# Popular Government

*Special Issue*

## The Courts of Yesterday

## The Courts of Today

## The Courts of Tomorrow

## In North Carolina

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# POPULAR GOVERNMENT

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### The Courts of Yesterday, Today and Tomorrow in North Carolina




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THE COMMITTEE ON IMPROVING AND
EXPEDITING THE ADMINISTRATION OF JUSTICE
IN NORTH CAROLINA
OF
THE NORTH CAROLINA BAR ASSOCIATION

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*North Carolina Bar Association*



To The Lawyers of North Carolina:

In a letter written to you a year ago your Committee invited you to write in "every suggestion growing out of your experience at the bar for improving and expediting the administration of justice in North Carolina." Lawyers from all sections of the state responded with thoughtful and penetrating suggestions which have been of great value in guiding the deliberations of your committee.

In the same letter I said: "We are asking every member of the North Carolina Bar Association to become an active working member of this Committee." I repeat that statement now. In order that you may serve with us effectively, we will send you, as they are published, copies of the research reports which form the points of departure for the Committee's deliberations. The report which accompanies this letter—"The Courts of Yesterday, Today and Tomorrow in North Carolina"—outlines the history of our courts and presents a detailed picture of our present-day court system. Its purpose is to show us clearly where we now stand. The Committee hopes that you will read this report carefully within the next few days, and that you will then write any further suggestions occurring to you to Albert Coates, Director of the Institute of Government, Chapel Hill, with a copy to me. This is not merely a formal plea; it is an earnest solicitation of your assistance.

Your Committee is calling this report to the particular attention of all state and local bar association officials, the members of the Judicial Council, and Judges and Solicitors throughout the state. Each member of these groups can bring his experience and insight to assist the Committee in interpreting and explaining the facts set out in this report.

Other reports will follow shortly. They will deal with the internal workings of the courts within the structure which is described in this initial report. These workings have been revealed by detailed studies of the civil and criminal dockets of justices of the peace, recorders' courts and Superior Courts in thirty to forty counties and the cities and towns within them—units representing all types of economic life and all types of courts in all sections of the state. The results of the civil docket study will reach you about the first of April. The criminal docket study will go to you later in April, and a study of juvenile and domestic relations courts will reach you shortly thereafter.

The chairmen of your Committee and its Subcommittees have conferred with a Committee from the justices of the peace. We have just held a conference with the Board of Governors of

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the North Carolina Bar Association. Within the next few weeks we will meet with members of the Judicial Council, the Commission on the Constitution, Justices of the Supreme Court, Judges of the Superior Courts, Judges of recorders' courts, the Attorney General and his staff, and solicitors of the Superior Courts and recorders' courts.

Every effort is being made to get the views of all groups concerned with the administration of justice. At the same time, your Committee wants to keep you abreast of its activities. My first report was carried to you in a letter to all members of the bar in February, 1957. My second report was made to an open session of the North Carolina Bar Association at Blowing Rock in June, 1957, outlining the scope of the study and the working plans. My third report was sent to you in the form of a forty-three page digest of opinions and suggestions coming in from lawyers throughout the state during the latter part of the summer.

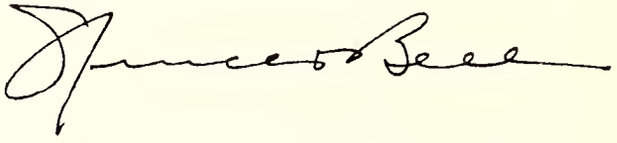
Since my last report your full Committee has met four times: on Saturday, September 14; on Friday and Saturday, October 11 and 12; on Friday and Saturday, December 20 and 21; and on Friday and Saturday, February 14 and 15.

During this time all of the Sub-committees have met once, some twice, and some three times—in Asheville, Charlotte, Rocky Mount, and Chapel Hill. They are bringing the results of their thinking as it develops before the full Committee for discussion. And as the full Committee crystallizes its thinking into tentative conclusions it will submit them to all members of the bar throughout the state for comments and criticisms and arrive at its final conclusions in the light of your advice and counsel.

Your Committee is not working to produce a comprehensive and scholarly report to gather dust upon the shelves of research libraries. We are, rather, trying to produce a comprehensive and accurate report for a very practical purpose—improving and expediting the administration of justice in North Carolina. To achieve this end we must start with accurate information and apply that information to arrive at a recommendation which will be both sound in principle and acceptable in fact to the people of North Carolina. We need your help at each stage of the task.

With all of us thinking and working together we can go a long way toward achieving the goal envisioned by Governor Hodges, who procured the resources for this study, when he said: "I hope and believe that the results of the study will furnish the people of the state a guidebook for the improvement in the administration of justice in North Carolina at all levels, both in the immediate future and for the years to come."

