REPORT

of the

FORTY-FIRST ANNUAL MEETING

of the

MARYLAND STATE BAR ASSOCIATION

held at

THE HOTEL AMBASSADOR, ATLANTIC CITY, N. J.

JULY 2, 3 AND 4, 1936

Published by

MARYLAND STATE BAR ASSOCIATION

NINETEEN HUNDRED AND THIRTY-SIX

ADDRESS BY JUDGE W. CALVIN CHESNUT

Of the District Court of the United States for the District of Maryland

HISTORY OF THE FEDERAL COURTS IN MARYLAND

Gentlemen of the Maryland State Bar Association:

The gracious invitation of your President to address you at this meeting failed to specify the subject to be discussed. In accepting the invitation I became first under the necessity of selecting a subject and then finding the time to develop it. I suppose it frequently happens in similar situations that the speaker finally selects something in which *he* is interested with the hope, and only the chance, that his audience may also find it not too dull. It is in this way that I have put together some notes on the history of the Federal Courts in Maryland which, with your permission, I will now offer to you.

To a stranger to our dual system of government, federal and state, probably the first question that would occur pertinent to such a subject would be, why do we have federal courts in the State of Maryland, especially as the State courts, both trial and appellate, function so admirably and to the general satisfaction of the citizens of the State. The answer, so obvious to all who are familiar with our governmental system is that in a dual government there must necessarily be a dual court system. The first duty of government is to preserve order and peace for and among its citizens. Litigation is or should be the modern substitute for warfare among citizens and should be also among Nations. Every government, therefore, must have a system of courts to enforce its laws. This is true of the Government of the Nation as well as of the States. And the Federal Courts are necessary not only for the interpretation and enforcement of federal laws but also to preserve the balance of governmental powers distributed by the Constitution between the States and the Nation. The creation of this federal judicial system was perhaps the outstanding unique contribution to the science of government given by the founding fathers in the Constitution. It was so regarded by DeTocqueville, the eminent French statesman and political author in what is now his classic commentaries on "Democracy in America". There is, of course, some disadvantage in a dual court system in a single country. There is inevitably some overlapping of jurisdiction and some dissimilarity

of procedure which at times may be vexing to the citizen and even to the lawyers, but on the whole it is a necessary incident to our dual form of government and, in the long run, is worth what it costs.

You may have noticed that the subject of the address is given as "The Federal Courts in Maryland", and have wondered why the plural was used when we have at present only one federal court in Maryland—The District Court for the District of Maryland. While this is true at the present time and has been so since 1912, it has not always been so because from 1789 until 1912 we also had in Maryland, and in each of the other judicial districts of the United States, another court known as the Circuit Court. It is a part of my thought for this paper to have something to say about the history of the Circuit Court as well as of the District Court. Of the whole federal judicial system only two courts have been continuously in existence since the formation of the Union—one, the Supreme Court of the United States which is specifically created by the Constitution, and the other, the District Court of the United States which has existed since the original Judiciary Act of 1789. You will recall the language of the Constitution, which, in Article 3, section 1, provides:

> "The Judicial Power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish".

Pursuant to this authority, Congress has in fact from time to time ordained and established other courts and from time to time added to, subtracted from or otherwise altered, the jurisdiction of the several courts. It is only the original jurisdiction of the Supreme Court which, itself fixed in the Constitution, is not subject to Congressional change. The appellate jurisdiction of the Supreme Court may be and has frequently been changed by Congress.

Before detailing the history of the several courts in Maryland, it may be well, in order to have a clear perspective, to take a brief glance at the whole of the federal judicial system as it now exists. In so doing, we find that the whole of the continental United States is divided into ten circuits, each consisting of three or more States of the Union, and each Circuit is in turn divided into numerous Districts, each State of the Union having one or more separate Districts; but at the present time no District overlaps a State line. The fundamental reason for the latter condition lies in two Acts of Congress affecting District Courts, one

known as the Conformity Act which in effect at the present time provides in general that the procedure in the District Courts in suits at law shall conform as near as may be to the state court procedure, and the other known as the Rules of Decision Act (which has existed since the original Judiciary Act) providing that in suits at common law in the District Courts the laws of the States in which the District Courts are respectively situated shall be the rules of decision. Both Acts are subject to numerous exceptions which it is unnecessary to here discuss.

Now turning to the Circuits, we find that in each of them there is a Circuit Court of Appeals which serves as an intermediate appellate court between the District Courts and the Supreme Court, the latter being the apex of the Federal Judicial System. And in each Circuit there are three or more Circuit Judges, when available sitting together as the Circuit Court of Appeals. District Judges at times, however, sit as members of the Court, but the Court is always limited in number to three sitting Judges. The decision of the Circuit Courts of Appeal are final with one exception rarely actually occurring in practice; but the Supreme Court has the discretionary right by certiorari to hear appeals from the Circuit Courts of Appeals.

The Supreme Court of course, as you know, also was given power by the original Judiciary Act, and has always since had the power, to review decisions in the court of last resort of the several States where certain federal questions are involved, because there are numerous federal questions which may be litigated in the state tribunals. This final appellate power of the Supreme Court is absolutely essential for uniformity of constitutional decision, and the court is the final arbiter between the citizen and the state, and between States themselves, and between the United States and the States. There was a time in the early history of the Government when this power of the Supreme Court was sharply challenged by several of the States, but it is now firmly established and has long been unquestioned. These courts then, the District Court and the Circuit Courts of Appeals and the Supreme Court, are the *constitutional* courts authorized by the Constitution. The Judges, therefore, are the constitutional judges and in the same category, by recent decision of the Supreme Court, are placed the Judges of the District of Columbia. There are, of course, other courts of the United States known as *legislative* courts, because not created under the provisions of Article 3 of the Constitution by express power thereof, but created by Congress under the implied power given for the execution of other powers. Thus territorial courts, when con-

tinental United States embraced territories as well as states, and the Insular Courts, and also the Court of Claims and the Court of Customs and the Court of Customs and Patent Appeals, are known as *legislative* courts. All together, they comprise the whole Federal Judicial System.

But this system of constitutional courts as it now exists is the result of a gradual evolution pursuant to the power given to Congress from time to time to ordain and establish courts inferior to the Supreme Court. As our subject is limited to the Federal Courts in Maryland, this history will properly be limited to the gradual development of the Circuit Courts of Appeals from their prototype in the Circuit Courts of the United States, one for each District.

