

# Peter Stephen Du Ponceau: Pennsylvania Lawyer Extraordinaire

By WILLIAM E. BUTLER,<sup>1</sup> Cumberland County  
Member of the District of Columbia Bar



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## ABSTRACT

*Peter Stephen (Pierre Etienne) Du Ponceau (also rendered as Duponceau, DuPonceau, du Ponceau, duPonceau) was among the most distinguished Pennsylvania lawyers of his time and, as so many lawyers, a man gifted in many fields: attorney-at-law, jurist, philologist, linguist, translator, interpreter, anthropologist, ethnographer, philanthropist, historian, educator, scholar, publicist, public figure, bibliophile, and military officer. His life and many accomplishments deserve further commemoration, especially in light of newly-available sources.<sup>2</sup>*

## EARLY LIFE AND EDUCATION

Peter Stephen Du Ponceau was born at St.-Martins, Isle of Ré, a small island off the port of La Pallice in southwestern France, on June 3, 1760, the son of a French military officer. A natural linguist, by the age of five he had memorized a Latin and French vocabulary. His formal studies commenced at a grammar school, augmented by home instruction in the form of private tutors.

At a neighbor's home one day he accidentally happened upon an English grammar and undertook the self-study of that language, testing his skills with English, Irish,

1. William E. Butler is the John Edward Fowler Distinguished Professor of Law at the Penn State Dickinson School of Law, Carlisle, and Emeritus Professor of Comparative Law in the University of London (University College London).

2. The Quarterly published an earlier account of Du Ponceau sixty-five years ago: Kurt H. Nadelmann, Peter Stephen Du Ponceau, 24 PBA Quarterly 248 (1953-54).

and Welsh military families quartered in the town. Before long he was devouring the works of John Milton (1608-1674), James Thomson (1700-1748), Edward Young (1683-1765), Alexander Pope (1688-1744), and William Shakespeare (1564-1616). As a student in grammar school, he roomed with a young Irishman, Edmund Stack; they “spoke English together to our hearts’ content.”<sup>3</sup> Then it was the turn of the Italian language, which he acquired in the same manner and on which he tested his abilities with an Italian regiment quartered locally. Extreme near-sightedness extinguished his hopes for a military career, but his father arranged for tutoring in mathematics, geography, history, and military science.

Greek he acquired to some extent, chiefly through self-study and informal classes with like-minded individuals. The Russian language he studied in Paris with a nobleman from that country, and he turned down an offer to instruct in English at the St. Petersburg Imperial College of Cadets. He later added German, Danish, Swedish, Spanish, and Dutch, among others.

At the age of thirteen, he enrolled in a Benedictine College, St. Jean Angely, where he excelled in philosophy and continued his studies of English. Upon his father’s death, he left the College at age fifteen and under a combination of maternal and clerical pressure agreed to enter a seminary on condition that he not be expected to enter the priesthood. A family friend, the Bishop of Rochelle, arranged for him to teach Latin to a much older class of students. He passed the seminary’s examinations with distinction for his bachelor’s degree.

**“. . . the best private law library in the United States formed by a pre-eminent member of the Pennsylvania Bar dispersed without finding its way to a legal institution.”**

## PARIS AND MILITARY CAREER IN THE AMERICAN REVOLUTION

Bullying by colleagues and students induced Du Ponceau to leave for Paris. There he ghosted translations for others on a per-page basis, undertook free-lance commercial translations for merchants, and did some private tutoring.