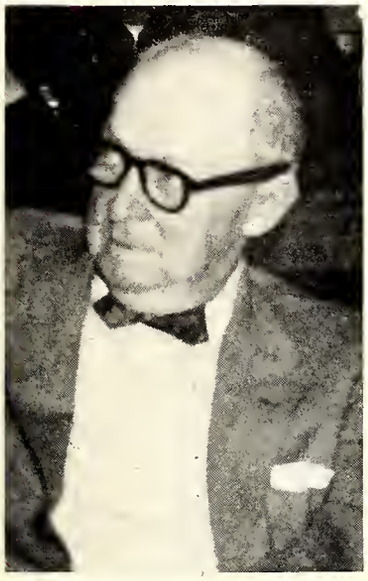
Respectfully submitted,



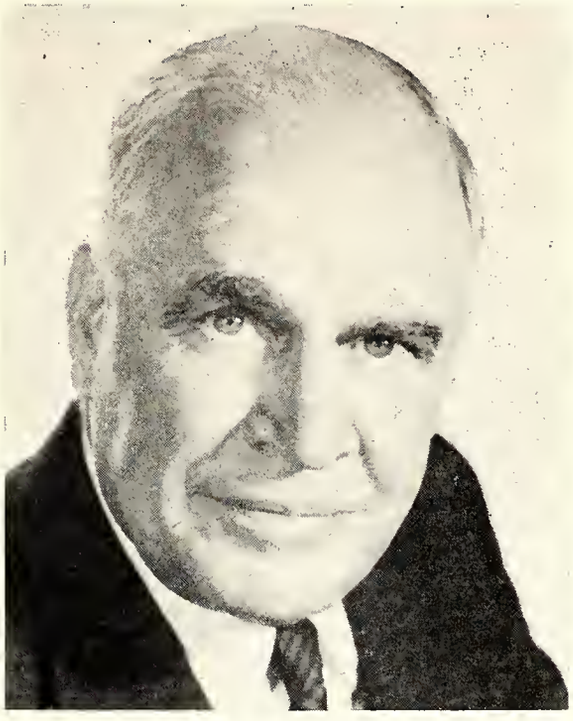
J. Spencer Bell

JSB:mb
Enclosure

J. Spencer Bell (right), Chairman of the Committee on Improving and Expediting the Administration of Justice in North Carolina, confers with W. W. Taylor, Jr., President of the North Carolina Bar Association, Henry Brandis, Jr., Dean of the University of North Carolina School of Law, and John C. Rodman of the Washington, N. C. Bar.



P. K. GRAVELY
*Chairman of the Subcommittee on the Jury System*



*"I hope and believe that the results of the study will furnish the people of the state a guidebook for the improvement in the administration of justice at all levels, both in the immediate future and for the years to come."*—LUTHER HARTWELL HODGES, *Governor of North Carolina*

HOWARD HUBBARD
*Chairman of the Subcommittee on Court Structure and Jurisdiction*

Francis J. Heazel (left), Chairman of the Subcommittee on Court Administration, talks with Joel B. Adams (right), and John Archer.

The Committee gets down to work

WALLACE MURCHISON
*Chairman of the Subcommittee on Practice and Procedure*

J. MURREY ATKINS
*Chairman of the Subcommittee on Public Relations*

The Committee hears a research report

Thomas H. Leath (right), Chairman of the Subcommittee on Judges and Solicitors, discusses a point with William F. Womble.

T. N. Grice, Co-chairman of the Subcommittee on Court Structure and Jurisdiction, talks with Senator James Poyner, of Wake County.

# The Courts of Yesterday, Today And Tomorrow in North Carolina

By Albert Coates

***Director of the Institute of Government***

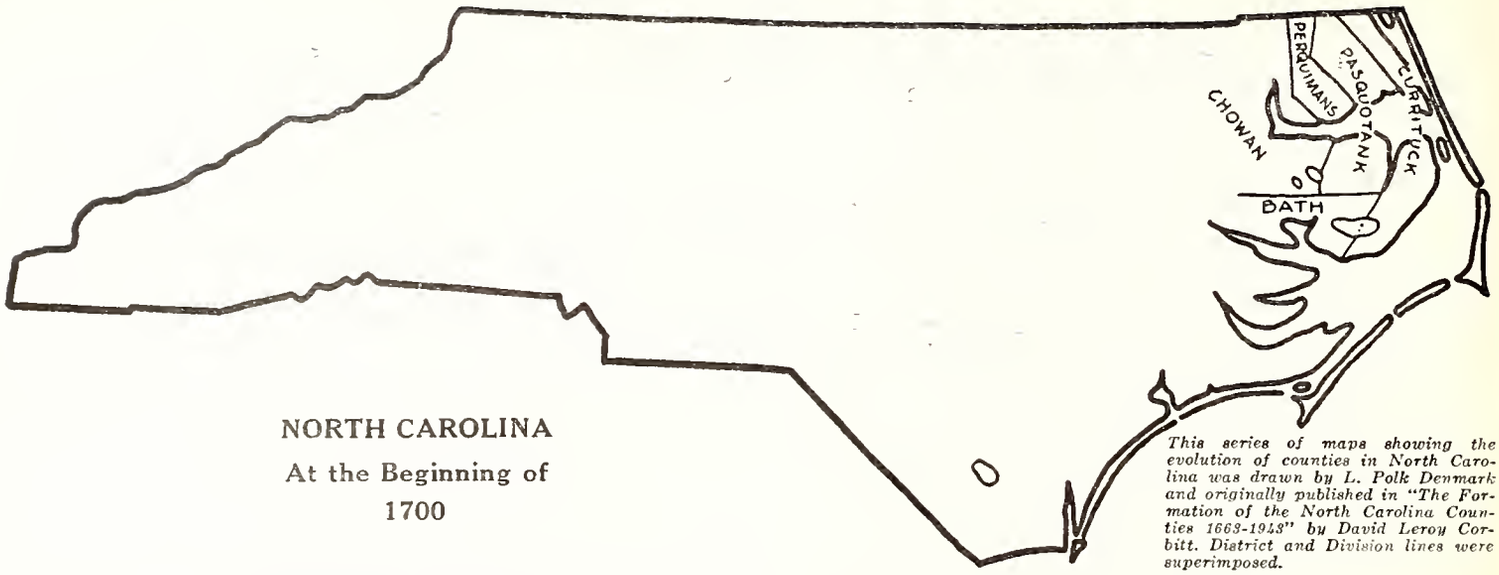
**With the assistance of his present colleagues, Alex Biggs and Robert Midgette; his former colleagues, Clifton Bumgarner, Basil Sherrill and Dillard Gardner; and Gladys Hall Coates.**

