

# South Carolina Jurists On The Federal Bench

State - Aug. 4, 1939.  
By James A. Hoyt

(In three instalments, of which this is the third.)

The first South Carolinian to be appointed United States circuit judge after the Confederate war was another Charlestonian.

Entering the war as captain of the celebrated Washington Light infantry, Charles H. Simonton at the close of hostilities was a prisoner of war and was not released until August, 1865. He had been captured at Town Creek, N. C. Meanwhile he had made a distinguished record in the Confederate army, serving principally around Charleston, and was promoted to colonel of the Twenty-fifth South Carolina regiment.

Before the war, Colonel Simonton had served a term in the South Carolina legislature. He had taken first honor in his class at the University of South Carolina, after attending the College of Charleston. In training, ability and personality he was well equipped for the leadership he asserted after peace was declared and during the dark days of Reconstruction. He was a member of the Constitutional convention of 1865, and served again in the house, 1865-66, and was elected as speaker—A position graced by many Charlestonians, including later James Simons and Richard S. Whaley—the latter, by the way, next door neighbor to Judge Simonton on Legare street.

Colonel Simonton was made chairman of the Democratic convention of Charleston which in 1868 declared for a "white man's government" and in the great political contest of 1876 for white supremacy he was chairman of the Democratic Executive committee of Charleston county—a position of primary importance in that crisis. Upon the return of the white man's government, for which he had fought, Colonel Simonton was again elected to the house, serving from 1877 to 1886.

The first Democratic president after the war, President Cleveland, appointed Colonel Simonton federal district judge in 1886, and he served in that position until 1893 when in Cleveland's second term he was appointed to the circuit court.

Judge Simonton's most celebrated service on the federal bench was probably in connection with his decision relating to the state dispensary system of selling liquor, which had been established by the Tillman administration. At least, it was these decisions which attracted greatest publicity, and as a matter of fact his decisions, along with others on the same questions involved, led to legislation vitally affecting the fight for prohibition in the United States.

It is impossible for one who did not live through it to appreciate the bitter feeling which existed in South Carolina in the early 1890's as a result of the enactment of the state dispensary law. The originally adverse decisions of the state supreme court with regard to the original law led to the Reconstruction of the court—Governor Tillman was more than 40 years ahead of President Franklin D. Roosevelt in the employment of that tactic.

In 1896 Judge Simonton declared null that portion of the dispensary law prohibiting the importation of liquor for personal use, and his decision was upheld by the United States supreme court, which had for some years, as Professor Wallace states it, been rendering inconsistent

opinions on the subject of interstate commerce.

"Original package stores" sprang up all over the state of South Carolina, and the state's monopoly in liquor selling was seriously threatened, when Judge Simonton the following year issued an injunction, annulling, as violating interstate commerce regulations, the portion of the new dispensary law, passed to meet his previous rulings, forbidding private dealing in liquor. The gist of Judge Simonton's reasoning, as summarized by Wallace, was that "so long as the state recognizes the liquor business as legitimate by engaging in it, especially for profit, she cannot forbid private persons selling liquors under the same regulations." Under this, and later rulings, the state dispensary was paralyzed.

Governor Tillman, the daddy of the dispensary, as he called himself, had by this time become Senator Tillman, and was just beginning to assert his strength in that august body. Congress had in 1890, on the demand of the prohibition states, enacted the Wilson law, designed to protect prohibition states from the importation of liquor, and the decisions of Judge Simonton and other courts—there were quite a number of such cases brought into court—defeated the purpose of the Wilson act. Senator Tillman introduced a bill to amend the Wilson act so as to meet these decisions, but before his bill was voted on, the supreme court, again adjusting its position, rendered the decision in the case of Vance vs. Vandercook, which while sustaining Judge Simonton in his ruling that any resident of the state had the right to order liquor for his own use, "annihilated the original package stores with which his ruling had covered the state." The state dispensary system then went on its inglorious way without lawful competition until it was finally destroyed by its own corruption.

However, the ultimate result of these decisions was national prohibition by constitutional amendment—a noble experiment of ignoble memory. The doctrine laid down in the Vance vs. Vandercook case prevailed until congress in 1913 passed the Webb-Kenyon act of 1913, which penalized the shipment or transportation of liquor intended to be received, possessed or sold in original package or otherwise in violation of state laws, and this act was further strengthened by the Reed amendment of 1917.