We begin naturally with the original Judiciary Act which was enacted by the first Congress and approved by George Washington, as President, on September 24, 1789. It is the foundation on which the whole of our federal jurisdiction and procedure has been built. Many of the members of the Constitutional Convention of 1789 sat in the first Congress, and their familiarity with the Constitution, in its framing, and with its proper spirit of interpretation, was naturally carried forward into their formulation of the basic rules for the creation and regulation of jurisdiction and procedure in the Federal Courts. The judicial system therein outlined was the division of the eleven States (Rhode Island and North Carolina not having then ratified the Constitution) into thirteen districts of which Massachusetts, then including New Hampshire and Maine, constituted three districts and each of the remaiinng ten States which had then ratified the Constitution, constituted one. These thirteen districts were then divided into three Circuits of which the New England States and New York constituted one, known as the Eastern Circuit, Pennsylvania, Delaware, Maryland and Virginia, the Middle Circuit, and South Carolina and Georgia the Southern Circuit. In each District there was created a District Court with a District Judge, and also in each District there was to be a Circuit Court, but there were no Circuit Judges. The Supreme Court was constituted to consist of a Chief Justice and five Associate Justices, and two of the six were appointed to hold the Circuit Court with the District Judge, in each of the three Circuits. The original or trial jurisdiction of all federal cases was divided between the District and the Circuit Courts. The District Courts tried the lesser crimes and the admiralty and maritime cases and cases affecting Consuls. The general civil jurisdiction was given to the Circuit Courts which also had appellate jurisdiction from the

District Courts in most of the cases which the latter was authorized to try.

The practical defect in this system arose from the onerous duties imposed upon the Supreme Court Justices who, in addition to holding two terms of the Supreme Court every year at the seat of the government, Philadelphia or Washington, were also nominally required to hold with the District Judge two sessions of the Circuit Court annually in each District. In those early days of slow travel and bad roads it was estimated that to literally perform the necessary circuit riding the Justices of the Supreme Court assigned to the Southern Circuit would have been required to spend at least six months of the year in traveling. So onerous were these duties at that time that quite a number of the leading lawyers of the country declined to accept appointment to the Supreme Court.

The inconvenience of the system cried aloud for relief, and this was furnished by Congress in the close of the administration of John Adams by the Act of February 13, 1801, by which the number of Circuits was increased from three to six and for each thereof, except the Sixth, the law provided there should be appointed three new Judges to be called Circuit Judges who were to hold the Circuit Courts in each District. The number of the Districts were also increased from thirteen to twenty-two and new District Judges authorized to be appointed for the new Districts. The Justices of the Supreme Court were relieved of Circuit Court duty. This was a much more workable system and quite like that which now exists except that the then Circuit Courts had original jurisdiction and not merely appellate jurisdiction from the District Courts as is the case with the present Circuit Courts of Appeals. President Adams promptly appointed the new District and Circuit Judges who were confirmed by the then Federalist Senate. These gentlemen were dubbed by the Jeffersonians the "Midnight Judges", and the new administration promptly repealed the Act and re-established the previously prevailing system, by the Act of March 2, 1802. Thus the newly created Federalist Judges were effectively legislated out of office and the practically unworkable prior system re-instituted with its hardships to the Justices of the Supreme Court.

The minutes for the Circuit Court for Maryland for the 20th of March, 1801, show that Philip Barton Key of Maryland as Chief Judge, George Keith Taylor of Virginia, and Charles Magill of Virginia, as Associates, had been appointed as Circuit Judges for the Fourth Circuit under the authority of this Act of

1801, and these honorable gentlemen qualified as such and presided over sessions of the Circuit Court in Baltimore on November 5, 1801, and on several days thereafter. The Act under which they had been appointed was repealed by the Act of 1802; but the minutes show they nevertheless undertook to hold the Circuit Court on March 20, 1802, sitting at Evans Inn. Judges Key and Magill were present.

Nevertheless the very necessities of the case soon required even the new administration to make some changes, and these were shortly thereafter enacted on April 29, 1802, under which six Circuits were again established although with different boundaries. Still no Circuit Judges were authorized, but instead of requiring two Justices of the Supreme Court to hold the Circuit Courts with the District Judge, a change was made whereby each of the six Justices of the Supreme Court was assigned to one Circuit and he, with the District Judge, held the Circuit Court, or either might hold the court alone except, of course, the appellate jurisdiction of the Circuit Court could be exercised only by the Circuit Justices.

This continued to be in the main the structure of the federal judicial system until after the Civil War, although in the meantime the accumulation of business in the Supreme Court had become such that the Circuit Justices were very seldom able to perform Circuit Court duty. It was not until the Act of April 10, 1869, in the administration of President Grant, that the President was authorized to appoint a Circuit Judge in each of what had then become the nine Circuits of the country. The Circuit Judges so appointed were to perform in substance the duties that the Circuit Justices had previously performed although the latter were not formally and legally relieved of their duties in that respect, because it was still provided that it should be the duty of the Chief Justice and each of the Justices of the Supreme Court to attend at least one term of the Circuit Court in each District of the Circuit during every period of two years. Occasionally the Circuit Justices did attend sessions of the Circuit Court, but the large accumulated arrears of cases in the Supreme Court made their attendance extremely infrequent. Maryland has for many years been a part of the Fourth Circuit and for many years the Chief Justice of the Supreme Court has been the Circuit Justice for the Fourth Circuit. Therefore, occasionally we have been honored with the presence of the Chief Justice in this District. Many of you will remember that Chief Justice Taft attended on the occasion of the promotion of Judge Rose from District to Circuit Judge in 1923. Of course, we also remember

from our history that Chief Justice Taney not infrequently sat in Baltimore. I shall have occasion to refer hereafter to one of the prominent cases in which he was here engaged as Circuit Justice.

We also remember that Judge Hugh Lennox Bond became the first Circuit Judge for the Fourth Circuit. The minutes of the court show that he took the oath of office on August 4, 1870.

Finally in 1891 came the Circuit Court of Appeals Act under which was organized in each of the Circuits a Circuit Court of Appeals to be held by Circuit Judges which in each Circuit were increased to at least three. The appellate jurisdiction of the Circuit Court was abolished, and in 1912 the Circuit Court itself was abolished and all its original jurisdiction bestowed upon the District Courts.

Where the Courts Have Sat in Maryland

In the original Judiciary Act it was provided that the District Court should sit twice a year at Baltimore and twice at Easton, on the Eastern Shore, but the Circuit Court was to sit alternately at Annapolis and Easton. By the Act of March 3, 1797, the places for holding the Circuit Court was made Annapolis and Baltimore, and by the Act of April 29, 1802, it was provided that both the District Court and the Circuit Court should be held thereafter only at Baltimore.