The foundations of this report were laid in the early days of the Institute of Government by Dillard Gardner's basic studies of the structure and jurisdiction of our courts as recorded in constitutional provisions, legislative enactments and judicial decisions from 1868 to the 1920's, and by Gladys Hall Coates' studies of the origins and evolution of our court system throughout colonial days and the American Revolution, as recorded in the colonial records, the state records, historical studies growing out of these records and the early constitutions, statutes and decisions. In the last year and a half Clifton Bumgarner, Basil Sherrill, Alex Biggs and Robert Midgette have brought these basic studies up to date and have carried forward the meticulous researches which have found fulfillment in this writing.

Three times in the history of North Carolina its lawmakers have looked at our judicial system in an effort to see it clearly and to see it whole.

The first look came when the Charter from the Crown in 1663 and the Concessions in 1665 authorized the Lords Proprietors to establish a system of courts in the Province of Carolina — "consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this our realm of England." The second look came when the authors of the Constitution of 1868 looked around them at the shambles of a rural and agricultural society—destroyed by civil war and demoralized by "reconstruction"—and faced the problem of adapting old courts to a new society which had not begun to emerge, and whose shape they did not foresee and could not predict. The third look came when the Committee on Improving and Expediting the Administration of Justice in North Carolina was appointed by the North Carolina Bar Association in 1955 at the request of the Governor.

This report to the Committee outlines the system of courts which grew out of the work of our lawmakers from colonial beginnings to the American Revolution. It outlines the system of courts which continued from the American Revolution to the Civil War. It spells out in some detail the structure and jurisdiction of the courts which have come down to us through constitution, statute and decision from 1868 to this day. It points to problems facing the courts of today calling for solutions which will shape the courts of tomorrow.




NORTH CAROLINA
At the Beginning of
1700

*This series of maps showing the evolution of counties in North Carolina was drawn by L. Polk Denmark and originally published in "The Formation of the North Carolina Counties 1663-1943" by David Leroy Corbitt. District and Division lines were superimposed.*

# THE COURTS OF YESTERDAY

1

## The Courts of the Colony—From 1663 to 1776

***The Charter from the Crown.*** The charter from the Crown in 1663 and the Concessions of 1665 granted "full and absolute power to . . . Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkeley, and Sir John Colleton, and their heirs . . . by and with the assent of the free men of the colony . . . to constitute all Courts for their respective Countyes, together with ye Lymitts powers and jurisdiccons of ye said Courts as also ye severall offices and Number of Officers belonging to each of the sd respective Courts together with their severall and respective salleryes fees and prequisites Theire appellations and dignities with the penaltyes that shalbe due to them for breach of their severall and respective dutyes and trusts. . . .

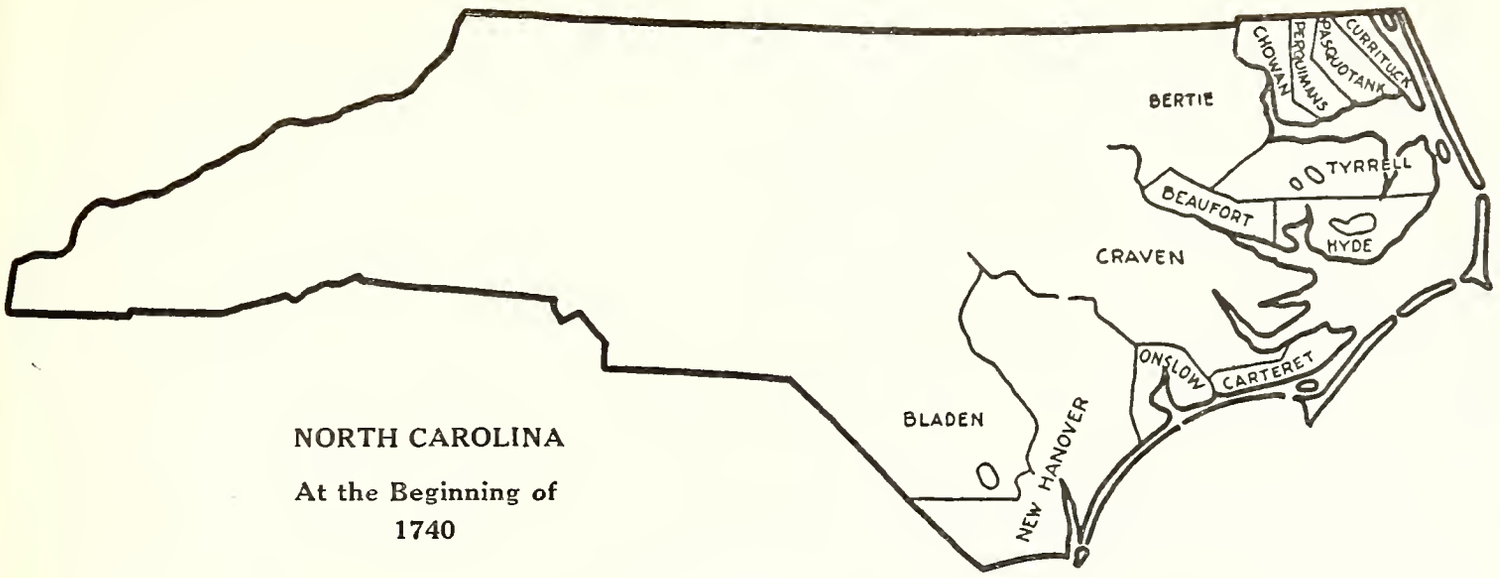
"And to do all and every thing and things, which, unto the compleat establishment of justice, unto courts, sessions, and forms of judicature, and manners of proceeding therein, do belong, . . . : "*Provided nevertheless*, that the said laws be consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this our realm of England."