Speaking of the Webb-Kenyon act, Historian Warren, stating that it was passed "to put an end to this situation," (the original package decisions) comments that "though the constitutionality of this law was doubted by President Taft and by most of the bar, it was supported by the (supreme) court in decisions which gave greatly added scope to the authority of congress to transfer its authority to the states."

It is an interesting commentary on Judge Simonton's part in this judicial development that his decisions as a federal judge, while in line with the supreme court's prevailing doctrine on liquor legislation, did much to break down the sovereignty of the states, for which as a soldier he had so valiantly fought.

Judge Simonton died in 1904.

Charles A. Woods.  
If there was ever a man who deserved the appellation, "A gentleman and a scholar" it was Charles A.

Woods. It is a high privilege to be able to recall him as a friend; and as a youthful newspaper reporter it was always a joy to report his decisions, notable for lucidity of thought and clarity of expression.

A native of Darlington, he spent his active years at the bar in Marion, where he was greatly honored and loved. He graduated from Wofford college in 1872 with high honors, in a class which contained many able men, including Bishop A. Coke Smith and Prof. Charles Foster Smith, later distinguished teacher at the University of Wisconsin.

In 1901, seeking a president of the University of South Carolina, a position second to none in the state in honor and importance, the trustees proffered the position to Mr. Woods, but circumstances compelled him to decline. Two years later, 1903, he was elected by the general assembly as associate justice of the state supreme court.

On that bench he served with great distinction until appointed by President Wilson in 1913 to the United States circuit court, and in that position he served until his death in 1925.

As associate justice of the supreme court of South Carolina, Judge Woods rendered several notable opinions.

In the case of Alexander Weldon and William Burroughs, convicted of murder and sentenced to death, Judge Woods by 30 years anticipated the supreme court of the United States in the enunciation of the doctrine of "fair trial" laid down in the celebrated *Scottsboro* cases.

The Weldon-Burroughs case arose in Florence county, if I am not mistaken, Eihu Moye, to whom the court referred as a "worthy citizen," was foully murdered, and one of the suspected persons, confessed, implicating Weldon and Burroughs as active participants. A special term of court was speedily called to try the accused. "An immense number of people assembled at the trial intensely hostile to the accused," and the courtroom was crowded. The prisoners were without counsel and the special judge presiding appointed to defend them an attorney known for his courage as well as his ability, who stated that as he made his way through the crowd he heard threats of lynching, which convinced him that if he should ask for the three days of preparation allowed by law, the prisoners would be lynched, and "under the compulsion of this fear he gave up that most vital right and went immediately into the trial without preparation." The crowd so pressed around the jury box and the judge's bench that the trial "could not proceed with decorum and fairness." It was manifest that if the prisoners were not convicted promptly, they would be lynched.

"Compulsion," said Judge Woods in the decision of the supreme court, "is sufficient to annul a will or a contract for the sale of property. How then can it be held that a trial involving life or death was fair and impartial according to the law of the land when the accused, under the compulsion of a reasonable apprehension of lawless violence, surrenders a right vital to his defense."

The verdict of conviction was set aside and the case remanded for a new trial.

As Judge Simonton was called on to pass upon the highly important constitutional questions growing out of the genesis of the state dispensary system, Judge Woods was called on to render the opinion in one of the most important cases in connection with the extinction of that great moral institution.

When the state dispensary was abolished by the general assembly and the governor was empowered to appoint a commission to wind up its unsavory affairs, Governor Ansel did appoint a commission of five citizens of the highest character to perform this unpleasant task. The legislature authorized this commission, which had

taken over the affairs and funds of the dispensary system, to turn over \$15,000 of these funds to the attorney general for use in connection with prosecutions against persons charged with violations of law in any manner connected with the dispensary. Certain whiskey houses, whose relations with the old board of control were under investigation, went into the federal courts and obtained an injunction restraining the new commission from turning over any funds to Attorney General Fraser Lyon in accordance with the act, the constitutionality of which was challenged. Mr. Lyon went into the state supreme court and petitioned for a mandamus against the commission ordering them to turn over the money. The commission, of which Dr. W. J. Murray of Columbia was the chairman, was more than anxious to comply with the demand of the attorney general, but they were legally restrained by the order of the United States circuit court.