It was later provided by the Act of March 21, 1892 (27 Stat. 11), that the District Court should hold two terms a year in Cumberland; and by the Act of March 3, 1925, should also hold two terms a year at Denton, Maryland, provided that suitable accommodations there were furnished free of expense to the United States. During the National Prohibition Era the number of criminal cases at Cumberland twice a year required substantially a week for each term and the number of parties and witnesses was so great that the comparatively small courtroom in the Post Office was inadequate and we had to ask the indulgence of the State authorities for the use of the County Court House which was freely and graciously extended. Now, within the last two or three years, there is in Cumberland a new and commodious Post Office Building of most pleasing architectural appearance and design, the whole of the second floor of which is given over to the use of the court and its officers, with a courtroom probably the largest in the State, with all modern arrangements and conveniences. Consistently with the spirit of the Act for holding

court at Denton the Judges of the Court have since 1925 frequently held court there and have likewise received the gracious use of the State Court Room, although the lack of sufficient accommodations for the clerk and the marshal occasion substantial inconvenience in the disposition of the court work. The Court also has authority where occasion requires to hold a special term of court at other places within the District, and in the exercise thereof occasionally in recent years terms have been held at Easton for the convenience of the parties, witnesses and counsel.

Early Records of the Courts

The early records of the courts are completely intact from their earliest organization. Separate dockets and minutes were, of course, kept for the District and Circuit Courts respectively from 1790 to 1912. They are all now in the custody of the Clerk of the Court in the United States Post Office and Court House Building in Baltimore. Recently it has been suggested that these early records might be sent for more certain preservation against fire damage to the new building in Washington, known as the Hall of Archives, but the Clerk seems reluctant to part with them.

The first session of the District Court (called in the record an Admiralty Court) was held at Baltimore Town on the seventeenth of April, 1790. The Honorable William Paca as Judge, Nathaniel Ramsay as marshal, and Joshua Barney as clerk were in attendance. Daniel Dennis was appointed cryer. The Court then adjourned until April 19th when it met again and David McMechen, Zebulon Hollingsworth and Archabald Robinson and William Owings qualified as attorneys. Eleven separate suits were docketed against the Brigantine Juliana which was condemned and sold and the proceeds held for distribution among those entitled thereto.

The next session of the District Court was held at Easton on the fourth Tuesday in September, 1790, with the same court officials present. A grand jury had been summoned, and, as still sometimes occurs, quite a number asked to be excused for one reason or another, the reasons therefor being entered on the minutes of the court. Many of them had seemingly perfectly good excuses in that they were officials of the State of Maryland in various capacities. The Court continued thereafter to meet alternately in Baltimore and Easton until, as already indicated. the Act of Congress provided that sessions should be held in Baltimore only. The minutes for the first ten years of the Court

are contained in a comparatively thin book as the business of the Court was not large and consisted principally of admiralty cases, for a large part uncontested, naturalizations and admissions of attorneys. The minutes were kept by the clerk, Joshua Barney, somewhat sketchily and with great abbreviations, but nevertheless are all entirely legible and understandable. The minutes show that Judge Paca was very constantly and usually very punctually in attendance, as were the other Court officers.

The first session of the Circuit Court was held on May 7, 1790, presumably at Annapolis although it is not definitely so stated. Justice Blair of the Supreme Court and District Judge Paca were in attendance with Richard Potts as attorney for the United States, Nathaniel Ramsay as marshal and Joshua Barney as clerk. William Bigger was appointed cryer of the Court, and John Hide was sworn as bailiff. Justice Blair delivered a charge to the Grand Jury who withdrew and were shortly afterwards discharged, having no business before them. The attorneys who qualified at this first session were Robert Smith, Philip Cook, Philip Barton Key, William Craik, William Kelty and Gabriel Duval. The Court then adjourned until the Court in course. The next term of the Court was held November 8, 1790, at Easton with the same Court officials present. Again the Grand Jury was charged by Justice Blair, withdrew and shortly returned, having no business before them. And so the minutes continue to show that the Court met for the next few years alternately at Annapolis and Easton having comparatively little business to perform, but holding regular terms to dispose of such business as there was.

The minutes and records of the Circuit Court for the first years were also kept by Mr. Barney as clerk and are quite abbreviated as in the case of the minutes of the District Court. After a few years he was succeeded as clerk by Philip Moore during whose period the minutes of the Court are not only in much better handwriting but seem to have been kept with more precision. It is indicated in the minutes that the work of the Circuit Court was more varied than that of the District Court and apparently more interesting. Still the volume of it was not large, and again for the first twenty years of the Court's existence the whole of the minutes can be found in one thin record book. At each term it is stated which of the Justices of the Supreme Court appeared to hold the Circuit Court with the District Judge. While as already indicated it was contemplated that two of the Justices should sit with the District Judge (prior to the Act of 1802), in practice there was seldom more than one Justice present.

And at that early time it seems not to have been the custom for the same Justice of the Supreme Court to regularly hold the Circuit Court in a particular Circuit. Thus in the early years the Supreme Court Justices who from time to time sat with the District Judge were Justices Blair, Wilson, Iredell, Cushing, Patterson, Bushrod Washington and Samuel Chase. It is not without interest to also note from the minutes that in the comparatively few criminal cases tried the defendants were nearly always acquitted by the petit juries. The minutes also indicate that when the Court was in session the general custom was that it met at 10 o'clock in the morning, and after the morning session usually adjourned until 4 P. M. for an afternon session, but they give the impression that little was done in the afternoon session except to adjourn until the next morning at 10 o'clock.

In addition to the book of minutes and the separate dockets containing the particular cases the early records also comprise a roster of attorneys admitted from time to time in the District Court and the Circuit Court separately. And these latter books also contain orders of court passed from time to time more particularly dealing with the rules of court. Here is an opportunity for the student of court practice to study the development of procedural rules for a period of nearly 150 years. The Circuit Court book at the November Term 1802 contains an elaborate set of court rules consisting of 101 separate rules regulating practically all procedural matters. And from time to time thereafter these rules were added to, amended or repealed. If one is interested in this particular subject he can find a complete history of procedural matters in the court in these early rules with the several amendments, including a comprehensive amendment of the rules which were in printed form as revised in 1909 and again in 1933. Time and space however do not permit any detailed consideration of this particular subject on this occasion. In passing it is, however, not without interest to note one of the first rules to be adopted in favor of women. In 1836 the Circuit Court rule, in regulating procedure for the return of a personal capias, which was not uncommon both in civil and criminal cases, provided "that it shall not be lawful to imprison any female for debt either on mesne or final process provided that on the arrest of any female on mesne or final process she shall give to the officer making such arrest a power of attorney authorizing some one of the attornies of this court to appear for her and provided also that nothing herein contained shall prevent the issuing of the writ ne exeat in any case where the same may now be lawfully issued".