***Planning under the Charter.*** With this grant of power the duly accredited authorities looked back on the system of courts growing out of the complexities of life in a closely-knit England. They looked around them at the few hundreds of people slowly increasing to thousands, scattered over a wilderness, making their living and living at home. They studied the system of courts set forth by John Locke in the Fundamental Constitutions of Carolina in 1669—with its strange sounding names of "Palatine's Court, Proprietors' Court, Chief Justice's Court, Precinct Courts, Constable's Court, Admiral's Court, Treasurer's Court, Chamberlain's Court." They gradually discarded most of its provisions, and in the letter and the spirit of the common law and its traditions they adapted old customs to new conditions and built a system of courts which withstood the storm and strife of the American Revolution and lasted till 1868.

***The Courts of the Colony.*** The courts of the colony started with the General Court, which had jurisdiction of all cases in law and equity, and legislative and executive responsibilities as well as judicial. It was staffed by the Governor with "six councillors at least or twelve at most or any number between six and twelve," charged by the Lords Proprietors "to do equal justice to all men to the best of their skill and judgment without corruption, favor or affection."

Within a generation this General Court was evolving into a system of courts, including (1) a single justice of the peace in practically every neighborhood to try the smaller civil and criminal cases at almost any time and almost anywhere, (2) a County Court of Pleas and Quarter Sessions in each county to hear appeals from the justices of the peace and to try larger civil and criminal cases beyond the jurisdiction of the justice of the peace, and (3) Superior Courts for each district grouping of counties, to hear appeals from the County Courts of Pleas and Quarter Sessions, and with general civil and criminal trial jurisdiction.

Justices of the peace in every locality in the state




**NORTH CAROLINA**

**At the Beginning of 1740**

had the same jurisdiction and procedure. County Courts of Pleas and Quarter Sessions in every county in the state had the same jurisdiction and procedure. Superior Courts in every district in the state had the same jurisdiction and procedure. And appeals went in similar fashion, for similar causes, and by similar procedures—from justice of the peace courts, to the county courts, to the Superior Courts.

Judges of the Superior Courts traveled circuits to hold court in district centers throughout the colony. A ten-day term twice each year was provided by the laws of 1762: at *New Bern* for the district including the counties of Craven, Carteret, Beaufort, Hyde, Dobbs and Pitt; at *Edenton* for the district including the counties of Chowan, Perquimans, Pasquotank, Currituck, Bertie, Tyrrell and Hertford; at *Wilmington* for the district including the counties of New Hanover, Bladen, Onslow, Duplin and Cumberland; at *Halifax* for the district including the counties of Northhampton, Halifax, Edgecombe, Granville, Johnston and Orange; and at *Salisbury* for the district including the counties of Rowan and Anson.

***Selection and Tenure of Judges.*** The justices of the peace were usually appointed by the Governor, with the advice of his Council, for a period of life or good behavior; three or more of these justices of the peace made up the county court in each county, and they appointed the clerk of the county court. The judges of the Superior Court and the Attorney General were appointed by the Governor — first representing the Lords Proprietors and later the Crown — for life or good behavior, and they in turn appointed the clerks of the Superior Court.