Constantly on the alert for gainful permanent employment and opportunity, Du Ponceau’s breakthrough came when he learned that Baron Friedrich Wilhelm Augustus von Steuben (1730-1794) sought a secretary/interpreter for his new position in the United States Army. Sailing from Marseilles and landing at Portsmouth, New Hampshire, on December 1, 1777, Du Ponceau presented an uninspiring sight: “. . . dreamy-eyed, nearsighted, and hopelessly scholarly boy of seventeen . . . possessed of an insatiable academic curiosity . . . tougher than he appeared at first glance, with his pale complexion and tall, lanky frame, exaggerated by adolescent awkwardness.”<sup>4</sup>

Von Steuben spoke no English. Du Ponceau found himself obliged to cope with the American version of that tongue at once. After some days in Portsmouth, von Steuben moved on to Boston, where Du Ponceau, by now a convinced republican, met John Hancock (1737-1793) and Samuel Adams (1722-1803); the party moved on to Yorktown, where they met General Horatio Gates (1727-1806). At von Steuben’s

3. We know of Du Ponceau’s early life thanks to: “Notes and Documents: Autobiography of Peter Stephen Du Ponceau”, *The Pennsylvania Magazine of History and Biography*, LXIII (1939), pp. 189-227, 311-343, 432-461; LXIV (1940), pp. 97-120, 243-269.

4. Paul Lockhart, *The Drillmaster of Valley Forge: The Baron de Steuben and the Making of the American Army* (2008), p. 49.

request, Du Ponceau received his military career after all, being appointed captain, by brevet, in the United States Army. On February 19, 1778, he and von Steuben travelled to Valley Forge, when Du Ponceau was presented to General George Washington (1732-1799). The Baron became a major-general in and Inspector-General of the armies of the United States. The consequences for Du Ponceau were pleasing: as secretary to the Baron, he became aide-de-camp and, by courtesy, was given the rank of major. It was in Valley Forge that Du Ponceau formed a friendship with General Lafayette (1757-1834), a relationship that endured until the latter's death.

Du Ponceau served General von Steuben for four years. Among his legal tasks were the translation, seeing through press, and distribution of von Steuben's *Regulations for the Order and Discipline of the Troops of the United States* (1779)—a formidable assignment as skilled engravers, printers, and bookbinders had either fled the British or sought their fortune elsewhere, often serving on privateers at sea. In due course, 1,500 copies were finally produced in June/August 1779, with special presentation copies for George Washington and King Louis XVI of France.

### ILLNESS FORCES A CAREER CHANGE

Consumption (tuberculosis) ended Du Ponceau's tenure under Baron von Steuben. Pronounced by his doctors to be incurable, Du Ponceau returned to Pennsylvania to die. His doctors proved to be in error, however, and on July 25, 1781, Du Ponceau became a citizen of the Commonwealth of Pennsylvania by oath. He found employment in Philadelphia with Robert R. Livingston (1746-1813), sometime Chancellor of the State of New York, who had been appointed secretary for foreign affairs. Du Ponceau's position as secretary to Livingston at \$750 per year payable in French crowns proved to be congenial. Livingston's house at Sixth and Chestnut Streets in Philadelphia became Du Ponceau's home upon Livingston's retirement in 1801, and Du Ponceau continued to reside there until his death in 1844.

On May 21, 1788, Du Ponceau married Anne Perry (1768-1792), of Massachusetts, the eldest daughter among eleven children of a Presbyterian pastor, Rev. Joseph Perry. After the death of her parents, she moved to Philadelphia, where she met Du Ponceau. There were three children, two sons who died in early infancy and a daughter, Louisa Frances (1790-1825). Anne died shortly after the birth of their third child. On September 12, 1794, Du Ponceau married Anne Latouche (1759-1817), of New York; there were no issue of this marriage.

While recuperating from his illness, Du Ponceau set in motion steps to consolidate his social and professional position. Although nothing of his life in France is believed to have disposed him to read law, Du Ponceau decided to become a Pennsylvania lawyer and arranged an apprenticeship with William Lewis (1751-1819), whom he regarded as "the most celebrated lawyer in Philadelphia, and perhaps the United States."<sup>5</sup> On January 24, 1785, upon motion of Mr. Lewis, Du Ponceau was admitted as an attorney of the Court of Common Pleas and on the favorable report of the examiners, he was received. He had previously been appointed as notary public; in 1791 he was made a sworn interpreter of foreign languages.