There was here squarely presented a contest of authority between the state of South Carolina and the federal courts—not by any means a new situation—and to a judge who might be inclined to seek the headlines there was presented an excellent opportunity to indulge in sensationalism and bombast, but Judge Woods was not that kind. His opinion, which was later sustained by the supreme court of the United States, reversing both the United States circuit court and the United States circuit court of appeals, was a masterpiece of restrained, dignified but positive enunciation of the sovereign rights of the state.

Justice Woods pointed out that the constitutionality of the state dispensary acts was finally established by the judgment of the state supreme court in the Aiken case and later by the United States supreme court in the Vandercook case, and that subsequently in the constitution of 1895 the scheme of state ownership and control was specifically permitted. If the state could legally own and operate the system, the state could legally wind up its affairs. The state having properly established an agency for that purpose, the federal courts could not step in and take charge of the liquidation.

The state supreme court thus held that the federal court was without jurisdiction to grant the injunction against the commission, and very tactfully Judge Woods went on to say that it is well known that the supreme court of the United States itself follows the decision of the state supreme court in the construction of the state constitution and statutes, and "this rule is binding upon the circuit courts of the United States." "This court," he continued, "will not therefore assume that the construction which it has placed upon the state constitution and the statutes in question will be disregarded by the federal court," and with this gentle intimation of the issuing of the peremptory writ of mandamus was held in abeyance. The federal court, however, did not take this polite hint. The case, as already stated, went on up to the supreme court of the United States, which upheld the opinion of Associate Justice Woods and reversed the circuit court and the circuit court of appeals.

It took a long time to bury the state dispensary, after it was killed, and the stench hung around for many years.

In another case in which he rendered the opinion of the state supreme court, Associate Justice Woods boldly and positively upheld the rights of the "share croppers"—and this was also 30 years before Mr. Norman Thomas and other present day reformers from the North discovered that such rights exist. In doing so, the South Carolina supreme court had the courage to reverse absolutely some of its previous decisions; and judges than the doctrine of "stare decisis."

This was the Hollman case, in which the state supreme court declared unconstitutional the act of the general assembly which provided that any laborer working on shares or for wages, under a contract, either written or verbal, might be criminally punished, as for a misdemeanor, for violation of the contract. This act had resulted in what was claimed to be "peonage."

Justice Woods in his opinion reviewed not only the law and the many decisions of various courts in similar cases, relating to similar statutes, but he also incorporated in the opinion a statesman-like discussion of the problem of Southern agriculture in the post bellum period, with particular reference to the Negro farm laborer. It was these conditions which had given rise to the statutes of this sort, attempting to enable the landlord to control his labor.

The conclusion of the court was, in effect, that the statute in question was invalid as providing imprisonment for a simple debt, in violation of both the state and federal constitutions. The closing words of Associate Justice Woods' opinion might well be now emblazoned where all the world might read:

"The constitution of the United States and of this state, as they are must control the courts; and the fundamental principle of these constitutions is that the welfare of all the people is promoted by the enjoyment of equal liberty by all alike, and that even if prosperity is not always promoted by constitutional guarantees, liberty is better than prosperity."

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State - Aug. 2, 1939  
By James A. Hoyt

(In three instalments, of which this is the first.)

The elevation of Richard S. Whaley of Charleston to the chief justiceship of the court of claims of the United States, of which he had been a judge since 1930 brings a South Carolinian to one of the highest positions in the federal judiciary ever held by a jurist from the Palmetto states, since the court of claims, in its jurisdiction nation-wide and with its appeals from its decisions direct to the supreme court of appeals.

In the history of the federal judiciary, there have been only three South Carolinians who have reached the United States circuit court of appeals, as it is now known. One of these three made himself famous by a celebrated clash with another son of South Carolina, destined to become president, Andrew Jackson. The three were: Dominic A. Hall, Charles H. Simonton and Charles A. Woods.

Only two South Carolinians have been appointed to the United States supreme court, and the career of each of them was spectacular and unique. These two were John Rutledge and William Johnson.

Rutledge, Johnson, Simonton and Whaley—four of the six—were born in Charleston and began their careers there, as did Hall, whose birthplace is given by Gayerre as England.

