

Fifty Years

of the

Circuit

Court of Appeals



for the

Fourth Circuit

[George W. McIntick]

An Address

Delivered by

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Judicial District of West Virginia**

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Fifty Years of the Circuit Court of Appeals for the Fourth Circuit

I appreciate very much the designation by Judge Parker of myself to reminisce on the subject, "Fifty Years of the Circuit Court of Appeals".

The Act creating this court was passed and approved on the 3rd day of March, 1891. The reason for the Act lay in the fact that the Supreme Court of the United States was some three to four years behind on its docket and it was appreciated that there had to be some relief given to that court.

I have always been told that the moving spirit in creating this law was the great Senator William Maxwell Evarts, of New York. He had had long and able experience and practice at the bar, and was regarded by many as the leading lawyer of the United States. He was one of the lawyers who had defended Andrew Johnson in his impeachment trial, and had been Secretary of State in the administration of President Hayes.

Incidentally, he had a farm up in Vermont where he often entertained many guests, and one story attributed to him was that on one occasion he set out, as potable things, plenty of champagne and plenty of milk, and told his guests to help themselves—that each had cost him the same.

The Act took effect from its passage. It provided that the court should be composed of the Chief Justice and the Justices of the Supreme Court, assigned to each circuit, the then Circuit Judge of each circuit, and further provided for the appointment of one additional Circuit Judge in each of the nine circuits as they then existed under the law.

The duty of appointing these Judges of course devolved upon the President then in office, namely, Benjamin Harrison.

In my opinion, and I am not alone, Benjamin Harrison was much the greatest lawyer ever to be elected to the office of President of the United States.

As you will remember, the Judges appointed by him, while he was President, were of such character and standing and ability that each one graced the position.

President Harrison took more than one year from the date of the passage of the Act before he made the appointments of these Circuit Judges. The record shows that the nine new Circuit Judges were appointed as of the 17th day of March, 1892. Of the nine appointed by him, two were Democrats and seven were Republicans.

They included William L. Putnam of Maine, Nathan Shipman of Connecticut, George M. Dallas of Pennsylvania, Nathan Goff of West Virginia, A. P. McCormick of Texas, William Howard Taft of Ohio, William A. Woods of Indiana, Walter H. Sanford of Minnesota and Joseph McKenna of California.

In the Ninth Circuit, William B. Gilbert of Oregon was appointed on the 18th day of March, 1892, to fill the vacancy created by the death of Lorenzo Sawyer.

At the time of the passage of the Act there was only one Circuit Judge in each of the Circuits, except in the Second Circuit, where William J. Wallace was then called Senior Circuit Judge and E. Henry Lacombe was called Junior Circuit Judge.

Apparently it was expected, under this Act, that the member of the Supreme Court allotted to the particular circuit should sit as a member of the court. To a certain extent this custom was followed, but not very frequently.

It was provided in the Act that the court should always consist of three Judges, and, necessarily, that included the designation of District Judges, as provided therein, to sit with the Circuit Judges. In one instance, at least, three District Judges composed a Court of Appeals.

However, from time to time Acts have been passed by Congress increasing the number of Circuit Judges in all the Circuits with the exception of the Fourth. This circuit never rose to the dignity of having three Circuit Judges until the Act of September 14th, 1922, and up to that time at least one District Judge had to be summoned at each term of the Court of Appeals to sit with the Circuit Judges. There is one exception to this—Martin A. Knapp, whom I will hereafter mention.

I believe it is not very generally known that after repeal of the Act in 1801, eliminating the "Midnight Judges" of the Adams Administration, there was no such officer as Circuit Judge until 1869, when the Act was passed by Congress providing for Circuit Judges and President Grant appointed nine Circuit Judges, being one for each of the circuits into which the states were divided.

Under the Ellsworth Act of 1789 there always had been, up to that time and further, until the 1st day of January, 1912, a Circuit

Court as well as a District Court. The law required the Justices of the Supreme Court to sit from time to time in each of their respective circuits, and all of them did so. The travel, in the early days, was a very onerous part of their duties, and history tells that the accommodations at various places of holding court did not quite compare with what we now get at the Grove Park Inn.

District Judges were created by the Ellsworth Act and most, if not all of them, when the Justice was not present, had Circuit Court powers, but when the Justice was present his opinion controlled.

Those of you who have read Beveridge's "History of John Marshall" will recall how little attention the Chief Justice, in the celebrated trial of Aaron Burr, apparently paid to District Judge Griffin.