### PHILADELPHIA LAWYER

Success as an attorney-at-law came rapidly. By September 1785, the Philadelphia court docket showed that he was counsel in twenty-one actions either for plaintiff

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5. Recounted in Robley Dunglison, "Biographical Sketch of Peter S. Du Ponceau," *American Law Magazine*, no. 9 (April 1845), p. 16.

or defendant. On January 28, 1786,<sup>6</sup> once again upon the motion of William Lewis, Du Ponceau was admitted as Counsellor of the United States Supreme Court.<sup>7</sup> He promptly found himself instructed to argue cases before the Court. Initially, that Court was based in Philadelphia, and once the capital was established in Washington D.C., he found himself travelling there with other leading members of the Philadelphia Bar. Joseph Story (1779-1845) who, before his appointment to the Supreme Court in 1811, routinely would dine with the Justices, heard Du Ponceau argue and described him in 1808 as follows:

Duponceau is a Frenchman by birth, and a very ingenious counselor at Philadelphia. He has the reputation of great subtilty [sic] and acuteness, and is excessively minute in the display of his learning. His manner is animated but not impressive, and he betrays at every turn the impatience and casuistry of his nation. His countenance is striking, his figure rather awkward. A small, sparkling, black eye, and a thin face, satisfy you that he is not without quickness of mind; yet he seemed to me to exhaust himself in petty distinctions, and in a perpetual recurrence to doubtful, if not to inclusive arguments. His reasoning was rather sprightly and plausible, than logical and coercive; in short, he is a French advocate.<sup>8</sup>

In later years, Story wrote to Du Ponceau in 1840: "To you and Chancellor Kent I mainly owe whatever attainments I have made in foreign jurisprudence and the civil law."<sup>9</sup> Both comments are interesting. Although he never studied law in France, Du Ponceau's manner, deportment, and style impressed American observers—all well-attuned to foreigners as they all had originated in that status—as French through and through, even though his legal training had been received entirely in the United States. One wonders how Du Ponceau would have appeared to a jurist raised entirely in France.

## AN EXERCISE IN COMPARATIVE AND INTERNATIONAL LAW

Du Ponceau's letterbooks for the period 1792 to 1809 indicate that the majority of his clients were individuals of French origin in the United States, West Indies, or France, and that his "important suits" addressed issues of international, commercial, and maritime law.<sup>10</sup> For many years he enjoyed a retainer from the French Republic. He considered intervention in a French prize claim against the frigate *South Carolina*, seeking documents to "... determine if it is wise for the Republic to intervene in the case which is now pending before the supreme court, or if this action

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6. Du Ponceau shows this date in his own hand on the Certificate of admission to the United States Supreme Court, reproduced in facsimile in M. Marcus (ed.), *The Documentary History of the Supreme Court of the United States, 1789-1800* (1998), p. 548.

7. At this time, the United States Supreme Court distinguished between counsellors and attorneys, following English procedure and the practice of several states. Only counsellors could plead a case; attorneys could file motions and engage in other paperwork, but not actually conduct a case before the Court. The rule was changed on August 12, 1801 to enable Counsellors to be admitted as attorneys on taking the usual oath. See *ibid.*, I(1), p. 177, n. 18. Pennsylvania was among the states that observed the distinction; Du Ponceau is shown as having been admitted to the Pennsylvania Supreme Court as Counsellor.

8. William Wetmore Story, *Life and Letters of Joseph Story, Associate Justice of the Supreme Court of the United States, and Dane Professor of Law at Harvard University* (1851), Vol. I, pp. 162-163.

9. Correspondence to Du Ponceau, dated January 30, 1841. Cited in Richard H. Heindel, "Some Letters of Peter Stephen Du Ponceau", *Pennsylvania History* (1936), p. 199.