The most famous of all South Carolina lawyers, and justly so, is John Rutledge, who also has the distinction of having been appointed chief justice of the supreme court and his nomination rejected by the senate.

Johnson's career on the supreme court was distinguished for three things—his youth, 32 years of age, at the time of his appointment; his subsequent clash with the president, Thomas Jefferson, by whom he had been appointed, and his length of service, more than 30 years.

Every one of these South Carolinians who have reached these high posts on the federal bench has demonstrated that signal quality of character that has been typical of the little state which produced them— independence of thought and fearlessness of expression.

In the history books as they have been written (largely by New England historians) John Rutledge's failure of confirmation by the senate as chief justice has detracted greatly from the reputation of a jurist and patriot who was one of the greatest of his day, or of any day. But more recent, and less biased appraisals of Jay's treaty, by students of American diplomatic history, have also brought about a more just judgment as to the place of John Rutledge in history.

The dedication of the supreme court, which had obsessed the country for so many years until President Franklin D. Roosevelt brought into the light of publicity its recent attachment to reactionary ideals and its modern remoteness from the realities of life and thought, did not always prevail. As a matter of fact, there have been times when what Mr. Roosevelt said about the court would have been considered mild indeed. Jefferson and Jackson, when they had occasion to denounce the court, did so in terms that Mr. Roose-

velt refrained from using, and Abraham Lincoln was scarcely less severe than his Democratic predecessors.

When the court was first set up, its importance and dignity were lightly regarded, and for many years, until the clash with President Jefferson, its decisions were given scant attention. In making the first appointments to the court, President Washington had great difficulty to secure acceptance from some of those whom he thought worthy of appointment. One declined after confirmation and another resigned. In his selections, Washington gave due weight to character, legal attainments and a necessary geographical distribution of the appointments, and one of the three or four whom he considered for the post of chief justice was John Rutledge of South Carolina.

Mr. Rutledge had been "president" of South Carolina under the old form of government, and governor under the new, and had been a member of the convention which framed the constitution of the United States. In his "The Supreme Court in United States history," Charles Warren says that: "Friends of John Rutledge of South Carolina were insistent that his seniority and distinction in professional studies and his services to his country entitled him to the position." Among others considered were Chancellor Livingstone of New York and Alexander Hamilton but the choice finally went to John Jay, then serving as acting secretary of state and a close personal friend of Washington, as was Rutledge.

"In the selection of the remaining five judges," says Warren, "Washington was confronted with an even more difficult problem, since the three states of Virginia, Pennsylvania and South Carolina presented an unusual number of qualified candidates." From South Carolina, "the president hesitated between the appointment of Charles Cotesworth Pinckney, John Rutledge and Edward Rutledge" and "William H. Drayton was also urged upon him. The choice finally fell on John Rutledge," a man of 50 years of age, who had been a former governor of the state and a judge of the state court of chancery for the past six years.

When the new court met in New York to organize of the six judges appointed, all of whom had been confirmed by the senate, only three were present—Jay, Wilson and Cushing, and a few days later Judge Blair attended. This was February, 1790.

The fifth appointee, Robert Hanson Harrison of Maryland, who had been military private secretary to General Washington, declined in order to accept the position of chancellor of Maryland, to which he had been appointed. In his place, Washington appointed James Iredell of North Carolina.

John Rutledge did not attend any of the supreme court sessions but he qualified as associate justice and served as such "on circuit," it being the original provision that the supreme court justices should preside over the federal circuit courts. They had little else to do, but the circuit court work was unpleasant, entailing much traveling over bad roads. As a matter of

fact, for several years both the supreme court and the circuit courts had few cases to consider, and when John Rutledge was appointed chief justice of South Carolina he resigned the federal post, considering the state judgeship more congenial and equally honorable.

Then after negotiating the treaty with England which bears his name, Jay returned to this country to become a candidate for governor of New York, and being elected, resigned as chief justice—a change which itself indicated the esteem in which the supreme court of the United States was then held.

In a most remarkable letter, Rutledge wrote to President Washington that this letter was "intended merely to appraise you of what I would do if selected" for the vacancy.

Washington immediately tendered him the appointment. Incidentally, the first president thus set a precedent of going outside the court to appoint the chief justice.