The first session of the Circuit Court of Appeals of the Fourth District was held at Richmond, the place designated in the Act for such sitting, on the 16th day of June, 1891. The Judges present and composing the court were the Honorable Melville Weston Fuller, Chief Justice of the United States, the Honorable Hugh Lennox Bond, Circuit Judge, who had been appointed by President Grant, and the Honorable John Jay Jackson, District Judge of West Virginia, who had been appointed by Abraham Lincoln in August, 1861.

When one is reminiscing over a period of fifty years, some personal matter might be proper as to the history of these three persons.

Melville Weston Fuller was a native of Maine, but was a citizen of Chicago when appointed Chief Justice by President Cleveland.

Judge John Carter Rose once told me this interesting story in reference to Chief Justice Fuller.

Along about 1906, when Mr. Fuller was qualified, under the law, by reason of having served more than ten years on the bench and having reached the age of seventy, to retire, Theodore Roosevelt invited him, and a number of others, to a dinner at the White House, apparently for the purpose, as subsequent events showed, of persuading him to retire and let William Howard Taft be appointed Chief Justice. The President spoke of all the sweet advantages of retirement, (such as Judge Northcott and I have lately heard) at great length and in his usual strong way, without eliciting a single answer of any kind from the Chief Justice. The President had to get through after awhile, as there is an end to all things, and at that moment the Chief Justice quietly said—"I think, Mr. President, that you had better attend to your own business, and let me attend to mine."

Once, before the Supreme Court of the United States, I heard one of the dearest men I ever knew, William A. Anderson, of Virginia, argue a case. He was one of those lawyers who could not speak (or, possibly, think) without, as we say, "hitting the ceiling". The Chief Justice had one of the sweetest voices I have ever heard until he was somewhat aroused, and in that instance he said—"Not so loud, Mr. Attorney General, not so loud, please." The Attorney General quieted down somewhat, but soon got back to his old habit and the second time the Chief Justice admonished him, still in a sweet tone, but with a bit of an air of finality to it; but the Attorney General apparently didn't appreciate it, and the third time the Chief Justice said, in very emphatic words—"I said, not so loud, Mr. Attorney General—now stop it!" Under his suave exterior he was always regarded as a man of iron.

Chief Justice Fuller presided for twelve terms of this court. His successor, Chief Justice White, never sat in this court.

Chief Justice Taft presided at three terms, once in Baltimore and twice in Richmond.

Chief Justice Hughes presided at three sessions of this conference.

Hugh Lennox Bond

Judge Bond was the first Judge appointed under the provisions of the act creating Circuit Judges. This appointment was made by President Grant on the 13th day of July, 1870, and Judge Bond took the oath of office and entered upon his duties on August 4th, 1870. He was born on the 16th day of December, 1828, I presume in the City of Baltimore, but I have seen nothing to indicate that as a fact. He served as Circuit Judge until the date of his death on the 24th day of October, 1893. I am not advised whether he had ever held any office prior to his appointment as Judge.

The state of affairs in the United States at the time of his appointment, especially in Virginia and the Carolinas, and, to a certain extent, also in Maryland and West Virginia, was a very uncomfortable one and a very difficult one. The Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution had just been severally ratified. Their construction was still to be made, and the onerous duties of doing so devolved upon the courts. The statutes in reference to Ku Klux Klan and the statutes in reference to negroes, and the torn-up state of all things connected with the ending of

the Civil War, were being continually discussed by the people and a great deal of bitterness was engendered thereby.

Judge Bond had been a strong Union man, and that was probably one of the reasons why he was appointed. He had to meet the prejudice and bitterness growing out of the aftermath of the Civil War. He met it boldly and courageously. I do not know of a better way to illustrate this than quoting from the address of General Bradley T. Johnson, made after the death of Judge Bond, at a meeting of the bar in Baltimore:

"I have known Judge Bond since our early manhood, for we entered life about the same time, he being somewhat my senior, and I have followed his career ever since. With different ideas—with absolutely divergent ideas of duty—of necessity we have never agreed on any public question which arose during our public lives. But there were fundamental traits of character in him which required the respect of all true men. He was absolutely a brave man, and no danger or threat of peril could stay him for an instant in treading the path which he believed to be the path of duty. He marched the way his duty pointed without a halt, and I sincerely believe that nothing could bend him.

Few people understand how near the country was to civil war over the disputed presidential election of 1876. The vote of South Carolina was decisive on that occasion. One electoral vote cast for Tilden would have placed a Democratic president in the chair. The Supreme Court of the state had interfered by mandamus requiring the votes to be counted by the returning board in a certain way—which way, we believed, would have resulted in giving at least two electoral votes to Tilden. The returning board, by direction from Washington, adjourned *sine die* and left their decision in favor of Hayes, thus ignoring the mandate of the Supreme Court. That tribunal at once committed them to jail for contempt, until they corrected their returns. The country was in a flame. Northern Democrats in their secret councils were talking of organizing troops and marching to Washington and inaugurating Tilden. I took positive ground against such suicidal action. But all South Carolina was in arms. Five thousand old soldiers were concentrated in Columbia within ten hours, and nothing but the self-control and courage of Wade Hampton contesting the election for governor saved the country from an outbreak starting in Columbia.

