

1986

## Egbert Benson The First Chief Judge of the Second Circuit and Other Related History

U.S. Court of Appeals for the Second Circuit

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## Egbert Benson

### The First Chief Judge of the Second Circuit

#### I Early Life

- born 1746.
- graduated from King's (Columbia) College 1765; classmate and lifelong friend of John Jay; executor of Jay's father's estate.
- admitted to the bar 1769; practiced in Dutchess County (Red Hook; later Poughkeepsie).
- served with John Jay in 1777 on the Committee for Detecting Conspiracies, dealing with British loyalists.

#### II First Attorney General of the State of New York (1778 to 1789)

- in 1781 (future Chancellor) James Kent began reading law with Benson.
- during 1781-84 Benson was designated as a representative of New York in the Confederation Congress.

### III Rutgers v. Waddington - 1784

Action under the N.Y. Trespass Act in the Mayor's Court, New York City, by Elizabeth Rutgers, whose real property had been sequestered by the British army during the occupation of New York and rented to the defendant, Waddington. The Trespass Act expressly barred any defense that the use of such property by authority of the British was lawful.

Benson and John Lawrance (Judge Advocate at the trial of Major Andre, future Representative of New York at the 1st Congress, second U.S. District Judge for the New York District, U.S. Senator 1796-1800) represented Rutgers. Waddington was represented by Alexander Hamilton, Morgan Lewis (future Chief Justice and Governor of New York) and Brockholst Livingston (future Justice of the Supreme Court of New York and of the Supreme Court of the United States).

The opinion of the Court, written by the Mayor, James Duane (later the first U.S. District Judge for the New York District), adopted in part Hamilton's argument that the statutory bar should be disregarded as a violation of the law of nations.

IV Like many leading men of this period, Benson was a land speculator. In 1771 he and John Jay joined Duane in the

acquisition of land claims near what is now Rutland, Vt. In 1785 the New York State legislature appointed Benson, Duane, Jay and others as Commissioners to press New York's claims to Western lands also claimed by Massachusetts. The New York agents retained Hamilton as counsel.

A court to try the claims, including future Supreme Court Justices Rutledge, Harrison, Paterson and Johnson, Chancellor Wythe and James Monroe, was selected by the parties, but the dispute was ultimately resolved by negotiation.

#### V      Annapolis Convention - 1786 - and Beyond

- Benson and Alexander Hamilton represented New York at the convention, which was called at the suggestion of George Washington to establish a uniform system of commercial relations between the states.
- the convention concluded on September 14, 1786, with the call, drafted by Hamilton, for a further convention in Philadelphia, in May, 1787, to address the defects in the Articles of Confederation. (At this convention in Philadelphia the Constitution was drafted.)
- On February 21, 1787, Benson moved in the Confederation Congress that a constitutional convention be called.

- On January 31, 1788, Benson moved in the N.Y. Assembly for the summoning of a convention for ratification of the Constitution by the State of New York.

VI First and Second Congresses under the Constitution  
(1789-92)

At the First and Second Congresses Benson represented New York in the House and participated in framing the Bill of Rights and the Judiciary Act of 1789.

- in February, 1790, Benson became the fourth lawyer admitted to practice before the Supreme Court of the United States.

VII Justice, Supreme Court of the State of New York (1794-1801)

Benson served as one of the five justices, along with James Kent and John Sloss Hobart (a future U.S. District Judge for the New York District). Until Justice Story's time the admiralty jurisdiction of the federal courts was narrowly construed, and much of the work of the New York Supreme Court during Benson's tenure concerned contracts of maritime insurance. Benson wrote leading opinions on this subject.

During Benson's service on the Supreme Court President Washington sought to appoint Benson a Commissioner under

the Jay treaty with Great Britain. According to a letter to Hamilton from the Secretary of State in 1796, Benson "is held in such high estimation for his abilities & integrity, as to render it extremely desirable that the appointment might meet his acceptance". An appointment to the U.S. Supreme Court was to follow Benson's service as a Commissioner. Benson declined.

Oliver Wolcott, Jr.

- born 1760; his grandfather had been a colonial Governor of Connecticut, and his father would later be one of the signatories of the Declaration of Independence and later Governor of Connecticut.
- graduated from Yale in 1778; studied law under Tappan Reeve.
- 1789-1800: appointed by President Washington, first, Auditor of the Treasury (1789); then Comptroller of the Treasury (1791); and, finally, Secretary of the Treasury (1795), succeeding Hamilton, whose close friend and political ally he remained.
- continued as Secretary of the Treasury under President Adams, despite the latter's feud with Hamilton; resigned in December, 1800, at the end of Adams' term as President.

Samuel Hitchcock

- son-in-law of Ethan Allen.
- Attorney General of Vermont.
- U.S. District Judge for Vermont.

### Judiciary Act of 1801

- (explanation of Circuit Court system established by Judiciary Act of 1789 and its burdens on the Supreme Court Justices).
- changes in the judiciary suggested in President Adams' message to the 6th Congress, 1799.
- March 11, 1801: bill reported by House of Representatives committee, primarily drafted by John Marshall, Representative from Virginia.
- after debate in which Marshall defended the bill (speech lost), a similar bill reported by Marshall's Committee on March 31, 1801; consideration postponed until second session of 6th Congress in fall of 1800 (first session of Congress held in Washington). By this time Marshall was Secretary of State.
- Judiciary Act passed in February, 1801; debated during resolution by the House of the tied Jefferson-Burr presidential election.



- provisions of Act as passed.