The roster of admitted attorneys naturally includes the signatures and dates of admission of practically all the leading lawyers of the State. I have noted the signatures and dates of admission of some of the lawyers admitted in the early days which may be of interest to the members of this Association. I give them as follows with the years in which they were admitted:

William Pinkney, 1795; Edward Hinkley (the grandfather of one of our distinguished members, Col. Hinkley), 1817; Reverdy Johnson, 1818; Roger Brooke Taney, 1823; James Alfred Pearce, 1825; John H. B. Latrobe, 1826; George W. Dobbin (afterwards Chief Judge of the Supreme Bench of Baltimore City), 1831; likewise T. Parkin Scott, afterwards some time holding the same office, 1831; J. Mason Campbell, son-in-law of Chief Justice Taney, 1832; William Fell Giles, later United States District Judge, 1834; I. Nevitt Steele, 1836; S. Teackle Wallis, 1840; John Cadwalladar, 1842; Robt. M. McLane, 1844; William Pinkney Whyte, 1848; Edward Otis Hinkley, father of Col. Hinkley, 1849; James S. Bartol, 1850; Henry Stockbridge, 1850; Henry Winter Davis, 1851; Charles E. Phelps, 1857; John P. Poe, 1857; Roger Brooke Taney Campbell (grandson of Chief Justice Taney), 1864.

In 1865 the court, pursuant to an Act of Congress, adopted a rule that attorneys of the court wishing to continue to practice would have to take an additional oath that they had not participated in armed rebellion against the United States, and many of the lawyers already enrolled at that time again signed the register after taking the appropriate oath; but a few years later this rule was repealed, enabling a number of prominent attorneys of the Bar who had been in the service of the Confederacy to become members of the court. In 1872 Major Randolph Barton was admitted and doubtless Col. Marshall and Mr. Jos. Packard and others also became qualified.

The Baltimore Court Houses

It is regrettable to the historian that the minutes of the court do not state in what buildings the federal courts sat from time to time, other than the reference to Evans Inn, already made, which I infer was an exceptional place. A somewhat extended research and wide inquiry has not been successful in ascertaining just where the federal court house was situated prior to 1822.

In Griffith's Annals, page 200, it is recited that:

> "In 1811 on the decease of Judge Chase, Gabriel Duvall of Prince George's County, was appointed one of

the Judges of the Supreme Court of the U. S. and with the Judge of the District, continues to hold the Circuit Court of the U. S. in this city, having lately obtained for that purpose the use of the Masonic Hall."

This Masonic Hall had been recently erected on the east side of St. Paul Street between Fayette and Lexington Streets. An extract from Centenary of Concordia Lodge, Baltimore, 1894, page 89, states:

"May 16th, 1814, The Lodge joined in the general procession ordered by the Grand Lodge of Maryland, to lay the foundation of the Masonic Hall. After service at the First Presbyterian Church, which stood upon the site of the old U. S. Court House on Fayette St., they marched to a spot of ground near the south west corner of St. Paul's Lane. * * * The cornerstone was laid May 18th, 1814, and dedicated November 28th, 1822. In 1867 the old hall was sold to the city of Baltimore for $45,000 and has since been used by the city and circuit courts. The Masonic Hall stood on the southeast corner of St. Paul and Court House lane."

From "Homes of the Grand Lodge of Free and Accepted Masons of Maryland", by Edward T. Schultz, Masonic Historian of Maryland, the following is extracted:

"A lot of ground was secured at the corner of St. Paul Street and Court House Lane, and the cornerstone of the building was laid May 16, 1814, with imposing ceremonies by the Grand Master Levin Winder, at the time Governor of the State. * * *

"Eight years were consumed in the construction of the building, and it was not until 1822 that it was ready for occupancy. In point of size it was a very modest building, but with a very pleasing and attractive facade of pure Grecian architecture. The design was by Maximillan Goldefroy, an able French architect, who also designed the Battle Monument.

"The ground floor was fitted up for the United States Court Room and Clerk's office, which continued to occupy it until the erection of the U. S. Court House at the corner of North and Fayette Streets, when the property was sold to the City of Baltimore and the City Courts entered into possession and remained until the

demolition of the building to make way for our splendid Court House."

In the "History of Baltimore City and County" by Thomas Scharf, published in 1881, there appears the following:

"United States Court House:—In 1855 the Hons. Joshua Vansant and Henry May both introduced bills in Congress to provide for the accommodation of the Courts of the United States for the District of Maryland, and for a Post Office Building, and also authorizing the President of the United States to select a suitable site for the erection of the same.

"The United States Court had formerly been held in the old Masonic Hall on St. Paul St. On the 16th of May, 1859, President James Buchanan, with his Cabinet, visited Baltimore to select a site and chose that offered for $50,000.00 by the First Presbyterian Church at the northwest corner of North and Fayette Sts. The contract for the building was awarded to M. Osbourne of New York. The Presbyterian Church stood upon a hill which was leveled before the foundation of the Court House was laid in 1862. The building was completed in 1865. It is constructed of granite from the Maryland and Maine quarries. It is 118 feet in length, and including the front portico which was afterwards removed and placed on the North Street front, it was 60 feet wide. The architectural style of the building is Italian with Grecian porticoes. It was designed by A. B. Young, government architect. The lot is enclosed by a handsome iron railing supported by granite posts. The Court House was contracted for at $112,800., but owing to the suspension of the work and the increased price of labor and materials its cost amounted to over $250,000. The first session of the United States Circuit Court held in the building commenced May 25, 1865."

From these notes it appears that the federal courts sat from 1822 to 1865 in the Masonic Building on the east side of St. Paul Street, between Fayette and Lexington Streets. And it was there on March 28, 1836, that Chief Justice Taney took the oath of office before District Judge Elias Glenn. Exercises in commemoration of the centenary of this event were recently held in the United States District Court for Maryland. From 1865 to 1889 the federal courts sat in the new Court House situated at the northwest corner of Fayette Street and what is now Guilford

Avenue. In 1889 the court moved into the new granite Post Office Building facing on the east side of Calvert Street and running from Fayette to Lexington Streets, and occupying most of the block running back to Guilford Avenue. In 1929 this Post Office and Court House was torn down to make way for the present United States Post Office and Court House which occupies the entire block. During the construction of this new building the District Court, with the offices of the Clerk and the Marshal, and the United States Attorney, was located in what is known as the Gutman Building, 210 N. Eutaw Street. Early in June 1932, the court and appurtenant offices were removed to the fifth floor of the Post Office Building which occupies the whole of the block bounded by Calvert, Lexington, Guilford Avenue and Fayette Streets, where there are three suitable and commodious courtrooms. Referring to the architectural appearance and surroundings of the Post Office that was dedicated September 12, 1889, the following item is of interest from the History of Baltimore published by Love in 1898, pages 1033-1034:

> "Passing up Fayette Street we are confronted by another very conspicuous building standing on the block immediately west of the City Hall, the United States Post Office, a recent erection built of granite in the style known as Italian Renaissance. There are a number of towers, the central one being 189 feet high with fronting on Monument Square; the building is fitted with every modern improvement to facilitate post office work. The entire third floor is occupied by the United States Circuit and District Courts. The ground cost $553,000. The city gave two lots costing $56.000. and the entire appropriation for the building was $2,011,835. It was dedicated September 12, 1889."