2

## The Courts of the State—From 1776 to 1868

*The second look at the Courts by the lawmakers came with the Constitutional Convention of 1868.*

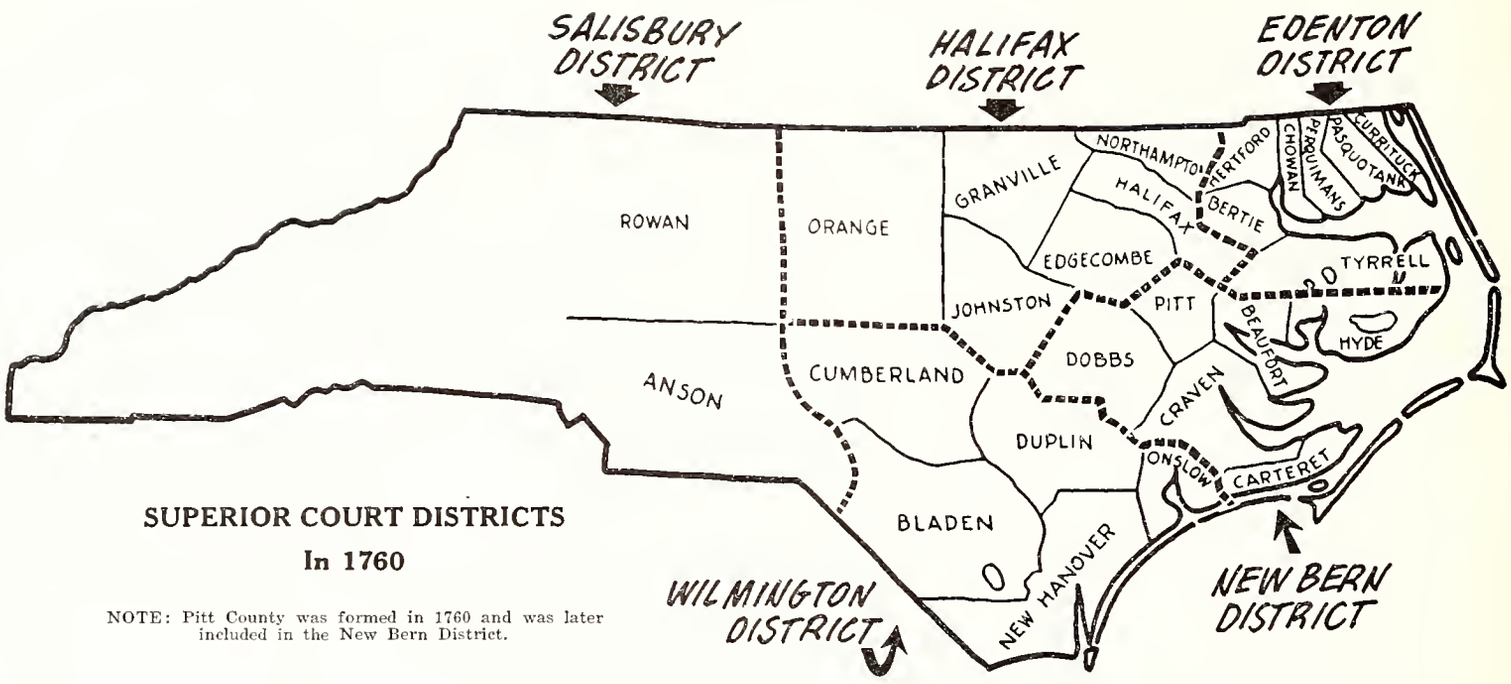
***The Justice of the Peace.*** There was a justice of the peace with the same jurisdiction and procedure in every neighborhood throughout the state. He had jurisdiction in the smaller civil and criminal cases—jurisdiction which had existed for the ninety years from 1776 to 1868 with little change.

***The County Courts.*** There was in every county a County Court of Pleas and Quarter Sessions with the same jurisdiction and procedure. It was staffed by three or more justices of the peace, exercising local legislative power, handling the administration of county government, and sitting in judgment in civil and criminal cases beyond the jurisdiction of the justice of the peace—powers which had slowly expanded from colonial beginnings by orderly growth in a uniform pattern.

***The Superior Courts.*** There were Superior Courts with the same jurisdiction and procedure in every district in the state. They had jurisdiction in civil, criminal and equity cases and other matters—jurisdiction which had continued in orderly patterns of growth with little change from colonial beginnings.

Throughout this period appeals went in orderly fashion from justice of the peace courts to county courts to Superior Courts.

During the ninety years from 1776 to 1868, judicial districts and judges had varied from six in 1777, to eight in 1790, to six in 1806, to seven in 1837 and to eight again by 1862.




**SUPERIOR COURT DISTRICTS**
**In 1760**

NOTE: Pitt County was formed in 1760 and was later included in the New Bern District.

Under the Laws of 1777 Superior Court judges had been required to hold two twelve-day terms of district court each year in New Bern, Edenton, Wilmington, Halifax, Hillsboro and Salisbury, for the counties in their respective districts.

By 1790 the state was divided into Eastern and Western "Ridings," with four districts in each Riding; judges rotated through the districts in each Riding, with one judge from each Riding passing into the other Riding on the completion of each circuit. By 1806 Superior Court sessions were moved from "district center towns" to county seats; and Superior Court judges were required to hold one-week terms, twice a year, in each county. By the 1830's the General Assembly was broadening the Superior Courts of Law into the Superior Courts of Law and Equity — because "many innocent men are withheld of their just rights for want of courts of equity."