1. terminated circuit-riding duties of Supreme Court Justices and reduced their member by one.
2. created three-judge Circuit Courts as trial courts of general jurisdiction; established the Second Circuit (N.Y., Conn., Vt.); created the District of Albany, predecessor of N.D.N.Y.
3. conferred federal question jurisdiction on the federal courts for the first time.
4. the two earlier bills drafted by Marshall's committee would have abolished some District Courts and changed those remaining into Courts of Admiralty.

Appointments under the Act ("the Midnight Judges")

- for the Second Circuit, Benson, Chief Judge, Wolcott and Hitchcock.

- in Third Circuit: for Chief Judge, Jared Ingersoll (declined), Edward Tilghman (declined), William Tilghman -- three acknowledged leaders of the Philadelphia bar.

from Delaware, Richard Bassett, Governor and a signer of the Constitution.

from New Jersey, William Griffith, a distinguished lawyer from Burlington.

- in the Fourth Circuit, for Chief Judge: Charles Lee, Attorney General of the United States (declined), Philip Barton Key, uncle of Francis Scott Key.

## The Work of the Courts

In the Second Circuit, most business appears to have been under short-lived Bankruptcy Act of 1800.

Little business occurred at the three sittings in New York City, the most significant case docketed being the "Young Ralph", seized as a slave ship, whose owners were represented by Alexander Hamilton. [research in other Districts not begun].

In contrast, in the Third Circuit the high volume of activity in the Circuit Court lead to publication of Wallace's Reports, covering only its first term; this was the first volume to report only the decisions of U.S. Courts.

## Repeal

- President Jefferson invited the consideration of the new judiciary act in his first message to the 7th Congress in March, 1801.
- Alexander Hamilton published in the N.Y. Post and as a pamphlet a series of essays attacking Jefferson's "pigmy mind", particularly the proposal to repeal the Judiciary Act of 1801.
- January, 1802: The Republicans moved the repeal of the Judiciary Act of 1801 and restoration of former system. There remain the records of lengthy Congressional debates and correspondence on whether Article III would be violated by the repeal. In February, repeal passed the Senate (16-15) and, by larger majority, the House, effective July 1, 1802.
- the Circuit Judges completed June, 1802 terms.
- Judge Basset published pamphlet declaring the repeal unconstitutional.
- Justice Samuel Chase wrote to Chief Justice Marshall, urging the unconstitutionality of the repeal under Article III. Chief Justice Marshall questioned whether

Supreme Court Justices could again preside in the Circuit Courts, to which they were not commissioned, but seemingly acquiesced in the notion that the newly-appointed Circuit Judges could be turned out of office. The Justices resumed circuit-riding under the restored old system.

- Correspondence and meetings among the Circuit Judges asserted the unconstitutionality of the repeal and contended that they were still entitled to their salaries. The Circuit Judges addressed memorials to Congress, which were rejected.

#### Stuart v. Laird - 1803

Constitutionality of the repeal comes before the Supreme Court, raised by Charles Lee. Chief Justice Marshall and Justice Cushing did not sit. The constitutional was issue avoided in the Court's brief opinion by Justice Paterson, who, like Judge Basset, was one of the signatories of the Constitution.

#### Aftermath

1. Even before repeal, Republicans in Congress attack Wolcott's conduct of the affairs of the Treasury. Wolcott published a pamphlet in reply.

2. Impeachment of Justice Chase (1805) -- while commonly supposed to have been based on his overbearing conduct at trials under the Sedition Law, the largest vote in favor of his conviction came on the charge based on his speech to the Grand Jury in Baltimore in 1803, attacking the repeal. Philip Barton Key was one of Chase's counsel.
3. Benson resumed private practice, acting as co-counsel with Hamilton. Hamilton arranged a lucrative business partnership for Wolcott in New York.
4. The Hamilton-Burr duel took place on Wednesday, July 11, 1804. On Monday, July 9, Hamilton called at Benson's law offices and dined with Wolcott. Wolcott was at Hamilton's bedside when he died.
5. Benson founded the New-York Historical Society in 1804, serving as its president until 1816; he was succeeded by Gouverneur Morris who, in 1802, had been the spokesman in the Senate for the Federalists opposing the repeal of the Judiciary Act of 1801.

Benson also served in Congress in 1813.

6. Wolcott returned to Connecticut, served as Governor 1817-1827; he died 1833.

7. William Tilghman, the Chief Judge of the Third Circuit, was appointed Chief Justice of Pennsylvania in 1806 and served until 1827; even to close friends he never spoke of his service on the Third Circuit. He was greatly revered for his judgment, lucidity and learning. In 1809 he participated in one of the final, increasingly violent stages of the confrontation between the State of Pennsylvania and the federal courts in the case of the sloop "Active", which had begun in the Pennsylvania State Court of Admiralty in 1778, been adjudicated by the Congressional Committee on Appeals prior to the adoption of the Articles of Confederation, and since then had been twice before the Supreme Court of the United States.
8. Dominick Augustine Hall, commissioned Chief Judge of the Fifth Circuit by President Jefferson on the eve of that Court's abolition, was appointed Territorial Judge and, in 1813, the first United States District Judge for Louisiana. In 1814, having dared to issue the writ of habeas corpus for a prisoner in Maj. Gen. Andrew Jackson's stockade, Judge Hall was himself imprisoned there by Jackson and later marched out of town by a squad of soldiers. Returning to the bench, Judge Hall held Jackson in contempt and fined him one thousand dollars.
9. In 1827, in an action in the United States Circuit Court for the Southern District of New York between John Jacob Astor

and the State of New York involving a claim to a huge tract of land Astor had purchased, Benson, then over eighty, was called as a witness by Astor to testify about the confiscation of Loyalist property at the time of the Revolution. Although the State was represented by Daniel Webster, Astor prevailed at trial and in the Supreme Court. Benson died six years later, in 1833.



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