Here it is not inappropriate to make a brief note regarding the State Court House in Baltimore City, close to which the Federal Courts have always been situated. In a book entitled "Baltimore", published by the City for its 200th Anniversary in 1929 there appears the following:

> "In 1768, a Court House in Baltimore was erected for the needs of both town and county. It corresponded, in some measure, to what was known in the northern colonies as the 'Town Hall'. This building was first constructed upon a bluff of Calvert Street, but later the ground was cut from under it so that traffic could flow through north and south. It was, perhaps, unique in

> American building operations. To John Pendleton Kennedy, it suggested 'a house perched upon a great stool', and he added that 'the buttresses on either side supplied space for a stairway that led to the Hall of Justice above, and straddled over a pillory, whipping-post and stocks'. Today, the Battle Monument occupies the site of the ancient Court House—and the cliff has disappeared, except as represented in a sharp hill westward towards Charles Street."

This early Court House was succeeded by others, the first of which was evidently prior to the time that the Battle Monument was erected, which was not long after the Battle of North Point in 1814, which it commemorates. Many of us will, of course, well remember the old brick City Court House which stood at the northeast corner of Calvert and Lexington Streets, but with the auxiliary use in connection therewith of the gray stone Record Office at the southeast corner of St. Paul and Lexington Streets, and the use, as has already been noted, of the old Masonic Temple on St. Paul Street for the City and Circuit Courts. In this brick Court House in the early 90's I can well remember were housed the Criminal Court on the first floor (where the celebrated Evening News libel suit was tried in 1894) and the Superior Court room above it with the Court of Common Pleas on the second floor on the west side and between them the old Bar Library presided over by Mr. Converse, the Librarian. This Court House was abandoned in 1895 and torn down and replaced by the most excellent present structure which, as we all know, occupies the complete block bounded by Calvert, Lexington, St. Paul and Fayette Streets, and which was occupied first in 1900. In the interval the State Courts were housed in a temporary brick structure at the southwest corner of Guilford Avenue and Lexington Street and as an adjunct there was used the then old United States granite Court House at the northwest corner of Fayette Street and Guilford Avenue which, as we have seen, was built upon the site of the First Presbyterian Church.

The United States District Judges

The following are the names and periods of service of the United States District Judges for Maryland: William Paca, 1791-1799; James Winchester, 1799-1806; James Houston, 1806-1819; Theodorick Bland, 1819-1824; Elias Glenn, 1824-1836; Upton S. Heath, 1836-1852; John Glenn, 1852-1853; William F. Giles, 1853-1879; Thomas J. Morris, 1879-1912; John C. Rose,

1910-1922; Morris A. Soper, 1923-1931; William C. Coleman, 1927-; W. Calvin Chesnut, 1931-.

Until 1927 there never had been but one District Judge for the District of Maryland, except for a period of a few years when Judge Morris took what is called qualified retirement after reaching 70 years of age (having served for more than ten years), and Judge Rose was appointed as the active District Judge, but the Act provided that after the vacancy in the office of District Judge then held by Judge Morris, there should be no additional Judge appointed. However, the increasing volume of federal judicial work which pressed so heavily on Judge Rose before he was promoted to be Circuit Judge in 1923, and upon Judge Soper as his successor, was so great that in 1927 an additional Judge for the District was authorized by Congress and Judge Coleman was appointed.

I regret that I have neither the time nor sufficient material for any extended biographical account of all the former Judges of the District Court. However, I will say something briefly as to several of them.

Judge William Paca was the first Judge and, of course, was appointed by President Washington. Like most of Washington's appointments, it was conspicuously excellent. I borrow from a recent address of Judge Coleman some of the biographical data that he there collected regarding Judge Paca. He was born April 11, 1740, graduated from the University of Pennsylvania in 1759, admitted to the Inner Temple of England in 1762 and to the Bar of Maryland in 1764. From 1771 to 1774 he was a member of the Provincial Legislature and a conspicuous leader in the Revolutionary party. In 1779 he was a delegate to the Continental Congress, and he was a signer of the Declaration of Independence. From 1777 to 1779 he was a State senator; from 1778 to 1780, Chief Judge of the Supreme Court of the State and in 1780 was appointed Chief Judge of the Court of Appeals in prize and admiralty cases; from 1782 to 1786 he was Governor of the State of Maryland, and in 1788 a member of the State Convention which ratified the Constitution. He was succeeded by James Winchester, appointed by President Adams in 1799. Following the court minutes for March 15, 1806, the clerk has made the following memorandum:

> "Honorable James Winchester, Judge of the District Court, departed this transitory life some time in the month of March, Anno Domini, 1806, after a long and painful illness occasioned by the bursting of a blood

> vessel. Of this distinguished man it may be truly said that with the politer accomplishments of a Chesterfield he added to a variety of other perspicious qualifications the most unbounded liberality and benevolence of soul."

This is certainly a warm tribute from a clerk whose official position gives him many opportunities to realize the limitations and imperfections of the Judges of the court.

Judge Elias Glenn, who filled the office from 1824 to 1836, had the distinction, as has already been noted, of administering the oath of office to Chief Justice Taney, and this seems to have been about his last judicial act.

Upton S. Heath was a friend of the new Chief Justice and, upon the death of Judge Glenn, was appointed District Judge for Maryland in the same year, 1836. He frequently thereafter sat with the Chief Justice in the Circuit Court until the termination of his service in 1852.

