

1789-1919

**THE UNITED STATES
DISTRICT COURT**

for the

SOUTHERN DISTRICT OF NEW YORK

Its Growth, and the Men Who Have Done Its Work

By

CHARLES MERRILL HOUGH, LL.D., J.U.D.

District Judge 1906-1916

Circuit Judge 1916-1927

MARITIME LAW ASSOCIATION

of

THE UNITED STATES

This account of the history of the United States District Court for the Southern District of New York, was found among Judge Hough's papers after his death on April 22, 1927. It was evidently written in 1923, and is published by the Maritime Law Association (of which he became a member in 1911, and was President from 1919 until his death), in accordance with a resolution adopted at the Annual Meeting of 1934.

The text has been carefully examined by Mrs. Hough and by Charles Weiser, Esq., the present Clerk of the Southern District Court; and the additional information contained in the Appendix has been prepared by Mr. George J. H. Follmer, Chief Deputy Clerk. The data concerning the Eastern District were prepared by Percy G. B. Gilkes, Esq. Grateful acknowledgement is made for this assistance.

ARNOLD W. KNAUTH, *Secretary.*

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It is an historical commonplace that but for the system of United States Courts extended throughout the states "the Federal Constitution could never have been put into practical working order."¹

But no system is mature at birth, and no apparatus, however cunningly devised, works without human guidance; nor can it work to advantage without material whereon to exhibit merit.

The national courts in the City of New York are an excellent example of a human device, reasonably well planned but of small importance until the community furnished material suitable for its activity—and happy selection provided, upon the whole, men capable of accepting and improving the opportunity afforded by that material.

The very fact that the constitutional clauses relating to the judiciary were the subject of little discussion prior to adoption of the Constitution, is strong evidence that few observers or critics perceived that an independent national judicial system would not only grow with the nation, but in ways that could not be foreseen would contribute to the nation's growth.

What opposition there was came from men, like Maclay of Pennsylvania, who merely included the judiciary in an all pervading hatred of any form of central or national government. Thus

¹ Fiske's *Critical Period of American History*, p. 300.

Maclay wrote of the Judiciary Act of 1789² that it was "calculated for expense, and with a design to draw by degrees all law business into the federal courts. The constitution is meant to swallow up state constitutions by degrees, and thus to swallow all state judiciaries."

Opposition of this kind might inflame anti-national prejudice, but there is no evidence of professional opposition to some federal system of courts. It was perhaps well for the harmony of the Constitutional Convention on this point that Thomas Jefferson was abroad, for ten years later, it having come to his ears that the Courts of the United States were following common law precedents, he wrote to Edmund Randolph: "Of all the doctrines preached by a federal government, the novel one of the common law being a force and cognizable as an existing law in their courts is to me the most formidable"—for he held the strange opinion that the national courts would engross all business because so much of common life was founded on common law.

But even if Jefferson's masterful management had been felt in Convention, the result would scarcely have been different. Most of the work on the judiciary clauses was "done in Committee by Ellsworth, Wilson, Randolph and Rutledge,"³ and most of the Convention delegates, with substantially all of the leaders of the bar throughout the country, thought with a later historian that "from the Declaration of Independence to the date of the ratification of the Constitution the judicial tribunals of the States had been unable to administer justice to foreigners, to citizens of other states, to foreign governments and their representatives and to the governments of their sister states, so as to command the confidence and satisfy the reasonable expectations of an enlightened judgment."⁴

To a considerable extent the same men, and certainly men in a like mood, took up the establishment of the courts at the first session of Congress. They knew that some effort in the Convention to secure to state tribunals first instance work in matters affecting the national government had been voted down, and the method of appointment and tenure of office of the proposed federal judiciary settled without opposition,⁵ and on this foundation they built.

The Judiciary Act of 1789 was a Senate measure, and there were but six votes against it and no reported discussion.⁶

In the House, criticism of a curious nature developed, wholly

² 1 Stat., 73

³ Fiske's *Critical Period of American History*, p. 300

⁴ Curtis's *History of the Constitution*, Vol. 2, p. 442; Harper Bros., 1859.

⁵ Bancroft, *History of the United States*, Vol. 6, pp. 223 and 352 (Appleton & Co., 1885)

⁶ 1 Ann., 51

directed against the proposed District Courts. The spokesman was Samuel Livermore of New Hampshire, himself a well known judge, who advanced the singular objection that it was wrong to multiply courts—there should be as few of them as possible, because "mankind in general are unfriendly to courts of justice." Egbert Benson of New York rejoined that the Senate had spent much time over this bill and had done it "tolerably well"; whereupon the House passed it.⁷

The ever interesting salary question evoked more talk than any other recorded episode. As summarized by Hildreth,⁸ the South was for a generous scale of remuneration, while New England held for low salaries. Again Mr. Livermore took the lead, and the discussion⁹ reveals at least what was the legislative estimate of the probable earnings of a leading lawyer of the time—it was "two thousand guineas" per year. In result, the salaries of the thirteen original District Judges ranged from \$800 in Delaware to \$1,800 in Virginia and South Carolina.

The relative importance of New York is well enough illustrated by the fact that to Pennsylvania was awarded \$1,600, while Maryland and New York were bracketed at \$1,500.¹⁰

No reported discussion is known concerning the names to be given to the inferior courts. The Circuit Court, as the Act clearly shows, was the tribunal in which the Supreme Court Justices were expected to do most of their work. At a time when in no city on the continent were courts continuously open, it was assumed that the officers of the Supreme Court could not find work at the Capital for more than a few weeks a year; the rest of the time they were and were intended to be truly "*Justices in eyre*." Therefore most naturally to their court was given the name Circuit; for, as had been said nearly two hundred years before, "the Judges of Circuits as they be now, are come into the place of the ancient justices in eyre called *justiciarū itinerantes*, . . . (and) all the counties of the realm were divided into six circuits and two learned men well read in the laws and customs of the realm were assigned by the King's Commission to every circuit, to ride twice a year through those shires allotted to the circuit, making proclamation beforehand a convenient time in every county of the time of their coming and place of their sitting, to the end that the people might attend therein in every county of the circuit."¹¹

Quite in ancient style, the act directed the circuit court to be

⁷ 1 Ann., 813.

⁸ Harper Bros., 1851, Vol. 4, p. 126

⁹ 1 Ann., 396 *et seq*

¹⁰ Act September 23, 1789.

¹¹ *The Use of the Law*, attributed to Sir Francis Bacon, circa 1630

held by two Justices of the Supreme Court and the District Judge sitting together. Yet even in the beginning favor was shown, if not to the dignity, at least to the probable age of the incumbents of Supreme Court office, for they were not required to proceed into the districts of Maine and Kentucky, then respectively parts of the States of Massachusetts and Virginia; and to the District Courts in those outlying regions was given the jurisdiction of the circuit court as well.

How completely this trial work was looked on as the principal duty of the Supreme Court Justices is shown by the constant use of the phrase "Circuit Judge" in describing them; this title was used in the messages of the various Presidents until certainly Jackson's time. The man who was laboriously described as "Mr. Justice" when sitting *in banc* at the Capital, became a "Circuit Judge" during most of the year.

The title "District Court" arrived without reported discussion. The word was well enough known in legal and ecclesiastic phraseology, and meant generally the region within which one may be compelled to appear, so that "*hors de son fée*" and "*extra districtum suum*" meant the same thing in the manorial courts.¹²

There is, however, no evidence that the framers of the Judiciary Act examined the ancient authorities. The word "District" lay at their hand because Kentucky had for some time been known as the district of that name—the phrase was common in Virginia statutes. Indeed some word that could be widely used to describe new political units was required, and the word "District" was of a convenient vagueness to apply not only to a judicial area, but to the regions returning members of Congress, and particularly to the already projected District of Columbia.

While some objection had arisen to a District as distinct from the Circuit Court, it is plain that no one objected to conferring on some court jurisdiction in admiralty and over cases involving seizure of goods and merchandise imported in violation of revenue and navigation laws. There is ample evidence in the Vice- and State Admiralty records still remaining in the custody of the Southern District, that for nearly a hundred years the Crown and the State in succession thereto, had been accustomed to seize illegally imported merchandise in substantially the same manner as ships were attached, and all the proceedings for the condemnation of the offending goods had been carried through in the Admiralty Court, and under a procedure analogous to maritime proceedings *in rem*, as is done to this day.

When the House of Representatives, finding that the Senate

¹² Cf. Sub nom District, Jacobs's Law Dictionary (1809), and citations; also Blount (1670).

had done its work "tolerably well," accepted the Judiciary Act, everyone regarded as the District Court's principal work, and the reason for its existence, the labor of attending (in the statutory phrase) to "All civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost and navigation or trade of these United States."

To be sure the District Court was given jurisdiction to administer for minor offenses "not over thirty stripes," and it might try certain suits by aliens for *torts* in violation of "treaties and the law of nations," also small actions by the United States; but everything except the still existing consular jurisdiction, and admiralty and governmental seizures, was concurrent either with the State Courts or the Circuit Court, and so it practically remained, plus bankruptcy at times, for a century and a quarter. So long a stretch of substantially unchanging work is unique in American judicial history.

The appellate jurisdiction of the Circuit over the District created by the original statute, is a curious instance of how a habit once formed survives the reason for forming it. The Act of 1789 required the attendance of at least two Judges to make a Circuit Court, and both were required to proceed from district to district, though certainly with no great frequency, for it was specifically provided that in the District of New York the Circuit Court should first sit on the 4th of April, 1790, and thereafter on the like day "of every sixth calendar month thereafter." It was never intended than a single Judge sitting at Circuit, should entertain appeals from the District Court, but in 1802¹³ the requirement of two "Justices in eyre" was relaxed, and yet the appellate jurisdiction lasted until 1891.