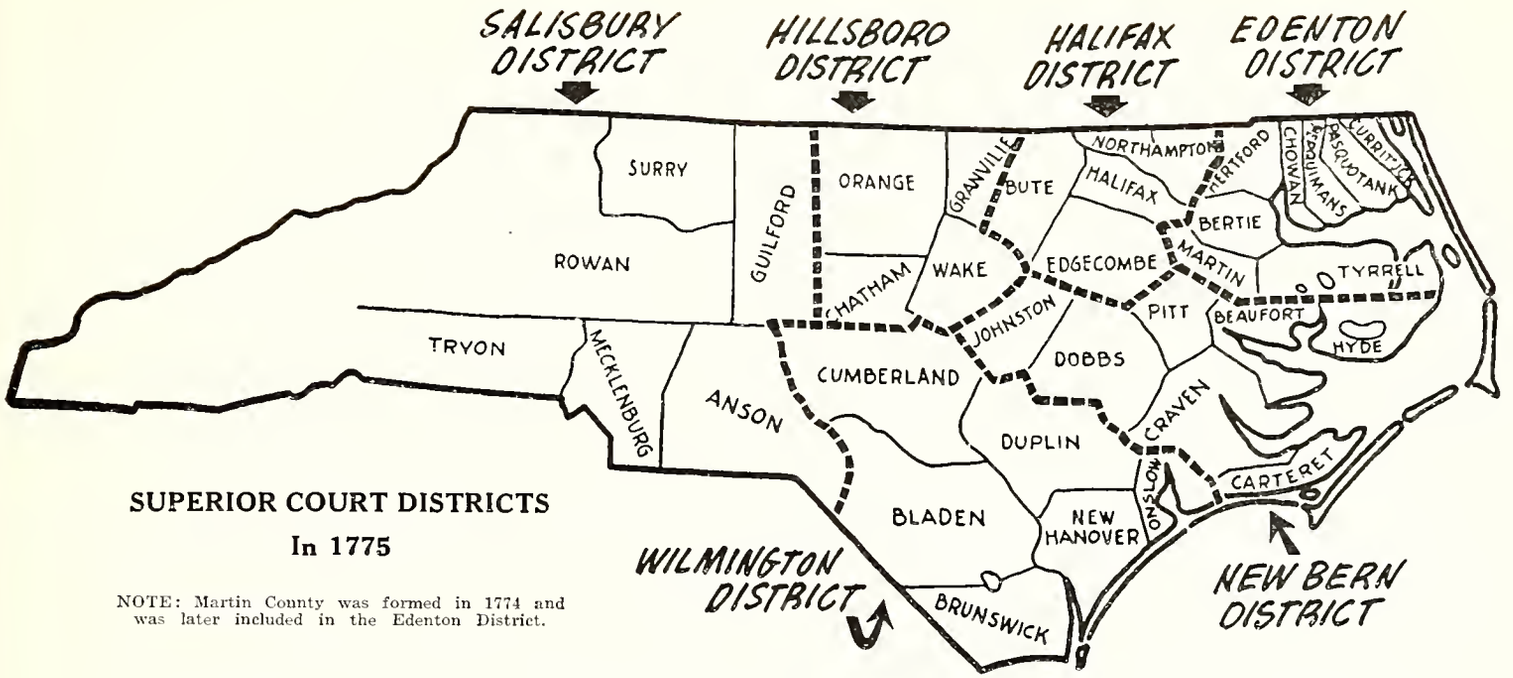
***The Supreme Court.*** In 1799 a legislative act gave the Superior Court judges, sitting *en banc*, authority to pass on law and equity questions which a judge on circuit did not want to decide alone or on which trial judges could not agree. The appellate court idea was developed further in a legislative act of 1810 permitting a party dissatisfied with a Superior Court ruling to remove the case to the full bench. In 1818 this appellate court became the Supreme Court of North Carolina — with three judges having jurisdiction "to hear and determine all questions of law, brought before it by appeal from a Superior Court of Law, and to hear and determine all cases in equity brought before it by appeal from a court of equity, or removed there by the parties thereto."

***Selection and Tenure of Judges.*** Throughout this period from 1776 to 1868 justices of the peace had been appointed by the Governor on the recommendation of members of the General Assembly from their respective counties "during good behavior"; and Superior Court judges and Supreme Court judges had been appointed by joint ballot of members of both houses of the General Assembly, and commissioned by the Governor.

***The Courts of 1868.*** With this background to guide them, the lawmakers of 1868 abolished "the distinctions between actions at law and suits in equity, and the forms of all such actions and suits"; and provided "one form of action for the enforcement or protection of private rights, or the redress of private wrongs, which shall be denominated a civil action; and every action prosecuted by the people of the state as a party, against a person charged with a public offence . . . shall be termed a criminal action."

They wrote into the Constitution provision for the Supreme Court with jurisdiction "to review, upon appeal, any decision of the courts below, upon any matter of law or legal inference; but no issue of fact shall be tried before this court; and the court shall have power to issue any remedial writs necessary to give it a general supervision and control of the inferior courts."

They eliminated the pre-war county court from the judicial system, divided the jurisdiction of civil and criminal cases between the single justice of the peace and the Superior Court, transferred to clerks of the Superior Court the probate jurisdiction of the pre-war county courts, and created a board of county commissioners in each county




**SUPERIOR COURT DISTRICTS**
**In 1775**

NOTE: Martin County was formed in 1774 and was later included in the Edenton District.

and transferred to them most if not all of the executive and legislative powers previously vested in the county courts.

They fixed the dividing line of jurisdiction between the justice of the peace and the Superior Court at $200 in "civil actions, founded on contract . . . wherein the title to real estate shall not be in controversy" with the justice of the peace having "exclusive original jurisdiction" below this line and the Superior Court having "exclusive original jurisdiction" above it.