While sentiment was at a white heat and the streets were thronged with armed men, Judge Bond appeared and opened the Circuit Court of the United States. He issued the writ of habeas corpus to the state authorities, requiring them to surrender the return board to the marshal of his court. I appeared, with other gentlemen, on

the return of the writ as counsel for the Supreme Court of South Carolina and for the National Democratic Committee. The courthouse was filled and surrounded by enraged and excited South Carolinians. The Federal garrison would not have been a cobweb to control them. But Bond heard their arguments, and ordered the release of the prisoners on bail as coolly as if he had been sitting on a railroad case in this courthouse. He saved Haycs, and some years ago I taunted him with it, saying: "You have never received the credit that was your due for having elected a president in 1876." His reply was: "I don't think I'm entitled to any credit for it." I have never anywhere seen firmer courage exhibited than on that occasion.

His negrophilism was based on his sympathy with the weak, and his whole career on that question was directed by the feeling of chivalry and generosity. On that, as on other questions, I differed with him *is toto*; but I sincerely agreed with him in the conviction that the path of duty was the straight line, and that a manly man ought to stand by his convictions, absolutely regardless of consequences.

I record my testimony to his courage and to his generosity—higher traits hath no man—and I tender my respectful sympathy to his family."

I cannot forbear from imposing upon you another instance applying to Judge Bond which I found printed in one of the Lawyer-Laugh's books:

"There was a suit tried in the United States Circuit Court at Raleigh, N. C. some years ago, in which a Baltimore commission house was plaintiff, and Gen. Bryan Grimes, who led the last charge at Appomattox, was defendant. Judge Bond, who presided, was strongly anti-southern during the war, and a citizen of Baltimore. The late Governor Fowle, who was a very eloquent lawyer, represented General Grimes, and in his appeal to the jury laid full stress on the character and record of his client, and dwelt eloquently on the "last charge at Appomattox." Coming out of court, he said to the opposing counsel (later Judge Fuller, of the United States Land Claims Court), "Fuller, that last charge at Appomattox has got me the jury." "Yes," said Fuller, very quietly; "and that last charge of Judge Bond has got me the verdict." And so it proved."

I cannot refrain from reciting an instance which occurred in the District Court of the United States at Charleston, West Virginia before I saw the town.

There was a controversy over the appointment of a receiver for the celebrated White Sulphur Springs property. District Judge

Jackson appointed a receiver and Circuit Judge Bond appointed a different receiver. Apparently quite a bitterness had grown up between them, each being a very determined character. Judge William J. Robertson, of Virginia, was counsel for the appointment of the receiver and for the receiver appointed by Judge Bond. As usual, the Circuit Judge overruled the District Judge. Robertson brought to the court in Charleston the decree signed by Judge Bond and presented it to Jackson for entry. Jackson grew very angry and proceeded to say a lot of things about the treatment accorded to him in this case by Judge Bond, and insisted that Bond had been very unkind and very ungenerous, and really quite unjudicial in his actions. The courteous Judge Robertson waited until Jackson had subsided, and then calmly said: "We understand, your Honor, that we, as lawyers, have not the privilege of saying such things about Judges. We further understand that Judges have the privilege of saying such things about each other."

It is possible that Jackson was not the only District Judge who ever made remarks about Circuit Judges.

John Jay Jackson

The District Judge, John Jay Jackson, Jr., who sat on this first court, was a very remarkable character. His grandfather, Judge John George Jackson, had been the first Judge of the District Court of the Western District of Virginia, which position was created by Congress on the 4th day of February, 1819. An interesting character, but space will not permit me to speak further of him.

His son, General John Jay Jackson, became a lawyer of great eminence in Western Virginia. He was a member of the Secessionist Convention of 1861. He fought secession to a finish, escaped from Richmond before he could be arrested, came back to Parkersburg, his home, and was one of those who stirred up the revolt against the Confederate Government of Virginia, and was a very strong force in creating the reorganized Government of Virginia and in the making of the State of West Virginia.

Here is one of the oddities that possibly I should not relate, but in speaking here, to this audience, it is too interesting to overlook.