As a semi-annual visit from the Circuit Judges was thought to be sufficient for the business of the whole State of New York, so it was evidently unthought of that the District Court could ever be in practically continuous session. The act only decreed that it should hold four sessions annually, of which the first should open in New York on the first Tuesday of November, 1789, and accordingly it did so open on November 3, before James Duane, who had been commissioned September 26. Duane had been a distinguished lawyer, well known in the Vice Admiralty Court a quarter century before; and many relics of his work exist on the files of the colonial court. He was not a man of great book learning, nor bred to the bar, but turned to it after an early mercantile career; yet he was extremely successful in business and laid out his winnings in land,

¹³ Act of April 29, 1802, 2 Stat., 156, allowed the Supreme Court to allot the circuits among the judges, and established six circuits instead of three. There were not enough judges to furnish two men for so many circuits, and so the two-judge requirement was altered.

evidently hoping to found something like a Manor at Duanesburg in Schenectady County. Under the Crown he had been Advocate General and Attorney General, was the first Mayor of New York after the British evacuation, and as such personally administered the "Mayor's Court," of which the present City Court and the Special Sessions may be considered the remote descendants. In his 57th year when appointed, his judgeship he doubtless regarded as a convenient and honorable ending to his active life, for he must have known that his judicial duties would be extremely light.

The District Court minutes are very full and still perfect; they show that the tribunal was opened with considerable state in the "Exchange," a building then much used for many kinds of public functions, and situated near the foot of Broad Street. Nothing was done, and there was nothing to do but read the Judge's commission and admit to the bar of the new Court such gentlemen as chose to attend.

The "Roll of Attorneys" was at once instituted, and is an actual roll of skins of parchment. As one skin was filled with names another was affixed thereto, and this method continued for about forty years, until books were substituted and the "roll" became a symbol.

About this first District Court there was a strong flavor of the state and provincial tribunals that had dealt with ships, customs duties and governmental seizures. Judge Duane had had much experience in that kind of business. The Clerk was Robert Troup, who had assiduously practiced in the State's Admiralty Court. The Collector who furnished the grist was John Lamb, who had held the office under the State, and contributed to the State admiralty court nearly all the business it ever possessed. The first United States Attorney was Richard Harison, a lineal descendant of the first Judge of the Vice Admiralty Court, who held his commission directly from the High Court of Admiralty.¹⁴

There continued to be nothing for the District Court to do, except admit more attorneys, until April 16, 1790, when the first process issued under a libel entitled *United States of America vs. Three boxes of Ironmongery, &c.*

There were no dockets, as that word is now understood, but from the minutes (so full are they) the history of this first litigation can be fully seen, and it is illustrative of what occupied the Court's time. A man with friends in New York had emigrated from

¹⁴ It is commonly said that the Vice Admiralty Judges were commissioned by the Crown, but in point of fact they were appointed by the High Court in England. Judge Harison's Latin commission existed until 1911, when it was consumed in the fire that destroyed most of the State Library in Albany.

England to Canada, and after no great stay there had come on to New York via the Hudson Valley. He brought his household goods with him, and his New York friends waited upon John Lamb, Collector, to ascertain whether duty should be paid upon said goods. They were told that what was old would pay no duty, but new articles were dutiable. The emigrant passed through New York and thence on to Elizabeth, N. J., or Elizabethtown as it was then called. What aroused Lamb's suspicions does not appear, but he sent several persons described as "tide-waiters" down to Elizabeth, who rummaged through the house containing the immigrant's goods, seized and brought back to New York what they considered dutiable, and against such articles the first action in the District Court of the United States for the District of New York was promoted. Thereupon application was made to Judge Duane to find these and other facts, which he apparently did after a public hearing, and his findings are entered at large in the minutes. In result he ruled that the maximum amount of duties that might be claimed by the United States upon the goods in question was \$95. These facts were certified to the Secretary of the Treasury for mitigation or remission of duties or penalty. It is certain that more than three-fourths of the minutes of the District Court during the whole period of Judge Duane's incumbency are taken up with applications of this nature. There were a few admiralty suits, never seriously contested; they were really to all appearance methods of selling vessels and giving good title thereto. This business after the fall of 1790 was carried on at the City Hall, which then stood where now is the Sub Treasury.

Duane was not in good health, and in the spring of 1794 he resigned, retired to Duanesburg and there died on February 1, 1797.

When in 1914 a Committee of the bar was moved to complete as far as possible the collection of portraits in the District Court Room, search was made among Judge Duane's numerous descendants for some portrait differing from the official representation of him as Mayor hanging in the City Hall. What was called the "family portrait" was and is in the possession of Mrs. Austin of Summit, N. J. It was contained in an oval frame; to be copied this frame was removed, and it was found (what had long been forgotten by the family) that the portrait as painted had been square, and to fit it to the oval frame the canvas corners had been turned in. The turned in portion contained the signature of Copley. From the apparent age of the sitter, the painting must have been made during the last visit to America of Lord Lyndhurst's father.

The first five years of the court's existence covered not only Duane's term of office but the business originating under him. The history of those years occupies 213 pages of the minute book, and shows the entry of 378 final orders. The business was vital to

the maintenance of the general government, but directly affected only the maritime and importing portions of the community, and could have attracted no public attention; its remoteness from the ordinary life of the average citizen is very marked.

John Lawrence, the second Judge, was so promptly appointed (May 6, 1794) as to make it a fair inference that Duane had duly arranged the succession. Lawrence was a Cornishman who came to New York in 1767, as a lad of seventeen. He studied law under Governor Colden, and though it is traditional that he had considerable knowledge of the admiralty, there is no evidence in the surviving records of either the Colonial or State Courts that he ever appeared as a proctor. He reached the rank of Colonel in the Revolutionary Army, and is best remembered as the Judge Advocate of the Court that tried Major André. He had served in the Continental Congress and for two terms in the House of Representatives. His Judgeship was but a means of filling up the time between retirement from the lower house of Congress and election as a Senator from New York. Thus his judicial labors extended only to December, 1796, and for several months before his resignation he was Senator-elect, there being then no prohibition either by statute or public opinion against a Judge running for political office while holding judicial preferment. He did not care to remain in public life after the fall of the Federalist party, resigned his Senatorship in 1800, retired to a private and prosperous career and died in 1810 at his "uptown" residence—356 Broadway.

Lawrence's administration of the District Court is marked only by the fact that he was the first Judge whose conduct was reviewed by the Supreme Court.¹⁵ This matter was a motion for mandamus to compel him to do something that the French Consul desired, and is the first legal report of those demands of Revolutionary France which subsequently led to our state of *quasi* hostility with that nation.

The first admiralty cause in the Supreme Court originated in the New York District, and reached the highest Court in Lawrence's time.¹⁶ Though this case contributed nothing valuable to general law, the record, still extant with its curious exhibits, is an interesting piece of evidence as to the rude habits of maritime life in the closing years of the eighteenth century.

Lawrence was one of the original members of the Society of

¹⁵ *United States vs Judge Lawrence*, 3 Dall (3 U S), 42

¹⁶ *La Vengeance*, 3 Dall, 297 (August, 1796) The records of this and the other early cases referred to are, with the papers of the State and Colonial Admiralty Courts, now kept in a separate box in the office of the Clerk of the Southern District

the Cincinnati, and on April 12, 1913, that Society presented to the Court the Judge's portrait, now hanging in its Motion Room.¹⁷

The resignation of Judge Lawrence seems to have left a gap difficult to fill. It is clear that no man of good business felt attracted to the office of District Judge by its salary, and the official occupations, though agreeable, were singularly monotonous; for the District Court of the time might almost be described as an arm of the Treasury, occupied during most of its scanty sessions with efforts to collect revenue, and no active lawyer felt like devoting himself wholly to such a pursuit. To be sure, the District Judge sat also at Circuit, but that Court had even less to do than the District. It must have required some affection for the slowly developing marine business of the City to get a Judge at all, but one was found in Robert Troup, who had for awhile been the Clerk under Duane, and was long politically active with Lawrence.

Born in New York in 1757, Troup had taken his degree at Columbia when seventeen, studied law under John Jay, entered the Revolutionary Army, been captured and confined for some considerable time on the prison ship, *Jersey*. He became District Judge immediately on Lawrence's resignation (December 10, 1796) and served for about a year and a quarter (April, 1798). After his resignation he frequently appeared as attorney of record in the United States Courts, and there and elsewhere was known as an active and fairly successful lawyer. But the great event of his life was his military service, and for many years before his death (January 14, 1832) he was best known as Col. Troup, and by his published account of life on *The Jersey*. Of him no portrait has been discovered, nor do his descendants still living in New York know that one exists. The business of the Court during his brief administration did not vary from that of his predecessors, except that the admiralty steadily though slowly increased in volume and apparent importance, while governmental matters diminished in relative quantity. Eight or nine years of Custom House management had shaken the system into a condition of stability. The earliest District Court minutes render the inference irresistible that much of the litigation arose from official inefficiency, and an ignorance common to both officials and the public.