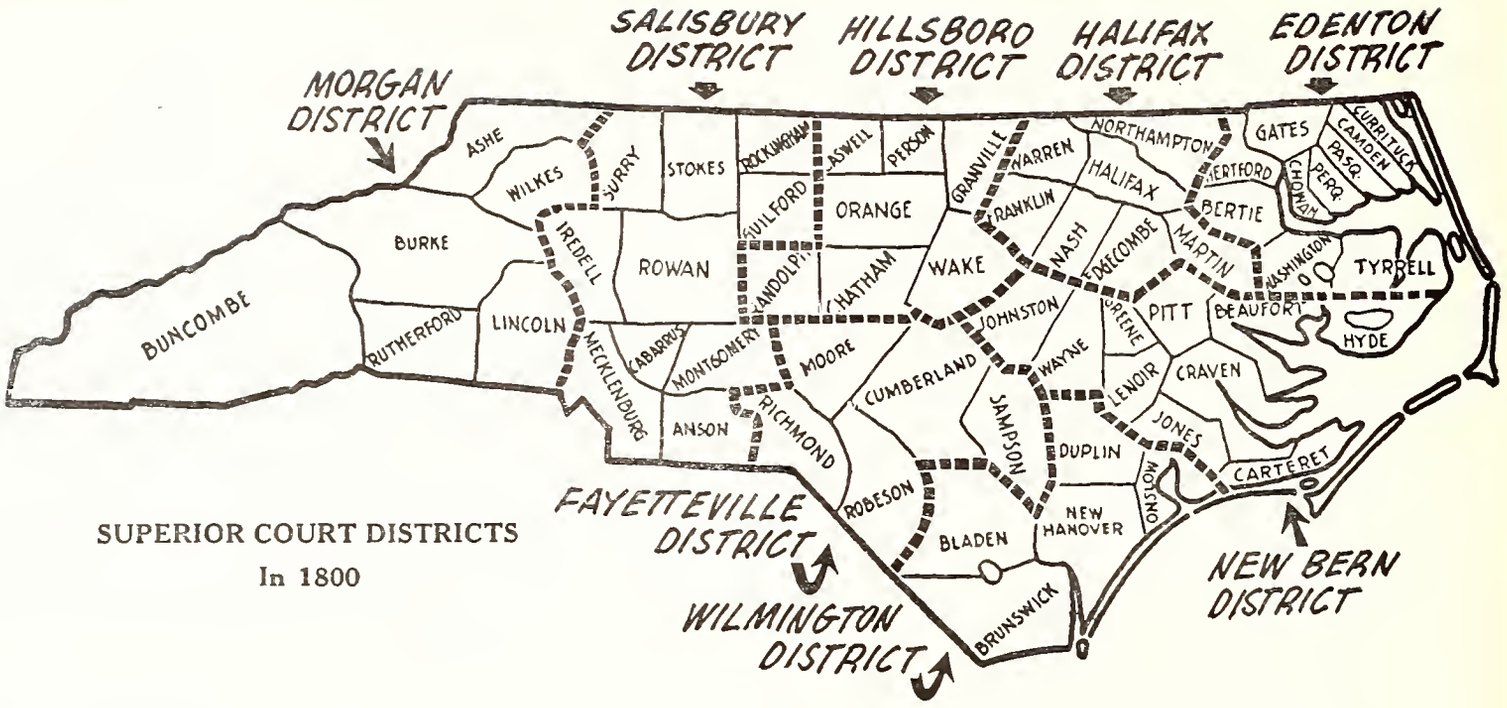
They fixed the dividing line of jurisdiction in criminal cases at "a fine of fifty dollars or imprisonment for one month" (thirty days in 1875) — with the justice of the peace having "exclusive original jurisdiction" of offenses below this line and the Superior Court having "exclusive original jurisdiction" of offenses above it.

They provided for future growth of the judicial system (1) by increasing the Superior Court districts from nine to twelve, (2) by increasing the number of justices of the peace to two in each township and allowing the General Assembly to increase the number of justices of the peace in cities and towns and in those townships in which cities and towns were located, and (3) by permitting the General Assembly to establish "special Courts for the trial of misdemeanors in cities and towns where the same may be necessary."

They provided for election of Supreme Court Justices by the voters of the state for eight-year terms, for election of the Attorney General by the voters of the state for a four-year term, and for the appointment of a Supreme Court clerk, marshal, librarian, and reporter by that Court, for election of Superior Court judges by voters of the state for eight-year terms, for election of solicitors by voters of each district for four-year terms, for election of a clerk of court by the voters of each county for a two-year term, and for election of justices of the peace by the voters of townships for two-year terms.

They preserved the simplicity and uniformity of structure and jurisdiction which had developed in colonial days and continued after the Revolution through the Civil War by providing a uniform method of selection, term of office, jurisdiction and procedure for every justice of the peace in every town and township in the state, for every Superior Court judge in every district in the state, for every Superior Court solicitor in every district in the state, and for every Superior Court clerk in every county in the state. With the intermediate county court eliminated, they provided for appeals from the justice of the peace to the Superior Court, and from the Superior Court to the Supreme Court.