John Jay Jackson, Jr., in August, 1861, was about thirty-seven years of age. Naturally, up to that time he had not been very prominent, as his ancestors had been in matters of Western Virginia. The story has been related from time to time, and in my young days

I heard it often from old people of standing, who had opportunities for knowledge, that when President Lincoln appointed John Jay Jackson, Judge, under the extraordinary circumstances then existing, he intended the appointment for General John Jay Jackson, and not for John Jay Jackson, Jr.; that General Jackson did not want the position, and turned the Commission over to his son, who took it and remained Judge for the forty-four years next ensuing, being two years Judge of the Western District of Virginia, thirty-eight years Judge of the District of West Virginia, and four years more Judge of the Northern District of West Virginia, the state having been divided as of the 1st day of July, 1901.

It must be admitted that, on the face of the proceedings, there was good reason to believe that Mr. Lincoln intended to appoint the big man, and not the little one.

In the early history of the court, District Judge Hughes, of Norfolk, Virginia, who was considered the ablest Admiralty Judge in this country, was designated to sit as a member of the Circuit Court of Appeals. During the term, an appeal from a decision of District Judge Jackson, of West Virginia, involving an action of ejectment, was heard by the court, and the case was reversed and the opinion was assigned to Hughes to write.

Several years later Jackson, who was considered the ablest land title Judge in the country, was designated to sit as a member of the Circuit Court of Appeals. During that term an admiralty case from Hughes was heard and the court decided to reverse the decree of the lower court, and Jackson was assigned to write the opinion of the court.

These decisions brought about some little feeling between Hughes and Jackson. When Hughes' attention was called to Jackson's opinion reversing him in an admiralty case, he said: "What does Jackson know about admiralty; he hasn't a stream of water in his whole district which I could not expectorate over."

When Jackson's attention was called to Hughes' opinion reversing him in an action of ejectment, he remarked: "What does Hughes know about actions of ejectment he hasn't a strip of land in his entire district which I could not expectorate over."

Nathan Goff

Nathan Goff, appointed by President Harrison as the additional Circuit Judge for the Fourth Circuit, was a native of Harrison County, Virginia. He was born on the 9th day of February, 1843. At the age of eighteen years he entered the Federal Army, and later, while he had the title of Major, he was captured and confined in Libby Prison in Richmond. While there confined, a very remarkable event in his life's history occurred.

Major Armsey, a Confederate officer, had been captured by the Federal soldiers. He was charged with being a spy, and apparently it was the intention, or, at least, it was thought it was intended by the Federal authorities, that he should be tried by a court martial as such and executed.

The Confederate authorities announced that if Armsey was executed, they would retaliate by executing Major Goff. All of these matters were brought to the attention of Major Goff, who wrote to President Lincoln a very remarkable letter, which has been copied into history many, many times. The substance of this letter was that if the Federal Government, in the exercise of its powers and its duties, and for the safety of the Union, thought it proper to execute Major Armsey, not for a moment to think of him, but go ahead and do what it thought was best, under the circumstances, and that he would take the consequences. The subsequent events were that Armsey was not executed, and Goff was exchanged.

He told me himself that when he was exchanged, he was taken to Washington and there had his one interview with Mr. Lincoln. He was wonderfully impressed by the great President, and for all his reasonably-long life, he treasured the memory of that interview.

He came out of the army, at the age of twenty-two, with the title of Brigadier General. He studied law, but was soon taken into politics. He was a member of the West Virginia Legislature as a delegate, and in 1868 he was appointed District Attorney for the District of West Virginia, and remained as such until the autumn of 1880, when he became a member of the Cabinet of President Hayes, succeeding Colonel Richard Thompson as Secretary of the Navy.

I have been told, on apparently good authority, that his name was on the tentative list of Cabinet Officers as Secretary of the Navy, made up by President Garfield on the 4th of March, 1881, until a few minutes before it was sent to the Senate, when his name was eliminated and that of William H. Hunt was substituted.

He was again appointed District Attorney and served until the fall of 1882, when he was elected a member of the House of Representatives from the First Congressional District of West Virginia. He was twice re-elected.

In 1888 he was the Republican nominee for Governor of the State of West Virginia, and received a majority of the votes cast for that office, but, at close range, with a lot of personal knowledge, I am compelled to say that his election was illegally and unjustly set aside by the Legislature, and he was not permitted to serve as Governor.

He would be called, in this day, a natural-born aristocrat, but his power of speech was such that all classes of people followed him and believed in him. Of the people of my state, I still regard him as the best political speech-maker it was ever my fortune to hear.

By some he was not regarded as a great lawyer because he had been so continually in politics, and former Governor George W. Atkinson, of West Virginia, told me that President Harrison at first refused to appoint him as Circuit Judge, believing that he was not sufficiently learned in the law.