The first Judge who regarded his judicial position as the fitting end of a life consistently devoted to legal work was John Sloss Hobart, who took office on April 12, 1798. Born in Connecticut in 1733 and a graduate of Yale in 1757, Hobart became District Judge at the age of sixty-five, obviously to close a professional life

¹⁷ The ceremonies in connection with this presentation were printed and remain on the files of the District Court as well as in the archives of the Society of the Cincinnati

of the greatest activity, for whether at the bar or on the State bench of New York, in Congress or at the State Constitutional Convention, he was always a lawyer. No one had taken a more important part in shaping the state government of the revolted province of New York. He was locally so well known for public services of this nature that, although he had never worn a uniform, membership was granted him in the Society of the Cincinnati. For him the court was a permanency, and with him began the line of Judges who, once appointed, found in their judicial work professional occupation and inspiration. He was the first judge to die in office, on February 4, 1805.

He thus occupied the bench during the time of belligerency with France in 1799, and had before him numerous causes raising questions of law as to the rights of captors and salvors on the troubled waters around the West Indian Islands. Under Hobart the business increased, not so much in mere number of adjudications as in the importance of business, though to modern ears the whole amount of work done by all the courts, state and federal, in the City of New York about the beginning of the nineteenth century seems ridiculously small. Only one of Judge Hobart's decisions was taken to the Supreme Court, and the case of *The Amalia* has perhaps the strongest flavor of what life on the sea might be like about 1799,¹⁸ of all the early marine causes in the U. S. Reports.

The *Amalia* hailed from Hamburg, and was documented by that free city; she was seized by a French privateer, for what reason is undiscoverable, as Hamburg and France were at peace, was never condemned in any court of admiralty, but turned by the French into a privateer, and on going forth as *L'Amélie*, flying the French flag, was seized by U. S. S. *Constitution*, Captain Talbot, brought into New York for condemnation, and there was claimed by her original German owners. Ultimately Captain Talbot was awarded salvage; but the report does small justice to the history of violence revealed by the original papers still on file in the Southern District.

Judge Hobart left no descendants. His original commission still remains on the files of the Southern District; and it was only by accident, and after prolonged search that an admirable pastel by Sharpless was discovered in the Independence Hall in Philadelphia, representing him as a United States Senator—an office he occupied

¹⁸ *Talbot vs. Seeman*, 1-Cr, 1 It is characteristic of the time, that the vessel's name is indifferently German, French or English throughout the record. This was the first effort of Marshall, C.J., in admiralty. The only other matter from the New York District considered in the Supreme Court prior to 1812 is *Dewhurst vs. Coulthard*, 3 Dall., 409 The first case from any state tribunal in New York did not reach the Supreme Court until February, 1805, *Hallet vs. Jenks*, 2 Cr, 210

for a few months and resigned to become District Judge. A copy of this portrait, given by the bar in 1914, now hangs in the District Court Motion Room.

The most striking politico-legal episode of Hobart's incumbency was the incoming and outgoing of the "Midnight judges." While with practical unanimity historians have written of the political side of that matter, and ascribed the re-organization of Circuit Courts and the creation of Circuit Judges to Federalist desire to perpetuate their power in the judicial department, reading our records and other public documents reveals legal and personal reasons for the creation as well as destruction of the new system.

Circuit Courts under the Judiciary Act of '89 existed only when at the appointed times two Justices of the Supreme Court came into the District and heard such appeals and cases in law and equity as might be ready for them. The three circuits then created meant nothing except as they set limits to the journeyings of the Judges for a given circuit. Against this system the elderly gentlemen of the Supreme Court protested from the beginning. It was impossible to assign them all to duties that did not take most of them far from home, and where they incurred unaccustomed hardships. The system is commonly believed to have been fatal to Justices Wilson and Iredell. As early as 1792 Washington sympathetically laid before Congress a memorial of the Judges on the subject.¹⁹

So far as the State and District of New York was concerned the procession must also have been wearisome because there was so little business. The Circuit Court records for the years to 1795 cover 57 pages, and show the trial or other disposition of 46 causes, for the most part criminal trials. In practice the District Court in New York has almost never exercised its criminal jurisdiction, even trivial cases were from the beginning brought in the Circuit Court.

On the day appointed by Congress the Circuit Court opened before Chief Justice Jay, Justice Cushing and Judge Duane. There is no surviving record of any ceremony at its opening in the City Hall on April 4, 1790; but the new tribunal immediately busied itself with an affair interestingly illustrative of how tentative and uncharted in detail was the new scheme of national government.

Their first case was an indictment against Hopkins and Brown for conspiring on the high seas to destroy the brigantine *Morning*

¹⁹ They never ceased to complain, and Madison in 1816, Monroe in 1824, and Adams in 1829, embodied their objections in presidential messages. Thus Madison said, "The time seems to have arrived which claims for members of the Supreme Court a relief from *itinerary* fatigues incompatible as well with the age which a portion of them will always have obtained," as with their dignity and other labors.

Star and to murder the captain and a passenger. The minutes contain a syllabus of the indictment, and show in detail the course of trial. The prisoners were found guilty and sentenced to six months imprisonment "without bail or mainprize," which imprisonment was to begin by standing in the pillory for one hour, and to conclude with the receipt by each prisoner of "39 stripes upon the naked back" to be administered at the "public whipping post" in the City and County of New York.

The counsel on both sides are identifiable as men of rank at the bar, and the Judges need no identification, yet the point was not raised that at the time of indictment and trial, there existed no statute of the United States defining or punishing the offense for which Hopkins and Brown were imprisoned and scourged.²⁰

A Court with so little to do, which yet required the presence of at least two Judges to transact any business, was embarrassed by its own greatness, and the minutes indicate some effort to conceal the nakedness of the land. Even after 1795 the records show that Court met and adjourned without transacting any business and without stating who was present. The inference is irresistible that no one was there but the District Judge, and he put a discreet minute in the book to keep up appearances. It was not, however, until April, 1799, that it distinctly appears that the District Judge sat alone, and permitted process to be returned.

During the life of the Court as organized by the Act of 1789 the longest entry in the minutes, and one of the most important works it did, is an opinion as to the duties laid on the Judges by an Act to "provide for the settlement of the claims of widows and orphans barred by the limitations heretofore established" in respect to invalid pensions.²¹ Messrs. Jay, Cushing and Duane in April, 1792, considered at length the fact that they and their associates in the divers circuits were directed by Congress to consider the demands of such widows and orphans, adjudicate upon them and cause the worthy applicants to be added to the pension roll.

They were "unanimously of opinion" that these duties were not judicial; that the Legislature could not "constitutionally assign to the judiciary" non-judicial labors; but that since the "objects of this act are exceedingly benevolent, and do real honor to the humanity and justice of Congress," they, the Judges, would as "Commissioners" execute this act in their private but not in their official

²⁰ The first National Crimes Act was enacted April 30, 1790, 1 Stat, 112, and contains no allusion to such an offense as that for which Hopkins and Brown were punished.

²¹ Act of March 23, 1792, 1 Stat, 243.

capacity. Having entered these views upon the minutes, a copy thereof was transmitted to the President, in a letter which is a model of eighteenth century humility. The letter is as follows: "Sir: As we could not in our opinion convey the enclosed extracts from the minutes of the Circuit Court now sitting here to the Congress of the United States in so respectful and proper a manner as through the President, we take the liberty to transmit them to you and to request the favor of you to communicate them to that Honorable Body. We have the honor to be with perfect respect, Sir, Your most obedient and most humble servants."

But even with a few admiralty appeals, in which no opinions are preserved, and some naturalization, there was little for the Circuit Court to do in New York; and when Jay retired from the Chief Justiceship, Paterson of New Jersey was the nearest available Justice. This difficulty (by no means confined to the New York District) first led Congress to a series of acts providing that a Circuit Court might consist of one Justice and the District Judge if they agreed, and might be adjourned by the District Judge if no Justice appeared,²² and they undoubtedly suggested the statute so much execrated as productive of the "Midnight Judges."²³

This statute set up six circuits instead of three, and those on the Atlantic seaboard still have the same numbers and area as were then assigned them.

The intent of the act was to give every circuit three circuit judges who should constitute both a court of first instance and of appeal from the Districts, and who should be on hand to push business, and relieve the Justices from "itinerary fatigues."

To the men appointed for the second circuit—Egbert Benson of New York, Oliver Wolcott of Connecticut and Samuel Hitchcock of Vermont—no exception could be taken so far as their personal and professional standing was concerned, however obnoxious their politics were to the triumphant Jeffersonian party. They met and produced their commissions in the City Hall of New York on June 5, 1801, and thereafter from time to time held court for a year. The business done required no more than thirty pages of the minute book, although bankruptcy under the Act of 1801 had been added to circuit jurisdiction. These distinguished lawyers are always spoken of as the "Midnight Judges" because of the tradition that they were

²² Act of March 2, 1793, 1 Stat, 333; Act of March 19, 1794, 1 Stat, 369. By the first of these statutes a difference of opinion between one Justice and the District Judge continued the cause; but if a like division occurred at the next term when a different Justice attended, judgment should be rendered in conformity with the opinion of the Supreme Court Justice

²³ Act of Feb 13, 1801, 2 Stat, 89

created on the last night of Adams' administration; but the records show their commissions as all dated February 26, 1801.²⁴

The non-political difficulty with the Circuit Court as newly made by the Act of 1801 was that the whole system was top-heavy, there was really nothing for three resident Circuit Judges to do, and the inference is strong that such men as the three who served in the Second Circuit soon found out that no court could make business, but must wait for business to grow out of the community, and they were not indisposed to be legislated out of offices whose emoluments were but \$2,000 a year, especially as the offices were also abolished, and they were not troubled by the sight of political opponents as successors.

