



Joseph Hopkinson

Born: November 12, 1770, in Philadelphia, Pennsylvania.

Died: January 15, 1842, in Philadelphia, Pennsylvania.

Federal Judicial Service:

Judge, U.S. District Court for the District of Pennsylvania

Received a recess appointment from John Quincy Adams on October 23, 1828, to a seat vacated by Richard Peters; nominated to the same position by John Quincy Adams on December 11, 1828. Confirmed by the Senate on February 23, 1829, and received commission on February 23, 1829. Service terminated on January 15, 1842, due to death.

Education:

University of Pennsylvania, A.B. 1786

Read law, 1791

Professional Career:

Private Practice, Philadelphia and Easton, Pennsylvania: 1791-1814

U.S. Representative from Pennsylvania: 1815-1819

Private Practice, Philadelphia, Pennsylvania: 1819-1820, 1823-1828

Private Practice, Bordentown, New Jersey: 1820-1823

State Assemblyman, New Jersey: 1821-1822

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Judicial Biography

*At the time of Richard Peters' death, John Quincy Adams was in his last months as President of the United States. Adams chose as the fourth judge of the court, and as Judge Richard Peters' successor, Adams' long time friend Joseph Hopkinson, a prominent Philadelphia lawyer and the son of Pennsylvania's first District Judge, Francis Hopkinson and the grandson of Thomas Hopkinson, a colonial admiralty judge. Hopkinson brought "a tone of dignity, learning, and urbanity" to the Philadelphia legal community. He, like his father, was a Federalist in his political leanings. Such noteworthy figures as Chief Justice John Marshall as well as Justices Joseph Story and Bushrod Washington authorized laudatory letters to the president recommending the appointment of Hopkinson to the District Court. In his letter, Chief Justice Marshall wrote:

. . . If I take the liberty to bring to your notice a person who stands high in his profession, as one well qualified to be his [Peters'] successor, I must hope to find an apology in my conviction of the importance you attach to the judicial department, and of your desire to fill all vacancies which may occur in it with gentlemen in all respects entitled to the public confidence.

I have been long and intimately acquainted with Mr. Joseph Hopkinson, and think highly of his legal attainments, as well as his fitness in all other respects for the office. I have heard him argue several important causes in the Supreme Court of the United States, in which he always displayed accurate knowledge of his subject, and very considerable power of mind. I forbear to speak of him otherwise than professionally, because I believe he is personally known to you.

President Adams gave Hopkinson a recess appointment to the Court in October 1828. His nomination, however, was not considered by the Senate until February 23, 1829, less than two weeks before Adams was to leave office and Andrew Jackson, Adams' political adversary, was to succeed him. Not surprisingly, with a change of administration just over the horizon, a motion was made in the Senate to postpone consideration of the Hopkinson nomination to March 4, Inauguration Day, when his recess appointment would expire. Upon defeat of the motion, he was confirmed by a divided vote of 28 to 15, with one of the two Pennsylvania Senators voting against him. Several days later, President Adams sent Hopkinson a letter enclosing his commission. The President likened Hopkinson's appointment to the historic appointment of Chief Justice Marshall by his father President John Adams in the final days of that administration in 1801:

One of the last acts of my father's administration was the transmission of a commission to John Marshall as Chief Justice of the United States. One of the last acts of my administration is the transmission of the enclosed commission

* The following material is excerpted from JUDGE HARVEY BARTLE, III, MORTALS WITH TREMENDOUS RESPONSIBILITIES, A HISTORY OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, 3-12 (Saint Joseph's University Press, 2011). Reproduced with the permission of the author, Judge Harvey Bartle, III, and the publisher, Saint Joseph's University Press.

to you. If neither of us had ever done anything else to deserve the approbation of our country and of posterity, I would proudly claim it of both for these acts; as due to my father and to--your friend, J. Q. Adams.

Born in Philadelphia on November 12, 1770, Hopkinson received his bachelor's degree at what was then known as The University of the State of Pennsylvania (now the University of Pennsylvania). Thereafter, he read law under James Wilson and William Rawle and attended Wilson's celebrated law lectures at the University of Pennsylvania in 1791. He engaged in private practice in Philadelphia and also in Easton, in Northampton County. After completing two terms in the United States House of Representatives (1815-1819), he moved to Bordentown, New Jersey, for a time in semi-retirement. He returned to Philadelphia in 1823 where he resumed his active law practice.