There was a new star coming into the firmament of West Virginia politics at that time. His name was Stephen Benton Elkins. He was Secretary of War in President Harrison's Cabinet, and he once told me that he was able to overcome all the difficulties that were in President Harrison's mind when Nathan Goff was appointed Circuit Judge.

His subsequent career, of twenty years on the bench of the Circuit Court of Appeals fully justified his appointment.

He remained on the bench until the winter of 1913, when he was elected Senator in the Congress of the United States (the last one from West Virginia elected by a Legislature) without any action whatever on his part. As he, himself, said, it cost him a sheet of paper, an envelope and a three cent stamp. In 1889, he was voted for, and on the last ballot of the joint session of the then Legislature, the vote was forty-six for John E. Kenna and forty-five for Nathan Goff.

It has been told to me, on apparently good authority, that it was the intention of President William McKinley to appoint him to the next vacancy on the Supreme Court of the United States, but the accursed bullet of Colgholz prevented this happening in history.

He departed this life on the 24th day of April, 1920, and was buried in the city of his birth.

Charles Henry Simonton

Charles Henry Simonton was born in Charleston, South Carolina on the 11th day of July, 1829, and departed this life on the 25th day of April, 1904. He practiced law from 1852 to the 3rd day of September, 1886, when he was appointed United States District Judge for the District of his native state. He was appointed United States Circuit Judge for the Fourth Circuit on the 19th day of December, 1893. The unusual factor in his appointment was that each one was made by President Cleveland. He was long a member of the Legislature and especially was he such member in the trying days of 1860. He was a soldier in the Confederate States Army and had the rank of Colonel. In 1865, he had the bad fortune of being captured by Union Troops and was confined in Fort Delaware until after the surrender of the Confederate Army.

He was most highly regarded, wherever he was known, as a lawyer, as a soldier, as a citizen, as a Judge, and as a man.

I regret that it was not my fortune to know him, and therefore can say nothing personally as to his real worth.

I quote from the memorial proceedings the sweet remarks made by the presiding Judge thereat, Mr. Chief Justice Fuller:

“Although it is not needed, I cannot refrain from saying something in addition to what has been so well said by my brethren, and by the gentlemen of the bar, in testimony of my deep and affectionate regard for the just judge, the admirable gentleman, the good man, whose departure we mourn—those more intimately associated with him sorrowing most of all, that we shall see his face no more. The world in general does not sympathize with judicial labors, which have nothing in themselves to invite public applause; and yet it is through them that around life and liberty and property and happiness is drawn the sacred circle of the law. But in the consciousness of duty done, of ancient landmarks preserved, of rights protected, of truth maintained, and justice executed, the patient toil of years finds its reward. That reward came to our friend in the fullest measure, and the sweet remembrance of the noble work of his lifetime will blossom, though he sleeps in the dust.”

Jeter Connolly Pritchard

Judge Pritchard was born at Jonesboro, Tennessee, on the 12th day of July, 1857.

His life in his youth was one of toil and difficulties. His father died in the Civil War and our youth was only eight years old when the war ended. At the early age of twelve he was apprenticed to a printer. His education really began there. Scant opportunities were afforded him to attend school. Of all the Judges who have honored the Court of Appeals, he had the hardest experience in gaining the educational requirements. He was thirty years of age when he was admitted to the bar. He was twenty-eight years of age when elected a delegate to the Legislature of North Carolina. He served three terms in that body and demonstrated his capacity for political leadership. In 1895 he was elected a Senator in the Congress of the United States to fill the unexpired term of Zeb Vance, and in 1897 he was elected Senator for the full term of six years. Politics changed and he was not reelected.

On the first day of April, 1903, he was appointed Associate Justice of the then Supreme Court of the District of Columbia. Upon the passing of Judge Simonton, he was appointed a member of this Court of Appeals. He departed this life on the 10th day of April, 1921.

He was an orator of great power, an interesting conversationalist, a man always kindly and much beloved by all who came in contact with him.

He was in Charleston, West Virginia, when the 1920 Republican Convention was in session in Chicago. I had the pleasure of being with him for much of each day. He felt that he could have been nominated for Vice President, but I saw the wire sent by him, absolutely refusing to have his name presented to the convention. He said to me that he much preferred to keep his office as one of the Judges of the Court of Appeals. Naturally, he took great interest in the proceedings of the convention.

I must stop here a moment to say that looking back upon the events which transpired shortly before my appointment as Judge, I am inclined to doubt whether I would be here today as a Judge if it had not been for the action of Judge Pritchard when a certain event occurred.

My predecessor, Judge B. F. Keller, was paralyzed on the 9th day of December, 1919. When this sad event occurred, Judge

Charles A. Woods was in Charleston holding court. There was much talk of Judge Keller resigning, and certainly much influence was attempted to be brought upon him to resign, and it was said that he was giving real consideration to the subject matter.