By the new act,²⁵ which increased the District jurisdiction by detaching bankruptcy from the Circuit, was created the system of circuits and circuit courts which lasted till 1912. The Supreme Court was permitted to apportion circuit work as it deemed best, and one Justice became the allotment of each circuit. But the difficulty of earlier years as to adjournments continued. It was evidently impossible to rely upon a Justice being on hand and on time, and the power of the District Judge to hold a Circuit Court alone was not yet recognized. It was thought to require an Act of Congress²⁶ to enable the Marshal to adjourn a stated term "by virtue of a written order from the Judge," if not even the District Judge appeared on the statutory day.²⁷

When Judge Hobart's successor was appointed, the District

²⁴ Judge Benson was born in New York City in 1746, graduated at Columbia 1765; was Attorney General of New York for twelve years, beginning in 1777; at divers times between 1784 and 1815 was a member both of the Continental and Federal Congress; was for a brief period in 1794 Justice of the Supreme Court of the State and was one of the early Presidents of the New York Historical Society, in whose library his portrait now hangs

Oliver Wolcott was born in Connecticut, January 11, 1760, and graduated at Yale in 1778. He was the second Secretary of the Treasury of the United States, and for ten years, beginning in 1817, was the Governor of Connecticut. On retirement from public office he became a resident of New York City, and there died June 1, 1833.

Samuel Hitchcock was born in Massachusetts, March 23, 1755, and graduated at Harvard in 1777. He moved to Burlington, Vermont, about 1786, and was one of the earliest and best known lawyers in that state; was District Judge for Vermont from 1793 until commissioned as Circuit Judge. He remained prominent in the affairs of Vermont until his death at Burlington, November 30, 1813.

²⁵ Act of April 29, 1802, 2 Stat., 156.

²⁶ Act of March 26, 1804, 2 Stat., 291.

²⁷ There were many changes in the law with regard to the power of single Judges to hold a Circuit Court. The matter was reviewed by Judge Betts in 1852, *In re Kaine*, 14 Fed. Cas., p. 86, and is a curious example of how difficult it was to overcome the ideas prevalent in 1789, as to the number of judges deemed proper for an important court of record.

Court was plodding on much as it had done for fifteen years, and the Circuit Court still required the presence of a Justice from another state to enable it to function in the trial of causes, and it was still, when functioning, almost wholly busied with the punishment of crime.

President Jefferson appointed to succeed Hobart, Matthias Burnet Tallmadge of Herkimer, N. Y. This gentleman, who was born March 1, 1774, and graduated at Yale in 1795, had established his professional and political fortune by marrying the daughter of Governor Clinton,²⁸ and his record as a Judge was marked by curious and long remembered difficulties with the colleague soon to be appointed. Tallmadge's health seems to have been always feeble. The minute book shows frequent absence through illness, which seems to have affected the Judge's literary style, for on April 4, 1807, it is recorded that the written order to the Marshal to adjourn Court begins as follows: "Sir, I yet feel myself too very unwell to attend court today even for the purpose of adjourning it." Somewhat similar entries continue for some time, and finally the Court was adjourned *sine die* and did not in fact meet again until September 1. This was the Circuit Court, but it cannot be said that the business of that tribunal suffered greatly by a five-month interregnum.

By this time, however, a Circuit Justice had been appointed, whose home was in New York, and who was minded to make the business of the trial court in New York City an important part of his life; and with Brockholst Livingston²⁹ really begins the history of the Circuit Court as a growingly important metropolitan tribunal.³⁰

By 1812 Federal business had begun to appear in the interior of New York State, and by the Act of April 29, in that year³¹ two District Judges were provided for the New York District. Either Judge might conduct court by himself, but if they transacted business together and differed in opinion, that of the senior Judge pre-

²⁸ He had been a member of the New York State Senate for two years when in June, 1805, he was appointed as District Judge, "although quite without reputation as a lawyer" (Genealogical Sketches of the Graduates of Yale College, Vol 5; History of Herkimer County, Benton, p. 179; N. Y. Geographical Record XIII, Vol 2, p. 461.)

²⁹ Appointed associate Justice, Nov. 10, 1806.

³⁰ Justice Livingston died in 1823; his successor was Smith Thompson, also a New Yorker, who died in 1843, and was shortly succeeded by Samuel Nelson, who served until he attained the age of 80 in 1872. It was this succession of Circuit Justices who regarded New York as home, that made the Circuit Court a tribunal attractive to a growing bar in a growing city, and by the time Justice Nelson's career ended the Supreme Court was far too busy in Washington, to permit its members to do much trial work on the circuit.

³¹ 2 Stat., 719.

vailed. The reason for appointing a second Judge is revealed by the requirement that terms of court be held at Utica, Geneva and Salem, and that a clerk should be appointed who should reside and keep his office at Utica.

To fill the new office thus created William Peter Van Ness was appointed May 27, 1812, who was born in Ghent, N. Y., in 1778, and received his degree at Columbia in 1797. He was locally best known as Aaron Burr's second in the famous duel with Hamilton, and much of his subsequent life was devoted to explaining and justifying in print his relation to the affair. Between him and Tallmadge there quickly developed (if there did not exist before) a marked animosity. Tallmadge was an up-state man and sought to obtain the separation of the State into two districts in order that he might reign alone in one. He succeeded in doing this, or thought he had, by the Act of April 9, 1814,³² which laid off the Southern District of New York, but included within its limits to the northward the counties of Rensselaer, Albany, Schenectady, Schoharie and Delaware. The rest of the State was to be the Northern District, and to it Judge Tallmadge was assigned by name; the Southern District was left to Van Ness. The act even descends into such particulars as to permit Van Ness to sit in the Northern District in case of the "inability on account of sickness or absence" of Tallmadge. Despite its particularity, however, the statute was imperfect and did not provide for the organization of the Northern District in respect of clerk, marshal and the like. This omission was not provided for until the Act of March 3, 1815.³³

There remains among the manuscripts of the New York Public Library the letter of one John T. Irving to Judge Van Ness, written from Washington, and describing what he saw in the House of Representatives in respect of completing the organization of the Northern District. Irving says that when "Mr. Taylor of our state" moved to complete such organization "I immediately saw the drift of this business," for if the proposal should succeed "the Northern District will be completely organized and when Tallmadge relinquishes his berth, or is compelled to leave it, a successor will be appointed in his place, when in fact there is no manner of necessity for a distinct district, but upon the event of a vacancy both might be consolidated into one, and the office of District Judge of the State be made both respectable for the extent of its jurisdiction and for the salary attached to the office. In fact I saw no necessity for this step of Mr. Taylor, and particularly as all the business of the Northern District has been faithfully discharged so far as I know, although Tallmadge has had no share in its transaction."

³² 3 Stat., 120

³³ 3 Stat., 235

But Judge Van Ness was quite capable of promoting his own interests by congressional action; it is certainly true that he and not Tallmadge did most of the work in the interior of the state, and the old directories of New York show that Tallmadge never resided in the Northern District but continued to live in the city. The Act of February 15, 1816,³⁴ shows that one term in the Northern District had been wholly omitted, and this curative statute was passed declaring that no proceedings should be affected by such omission. The almost contemporary statute of April 27, 1816,³⁵ grants Judge Van Ness \$1,500 in a lump sum as compensation for his services in holding the Northern District Court, and the statute of March 3, 1817,³⁶ gave him an additional thousand.

Thus the Southern and Northern Districts became separate entities in 1815, and three years later the four northern counties of the Southern went to the Northern District,³⁷ thus leaving the Southern what might even then have been properly called the "City District."

While the right of the District Judges in New York to sit as well in one District as the other, was a concession to Tallmadge's physical weakness, it marks the beginning of the system of using Judges out of their own Districts in order to relieve press of business. Judge Tallmadge rarely sat in the Southern District (after 1815),³⁸ although he lived there (so far as can now be seen in violation of law); while Van Ness, as the early records show, did most of the work in the Northern District also.

That judge was not only active politically and judicially, but possessed the pen of an orator, as may be seen by his published decisions,³⁹ while his difficulties with his colleague produced not only legislation but tradition. When, in 1900, Judge Addison Brown was visibly overworked and suggestion was made that an additional District Judge be appointed, he pointed out to many members of the bar, that the experiment had been tried ninety years earlier, with frictional results, and mildly hoped that the twentieth century would show an advance in professional manners. When in 1903 an additional judgeship in the Southern District was plainly necessary, the then incumbent (Judge Adams) remembered and sug-

³⁴ 3 Stat., p. 254.

³⁵ 3 Stat., p. 318

³⁶ 3 Stat., p. 392

³⁷ Act of April 3, 1818, 3 Stat., 413

³⁸ In the summer of 1819 New York was visited with an epidemic of yellow fever. Judge Tallmadge fled from it, to his father's house in Poughkeepsie, and there died (not of the fever) on October 7. His descendants are numerous, but search has revealed no portrait of him.

³⁹ Van Ness's Prize Cases (Gould, Banks & Gould, N. Y., 1814); the first report of any kind from the Second Circuit. The two causes reported are also in 1 Paine, and Fed. Cas. Nos. 7415 and 7417.

gested a renewal of the legislation by which when there were two District Judges in the same District, of differing opinions, the view of the senior Judge should be controlling.