In those days, as Uncle Remus would say, as now the issue of the hour was "neutrality." Neutrality between England and France, and Jay's treaty, denounced by the anti-Federalists as too favorable to England, was the subject of acrimonious debate. The treaty had been conditionally ratified by the senate June 24, 1795, and the senate adjourned two days later. The appointment as chief justice of John Rutledge, tendered in a letter of July 1st, was announced.

On July 6, Rutledge made his celebrated speech in Charleston, denouncing the treaty. In one about to become head of the highest court, and the beneficiary of the administration which was responsible for the treaty, any utterance on the subject was unwise and not called for, but the contents of the speech and the circumstances of its delivery have both been grossly misrepresented. The incident was at once seized upon by the extreme Federalists to defeat the confirmation of Rutledge and their purpose was accomplished, when the senate by a vote of 10 to 14 refused to confirm the nomination the following December.

Meanwhile, Rutledge had left Charleston and arriving in Philadelphia had taken the oath of office on August 1. The court at that session heard only two cases, and the chief justice left Philadelphia to enter upon his circuit court work "but he was destined never to return to the supreme court, for the Federalists were fixed in their determination to punish him," says Warren.

Thomas Jefferson wrote: "The rejection of Rutledge by the senate is a bold thing, for they cannot pretend any objection to him but his disapprobation of the treaty. It is, of course, a declaration that they will receive none but tories into any department of the government."

Mr. Jefferson was not under any delusions. He knew that Hamilton controlled the senate.

As to "what might have been," Mr. Warren, in his history, says:

"The rejection of Rutledge was an event of great importance in American legal history, which has hitherto received cursory attention. But for his unfortunate Charleston speech, he would have undoubtedly been confirmed, despite the rumor as to his mental condition. As his death did not occur until the year 1800, the chief justiceship, if held by him, would have become vacant at a time when it is extremely unlikely that President Adams would have appointed John Marshall as his successor. Thus upon the event of one chance speech regarding a British treaty hinged the future course of American constitutional law."

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William Johnson was one of the youngest men ever appointed to the supreme court (if not the youngest), 32 years old, and he served one of the longest terms—30 years.

He was born in Charleston, December 27, 1771. His father, a non-conformist, had been driven out of England and went to Holland, the refuge of political and religious expatriates of that day. There he changed his name to Jansen, and under that name emigrated to New Amsterdam, receiving a grant of land in what is now New York City, but when New Amsterdam was ceded to the English and became New York, he changed his name back to Johnson. He was then, it turned out, unable to claim the land which has been granted him as Jansen.

Johnson moved to South Carolina. His son was educated at Princeton and returned to study law in the office of Charles Cotesworth Pinckney and was admitted to the bar in 1793. When scarce 21 years of age, he was elected to the state legislature and served until 1796, when he was appointed judge of the circuit court of common pleas.

In 1804 he was appointed by President Jefferson as associate justice of the United States supreme court to fill a vacancy caused by death. This was the first appointment to the court made by Jefferson, and it followed close after the subsidence (for the time being) of the great fight which resulted in the famous Marbury vs. Madison decision, and the repeal of the judiciary act of 1801, under which President John Adams, in the last days of his term, had "packed" the new circuit court judgeships with federalist appointees, much to the indignation of the incoming president and his party.

Jefferson felt that the new associate justice should come from either New York, South Carolina or Georgia. Albert Gallatin, his adviser, wrote to the president: "The importance of filling this vacancy with a Republican (Democrat) and a man of sufficient talents to be useful is obvious but the task is difficult." Gallatin thought such a lawyer is as loose in Georgia as in New England and that a real lawyer could not easily be found there. "But," he said, "South Carolina stands high in that respect, at least in reputation."

Warren in his history says that having finally determined to select a South Carolina lawyer, "Jefferson had a choice of five prominent Republicans, John Julius Pringle, Thomas Waties, William Johnson, Lewis C. Trezevant and Theodore Gaillard, of whom he selected Johnson."

"Neutrality" had again become the "paramount issue" of the day, and congress under Jefferson's guidance had enacted the "embargo laws," which Jefferson was determined to enforce, his pet policy. This issue, complicated then as now, involved not only our foreign relations but sectional interests—the South against New England. There is really nothing new under the sun.