I know that Judge Woods was approached by strong Democratic influences, and I know that he left Charleston feeling that Judge Keller was going to resign, and upon his reaching Richmond he called on Judge Pritchard and told him what the situation was, and suggested to Pritchard that on account of the state of health of Keller, and the likelihood that he would never be on the bench again (which indeed turned out to be the fact) that Pritchard should use his influence to induce Keller to resign and let his successor be appointed.

Certainly all of you who knew Pritchard would immediately guess that this act of Woods had reverse English, as far as Pritchard was concerned. He immediately wired Mrs. Keller not, under any circumstances, to permit the Judge to resign, and promised her that he would see that the business of the district was properly taken care of, and for her not to let the Judge worry for a moment about that.

Of course it is an unknown question what might have happened, but it is clear to my mind that if Keller had resigned then, as I stated a moment ago, I would not be here today as Judge.

I do know that Pritchard, while he considered Woods an able Judge, always insisted that he was a consummate politician.

Charles Albert Woods

Judge Woods was born in the State of South Carolina on the 31st day of July, 1852, and died in his native state on the 21st day of June, 1925. Like many of us, he taught school in his youngdays, and studied to be a lawyer at the same time. He was admitted to the bar in 1873, and began the practice of law at Marion, South Carolina. This practice was continuously carried on for thirty years, and in January, 1903, he went directly from private practice to the Supreme Court of South Carolina. I am told that he was not a specialist, but like all of us country lawyers, he had to take such legal work, civil and criminal, that came to him. In the first part of his practice, at least, if not in all of it, his state had not recovered from the sad effects of the War between the States, and compensations were not large.

I had a rather curious experience before his appointment as Circuit Judge.

In the spring of 1913, shortly after the inauguration of President Wilson, I called on the then Attorney General, James C. McReynolds, with whom I had attended the University of Virginia.

At that time, Judge Goff, having been elected Senator, had just resigned as a Circuit Judge, and apparently all the world had endorsed John W. Davis for the position. Feeling free to talk to the Attorney General, I asked the question if he intended to recommend John. He answered by handing me a small piece of note paper, the writing on which was, in substance, as follows:

"Dear Mr. Attorney General: Please give full consideration to the name of Charles A. Woods, of South Carolina, for the office of Circuit Judge for the Fourth Judicial Circuit. Yours truly, Woodrow Wilson."

The Attorney General then said that the paper which I had just read outweighed all of Davis' many endorsements, and the appointment of Judge Woods followed in due time.

Incidentally, the Attorney General asked me, at this meeting, a great number of questions about John Davis. These questions went closely into his life and habits, and my opinion of his ability and industry, etc. Of course I answered that he was a great man and a great lawyer. I did not, at the moment, catch the reason why such questions should be asked me, but within a week thereafter it was publicly announced that he had been chosen as Solicitor General.

It was said at the time that the friendship between Mr. Wilson and Judge Woods had its origin in a bicycle trip made by them together over the highways and byways of England some years before. I presume that neither one, at that time, dreamed of what was before them, but undoubtedly this friendship, thus formed, caused the appointment of Judge Woods when Mr. Wilson came into his Kingdom.

Judge Woods was the personification of courtesy, kindness and helpfulness to new Judges. I am happy to bear personal testimony to all of these splendid qualities of his nature. He was always gracious, but always firm.

He voluntarily imposed unnecessary work upon himself by holding courts at various places for sick or disqualified District Judges. He told me that he really enjoyed trial work. He also told me that it was a pleasure to come to Charleston, West Virginia, because of the kindness of its bar and people to him.

He held court several times there, either during the illness of Judge B. F. Keller, or in one or more cases wherein I was disqualified to sit. We found he had been badly educated on one point. He was trying a case before a jury. The evidence was completed at two o'clock in the afternoon on the last day of April. He stated that he was going to adjourn court until the next morning, when he would charge the jury. The late George Couch, one of the attorneys, promptly objected and requested that the case be finished that afternoon. When asked by Judge Woods what his reason was, he promptly replied that the trout season began the next morning at six o'clock; that he had made his arrangements to go on a fishing party that night. The Judge seemed somewhat dumbfounded, and said that he had never before heard of such a reason.

A bit later it was my pleasure to give a dinner in his honor, at which there were eighty or more lawyers present, and I thought it absolutely essential that he be instructed on this important point, to-wit, that the opening of a trout season, or, in fact, any time when a lawyer wanted to go fishing, was perfectly good ground for the acceleration of a case, or even for adjourning court. Feeling that he needed this instruction, I designated Fisherman and Hunterman Robert Scott Spilman to give him such instruction, so that he might never err again in the same way, and, as you all know, the job was well done. He especially recommended the perusal of the best law book ever written, Isaac Walton's "The Compleat Angler".