10. His letterbooks are held at the Historical Society of Philadelphia. This data is drawn from Jennifer D. Henderson, "A Blaze of Reputation and the Echo of a Name': The Legal Career of Peter Stephen Du Ponceau in Post-Revolutionary Philadelphia" (unpublished M. A. Thesis, Florida State University, 2004), p. 27.

would be likely to expose the republic to a Considerable expense without any benefit.”<sup>11</sup>

Du Ponceau truly had that rarest of commodities: an international and comparative legal practice. His command of Roman and continental European legal concepts and of the law of nations, together with his unparalleled knowledge of languages, made him a natural advisor for European merchants, commercial agents, and diplomatic and consular officials. John Pickering (1777-1846) wrote of Du Ponceau’s law practice:

[H]e was engaged in all the important cases, which then came before the courts of the State as well as of the United States. At that day the controversies which arose between France and the United States, and the position of the United States as a neutral power, while all Europe was at war, gave rise to questions of international law for which our lawyers, generally, were then quite unprepared; and his knowledge of the civil and continental law of Europe, which were easily accessible to him, by means of his native language—a language then studied, or read, by very few persons in this country—gave him many decided advantages at the bar in cases of the kind alluded to.<sup>12</sup>

Hugh Henry Brackenridge (1748-1816), a member of the Pennsylvania Supreme Court, wrote, “. . . Mr. Duponceau, whom all will admit, I take it, possesses the greatest knowledge of general law of any, in the U. States . . . may be said to be the greatest universal jurist”.<sup>13</sup>

Du Ponceau’s position with Robert Livingston was his last in public service. He devoted himself to private and professional business and to scholarship in a number of fields. Apart from his practice of law and his legal translations, literally scores of learned societies and organizations engaged his attention. Two especially, based in Philadelphia, deserve an article in their own right but will be commented upon briefly here.

## LAW ACADEMY OF PHILADELPHIA

Although not a law school in its traditional American meaning, the Law Academy of Philadelphia was dedicated to legal education. In many respects it resembled an Inn of Court in England, which was probably no coincidence. The origins of the Law Academy trace back to 1783, when it was formed by Du Ponceau, Bushrod Washington (later a justice of the United States Supreme Court) (1762-1829), and John Wilkes Kittera (1752-1801), recently admitted to the Bar.<sup>14</sup> Surviving records are few, but apparently the members met occasionally to hear lectures on legal topics or to engage in mootings. Various officers served from time to time, and it seems that the name of the society itself changed.<sup>15</sup> In 1811 Du Ponceau was elected President of the Society at the age of 51.

11. See the letter from Du Ponceau to Philippe de Létombe (d. 1833), the French Consul in the United States, dated 6 September 6, 1796 and extracted in note 4, V, at 482. Eventually, Du Ponceau intervened in the case as *amicus curiae* and reported the outcome to Létombe on February 21, 1797. *Ibid.*, V, pp. 487-498, 490-492. His intervention was decisive at the time in what was an exceedingly complicated affair. For a summary, see *ibid.*, pp. 450-461.

12. John Pickering, “Peter S. Du Ponceau, LL.D.”, *Journal of the American Oriental Society*, I, no. 2 (1844), p. 167.

13. Hugh H. Brackenridge, *Law Miscellanies* (Carlisle, 1814), p. 417.

14. See George Sharswood, *The Origin, History, and Objects of the Law Academy of Philadelphia: An Address Delivered Before the Academy, March 13, 1883* (1883); William MacLean, Jr., *The Law Academy and the Growth of Legal Education in Philadelphia* (1900). For his own recollections, see Du Ponceau, *Address Delivered Before the Law Academy of Philadelphia on the Opening of the Session 1831-2* (Philadelphia, 1832).

15. MacLean and Sharswood quoted sources that documented the existence of law societies during the period 1785 to 1811. Du Ponceau himself said he had “heard no more of Law Societies in this city, although some might have existed without my knowing it.” Du Ponceau, note 14, at 6.

