, and led to a proposition from the adverse party that if Mr. Cox would himself accept the presidency of the road they would withdraw all opposition, make his election unanimous and assist him in saving the property from wreck. Under these circumstances, he accepted the election, and when it became necessary for the company to go through a foreclosure the Court appointed him the receiver, and he controlled the property until the reorganization in 1876-77. Mr. Cox took the complete general management of the road personally and administered its affairs during that period. At the close of Mr. Cox's term in Congress, on March 4, 1879, he returned again to Cincinnati and resumed legal practice. In 1881 the Hon. Rufus King, desiring to retire from the deanship of the Cincinnati Law School, Mr. Cox was invited to take that position, which he accepted, and remained in it till the close of the academic year of 1897. This position required, of course, a larger amount of lecturing than any other member of the faculty performed, and under the rule adopted by the board of trustees the dean did not engage in court practice,

as that would interfere with the constant administration of the school necessary, but he confined himself, besides attending the duties of the school, to what is known as chamber practice, including action as referee and master in cases referred to him out of the courts. During a portion of the time from 1881 to 1897 Mr. Cox also acted as president of the University of Cincinnati.

Mr. Cox devoted himself at intervals during his later life to microscopical science. His papers in this sphere of knowledge have been printed in microscopical journals and have gained for him wide recognition. He was elected corresponding member of the Belgian Microscopical Society and fellow of the Royal Microscopical Society. For more than twenty years Mr. Cox reviewed books for *The Nation*, chiefly those relating to the military and civil history of our civil-war period.

Dr. Cox had conferred upon him the following academic degrees: A.B. and A.M., by Oberlin College, in the years 1851 and 1854, respectively; and LL.D., by Denison University in 1867, the University of North Carolina in 1869 and Yale University in 1879.

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VITA.

JAMES REES EWING was born in Columbus, Ohio, June 25, 1870. Having spent one year in the Pataskala High School, he entered the Preparatory Department of the Ohio Wesleyan University, at Delaware, in the fall of 1884, and was graduated in 1890, with the degree of A.B. He accepted a position as instructor of Greek and Latin in Green Spring Academy, at Green Spring, Ohio, and at the end of one year was appointed professor of Greek in Ottawa College at Ottawa, Kansas. At the end of three years he removed to Granville, in his native State, where he was instructor in Greek, in Denison University, for one year.

In October, 1895, he entered the Historical Department of the Johns Hopkins University.



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