In fact, as a bit of advice to the newer Judges, I would say that whenever the fishing season opens, or the hunting season begins—especially the deer-hunting season, which only lasts about three days, that they excuse any jurors, lawyers or others connected with the court who want to go and spend some pleasant days on the streams or in the woods.

Incidentally speaking, I have several times enjoyed the pleasure of having a speckled trout, a haunch of venison, or a tasty grouse by reason of such excusings.

As a closing statement as to Judge Woods, and quoting his friend, Dr. Walter McNeill, and speaking, as the Doctor did, in the first person:

"Some while ago, I, as losing lawyers so often do, felt a little aggrieved at a decision of one of our courts. I asked Judge Woods if he would mind taking the trouble to read the original record and the decision, and to express to me privately his personal view of the case. He did so, and somewhat to my surprise, but yet gratifi-

cation, he inclined to think that my grievance was at least partially justified; but he then referred to the well known fact that even courts do not always agree, and added: "The other Judges are right unreasonable sometimes."

Martin A. Knapp

Judge Knapp was born on a farm in the State of New York in the year 1844, and departed this life at his home in Washington on the tenth day of February, 1923. One of the speakers at the meeting of the session of this court held in his memory said: "The intense atmosphere of the New York farm where, in his boyhood, Judge Knapp lived and worked, will be known from the fact that it was the great pride of his father that every young person in the community was in the Methodist Sunday School, and that every man voted the Republican ticket."

He, like others of us, taught school awhile, and then was admitted to the bar of his native state in 1869. He practiced in the City of Syracuse and was Corporation Counsel thereof for seven years.

In 1891 he was appointed a member of the Interstate Commerce Commission (usually designated the I. C. C.). He was re-appointed from time to time until December, 1910, when he was appointed Circuit Judge and was made the presiding Judge of the ill-fated Commerce Court.

This court was abolished by an Act of Congress enacted on the 22nd day of October, 1913. This act directed that the Judges who served on that court should, from time to time, be designated and assigned by the Chief Justice of the United States for service in the District Court of any district or the Circuit Court of Appeals for any circuit. Under this act Knapp was, on the 26th day of December, 1913, assigned to the Fourth Circuit Court of Appeals. He continued there as Judge until his death.

Under the act he had no successor. He told me once that he would have retired when the statute permitted it, but having no successor, he stood in no one's way. His case illustrated the fact that foreign Judges do not always fit a local situation and laws. He told me that he often felt lost in many cases; especially in land cases.

Personally, the nicest things could truthfully be said of him. He was at all times and under all circumstances a cultured gentleman.

Mr. Henry T. Wickham, speaking at the memorial meeting of his long acquaintance, said: "I soon discovered that Martin A. Knapp possessed in the highest degree those Socratic characteristics which become a Judge. They are—'to listen patiently, to answer courteously, to reason wisely and to decide impartially'."

John Carter Rose

Judge Rose was born in Maryland on the 27th day of April, 1861, and departed this life on the 26th day of March, 1927.

There is so much to be said of this great Judge that it is difficult to know, in a short space, where to begin, and more difficult to know where to stop. With all his greatness as a lawyer, as a District Attorney, as a District Judge and as a Circuit Judge, it is absolutely true to say that as a man, he was always human and always interesting. He was willing to tackle anything in law or courts.

Once, when sitting in my district, there was a complicated ejectment suit on the docket involving the difficult forfeiture laws and local decisions of West Virginia on land litigation. The counsel agreed to continue and not harass him with it. He ejaculated from the bench that in twenty-eight years of active practice, he had had only one small ejectment case, but that if either side wanted a trial, he would be glad to go ahead and hear it.

In the trial of rate cases, whether telephone, gas or electricity, he was a master. His steel trap mind for figures was very remarkable. He was the fastest thinker I have ever known.

Some years ago, while Rose was on the bench, a Baltimore attorney, who had lost his case in this court, filed a petition for a rehearing on the sole ground that one of the Judges had taken up his entire time asking him questions, and he would therefore like to have an opportunity to argue his case. Those of you who remember Rose can do your own guessing.

It was said that he knew something about everything on earth, but he did not show it, when, back in the gay nineties, he came to my City of Charleston, the Capital of West Virginia, on some legal business, and brought his personal bath tub with him all the way from Baltimore.