One of the first test cases of the embargo acts came up in Charleston when a vessel owner petitioned for mandamus to require the collector of the port to grant a clearance of a vessel loaded with rice, clearance of which had been refused under the president's instructions. Judge Johnson, in the circuit court, granted the instructions to the collector to be illegal and void, as unwarranted by the statute.

"No decision in a federal court," says Warren, "ever rendered up to that time (except in the Burr case) received so full publication or so widespread notice in the newspapers. The federalist press seized upon it with glee as a strong rebuke by a Republican judge to a Republican president."

President Jefferson himself, says Warren, did not attempt to disguise the fact that he regarded Johnson's action as a "direct attack upon him and his embargo policy," and if he had been indignant at Marshall's interference with his executive functions, "he was still more agitated at this invasion by his own appointee." As a matter of fact, there resulted what amounted to a public controversy over the decision between Jefferson and Johnson, who did the unusual thing of making a public defense of his decision.

Johnson's service on the supreme court embraced the period during which the supreme court, with John Marshall as chief justice, rendered some of its most historic and momentous decisions, including the Dartmouth college case and the McCulloch case, involving the life of the Bank of the United States, which institution Andrew Jackson fought so hard to destroy.

But if Johnson was in opposition to Jackson in the bank fight, as he was in opposition to Jefferson on the embargo question, he was with Jackson on the nullification issue, which split the party, and split South Carolina also. So that both Jackson and Johnson both found themselves in violent antagonism to the state which had given birth to them both.

Justice Johnson's opposition to the nullification policy of South Carolina was indeed so acute that he gave up South Carolina as his residence and became a resident of Pennsylvania in 1833, removing the next year to Brooklyn, where he died in August of 1834.

Justice Johnson was the author of "The Life and Correspondence of Nathaniel Greene," a work which in his History of South Carolina Professor Wallace somewhat severely criticises as unfair to the partisan patriots, Generals Sumter and Marion.

Dominic A. Hall.

It was the first South Carolinian to occupy the position of United States circuit judge who collided with the only South Carolinian to be elected president.

General Andrew Jackson in 1812 upon taking command in New Orleans found a peculiar state of affairs which Marquis James has vividly described in his most interesting biography of the doughty warrior from the Waxhaws. Acting with charac-

teristic promptitude and vigor, the general put the city under martial law, and submission to his edict was general enough as long as an invasion was threatened, though Jackson had almost as much trouble keeping his motley army in battle as he did in keeping the British army out of New Orleans. The victory, which added so greatly to his fame, was won after peace had been negotiated, but at the time Jackson did not know it, and when rumors that peace had been made began to percolate through the city the general refused to accept any such reports until he received official information, which was slow in coming, and he continued to exercise supreme authority. He ordered the arrest of a member of the legislature, one Louaillier. Application was made for a writ of habeas corpus to Judge Dominic A. Hall, who issued the writ. General Jackson ordered the arrest of the judge.

Meantime official news of peace had been dispatched to General Jackson by special messenger but the envelope which the general received contained the wrong letter. Jackson must have known what the message to him was intended to convey, as every one else knew it, but he still refused to relinquish or to relax his war-time authority.

Louaillier was tried by court martial and acquitted but Jackson set aside the judgment of his own court and kept the legislator in prison, also the judge under arrest. He did not quite dare to court martial Judge Hall but sent him out of town.

When the official news of peace was proclaimed, all prisoners were released, and Judge Hall, returning to New Orleans, and resuming his judicial duties, summoned General Jackson for contempt of court. The general, himself an excellent lawyer and formerly a judge, was tried and convicted and fined \$1,000. He paid the fine.

Hall had first been appointed by President Jefferson as judge of the first United States circuit embracing North Carolina, South Carolina and Georgia, in 1801, but retired in 1802 upon the repeal of the judiciary act. Under the act of March 3, 1804, to establish the government of Louisiana, a district court, having powers of the circuit court was provided, with one judge for the territory of Orleans, and Jefferson appointed Hall to the post. He was considered exceptionally qualified because, in addition to his other experience, he understood French and was versed in maritime law. At the time he was a member of the South Carolina legislature from Charleston.

He served in this capacity from 1804 to 1813, when the state government was formed, and he resigned his federal judgeship to accept appointment on the supreme court of Louisiana, but soon quit that post and was reappointed to his position as federal judge, which had not been filled. He served in that capacity until his death in 1820.