In 1820 efforts were undertaken to create a permanent Foundation for such an organization, and to this end the Society for the Promotion of Legal Knowledge and Forensic Eloquence was established by a group of judges and lawyers. The object of the Society, as articulated in the Preamble to its Constitution, was to:

connect with the mode of instruction at that time exclusively pursued, a more scientific and academical (sic) system, whereby not only a greater degree of jurisprudential knowledge might be acquired, but the students might be exercised in the art of public speaking, so as to unite the talent of the orator with the science of the jurist.<sup>16</sup>

This group then invited an alliance with the Law Society, of which Du Ponceau was the President, and suggested that the Law Society become a Law Academy as an appendage of the new Society and under its control. Du Ponceau was elected the first Provost of the Academy.

The Law Academy formally opened on February 21, 1821, in a room of the Supreme Court of Pennsylvania in the presence of the Trustees and members of the Society for Legal Knowledge and Forensic Eloquence. In his inaugural address, Du Ponceau referred to the fledgling and unsuccessful efforts to persuade the University of Pennsylvania to establish a law school, noted the formation of law schools elsewhere, and strongly urged that a national law school should be created in Philadelphia. The parent society soon came to an end, but the Law Academy lived on well into the twentieth century, having been incorporated by act of the legislature on April 14, 1835.

Mooting was among the activities of the Law Academy; the students were organized into teams and judged by legal professionals who actually produced a written opinion in judgment of the argument presented.<sup>17</sup> Students also wrote dissertations on legal subjects, several of which the Academy deemed worthy of publication. One such dissertation by Antony Laussat, a student then twenty years of age, achieved the approbation of John Marshall (1755-1835) and James Kent (1763-1847) and became a standard work on equity.<sup>18</sup> Over the years, the Law Academy published a number of works, including a seminal work by Du Ponceau himself on jurisdiction.<sup>19</sup> At some later stage, the Law Academy established the Peter Stephen Du Ponceau Prize for an essay upon a subject, either legal or connected with the law, selected and proposed to the Law Academy by its faculty or worthy works submitted anonymously. The "Duponceau Medal" was awarded to the best essay as the medal highest in value; the medal next highest in value was the Laussat Medal.<sup>20</sup>

In 1834 Du Ponceau published in Philadelphia another substantial monograph under the auspices of the Law Academy on the United States Constitution.<sup>21</sup> The volume enjoyed considerable success, was widely cited and translated into French.

## AMERICAN PHILOSOPHICAL SOCIETY

The first learned society in North America, the American Philosophical Society (APS) was founded at Philadelphia in 1743 and for 275 years has been promoting re-

16. See the Constitution of the Law Academy (1821).

17. The Opinion Book, entitled "Opinions Delivered Before the Law Academy of Philadelphia by the Provost and Vice Provost," covering the years 1820 to 1822 and signed by Du Ponceau is preserved in the Manuscript Division of the American Philosophical Society, having been presented by Robley Dunglison in 1862.

18. A. Laussat, *Essay on Equity in Pennsylvania* (Philadelphia, 1826).

19. P. S. Du Ponceau, *Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States* (1824); the author's opening address to the Law Academy delivered in 1821 is appended to this volume.

20. See Article XII, *Charter, Constitution and By-Laws of The Law Academy of Philadelphia* (1867), p. 23.

21. Du Ponceau, *A Brief View of the Constitution of the United States* (Philadelphia, 1834; reprinted New York, 1974).

search in the sciences and the humanities. For Du Ponceau, this organization, just around the corner from his house, became his intellectual base, together with his personal library. He was elected to membership in 1791—a singular distinction for a young man—and, after serving on numerous committees of the Society, was elected President in 1827. He served in this latter capacity until his death in 1844.