We all have an abiding affection for the memory and warm admiration for the judicial qualities and attainments of Judges Morris and Rose, but this is not the occasion to amplify them. I am glad, however, to have an opportunity briefly to make some comments with regard to District Judge Giles who immediately preceded Judge Morris and whose period of service was from 1853 to 1879. I doubt very much if any living member of this Association has a personal recollection of Judge Giles. Even Mr. Spamer, who has been Clerk of our Court since 1907 and was theretofore deputy in the office from 1888 has only a faint recollection of once, before his connection with the office, having visited the courtroom of Judge Giles while the latter was sitting. To the historian it is regrettable that the Court does not have portraits of the early District Judges. Of Judge Morris and Judge Rose we do have excellent portraits painted by Thomas C. Corner which adorn the panels adjoining the Bench in the present larger courtroom. I feel that I have some personal interest in Judge Giles because in one of the rooms of my official Chambers there is a very old and large photograph of him. It portrays in a manner of dress characteristic of the Civil War period, a man of about 60 years of age, with good and regular features, clear eyes, high forehead, graying hair, and slender side-whiskers—the general type of face of that of former President Patton of Princeton and somewhat reminiscent of President Elliott of Harvard—altogether a dignified and intellectual countenance. I have learned something in detail of Judge Giles' life from a scrapbook kept for many years by his wife and recently loaned to me by his

grandson, Mr. George Stewart Giles of Chicago. He was evidently a prominent figure in the public life of Baltimore in his time. He had been a representative in Congress some years prior to going on the Bench. He was frequently called upon to make addresses on public occasions both before and after he went on the Bench. On May 25, 1846, he delivered an oration at the dedication of the Odd Fellows Hall in Washington. Of it a newspaper said:

> "It is replete with interest and abounding with many bright thoughts expressed in a style of diction flowing easy and felicitious and is highly honorable to the occasion which called it forth and to the mind of its gifted author."

On another occasion he delivered an address to the Old Defenders of Baltimore, on which the newspaper comment was:

> "The address of Col. Giles was a production of much merit and abounded in lofty patriotism and was frequently interrupted by the warm applause of those who had the gratification of listening to him."

He also gave a talk on the Hungarian Revolution before the Polemic Union in the front hall of the Maryland Institute. Still again in the early 50's he addressed a large meeting of citizens of Baltimore called to exhibit "their never dying love for the Constitution and its Compromises", a meeting apparently due to the national controversial issues aroused by the Fugutive Slave Law. In this address he strongly denounced tendencies toward disunion, and the meeting adopted resolutions opposing any idea thereof.

In one of his addresses he stated that it had been his good fortune to enter Judge Purviance's office as a student in 1826 and thereafter had retained the warmest and most cherished respect for the latter as a Judge. Upon the death of Daniel Webster Judge Giles made an appropriate address in the Court of Common Pleas of Baltimore with response by the Honorable Judge Marshall. And again on November 24, 1854, he delivered an address before the graduating class of the Central High School at the Fourth Annual Commencement. The theme of the address was to put stress upon the importance of studying and understanding the principles of American government as contained in the Constitution, and an appreciation and veneration for the great Americans who had established it. He practiced law for some years at the Harford County Bar with Judge Constable and afterwards served with him in Congress.

An echo of the Civil War is found in Judge Giles' remarks to a retiring Grand Jury in 1860, as follows:

> "Gentlemen of the Grand Jury: Having finished the examination of all criminal cases which it was your province to investigate, it becomes my duty now to discharge you. And in doing so, I feel more solemn than I have ever felt on any previous occasion. The next term of this Court will be in March 1861, and it may be that ere that period rolls around, this great and noble Government under which, as a people, we have advanced to our present high position amid the nations of the earth, with all the elements of material wealth and prosperity around us, shall have been broken up, and you may be the last Grand Jury of *these present United States* which may ever assemble in this district. We are in the midst of a revolution, and no mortal eye can now see clearly whither we are drifting. Regarding as I have ever done, the *Union of these States* as the corner stone of all our prosperity and glory as a nation, my heart is sad—sad indeed when there comes to us on every breeze the startling intelligence that it is in imminent peril. From the head of the nation to the humblest citizen, all seem to have lost reliance on the efforts of man, and to be turning their tearful eyes to the God of our Fathers."

In the Baltimore American (precise date not given, but apparently about 1860) there appeared the following interesting editorial about Judge Giles:

> "Exempli Gratia.—Those of our citizens who occasionally visit the United States District Court, Judge Giles presiding, cannot but be favorably impressed with the admirable manner in which the business is transacted. A large portion of the cases are of a criminal character, and whilst the rights of the prisoner are carefully guarded, the law is enforced with rigid care. The quibbles and technicalities, leading to postponement, procrastinations, and the ultimate escape of the prisoners, are not permitted, and the majesty of the law held sacred from the technical pleas through which the law is often made to appear as if designed for the escape rather than the punishment of the guilty. Justice is administered promptly and intelligently without unnecessary delay. Witnesses are not summoned to testify in cases fixed

for trial only to have applications for postponements on frivolous and untenable grounds argued and granted from day to day, and finally, as the end of the term approaches, after a wearying attendance, to have them laid over to another term of the Court. The prisoner must be ready for trial, and, standing on the merits of his case, rest his hopes of acquittal on a fair and impartial investigation before a jury of his fellow citizens.

Judge Giles has already attained a position and character in the judiciary that few men could have reached in so short a time. He gives his whole mind to the case on trial, and decides all legal points that may be raised with a promptness which evinces legal knowledge of the highest order. His decisions are delivered orally, and, whilst brief and conclusive, are sustained by such an array of eminent authority and precedent that they are seldom, if ever, appealed from.

The taking of 'straw bail', another of the modern contrivances for defrauding justice and enabling the guilty to flee from the punishment that would otherwise be awarded, is also unknown in this Court. The Judge, whilst presiding with such ability, dignity and efficiency on the bench, does not leave to subordinates the performance of the other important duties of his office. The amount of bail required and the character and responsibility of the bondsmen are under his personal supervision. As the representative of the Government, he knows neither friends nor enemies, but acts with all the scrupulous care that he would exert in matters of private interest. We cannot forebear to remark that it would afford us unbounded gratification to be able to record a similar tribute to the other criminal tribunal of our city. Comparisons, we know, are odious; but in this instance, they are so unavoidable, the inference so strong, and the benefit which the public would derive from the introduction of the same judicial firmness, integrity and intelligence into our city criminal court so inestimable that it is difficult to refuse utterance to the wish that we could transport Judge Giles across Court House lane."

When Judge Giles was approaching the age of 70, the Cumberland-Allegany Times published a statement to the effect that Judge Giles was about to retire under the "Recent Act of Con-

gress" which allowed judges of the United States to retire at and after the age of 70 with full pay. The paper went on to say that the Honorable Judge Pearre of the Circuit Court for Allegany County would probably be his successor. As is known, however, Judge Thomas J. Morris was appointed to succeed Judge Giles.