As a young lawyer, he successfully represented Benjamin Rush, a signer of the Declaration of Independence and a noted Philadelphia physician, in a libel action in the Pennsylvania courts against William Corbett, the publisher of the *Porcupine Gazette*. The jury found that Corbett had defamed Rush when Corbett disparaged Rush's practice of bleeding patients during the several yellow fever epidemics in Philadelphia in the 1790's.

Later in his legal career, Hopkinson participated as part of Justice Samuel Chase's defense team during his impeachment and his later trial in the Senate in 1804. Several of the Articles of Impeachment related to his actions at the Fries trial. Chase, a staunch Federalist, was acquitted.

Hopkinson appeared as counsel in a number of cases before the United States Supreme Court. Among others, he was co-counsel with Daniel Webster in arguing and winning in 1819 a case upholding the original charter of Dartmouth College. He also represented the State of Maryland, the losing party, in *McCulloch v. Maryland* in which the Supreme Court declared unconstitutional the state's tax on notes issued by the Bank of the United States. It was in the Court's opinion in that case that Chief Justice Marshall penned the well-known words "the power to tax involves the power to destroy."

Hopkinson, in addition to his legal pursuits, was very active in the American Philosophical Society and the Philadelphia Academy of Fine Arts. He also served as a trustee of the University of Pennsylvania. Again, like his father, he was accomplished as a writer of both prose and poetry. His most famous composition, written in 1798, was the popular "Hail Columbia," sung to the tune known as "The President's March." It was an encomium to George Washington and was designed as a patriotic response to counter those in America who made a point of singing the "Marseillaise" to demonstrate sympathy with the revolutionary events occurring in France.

The types of cases heard by Judge Hopkinson did not differ markedly from those that came before Judge Peters, although, of course, the Sedition Act had long ago expired. Hopkinson sat on numerous admiralty and maritime suits, including those in which seamen sued for wages and those involving alleged maltreatment of seamen by ship captains. Based on notions of fairness and equity, he crafted the law in favor of the seamen to prevent abuses by

their powerful officers. Other cases concerned the jurisdiction of United States courts over conduct on the high seas and claims for damages resulting from ship collisions. Bankruptcy matters also came before him. On one occasion, he presided over a lawsuit involving the issue of diplomatic immunity for a minister of the King of Denmark who was arrested and imprisoned for failure to pay a debt. Philadelphia was home to the Second Bank of the United States, headed by Nicholas Biddle. Cases involving bank notes and counterfeiting appeared on his docket.

Judge Hopkinson, as had Judge Peters, recognized the importance of the separation of powers. He was careful not to encroach on the legislative sphere. In one decision, he stated:

This is a case in which a court must be guarded to keep within the judicial pale; and not take a step into the legislative domain, under impulses given by the circumstances of the case. We must look closely and exclusively to what legislation has done on the subject, and be careful to do no more. . . . But the courts have never assumed the office of supplying legislative defects; and a judge should especially look to the limitations of his powers, when he approaches a case of evil aspect and bad fame.

When sitting as a Circuit Judge, Hopkinson was often joined by Justice Henry Baldwin, a Pennsylvanian from Pittsburgh, appointed in 1830 by President Andrew Jackson to succeed Justice Washington. Hopkinson and Baldwin had served together in Congress but did not have the same close relationship as Hopkinson had had with his fellow Federalist and longtime friend Bushrod Washington.

One case of note before Justice Baldwin and Judge Hopkinson involved a robbery. The stagecoach, during this era before the advent of the railroad, was a common means of transportation, not only for passengers but for the United States mail. Travel then, as is true now, was not always without incident. At 2:30 a.m. on December 6, 1829, a stagecoach left Philadelphia for Reading with a driver and one passenger beside him on the outside seat, nine passengers inside the coach, and bags of mail. Suddenly, along the route three highwaymen stepped out, pointed pistols at the driver, and ordered him to stop. The men extinguished the lamps on the coach by striking them with their firearms. In the darkness, after compelling the driver and the passenger beside him to climb down from their outside seat, they demanded that the other passengers exit the coach one by one and then robbed each of them. Next they proceeded to steal the contents of the mailbags, tie up the driver, and hitch the horses to a fence. During the course of the robbery, a conversation ensued between the driver and one of the robbers. The driver reported he was asked “whether I didn’t think it was a rough introduction.” The driver replied, “I thought it was.” When the robber further inquired whether the driver made his living by driving a stagecoach, he answered, “I did and it was a rather hard life too, the way I was used.” The robber responded, “This is the way we make our living, and it’s hard with us sometimes.”