Du Ponceau served the interests of the APS in several capacities. He played a major role in the shaping of the APS library and archives and frequently translated foreign communications to the APS for society publications. But brilliant as Du Ponceau's career was as a lawyer, he is claimed by other disciplines, including philology—where he is known as the “father of American philology.”<sup>22</sup> He was especially interested in the American Indian, Mexican, and Chinese languages. That interest accounts for the exceptional library holdings of the APS on American Indian languages, an interest Du Ponceau shared with John Vaughan (1756-1841), a Philadelphia wine merchant and bibliophile. At the instruction of Thomas Jefferson, who served simultaneously as President of the United States and of the APS, Du Ponceau assisted Albert Gallatin (1761-1849) in the study of Indian vocabularies. Jefferson believed there were relationships between the Indian tribes reflected in the similarities and differences of their respective languages. Du Ponceau and Gallatin determined that there was a correlation between the similarity of language and the duration of time that had elapsed since the tribes had migrated to other regions of North America. Du Ponceau published his own findings in a monograph on the grammatical system of Indian languages, which on May 2, 1835, was awarded the Comte de Volney Prize of *Linguistique* of the Institut de France.<sup>23</sup> In assembling his materials on American Indian languages, he corresponded with individuals throughout the world and attracted submissions to APS publications. He also expanded his studies of language to encompass the Chinese system of writing.

## OTHER SOCIETIES, HONORS AND INTERESTS

In all, Du Ponceau was a member of forty-two learned societies, of which nineteen were outside the United States. The University of Pennsylvania conferred the degree of M. A. (hon.) on him on March 21, 1782, at a ceremony attended by General George Washington, Baron von Steuben, and members of Congress, among others. Harvard University conferred the degree of LL.D. (hon.) in 1820. He became a trustee of the University of Pennsylvania later in life. He was elected to the American Academy of Arts and Sciences, President of the Historical Society of Pennsylvania (1837 to 1844), and President of the Athenaeum of Philadelphia (in 1844). He published on such matters as English phonology, the early history of Pennsylvania, the landing of William Penn, silk-worms, and the American literary tradition.

Some of his most important legal works appeared as part of other writings. His translation of passages from the acknowledged father of the conflict of laws, Ulrich Huber (1636-1694), appeared in an otherwise unremarkable opinion of the United States Supreme Court.<sup>24</sup> His first major work, a summary of French bankruptcy law, appeared as part of a treatise by Thomas Cooper (1759-1839) comparing American

22. Roy E. Goodman and Pierre Swiggers, *The American Philosophical Society and the Study of Language in the Early Nineteenth Century* (Leuven, 1953), p. 41.

23. Du Ponceau, *Mémoire sur le système grammatical des langues de quelques nations Indiennes de l'Amérique Du Nord* (Paris, 1838). Du Ponceau was among the select Americans elected to the Institut de France as a Corresponding Member in 1827.

24. *Emory v. Grenough*, 3 U. S. 369 (1797).

and English bankruptcy law.<sup>25</sup> He contributed notes to the American edition of Charles D. Butler (1750-1832) on Grecian, Roman, feudal, and canon law codes.<sup>26</sup> Translations of the 1808 French Code de Commerce and then the French Criminal Code he offered as appendices to an American law journal.<sup>27</sup> For the American edition of the *Edinburgh Encyclopedia* he contributed articles on “Allegiance” and “American law.”<sup>28</sup> When Kent’s *Commentaries on American Law* appeared, Du Ponceau published a review of volume one.<sup>29</sup>

## LEGAL TRANSLATIONS—AN ENDURING LEGACY

If Du Ponceau is to be believed—and there is no reason to doubt him—for him legal translation was a form of relaxation, all the more remarkable for a person afflicted with severe vision problems. In addition to his contributions to the APS as a translator of materials received for publication in the APS Proceedings, his assistance to the Supreme Court of the United States by translating items from Latin for their use, and his submissions to sundry law journals, he completed other translations. Perhaps the state of Anglo/American relations on questions of neutrality led him to publish his translation of Cornelis van Bykershoek (1673-1743), *A Treatise on the Law of War* (1810), from the Latin version. Warmly welcomed at the time, presentation copies were in the hands of the President of the United States.