Under Justice Livingston and Judge Van Ness the business of the United States Courts increased steadily, not only nor so much in number of litigations, as in the quality of business transacted. Petitions for remission of penalties ceased to be entered in the minute book, and that volume assumed the brevity, if not paucity of statement that marks it today. During the last part of Van Ness's incumbency (1820-5) the number of final judgments or decisions in the District Court was 542, and in the Circuit, 187; but it was not until 1827 that the first volume of *Paine's Reports* was published, and the work of the Second Circuit justified the labors of a reporter, who published for profit.⁴⁰

Van Ness died in office November 7, 1826. His immediate descendants removed from New York, and when in 1914 the legal fraternity of Phi Delta Phi offered to assist in completing the line of judicial portraits, they presented to the Court a copy of the portrait of Judge Van Ness by Jarvis, then in the possession of his grandson's widow in Baltimore, Md.

Down to 1825 Congress paid no attention to the place of sitting of the Court, and the habits of the Circuit and District naturally conformed to those of the community. The City Hall in Wall Street contained no offices of any kind.⁴¹ The sessions of courts were held there, but the records and clerk's office were elsewhere. When the present City Hall was opened in 1812 it was at first used for trials in the same way, and the United States tribunals sat there, at least when a jury was required or an audience expected. The minutes, however, refer to the "District Court Room on Dey Street" (*circa*, 1807), and it is clear that hearings without jury were there held.⁴²

In 1825 Congress decreed⁴³ that the Circuit and District Courts should be "holden in the City Hall of the City of New York as heretofore until otherwise ordered by law or until the Secretary

⁴⁰ *Paine's Reports*, 2 vols.; Vol 1, 1827, Vol. 2, 1856, after the death of the reporter. The cases contained are for the most part in the circuit, begin with 1810 and cover both Districts of New York. It is sufficient evidence of the comparative unimportance of New York that before Paine's first volume, Bee, Bröckenbrough, Cranch, Fisher, Gallison, Mason, Peters, Wallace, Sr, Ware and Washington were reporting in other circuits, although some did not publish until after 1827.

⁴¹ See Stokes's "Iconography of New York," for plan of this building. It was demolished when the building in City Hall Park was ready for use.

⁴² Judge Hobart during the latter years of his life lived at 16 Dey Street, and Edward Dunscomb, the clerk, at 49 Dey Street. It is believed that this last was the "District Court Room" referred to.

⁴³ Act of March 4, 1825, 4 Stat., 101.

of the Treasury on the representation of the Judges of said courts respectively, shall direct further or other accommodation be provided."

The act, however, permitted the District Court to continue to hold sessions "where the same are now held" until May, 1826. That place was certainly whatever house near the City Hall Park the clerk for the time being occupied as an office, but just what building the Act of Congress refers to is not known.⁴⁴

A survey of court work to the end of Van Ness's time can easily be expressed in words of undue disparagement, by measuring it all (after the modern fashion) in terms of reported cases, and pointing to Paine's scanty volume as the fruit of thirty-five years.

This is not just, for while it is true that until the City of New York began to take the first place in commerce, the Second was not a comparatively important circuit, it is as true that if the judges to and including Van Ness had been themselves as inclined to reporting as were Deady, Baldwin and Bee, volumes as important in subject matter could have been produced; the minutes and file papers show that. But until far into the 19th century opinions were not filed, they were read from the bench, and the manuscripts remained private property of the Judge. If he liked semi-literary work, or wished the sort of mouthpiece Davies was for Ware, and

⁴⁴ The habitations of both the Federal and State Courts in New York City, is a matter as to which exactness is sometimes difficult, and of no great importance. Until about 1830, the present City Hall was used for formal sessions of all the higher courts, and the U. S. Circuit Court judging from the captions of the minute book did nearly all its work there—it seldom functioned without a jury.

But the District minutes rarely state where the court sat, and non-jury work was doubtless largely done at the Judge's office, which can be traced through contemporary directories as always near "The Park." Thus from 1808-11 Judge Tallmadge was at 17 John Street, and Judge Van Ness can be discovered at 45 Chambers Street and later at 94 Nassau Street.

Shortly before 1830 the City Hall became too small for the demands upon it, and the municipality took over the "Old Alms-House," wherein to house courts and city bureaus of many kinds

This was a building erected about 1790, approximately on the site of the "Tweed" County Court House, on Chambers Street, between Broadway and Center Street, the other or north side of Chambers Street being occupied by the Bridewell, the Work House and the "Gaol." In 1812 the erection of a "New Alms House" on the present site of Bellevue Hospital, enabled the city to devote this building to a variety of uses; it housed the New York Historical Society, "Scodder's Museum" and other presumably educational enterprises, and was known as The New York Institution. There is a view of it in Stokes's "Iconography," Vol III, p 584, where it appears as a plain stone barracks.

As soon as it was remade into public offices the U. S. Court occupied its "East End," and after a few years the Clerk and Marshal and U. S. Attorney also moved there, although as late as 1832, the Attorney was at 64 Varick Street, the Clerk at 14½ Pine Street and the Marshal at 41 Cedar Street. The name "Old Alms House" was finally forgotten and the building

Peters for Washington—reports appeared; otherwise the only possible reporting consisted in such notes as make up most of (*e.g.*) the New York *Johnsons* before Kent took office. Paine was the son of the District Judge in Vermont, and a great admirer of Brockholst Livingston, and put out his first volume as a tribute to Livingston's memory, and probably with some family feeling for the circuit hierarchy; but he never made any effort to go back of his own acquaintance with the court, and trusted too much to memory; thus he forgot all about Tallmadge, and records Van Ness as a District Judge in 1810—two years before he was appointed.

The fair measure of any court is to consider not only its literary law, but the kind and quantity of work done, and the repute of the men who did it among their neighbors. By that standard the judges before Betts are all (except Tallmadge) to be approved, and their courts created a prestige which measurably advanced the idea of nationality, but they undoubtedly contributed less to book law than any other judicial aggregation of the same numbers and opportunity and contemporaneous with them; they were more occupied with business and politics.

The politics is amusingly evidenced by the beginnings of rules

known as the "New City Hall," though well into the '40's Valentine's Manual gives both names and puts the latter one in parenthesis. The Court minutes, however, invariably speak only of The City Hall, but in point of fact from 1830 to 1854 the only court that regularly sat in what is now called the City Hall was the Common Pleas—the Supreme and Superior Courts were most of the time under the same roof as the U S Courts.

On January 10, 1854, the New City Hall burned, but the court records and the library of the Law Institute were not seriously injured. The building was never repaired, and the courts both state and federal were scattered and uncomfortable for some time. The U S Court offices found an abode at College Place, corner of Murray Street, while court was held (with the Supreme and Marine, and later the Superior Court also) in a building indifferently called "The New Court House" and the "Fireproof building" then just completed at the southwest corner of Chambers and Centre Streets. But the Circuit and District minutes still speak of court as held at "The City Hall in the City of New York"; apparently any building within City Hall Park was thought entitled to that official designation. Perhaps it was thought to be compliance with the Act of 1825.

By this time the north side of Chambers Street adjacent the Park had long passed into private hands, and on part of the Workhouse grounds was erected 39-41 Chambers Street. In this building the United States rented space, ample for the demands of the time, and the minutes of November 23, 1858, contain the following: "The new United States Court Building in Chambers Street opposite the Park having been completed, the Court opens in its new room"

In this house both the Circuit and District Courts and all their adjuncts, remained until May, 1875, when they occupied their allotted portion of the 2nd, 3rd and 4th floors of the "U S Court and P O Building" at the southern tip of City Hall Park. A letter from the Librarian of the Municipal Reference Library, giving further information about the location of the Court, is printed in the Appendix

of court. In the modern sense of practice regulations applicable to the bar there were none for many years. Until Tallmadge appeared the incumbents had been familiar in youth with the ways of the Vice- and State-Admiralty, and they went on by tradition.

But rules were from time to time entered in the minutes for the guidance of Clerk and Marshal. Thus in 1796 the Clerk was first ordered to put Registry funds in a bank, and The Bank of the United States was named; Tallmadge promptly changed both clerk and bank; a Clinton became the clerk, and the Manhattan Company the bank. Van Ness as promptly made one Rudd the clerk, and handed the money over to the City Bank—but when Rudd proved a defaulter he went back to the Bank of the United States.

In Judge Hobart's time legal notices were directed to be published in the *Daily Advertiser*, but his successor's first "rule" substituted that staunch Jeffersonian sheet, *The American Citizen*.

By 1812, however, the probability of prize causes in the near future, moved the court to appoint a committee of the bar to formulate rules. After only a few weeks of labor they produced (Sept. 2, 1812) a set of rules in Prize and forms for standing interrogatories; nothing more.

The committee consisted of Nathan Sandford, Thomas A. Emmet and Charles Baldwin, to whom were later added William Slosson and John T. Irving. After their prize effort, they assuredly took their labors easily, for it was not until November 6, 1821, that any general rules for the instance or law sides of the court were promulgated. They are 56 in number and for the most part relate to administrative details—but most of them are in substance law today.

Livingston and Van Ness passed on too soon to reap any harvest of work from equity and patent suits. How modern is this litigation, which has at times almost swamped the courts of the District, is often forgotten. In 1811 Justice Livingston (*Livingston vs. Van Ingen*, 1 Pai. 45) held that no such jurisdiction existed; Congress did not supply the lack until 1819 (3 Stat., 481), and that the want supplied was not pressing is fully shown by the paucity of such litigation until Justice Nelson's time.⁴⁵

Judge Van Ness was a worker, diligent in the day of small things; his death, however, was coincident with an era of greater opportunity, and in Samuel Rossiter Betts (appointed December 21, 1826) there appeared a man whose native force of character,

⁴⁵ Robb's Patent Cases (Boston, 1854) purport to contain all Circuit and Supreme Court decisions in patent matters with some cases in state courts from 1789 to 1850. There are 124 of them. A larger number has recently been heard in a single year, in the Southern District.

acquired learning and extraordinary industry fully qualified him to reap the legal harvest produced by such a harbor as New York's, meeting the commerce of the new Erie Canal and the railways so soon to cover the land. The city population almost doubled in the decade between 1820 and 1830, and soon after Betts⁴⁶ took office the town of 30,000 souls of Duane's time contained 200,000.