He was Supervisor of the Census of 1890 for the State of Maryland. He once told me that he really reveled in that work. It was so delightful to him. However, his real life's work, where he was

the finest, was the twelve years as District Attorney of Maryland, the twelve years as District Judge of Maryland, and the four years plus that he was Circuit Judge of the Fourth Circuit. If any criticism could be made of him, it was that he was too intense in his ways and actions for his own and his country's good. Life was thus burned out before it should have been, and we are left to sustain the loss.

Edmund Waddill, Jr.

Judge Waddill was born on the 22nd day of May, 1855, in Charles City County, Virginia, and departed this life on the 9th day of April, 1931, at his home in Richmond. His mother died when he was five years old, and he was taken into the home of the Reverend John M. Lamb. He remained with this family for twelve years. He attended such schools as opportunity permitted. He became a deputy clerk of Charles City County in 1872, and in 1873 he was appointed deputy clerk of Hanover County. He studied to be a lawyer while in those offices. He attended two sessions of the summer Law School, at the University of Virginia under that great teacher, John B. Minor, whose memory I personally reverence.

In 1877 he began the practice of law in Hanover County. In January, 1880, he was elected County Judge of Henrico County, although not yet twenty-five years old. In 1883, he was appointed, by President Arthur, United States Attorney for the Eastern District of Virginia.

In 1885, and in 1887, he was elected a member of the House of Delegates of Virginia by the voters of Henrico County.

In 1888, he was the Republican nominee for the House of Representatives from the Richmond District. He claimed to be elected, and after a bitter and difficult contest was seated and served as such until the 4th day of March, 1891. A remarkable office-holding career so early in one's life. During this time and until 1898 he was a busy and successful practitioner of his profession. He was appointed Judge of the District for the Eastern District of Virginia upon the resignation of Judge Hughes in 1898. He was then forty-two years of age and served as such Judge for the period of twenty-three years and until he was transferred to the Circuit Court of Appeals on the second day of June, 1921. This service continued to his death in 1931. Personally, to me, he was the nearest and dearest of all of the Circuit Judges of this circuit whom I have known, and I revere his memory.

He, as District Judge, had a great deal of Admiralty work and especially during the period of what we now call World War No. 1. He delivered many strong opinions on difficult international questions. Thirty-three years as a Federal Judge means a great deal, not only to the Judge, but to the people of the district and circuit. He performed his duties well. He was blessed with a real sense of humor, and was the gentlest and kindest of men.

A laughable incident which happened in his court is worth reciting. Some time in his career, he, in passing sentence upon a negro found guilty of some vicious crime, alluded to the negro as being a scoundrel. The negro arose and said to his Honor: "I am not half as big a scoundrel as your Honor (*long silence*) takes me to be." The Judge blushed and sternly said to the negro: "Young man, get your words closer together."

Living Judges

I certainly will be excused from reminiscing about the living Judges of this court.

I could say many pretty things about them, and I could tell more or less humorous things that might not be wholly appreciated by them.

There is, for the District Judges, always an open season for the expression of their opinions of Circuit Judges. Of course there is always an open season for the lawyers to express their opinions of all Judges, Supreme, Circuit and District, and I might further add to this list, all State Judges.

Once when I heard a Circuit Judge using strong language about a decision of the Supreme Court in a case appealed from this court, a District Judge, standing by, simply said to me: "Are not those words sweet to our ears?"

I am sure that I voice the sentiments of the District Judges and the Bar when I say that they are a bunch of good fellows and that we hope they will long continue on their jobs.

Clerks

No court can be properly constituted, and act and continue to act in its proper relations to the judges, the lawyers, the litigants and the public unless it is blessed with good clerks and a well conducted clerk's office.

The clerk, in a real sense, is the executive secretary and general manager of the court. The keeping of the records of the proceedings of courts is an art in itself. The qualities required of a good clerk are intelligence, education, infinite patience, industry, attention to details and that good quality of human nature, known as ability to deal at all times and places with the general public.

Kind fate and proper selection has given to this court such officers.

The first clerk of this court was Henry T. Meloney, who commenced his administration with the organization of the court and remained as such until his resignation on the 15th of November, 1917.

On the first day of July, 1895, our present excellent clerk, Claude M. Dean, whom we all love as a man and appreciate as a clerk, was appointed deputy, and on the 15th day of November, 1917, upon the resignation of his predecessor, was appointed clerk.

The present deputy, Richard M. F. Williams, Jr., entered the clerk's office on the first day of April, 1913, and became deputy upon the promotion of Claude M. Dean.

The Judges and the bar can well be proud of the clerks and the conduct of the clerk's office.

In the fifty years of its existence, the court has had before it for consideration four thousand, eight hundred and thirteen cases. This means that somebody has had to work faithfully and diligently.