He translated two more texts, the first Joseph-Mathias Gérard de Rayneval (1736-1812), *On the Freedom of the Sea*, the manuscript of which he presented to the APS and was ultimately published in 2013.<sup>30</sup> The second is being edited for publication: a translation of Ferdinando Galiani (1728-1787), *De’ doveri de’ principi neutrali verso i principi guerreggianti, e di questi verso i neutrali* (1782).

In the field of linguistics, he published translations from the Swedish, French, and German, together with Italian medical works, among others.

## PRIVATE LIBRARY

Du Ponceau left two legacies as a serious book collector: his role in shaping the collections of the APS, and his own personal library which, until data as yet unknown demonstrates otherwise, was in this writer’s opinion the best of its kind in the United States. Over the years he presented more than one thousand volumes to the APS, including manuscripts, as noted above, of unpublished translations. Some of his gifts were by bequest; others he simply carried across the road and presented.

When he began to collect books is a matter of conjecture. He is known to have frequented Paris bookshops at the age of sixteen, when he left his studies for that city. Whether he had the resources to purchase and whether he brought any books with him to America is not a matter of record, although given his character, it is difficult to imagine him without some books on his person, however difficult the travails of

25. Thomas Cooper, *Bankrupt Law of America Compared with the Bankrupt Law of England* (Philadelphia, 1801). Du Ponceau also added a translation of the Ordinances of Bilbao addressing bankruptcy in Spain. Nadelmann described the Cooper/Du Ponceau work as the “first comparative law book ever produced in the United States and also the first scholarly presentation in English of the bankruptcy law of France”. Nadelmann, note 1, at 249.

26. Charles Butler, *Horae juridicae subsecivae* (Philadelphia, 1808).

27. See *American Review of History and Politics* (July and October 1811).

28. Reprinted in *Port Folio*, VII (4th ser.; 1819), p. 26. Du Ponceau also wrote for Lieber’s *Encyclopedia Americana* (Philadelphia, 1829).

29. *American Quarterly Review*, I (1827), p. 162.

30. See J.-M. Gérard de Rayneval, *On the Freedom of the Sea*, transl. W. E. Butler (Clark, New Jersey, Lawbook Exchange Ltd., 2013).

travel. The same must apply to his service in the Continental Army. Serious acquisitions probably commenced when he resigned his commission and took up civilian life in Philadelphia at the age of 21 late in the year 1781. One must further assume that modest circumstances limited his ability to acquire books during the 1780s, although we can be confident that he will have made acquisitions. He had a Russian edition of John Locke, for example, which, judging by its inscriptions, will have been acquired no later than 1786 and possibly much earlier. On March 6, 1789, he made handsome gifts to the APS, perhaps in anticipation of his election to membership. Although they might have been purchased for the occasion, more likely he chose to share some appropriate items from his own collection.

There is every indication in accounts of his character and of his professional life that he was convivial and would share his books for pleasure or for professional reasons. The Philadelphia Bar during the 1790s and early nineteenth century frequently appeared before the Supreme Court of the United States to argue cases. When the Court moved to Washington D.C., they travelled together by stage, hired specially for the purpose. The Court sat in February, requiring that counsel travel in the depths of winter on deplorable roads through rain, hail, and snow. However adversarial they were in Court, together they “became intimately acquainted with each other.” As Du Ponceau recalled in his autobiography, “it was really a proud thing, at that time, to be a Philadelphia lawyer.”<sup>31</sup>

Assuredly Du Ponceau excelled in building his own law collection.<sup>32</sup> In a review of Eighteenth Century American law libraries, one specialist observed a “general interest in admiralty law and the law merchant” indicated by the presence of Charles Molloy (1646-1690), *De jure maritime*, or Giles Jacob (1686-1744), *Lex Mercatoria*, but lacking was a “representative group of English treatises on prize law and the jurisdiction of admiralty courts.” He suggested that the “American bar in the early national period showed an amazing ignorance of prize procedure in England, which resulted in a sharp departure in American prize court practice from that in the mother country.”<sup>33</sup>