While he was still a new Judge, sessions of the Circuit Court were required on the last Mondays of February and July, in addition to the original two terms a year; while the District Court, instead of holding the four sessions annually first provided for, was instructed (as at present) to hold a term on the first Tuesday of each month. By the same statute⁴⁷ the rise of New York is peculiarly emphasized by raising the Judge's salary to \$3,500 a year, while Pennsylvania and South Carolina, which thirty odd years before had been ranked as more financially important, were granted no more than \$2,500.⁴⁸

Judge Betts diligently sought to state and modernize admiralty practice, and his work promptly bore fruit on November 4, 1828, when he promulgated 180 rules and 30 standing interrogatories covering the whole ground of Prize and Instance, plus such few common law rules as seemed necessary for a court sitting in a state still pursuing common law practice with as great rigidity as any of the thirteen colonies.

After working ten years under these rules, Betts published the first work on American Admiralty Practice⁴⁹ worthy the name.

He evidently preferred reaching the professional public by a treatise rather than by reports. Grudgingly he did permit some selected judgments to be printed, but only years after the publication of his book.⁵⁰ None of his manuscripts went on the files of the court, but remained in neat bundles in District Court Chambers until 1912, when they were delivered to some of his descendants.

⁴⁶ Judge Betts was born in Berkshire County, Mass., in 1787, graduated at Williams in 1806, saw some slight service in the War of 1812, was a Member of Congress in 1815 and after serving 41 years as District Judge retired in 1867. He died at New Haven, Conn., November 3, 1868.

⁴⁷ Act of May 29, 1830, 4 Stat., 422.

⁴⁸ This habit of paying salaries roughly graded according to amount of business or supposed cost of living, lasted until Act of February 12, 1903, 32 Stat., Part 1, page 825—when uniformity became the rule.

⁴⁹ A Summary of Practice in Instance, Revenue and Prize Causes in the Admiralty Courts of the United States for the Southern District of New York, and also on appeal to the Supreme Court, together with the Rules of the District Court (New York, Halsted & Voorhies, 1838).

⁵⁰ Blatchford & Howland (1855) contains cases between 1827-1837; Olcott (1857) covers 1843-47; and Abbott's Admiralty (1857) 1847-50. Blatchford's Prize Causes (New York, Baker, Voorhis & Co., 1866) was published without known permission from the Judges whose opinions are therein contained.

When the Judge retired in 1867, Daniel Lord moved an entry in the court minutes which in part states that:

"Had all the decisions made by him been published when they were made it would now be seen that to him more than to any other Judge is due that constitutional administration of the admiralty law which now prevails undisputed throughout the nation and which when he came to this bench was almost everywhere debatable ground. And it is but just to him to say that the views of that law which he now holds, in common with all the great admiralty judges, were the convictions of his earliest judicial investigations in this court and have always been continuously held and administered by him."

If anything be needed (beyond reading his decisions) to prove the truth of this encomium, it will be found in the concluding sentence of the preface to Betts's Practice:

"And when the celerity of the proceedings and efficiency of the remedies of maritime courts become generally known and appreciated in this country, it is believed their jurisdiction will no longer be restricted to the accident of flux and reflux of tides, but will also be extended to and embrace the commercial navigation of the United States over all their great inland waters."

This was written and published thirteen years before *The Genesee Chief* (12 How., 443).

Judge Betts gradually collected the first Admiralty Library in the United States⁵¹; and his book proves that he had studied the English and Continental authorities as well as the practice "made in New York" evidenced by the Vice Admiralty records and handed down by tradition. It is a tribute to his judgment and boldness that study did not lead him to adopt any of the refinements of even the English civilians, and it is no small praise for him and for the practitioners of New York far back in the eighteenth century that Betts's Rules of 1838 (if arrest and imprisonment for debt be modernized) are substantially law today and would not have shocked the practitioners (as the phrase then went) of 1750.

The substantial changes he deemed necessary were to hasten default by substituting one proclamation for three on different days, and facilitate filing libels and obtaining monition or citation without (in most cases) special allocatur. Taking testimony in open court

⁵¹ The size and value of this library are much commented on in contemporary newspaper reports of the fire in the "New City Hall" in 1854. The books escaped injury other than that received by being thrown out of second story windows into snow.

was known in provincial times though rarely practiced, but District Court practice had always been that (in Judge Betts's language) "Oral testimony is taken on hearing in the same manner as trials at common law," except that where appeal was contemplated, and the party producing evidence stated that it would "not be in his power to produce the witnesses before the Circuit Court" their evidence was taken down in writing by the clerk for incorporation in the apostles pursuant to Sec. 30 of the Judiciary Act.

In 1838 there could be said to be a few lawyers in New York, and in New York alone who were primarily known as belonging to the Admiralty bar. Erastus C. Benedict, author of *Benedict on Admiralty*, 1st Ed., 1850, who in 1823 had been Judge Betts's pupil, devoted himself almost wholly to that branch of the profession; Francis B. Cutting had a more general practice, but these two gentlemen may be called the founders of the distinctively admiralty bar of the United States.

The District Court entered 424 final orders, in the year the Judge published his practice book, and in the five years between 1840-45 it attended to 1645 motions or cases, while the Circuit Court considered 676. Considering that this work was done by two men, one of whom owed his first duty to the Supreme Court in Washington, the Circuit and District were busy tribunals; they had arrived with the metropolitan business of New York.

As the years passed the work grew heavier in responsibility for the District Judge, for in 1844⁵² the disgust of the Supreme Court with their "itinerary fatigues" obtained further result and Congress permitted the Justices to attend no more than one term of the Circuit Court per annum, which term the justice might designate, and at which such matters as he chose to hear should "have precedence in the arrangement of the business of the Court." It was still impossible to get assistance in the busier districts from Judges not so much engaged; the system now of long standing of making District Judges interchangeable within their circuits was not completed until 1852.⁵³ Until that date the courts in New York City were well served only because the men in office loved their work, and Justice Nelson to the end of his long life regarded the city as his home. His record on the state bench had made him well known

⁵² Act of June 17, 1844, 5 Stat., 676

⁵³ Act of July 29, 1850, 9 Stat., 442, enabled District Judges to go into other districts of the circuit in the case of sickness or other disability of any District Judge

Act of April 2, 1852, 10 Stat., 5, made it possible for District Judges similarly to hold court when the "public interests required it from the accumulation or urgency of judicial business in any district." These two acts are probably the last instance of the use of the phrase "Circuit Judge," meaning thereby "Circuit Justice"

to the bar, and while business flowed into the courts of which he was the local head, mainly because maritime, revenue and interstate business continually increased, the increase was in no small degree due to the liking widely felt for himself and his associates.

After 1852 Judges Ingersoll⁵⁴ of Connecticut and Prentiss⁵⁵ and Smalley⁵⁶ of Vermont became frequent visitors to the city; and there is a tradition at the Vermont bar that it was the hospitality of the last named gentleman which ultimately induced Congress to amend the Act of 1852 by limiting the daily judicial expense account to \$10. It is related that he frequently entertained counsel at the Astor House, and charged the cost thereof to the Government, until passage of the limiting act of March 3, 1871, 16 Stat., 494.

Justice Nelson had no objection to reporting, and in Samuel Blatchford found a reporter who distinctly advanced the reputation of the Circuit by judicious selection of cases and syllabi evidencing a legal breadth which he also proved at the bar and on the bench.

Judge Betts's conduct as to reporting, so detrimental to his fame, can be partly explained by the District Court scrap books, still extant; beginning in 1839 and extending beyond Betts's time. These volumes show that especially before and during the Civil War the daily newspapers printed opinions and court transactions with fulness and in a lawyer-like manner now unknown. In these scrap books will be found in print taken from newspapers not only hundreds of Betts's opinions, but similarly printed judicial decisions from all over the country as well as accounts of *causes celebres*, especially relating to extradition, piracy and slavery now utterly forgotten.⁵⁷

In Judge Blatchford a successor to Judge Betts was found who, if not the latter's equal in natural ability and urbanity of manner, had largely spent his life in the national courts and was possessed

⁵⁴ District Judge, 1853-1860

⁵⁵ District Judge, 1842-1857

⁵⁶ District Judge, 1857-1877

⁵⁷ The oldest scrap book is mentioned as one of the source books of the Federal Cases in the Preface to that work Blatchford's Circuit Court Reports began in 1850; Benedict's District Court Reports in 1865, by which time Judge Betts's health was so infirm that he had ceased to exert influence. The business of the Southern District between 1865 and 1867 was for the most part transacted by other District Judges in the circuit, especially Judge Benedict of Brooklyn. The issuance of the Federal Reporter in 1880 marks the end of Benedict's Reports, the editors of which immediately became the local representatives of the new publication. The Blatchfords endeavored to continue their series in rivalry with Fed. Rep. The effort failed, and the feeling thereby engendered between the Benedicts and Blatchfords served to amuse the junior bar of the time. Justice Blatchford and his son regarded Fed. Rep. as undignified, and the Benedicts as recreant to the cause of dignity.

of an energy and industry beyond praise.⁵⁸ Under him and the Circuit Judges appointed when the Justices of the Supreme Court practically retired from circuit work in 1869,⁵⁹ the business of the Court increased both in quantity and in importance, especially on the Equity side. The necessity of appointing additional Judges was, however, avoided for more than a generation by the device of splitting from the Southern, the Eastern District of New York.⁶⁰ This new Court was in several ways a relief valve for the older district. Not only was local business, then very small, cared for, but admiralty jurisdiction was almost concurrent, and the Judge of the Eastern District was⁶¹ shortly afterward by statute authorized to hold terms for the trial of Criminal causes in the Southern District and to receive additional pay for so doing. The result of this statute was to make Judge Benedict for nearly thirty years almost the only Criminal trial Judge in the Federal Courts of both Districts.