Of all the Maryland Federal District Judges the tenure of Judge Morris was the longest, from 1879 to 1912—33 years; and next to him in point of time of service was Judge Giles, whose tenure covered 26 years. It is interesting to note that the average tenure of office of the clerks of the court has been much longer than that of the judges. There have been only five clerks of the court since its organization. They are as follows: Joshua Barney, who served from 1790 to 1793; Philip Moore from 1793 to 1834; Thomas Spicer from 1834 to 1864; James W. Chew from 1864 to 1907, and Arthur L. Spamer, happily still in office, since 1907. Thus with the exception of the first clerk, Joshua Barney, who served only a few years, the average tenure of office of the four succeeding clerks is about 35 years each, the longest in service being Mr. Chew—a period of 34 years. The older members of the Bar will, I am sure, personally remember Mr. Chew. This average long tenure of the clerks indicates what is in effect a Civil Service with regard to this office although nominally the tenure is at the pleasure of the Senior District Judge. Despite this legal situation it is obvious that most of the clerks have served under many successive judges who have continued them in office although having the power to make their own appointments. Better than any other person, the Judges are in a position to know the value of a faithful and efficient clerk. Much of the regularity and successful administration of the court is dependent upon him. It is a pleasure to me to express my personal appreciation of the excellence of administration of the office of clerk of the District Court of Maryland under the administration of Mr. Spamer and a satisfaction to know that the office has the reputation of being certainly one of the best clerk's offices in the Circuit, if not in the whole of the United States. It covers a multitude of activities. In addition to the ordinary court work and keeping of numerous separate dockets, there is the current work of naturalization, issuance of passports and the making of voluminous statistical reports to the Government. It is a busy office with many deputy clerks, the chief of whom, Mr. Charles W. Zimmerman, has, during his long tenure become invaluable to the members of the Bar who practice in the court. Mr. Spamer was originally a deputy for many years under Mr. Chew and upon the latter's retirement in 1907, was appointed by Judge Morris and successively retained by Judge

Rose, Judge Soper and Judge Coleman. I am much indebted to Mr. Spamer and some of his deputies for their assistance in some of the research work for this paper.

Some Important Cases in the Court

This paper has already attained a length not contemplated at the inception of its preparation, but even so, I venture to detain you a few minutes longer with brief reference to a few of the more important cases that have some historic importance in the field of federal jurisprudence. So far as I can find, the first case to be decided by the Supreme Court which originated in the District Court for Maryland was, as might be expected, in admiralty, and is reported under the title of "The Betsey" in 3 Dallas, page 6, the decision of the court being by Chief Justice Jay at the February Term, 1794. It is reminiscent of the days of privateers and the then pretensions of the French which we remember so well in our history by what we have read of Citizen Genet. Curiously enough, in that case a French privateer called the Citizen Genet commandeered as a prize the sloop Betsey on the high seas, brought the vessel into Baltimore and claimed the right to have her adjudicated a prize by the French Consul. The owners of the sloop and her cargo, however, filed a suit in the District Court claiming restitution to which a plea to the jurisdiction was filed on behalf of her captors. The Supreme Court held that the admiralty jurisdiction exercised by the Consuls of France in the United States was not of right and that such jurisdiction could only be exercised by virtue of a treaty, and held that the District Court should pass on the libel on the merits at the instance of the alleged owners.

By the Constitution, Congress is expressly given power to "grant letters of Marque and Reprisal and make rules concerning captures on land and water". This power was exercised during the War of 1812-14, which was fought very largely at sea, with the consequence that the District Court at this period had numerous cases of prize to adjudicate. It is said that the records of the court, in the pleadings and testimony relating to these cases, contain many interesting episodes and adventures. Although I have not had the opportunity to read them, I am glad to know that they are being examined by a young Baltimorean, a former newspaper man, with the idea of publishing a book upon the subject.

An illustrative case which went from the Circuit Court in Maryland to the Supreme Court is entitled "The Merrimac",

reported in 8 Cranch, 317, in which Harper (probably Robert Goodloe Harper) and William Pinkney were counsel for the parties; and another case of a similar nature in which the same counsel was engaged, was United States v. 1960 Bags of Coffee, 8 Cranch, 398.

The early constitutionally important cases of McCulloh v. Maryland, 4 Wheaton, 315, and Brown v. Maryland, 12 Wheaton, 419, are not within the purview of this paper because they went to the Supreme Court from the Court of Appeals of Maryland and not from the federal Circuit Court.

I pass now over a long interval of years to 1861, when Chief Justice Taney sat in the Circuit Court in the old Masonic Temple on St. Paul Street, and delivered his famous opinion in the habeas corpus case of Ex Parte Merryman, which will be found reported in 17 Federal Cases, 144, Case No. 9487. You will remember, of course, that the Constitution in Article I, section 9, provides that:

> "The privilege of the writ of habeas corpus shall not be suspended unless when in case of Rebellion or Invasion, Public Safety may require it."

You will also recall the cleavage in sympathy in Maryland between the North and South at the inception of the Civil War led to various civil disturbances in the States and some sabotage of railroad property for the purpose of impeding the movement of Federal troops through Maryland. President Lincoln, without the express authority of Congress, suspended the writ of habeas corpus, and John Merryman, who had been arrested by the military authorities, appealed to Chief Justice Taney for a writ of habeas corpus. When it was issued to Gen. Cadwalader, he refused to produce Merryman in court. The Chief Justice, on being advised of this refusal by Cadwalader's aide, immediately in his own handwriting wrote out an order for the attachment of Gen. Cadwalader for contempt of court which, in due course, was likewise ignored, leaving the Chief Justice only the ineffective judicial weapon of formal protest to the President, which was never directly acknowledged. The occasion in court was highly dramatic. I have looked at the original papers and it is interesting to note the order for attachment, evidently in the Chief Justice's own handwriting and probably written while sitting on the Bench immediately in the presence of Gen. Cadwalader's aide. The paper bears internal evidence of the haste with which it was written although it is clearly expressed in the best legal form. Again, it is interesting to see the original manu-

script of the lengthy opinion which the Chief Justice shortly afterward filed in the case. The scene is more fully described in literary dramatic form in the recent excellent Biography of Chief Justice Taney by Swisher. We are familiar with the maxim "Inter arma leges silent", and this case is a striking illustration of it. Taney's most excellent opinion and his letter of protest to the President were, under the circumstances, but a futile protest at the time, but the principle of the decision was shortly after the Civil War thoroughly confirmed and applied by the Supreme Court, after Taney's death, in Ex parte Milligan where the court upheld the power of civil against military law where the state was not invaded. And contrasted with these two cases we should bear in mind the nearly contemporaneous case of Ex parte McCardle (also convicted by a military tribunal), another habeas corpus case, where in the heated partisanship of the reconstruction days, an intolerant Republican majority repealed the appellate jurisdiction of the Supreme Court after the argument on behalf of McCardle and before the court's decision, in order to obviate an anticipated result unfavorable to the Government. It is, of course, only an alliterative coincidence that these three great habeas corpus cases all related to prisoners the spelling of whose names began with "M". Taking the three cases together, they at once show the power of the courts in enforcing civil rights of personal liberty in time of peace, and by contrast, their impotency in times of war; and they also indicate the possible dangers to rights of personal liberty which may flow from impairing the appellate jurisdiction of the Supreme Court.