Du Ponceau, on the contrary, had an exceptional collection of materials on the law of prize accessible to him, his colleagues, and the judiciary. Correspondence preserved confirms what one must assume was a widespread practice. William Pinkney (1765-1822) wrote to Du Ponceau on July 3, 1815, from Baltimore:

In a Case in the Supreme Court of the United States (*The Nereid*) is a Question whether the Prize Code of Spain does *at this Time* contain the Rule laid down by its old Ordinance, that the Goods of a Friend found on board the Ship of an Enemy shall be confiscated as Prize of War. Proof of the old Ordinance is found in Azuni and elsewhere; but full Satisfaction as to the present State of the Spanish Law on that Stead can perhaps only be obtained from the translation of D’Abreu by M. Bonnemant in 1802. I suppose it probable (from what I see on p. 130 of your Translation of a portion of Bynkershoek—for which we are all much indebted to you—that you are in possession of Bonnemants Work—and if so you would perhaps do me the Favour (instead of Sending me the Book) to cause an Extract to be forwarded to me at Washington of the passage which touches the matter). It must necessarily be short—at least a very short Extract will be sufficient to show M. Bonnemant’s opinion (if he entertained it) that the Old Ordinance was in force when he wrote—I incline to think that you have given an

31. See Du Ponceau, note 2.

32. Du Ponceau used what is probably a rubber-stamp ex libris, found on some of this books that later passed to other collections. See W. E. Butler, “Exlibris of Peter Stephen du Ponceau,” *The Bookplate Journal*, IX, no. 1 (New Series, 2011), pp. 3-14.

33. H. Johnson, *Imported Eighteenth-Century Treatises in American Libraries 1700-1799* (1978).

Opinion in the Case of the Nereid against that which I am bound to maintain; but if this should be so I venture to believe that my Request is not out of Rule—I have the Honour to be—with sincere Respect Your most obedient Servant.<sup>34</sup>

## A LOST OPPORTUNITY

After certain bequests of individual titles, the largest of which was to the APS, the Du Ponceau collection was disposed of at auction in Philadelphia on October 16, 1844. The printed auction catalogue is rare—only three copies are known—and large (66 pages); the text has been reproduced in facsimile in what is to date the most substantial study of his holdings.<sup>35</sup> Prior to the Du Ponceau catalogue having become available, the quality of a private law collection was measured by the auction catalogue of Justice Joseph Story, his friend and colleague.<sup>36</sup>

The 1844 auction of the Du Ponceau library grossed in total, before expenses, some \$225.00. Whether it was sold without reserve is unknown. But thus was the best private law library in the United States formed by one of the pre-eminent members of the Pennsylvania bar dispersed without finding its way to a legal institution—a path, had it been pursued, which would have moved that institution to the forefront of law schools in the United States.

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34. Pinkney referred to Felix Joseph de Abreu e Bertodano, *Tratado juridico politico sobre pressas de mar*, transl. by Guillaume Bonnemant as *Traité juridico-politique sur les prises maritime et sur les moyens qui doivent concourir pour rendre ces prises légitimes* (2d ed. ; Paris, 1802). Du Ponceau did have the volume, disposed of at the auction of his library in 1844. The Letter is held by the Manuscripts Division, APS.

35. See W. E. Butler, *Peter Stephen Du Ponceau: Legal Bibliophile* (Austin, Texas, 2010).

36. "At the national level, perhaps no better private law library could be found than that of Supreme Court Justice Joseph Story . . ." See K. X. Metzmeier and P. S. Campbell, "Nursery of a Supreme Court Justice: The Library of James Harlan of Kentucky: Father of John Marshall Harlan," *Law Library Journal*, C (2008), p. 646. For the Story collection, see M. H. Hoeflich and K. S. Beck, *Catalogues of Early American Law Libraries: The 1846 Auction Catalogue of Joseph Story's Library* (2004).