For more than 25 years after the first Circuit Judge was appointed under the Act of 1869, the two Courts of the District remained, if not fully manned, not absurdly undermanned. The resident District Judge was in the main left to transact the admiralty and bankruptcy business of his own court, while the circuit work was largely done by the Judges from Northern New York, Vermont and Connecticut, and Judge Benedict tried practically all the criminal causes. The Circuit Judge could within limits select his own work, and when Judge Blatchford went to the Circuit he made more sure the foundations of the reputation which finally brought him to the Supreme Court, by confining his work to admiralty appeals and equity, with special reference to patents.

In Judge Choate,⁶² who succeeded Blatchford as District Judge, a man appeared who, like his classmate and successor Brown, was peculiarly qualified by native habit of mind, to apply to the admiralty

⁵⁸ For Blatchford's life see 150 U S, 707. He was the first, and as yet the only man, to pass through all the grades of the federal judiciary. His portrait by Huntington, now in the District Court Motion Room, was given by the bar on his appointment to the Supreme Court in 1882.

⁵⁹ Act April 10, 1869, 16 Stat, 44, creating Circuit Judges. Under that statute Lewis B. Woodruff (1869-1875) and Alexander S. Johnson (1875-1878) served before Blatchford was himself appointed C J March 4, 1878.

⁶⁰ Act Feb 25, 1865, 13 Stat, 438.

⁶¹ Act of Feb 7, 1873, 17 Stat, 422; RS 613; repealed by Act March 2, 1909, 35 Stat, 685, on the granting of a fourth Judge to the Southern District.

⁶² William Gardner Choate, b Aug 30, 1830, A B Harvard 1852, was appointed District Judge, March 25, 1878, and resigned in June, 1881, on the qualification of his successor. He died November 14, 1920. A full statement of his life and services prepared by Hon Harrington Putnam is in the Memorial Book of the Association of the Bar of the City of New York.

the principles of equity. The satisfaction of the bar and the public with his grasp not only of law but facts is markedly shown by the few appeals taken from Choate to Blatchford in the admiralty between 1878 and 1881.

On Judge Choate's resignation Judge Brown⁶³ took up his work in the same spirit and with equal if not greater grasp of the law, although Choate's inferior as a judge of facts.

Under the system of court administration then prevailing, Judge Brown was relieved by the repeal of the Bankruptcy Act of 1867 from most judicial duties other than the pursuit of admiralty. It is not too much to say that the growth of the American admiralty during the next twenty years was more largely due to Judge Addison Brown than to any other one man or one court, not excluding the Supreme Court itself. On his retirement he prepared and presented to the then members of the bar a Digest of his labors as represented by something over two thousand written opinions filed by him; a little book carefully treasured by those who received it. Had Judge Betts prepared a similar volume, each book in its own generation might have been called a "Digest of the Achievements of American Admiralty."⁶⁴

Although over seventy years of age, Judge Brown in 1901 was in vigorous health, but he saw that the Bankruptcy Act of 1898 had produced an apparently permanent volume of business that no one man could carry in addition to the previous labors imposed on the District Judge.⁶⁵

He therefore advised the admiralty bar early in the summer of 1901 of his intention to retire. His successor, Judge Adams,⁶⁶ was

⁶³ Addison Brown, b. Feb 21, 1830, A B, Harvard, 1852, District Judge, June 2, 1881, retired on the appointment of his successor, Aug, 1901, died April 9, 1913. A memorial written by Judge Choate was presented to a meeting of the Bar in memory of Judge Brown and is now on the files of the Court.

⁶⁴ The "Indexed Digest of Decisions of Hon Addison Brown, LL D, U.S.D.J for the SD of N Y, 1881-1901; reported mostly in the *Federal Reporter*, Vols 8-114," was printed by The New Era Printing Co of Lancaster, Pa, and is now out of print. Judge Brown states in his preface that he had not indexed about one-quarter of his opinions as they were "mostly of minor importance." He concludes his preface by saying, "Nor can I fail to acknowledge my very deep appreciation of the unfailing courtesy, kindness and consideration that from the moment of my entrance into office on June 18, 1881, have made our intercourse (i.e., that between bench and bar) one of unbroken harmony, cordiality and pleasure."

⁶⁵ See the tabular statement (p 34) of the difference between the business generated after three years of the Bankruptcy Act of 1867 and that produced after two years of the statute of 1898.

⁶⁶ George Bethune Adams, b April 3, 1845, appointed Aug 30, 1901, died in office Oct, 9, 1911, after an illness extending over more than a year, which wholly disabled him from discharging his judicial duties. A memorial is printed in the Bar Association Report for 1912, at page 205.

chosen by that bar, but no effort was made to obtain an additional resident Judge to share or assume the burdens of bankruptcy. This was unfortunate both for the business of the Court and the happiness of the new Judge. A most conscientious man, thoroughly acquainted with admiralty, but of small experience in other branches of the law, he became ill from overwork in less than a year and a half, and never fully recovered from that illness.

Relief finally came to the Court by the appointment of Judge Holt, and thereafter Judge Adams confined himself wholly to the Admiralty.⁶⁷

It seems never possible to obtain anticipatory relief from Congress in respect of accumulated work; and while the ordinary business of the Circuit Court appeared to be sufficiently cared for by a resident Circuit Judge with the aid of District Judges from other parts of the Circuit, there accumulated during the '70s and early '80s of the nineteenth century a "Customs Calendar" made up of actions at law to recover from the Collector of Customs illegally exacted import duties. Comparatively few of these cases were actually tried because separate suits had to be brought by each importer and usually for each importation; yet the decision of one test case might dispose of hundreds if not thousands of litigations scattered over the entire country. Yet they had to be cared for somehow, and by about 1885 there had accumulated about 20,000 such cases pending in the Southern District alone. Even if only test cases were tried, it was a serious matter to dispose of them, and it was finally admitted that Judge Wallace, who succeeded Judge Blatchford in 1882, was unable to do the work in addition to his other duties. This resulted in 1887 in the appointment of a second Circuit Judge, and it was understood at the time that Judge E. Henry Lacombe filled an office primarily created to demolish the "Customs Calendar."

For four years he continued this labor until the system of seeking recovery of Customs duties was changed by the "Customs Administrative Act of 1891." The Circuit Court of Appeals Act of the

⁶⁷ *District judges since Judge Brown's retirement:*

George B. Adams, August 30, 1901
George C. Holt, March 3, 1903, Act, February 9, '03, 32 Stat., 805
Chas. M. Hough, June 27, 1906, Act, May 26, '06, 34 Stat., 202
Learned Hand, April 26, 1909, Act, March 2, '09, 35 Stat., 685
Julius M. Mayer, February 26, 1912 (*vice* Adams, deceased)
Augustus N. Hand, September 30, 1914 (*vice* Holt, retired)
Martin T. Manton, August 23, 1916 (*vice* Hough made Cir. Judge)
John C. Knox, April 12, 1918 (*vice* Manton made Cir. Judge)
Francis A. Winslow }
Henry W. Goddard } January 4, '23, Act, Sept 14, '22, 42 Stat., 837
William Bondy, 1923

A complete list will be found in the Appendix

same year (contemporaneously known as the Evarts Bill, because it was fathered by Senator Evarts of New York) introduced a radical change in the construction of the national courts and produced results not foreseen when it became law—for it ultimately produced the death of the Circuit Court by a process of absorption into the District Court.

The new intermediate appellate Court opened its sessions on October 27, 1891, and the last appearance of Justice Blatchford in the Courts where he had spent so much of his life was to attend, in August of that year, and enter formal decrees of affirmance of pending appeals in the Circuit Court, in order that Wallace and Lacombe, J.J., might hear those appeals in the newly created court without disqualification. Thus in an ante-room of the Court and Post Office Building passed away an appellate jurisdiction in the circuit which had lasted without interruption or diminution for a hundred and one years.

The early years of the Circuit Court of Appeals made small difference with circuit work. Appellate cases were no more numerous than they had been until the bar at large found out by practical experience how much easier it was to take appeals other than in Admiralty, to another story in the same Court House instead of to Washington.

But as the years passed, more and more the Circuit Judges retired from first instance work, until with the close of the century it was, except for the continued and intensive industry of Judge Lacombe, almost entirely true that the Circuit Court was an organization whose work was wholly done by District Judges, while the management of the Clerk's Office and arrangement of labor were in the hands of the Circuit Judges, who did none of the work in which they had largely lost interest.

The most obvious way of meeting an advancing tide of litigation was to multiply District Judges, but the inconvenience and inherent error of a system of control in the hands of one set of men and entrusting the work to entirely different men grew with the years. Result was Sec. 289 of the Judicial Code, taking effect January 1, 1912, which abolished the Circuit Courts and transferred their records, jurisdiction, and indeed their whole history, to the Districts.