Two of the malefactors were indicted for robbery of the United States mail with the use of a dangerous weapon and for placing the life of the carrier in jeopardy “against the peace and dignity of the United States of America.” The United States Attorney was George Mifflin Dallas, later to be Vice-President of the United States under President Polk. The defendants also

had distinguished lawyers, John Kane, who subsequently became a federal District Judge, and Joseph Ingersoll, later a Congressman and United States Minister to Great Britain.

The defendants were convicted by a jury and all post-trial motions were denied. The Court rejected the defendants' argument, among others, that the indictment had been deficient in failing to identify the county in which the offense occurred as was customary in England. The Court explained that it was sufficient, in accordance with the venue provision of the Sixth Amendment, that the trial took place in the state and the district, in this case the Eastern District of Pennsylvania, where the crime was committed.

One of the most significant cases decided by Judge Hopkinson was *Wheaton v. Peters*, a landmark decision in the field of copyright law. The plaintiffs were assignees of Henry Wheaton who had served by appointment of the Supreme Court as its third reporter of decisions from 1816 until 1827. Initially, Wheaton had received no compensation from the Government but made his money selling copies of the Supreme Court decisions, with notes and summaries, in volumes known as Wheaton's Reports. Because this was not sufficient to make a living, the Court later paid him a salary.

The complaint alleged that Wheaton had both a common law and a federal statutory copyright in the Wheaton Reports. Plaintiffs maintained that defendants, including Richard Peters, Jr., Wheaton's successor as the Supreme Court Reporter and son of Judge Peters, were selling volumes entitled "Condensed Reports of Cases of the Supreme Court of the United States" which contained the virtually identical reports of cases included in the first volume of Wheaton Reports. Plaintiffs sought an injunction to restrain defendants from continuing to sell their works.

Hopkinson ruled that there was no common law copyright in the United States and that Wheaton's assignees had not demonstrated an equitable right to relief under the copyright statute passed by Congress. In 1834, the Supreme Court reviewed Hopkinson's decision on appeal. The Court agreed with him that no federal common law copyright existed, although it remanded on the issue of whether Wheaton had met all the requirements for a copyright under the Copyright Act. The Supreme Court then declared: "It may be proper to remark that the court are unanimously of opinion that no reporter has or can have any copyright in the written opinions delivered by this court; and that judges thereof cannot confer on any reporter any such right." Thus, even if plaintiffs won on the statutory copyright claim, they could only prevail with respect to any summaries and indices and could not prevent others from publishing the opinions themselves.

Hopkinson continued his interest and involvement in public affairs after he was appointed to the bench and apparently had the time to do so. In contrast to what would be permitted of a federal judge today, he was elected as a delegate from the City of Philadelphia to the Pennsylvania Constitutional Convention held intermittently from May 1837 into February 1838. One of the crucial issues it faced was whether state judges should continue to have the benefit of life tenure as provided in the Constitution of 1790, a document which William Lewis had had a hand in drafting. Hopkinson chaired the Convention's Committee on the Judiciary. Despite a valiant effort on his part to retain life tenure for state judges, he was unable to hold back the

populist Jacksonian tide. The delegates voted to change the state constitution to provide for appointment of the judges of the Pennsylvania Supreme Court for fifteen-year terms and the judges of other courts for either ten or five-year terms.

Hopkinson's last reported decision, a maritime matter, was handed down in December 1841. A captain of a sloop sued for payment of additional wages for painting and scraping the vessel at the owner's request. Based on the evidence and finding that these services did not customarily fall within the regular duties of a ship captain, Hopkinson entered a decree in his favor. Reflecting the less restrictive attitude in those days toward conflicts of interest, the record notes without fanfare that the judge's son Oliver Hopkinson represented the captain.

Joseph Hopkinson died in January 1842, after presiding as the Judge in the Eastern District of Pennsylvania for over thirteen years. He was buried in the Hopkinson Cemetery in Bordentown. Like his three judicial predecessors, he was a leader not only in the legal community but also in the civic, cultural, intellectual and political life of Philadelphia and beyond. His death marked the end of the era of judges in this District who had grown up in eighteenth century America.