Another important series of cases disclosed by the records of the court but not generally borne in memory are some 60 treason cases in which Southern sympathisers in Maryland, one of whom was also a John Merryman, were indicted by the Grand Jury for treason in acts of sabotage of the kind already referred to. None of these cases were ever tried. The reason is intimated rather broadly by Swisher in his recent Biography of Chief Justice Taney. He attributes to the Chief Justice an indisposition to have the cases tried and refers to a letter from Taney to Giles expressing the opinion that the latter was without authority to sit alone in the Circuit Court, where the cases had to be tried because they involved the possibility of capital punishment, and that he, Taney, by reason of then feeble health, was not able to come to Baltimore from Washington to sit with him. The result was that the cases were postponed from term to term until after the Civil War when they were finally dropped. The letter from Taney to Giles referred to is not quoted at length in the biography,

but a copy of it is in the possession of the Pennsylvania Historical Society by the courtesy of whose Librarian (Mr. Julian P. Boyd) I have obtained a copy. It reads as follows:

"Washington, Oct. 7, 1862.

My dear Sir:

I am afraid it will hardly be in my power to be present at the Circuit Court in November. My health has been very infirm during this summer and Fall—and I have not been outside of my own room more than half a dozen times since the adjournment of the Supreme Court. I regret this exceedingly, and will make an effort to be present if I regain my strength enough to bear the journey.

But if I am not present a question may arise whether you, sitting alone in the Circuit Court, have jurisdiction to try the capital cases which have been certified from the District Court. There is no express provision on this subject in the law directing their removal to the Circuit Court. But as they are expressly directed to be removed, it is clear that the District Judge is not authorized to try them when sitting alone in the District Court. Is he authorized to try them when sitting alone in the Circuit Court? There would seem to be no foundation in reason for such a distinction. And it appears to me that the direction to transmit such cases to the Circuit Court necessarily implies that the District Judge sitting alone is not to try them. And that the law intended to give the party standing on trial for his life the right to be heard before a Judge of the Supreme Court.

There is further reason for this construction. If both Judges are present, any question that arises may be certified to the Supreme Court, and the party have the benefit of the judgment of the highest judicial tribunal in the United States. If the question should be a new one in criminal law and at all doubtful, no doubt the Circuit Court both Judges being present, could certify it to the Supreme Court. In a trial before the District Judge alone, the party has not the benefit of the judgment of any Judge of the Supreme Court, and cannot have his case certified to the Supreme Court. His fate must depend upon the District Judge, without appeal and without remission. I cannot think a just interpreta-

tion of the Act of Congress will authorize the exercise of such a power by the District Judge.

The legislation of Congress concerning the court would lead to a contrary conclusion. For in civil cases of small comparative moment, his judgment is not conclusive but an appeal is given to the circuit court, and the opinion of the Judges of the Supreme Court sitting in the Circuit made conclusive. It could hardly have been the intention of Congress, in a case of life and death, to give a power to the District Judge which it denied in an ordinary case of small money concern.

I write to you now, my dear Sir, that you may have time to consider the subject and make up your mind upon it. It is one of some difficulty and certainly of the gravest character.

Very truly and respectfully

Your friend and serv't

R. B. TANEY."

The opinion expressed in the letter seems to run counter to the common practice by which the District Judges did in fact sit alone without the Circuit Justice in the Circuit Court in the trial of cases within its original, as distinct from its appellate jurisdiction. And I find from the minutes of the Circuit Court that Judge Giles on May 5, 1858, had sat alone in the Circuit Court in the trial of the murder case of one John C. Little; and years later in 1890 Judge Morris sat alone in the Circuit Court in the trial of some of the murder cases of the Novassee rioters in which the jurisdiction of the Circuit Court was based on R. S. 730 and 5339, which provide that where offenses are committed in the territory outside the Continental United States but within the jurisdiction of the United States, the trial may be had in the District Court of the District to which the offenders are first brought. Some of the cases went to the Supreme Court where the conviction was confirmed. Jones v. United States, 137 U. S. 202. And another important case decided by Judge Morris was the patent case relating to railroad car airbrakes, Westinghouse v. Boyden, in which Boyden finally prevailed in the Supreme Court (170 U. S. 537); and the anti-trust suit against the American Can Company (230 F. 859), decided by Judge Rose, was another case of great importance. In it 862 witnesses were exam-

ined, over 1,500 exhibits were filed and the record covered more than 8,700 pages.

And finally, it may be said that in the last two or three years the District Court has been quite busily engaged with federal constitutional questions and the administration of the new bankruptcy act commonly known as 77B, dealing with the financial reorganization of corporations.

THE PRESIDENT: Members of the Association: I think I was guilty of no breach of warranty when I promised you an interesting and profitable talk by Judge Chesnut. We can not give Judge Chesnut a rising vote of thanks, because, we are proud to say, he is a member of our Association, and we do not, according to the rules, give a rising vote to any member; but I do want to say, Judge Chesnut, that your fellow-members of the Bar Association, have followed, with interest and with admiration, your judicial career, and we hope that your formal connection with the Bar, with the Maryland Bar, to wit: membership in this Bar Association, will be preserved, and that the privilege shall be regularly exercised by you, of yearly attendance at our meetings. I think, to, that it would not be out of order to congratulate the Bar of Maryland on the fact that the character of the members, past and present, of our Federal judiciary has been so markedly high. Most of us have known Judge Morris and Judge Rose, and all of us do know Judge Soper, and Judge Coleman, and Judge Chesnut, and when we look over some of the other Federal judges in other Federal districts, we ought to be proud of the Federal Judiciary of Maryland.

Just a word more before we proceed to the other business. When Judge Chesnut was talking about the Circuit Court and the District Court, I could well recollect how, as a very young member of the Bar, in 1897, I went over to the United States Court to be admitted to practice there. I had to be admitted to both of the courts. Both courts had exactly the same organization. Mr. Addison, the court crier, who looked like Father Time, accepted the honorarium of five dollars from me for admission to each court as a member of the Bar, to practice in that court.

Now, there has been, as you all know, a great deal of talk about the reorganization of the American Bar Association. We are lucky today, to have with us, our friend, Alexander Armstrong, who will now explain the plan of reorganization to us.

MR. ALEXANDER ARMSTRONG: Mr. President and Ladies and Gentlemen: It was not until the close of the meeting last night,