Shortly thereafter came the Act of October 22, 1913 (38 Stat., 219) abolishing the short-lived Commerce Court and transferring all its jurisdiction to the Districts. Thus was substantially completed for a term of years at all events a continual accretion of jurisdiction in the District Courts from which the political history of the country shows no considerable subtraction except that caused by the creation in 1910 of the Court of Customs Appeals, which took away from both the District and the Circuit Courts of

Appeal the duty of examining in any form claims of importers for rebates of Customs duties.

The personnel of the District Court has during the last decade been at times greatly affected by the Act of October 3, 1913 (38 Stat., 203), which authorized the Second Circuit alone and practically the City of New York alone to draw upon all the rest of the country for specially designated District Judges.

This Act at the time of its passage was often called the Lacombe Bill, because the substance of it had been advocated for many years by that Judge. The system was tentative, but has been enlarged to the whole country by the Act of September 14, 1922 (42 Stat., 837), which seeks measurably to use the United States Judges not only in the regions for which they are appointed, but wherever men are wanted to overcome arrears of work.

The experience of the Southern District with trial Judges reared under very different local conditions is instructive and not altogether happy. It is instructive because it teaches the observer how singularly varied are the habits of bench and bar in the different states and how local customs affect the practical management of cases even in the national courts. These varying habits disconcert the bar and retard the trial of causes, at least until the visiting Judge has (and the process takes no short time) become accustomed to the habits of the bar he must necessarily encounter.

Our local experience has been somewhat unhappy also because experience has shown that it is almost impossible to bring men from a distance for a month or at most two and then invite them to attempt the trial of causes such as Equity or Admiralty which are very likely to produce voluminous records requiring careful perusal after argument concluded. The effect of this has been to throw the jury work unduly on the visiting Judges, and oftentimes to increase the labor of the residents because the Equity and Admiralty side of the Court was then left to be taken care of wholly by them.

The effect of the social and commercial upheaval caused by the World War even upon the work of a single court is best shown by the table which appears as an appendix at page 34.

The manuscript ends with these quotations:

Sine summâ justitiâ, rem publicam geri non potest.

(Cicero De Repub.)

. . . The plough, the axe, the mill
All kin's o' labor, an' all kin's o' skill
Would be a rabbit in a wild cat's claw
Ef 'twarnt fer thet slow critter—'stablished Law.

(Biglow Papers, Ser. II, Letter 2.)

And the men did the work faithfully.

(II Chron. XXXIV, 12.)

Their works do follow them. (Rev. XIV, 14.)

UNITED STATES JUDGES

DISTRICT OF NEW YORK

APPENDIX

CAUSES BEGUN IN DISTRICT AND CIRCUIT COURTS, SOUTHERN DISTRICT OF NEW YORK, IN THE YEARS GIVEN:

	1860	1870	1880	1890	1900	1910
Admiralty .	245	255	525	408	423	384
Law	120	151	185	162	405	346
Equity ..	93	369	509	196	319	607
Criminal	75	153	95	82	92	405
Appeals and Miscellaneous Matters..	10	126	61	70	8	38
	543	1,054	1,375	918	1,247	1,780
Bankruptcy		292			1,378	1,346

In 1920, new causes in District Court:

Admiralty	1,904
Law ...	1,215
Equity ..	1,405
Criminal	2,740
Miscellaneous	346
Total	7,620
Bankruptcy	1,503

District Judges

James Duane	1789-1794	Resigned
John Lawrence	1794-1796	Elected U. S. Senator
Robert Troup	1796-1798	Resigned and resumed practice
John Sloss Hobart	1798-1805	Died in office
Mathias Burnet Tallmadge	1805-1814	Continued as Judge for the newly-formed Northern District until 1819

SOUTHERN DISTRICT OF NEW YORK

District Judges

William Peter Van Ness	1812-1826	Died in office
Samuel Rossiter Betts	1826-1867	Died in office
Samuel Blatchford	1867-1878	Became Circuit Justice
William Gardner Choate	1878-1881	Resigned
Addison Brown	1881-1901	Retired
George Bethune Adams	1901-1912	Died in office
George C. Holt	1903-1914	Retired
Charles M. Hough	1906-1916	Made Circuit Judge
Learned Hand	1909-1924	Made Circuit Judge
Julius M. Mayer	1912-1921	Made Circuit Judge
Augustus N. Hand	1914-1927	Made Circuit Judge
Martin T. Manton	1916-1918	Made Circuit Judge
John Clark Knox	1918	
Francis A. Winslow	1923-1929	Resigned
Henry W. Goddard	1923	
William Bondy	1923	
Thomas D. Thacher	1925-1930	Appointed Solicitor-General
Frank J. Coleman	1927-1934	Died in office
John M. Woolsey	1929	
Robert P. Patterson	1930	
Alfred C. Coxe, Jr.	1929	
Francis G. Caffey	1929	

Appendix

UNITED STATES ATTORNEYS

SOUTHERN DISTRICT OF NEW YORK

Appointed

Richard Harison	1789
Robert Tellotson	1819
John Duer	1828
James A. Hamilton	1829
William M. Price	1834
Jonathan Prescott Hall	1849
Charles O'Connor	1853
John McKeon	1854
Theodore Sedgwick	1858
James I. Roosevelt	1860
E. Delafield Smith	1861
Daniel S. Dickinson	1866
Samuel G. Courtney	1866
Edwards Pierrepont	1869
Noah Davis	1870
George Bliss	1872
Stewart L. Woodford	1877
Elihu Root	1883
Stephen A. Walker	1886
* Edward Mitchell	1890
* Henry C. Platt	1893
Wallace Macfarlane	1894
Henry L. Burnett	1898
Henry L. Stimson	1906
Henry A. Wise	1909
H. Snowden Marshall	1913
Francis G. Caffey	1917
William Hayward	1921
Emory R. Buckner	1925
Charles H. Tuttle	1930
Robert Manley (Acting)	1930
George Z. Medalie	1931
Thomas E. Dewey	1933
Martin Conboy	1933

* Temporary.

Appendix

LOCATIONS OF THE SOUTHERN DISTRICT COURT

In the records of the Clerk of the Southern District there is found the following answer, dated August 21, 1912, to a questionnaire of the Attorney General:

“From 1859 to 1875 inclusive, the Courts, Marshal’s and Clerk’s offices, etc., were located in Burton’s Theatre, a building on Chambers Street, near Broadway, opposite City Hall Park, and which had been leased for the use of the Government through the efforts of Mr. Justice Nelson, associate justice of the Supreme Court, assigned to the Second Circuit.”

According to the researches of Rebecca B. Rankin, Librarian, of the Municipal Reference Library, the location of the U. S. District Court in the years 1838-1875 was at the following addresses:

1838-1853—New City Hall, East wing
 1854-1858—New Court House, first floor
 1859-1869—39 Chambers Street
 1870- —49 “ “
 1872- —41 “ “

THE EASTERN DISTRICT OF NEW YORK

The District Court and Circuit Court were organized in the County Courthouse in Brooklyn, March 22, 1865.

District Judges

- Charles L. Benedict.....Commission dated March 9, 1865, sworn in March 20, 1865, by Hon. Samuel R. Betts, United States District Judge, Southern District of New York
Resigned in 1897
- Asa W. Tenney.....Sworn July 20, 1897
Died December 20, 1897
- Edward B. Thomas.....Sworn February 21, 1898, by Hon. Addison Brown, United States District Judge, Southern District of New York
Resigned December 31, 1906
- Thomas Ives Chatfield.....Sworn January 15, 1907, by Judge Thomas
Died December 24, 1922
- VanVechten VeederSworn February 16, 1911, by Judge Chatfield
Resigned December 31, 1917
- Edwin Louis Garvin.....Sworn April 2, 1918, by Judge Chatfield
Resigned October 31, 1925
- Marcus B. Campbell.....Sworn January 8, 1923, by Judge Garvin
- Robert A. Inch.....Sworn June 4, 1923, by Judge Garvin
- Grover M. Moscovitz.....Sworn December 26, 1925, by Judge Campbell
- Clarence G. Galston.....Sworn May 4, 1929, by Judge Campbell
- Mortimer W. Byers.....Sworn December 2, 1929, by Judge Campbell

CLERKS OF THE DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

- Samuel T. Jones.....Sworn March 22, 1865
- B. Lincoln Benedict.....Sworn September 14, 1874
Resigned October 6, 1897
- Richard P. Morle.....Sworn October 6, 1897
Died January 14, 1914
- Percy G. B. Gilkes.....Sworn April 1, 1914

CLERKS OF THE CIRCUIT COURT

- Charles W. Newton.....Sworn March 22, 1865, to September 14, 1874
- B. Lincoln Benedict.....Sworn September 14, 1874, to December 31, 1911

LOCATIONS OF THE EASTERN DISTRICT COURT

The Court has occupied six different court rooms. When organized in 1865, it sat in the County Courthouse. Thereafter it sat in the court room of the City Court of Brooklyn. From April, 1867 to March, 1873, it occupied 189 Montague Street; then until 1891, 168 Montague Street. From 1891 to 1892, it used two remodeled houses at 40 Clinton Street, where a court room was erected in the back yard; this was notable for its freedom from street noises. On April 22, 1892, the Court moved into the U. S. Post Office Building where it still remains. This building was enlarged in 1932-33, and the quarters of the Court were much improved, relieving a pressure for space which had caused several Judges to take quarters in the adjacent Eagle Building.