***The Changes of 1875.*** Amendments to the 1868 Constitution in 1875 continued the basic pattern of 1868, and gave the General Assembly a freer hand to adapt the judicial system to future needs by (1) removing the fixed limit on the number of judicial districts and permitting the General Assembly to increase or decrease them as the need occurred, (2) removing the fixed limit on the number of justices of the peace and permitting the General Assembly to add others as it saw fit, (3) taking out of the Constitution the "exclusive" original jurisdiction of the justice of the peace and the Superior Court over cases on either side of the $200 dividing line in civil cases and the $50 —




SUPERIOR COURT DISTRICTS
In 1800

thirty-day dividing line in criminal cases, and (4) giving the General Assembly power to "allot and distribute that portion of this power and jurisdiction which does not pertain to the Supreme Court among the other courts prescribed in this Constitution or which may be established by law, in such manner as it may deem best. . . ."

## THE COURTS OF TODAY—FROM 1868 to 1958

*A third look at the judicial system as a whole has come with the Committee on Improving and Expediting the Administration of Justice in North Carolina, appointed by the North Carolina Bar Association in 1955, at the request of the Governor of North Carolina.*

### The Supreme Court

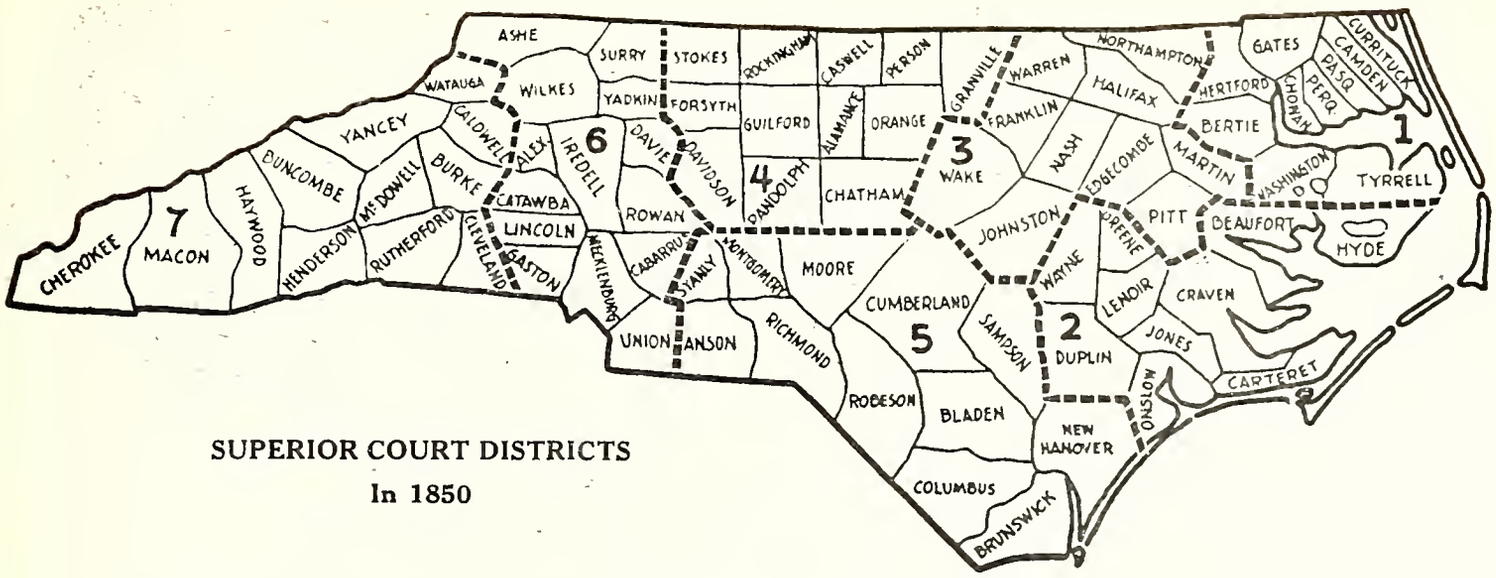
The Supreme Court has continued an orderly adjustment to its growing volume of work during the ninety-year period from 1868 to 1958. The Court has consisted of five Justices in 1868, three in 1865, five in 1888, and seven since 1936—elected by the voters of the state for eight-year terms. The Attorney General, who represents the State in criminal cases before the Court, is elected by the voters of the state for a four-year term, and a clerk, marshal and librarian, and court reporter are appointed by the Court. The influence of the Court was extended in the field of law through the creation of the Judicial Council in 1949, and in the field of judicial administration in 1950 by transferring control over the exchange and assignment of judges from the Governor to the Chief Justice.

Under the laws of 1837 the Supreme Court was required to hold two terms of court in the City of Raleigh each year beginning on the last Monday of December and the second Monday in June, and to "sit at each term until all the business on the docket shall be determined, or continued upon good cause shown." Under the laws of 1855 the Court was required to hold three terms each year—two in Raleigh beginning on the 30th day of December and the second Monday in June, and one in Morganton beginning on the first Monday in August. Under the 1868 Constitution the Court was required to hold two terms each year at the seat of the state government, beginning on the first Monday in January and the first Monday in June. Under the amendment of 1875 the Court was required to hold two terms at the seat of state government, with power in the General Assembly to change the meeting dates—a power exercised by the General Assembly in 1881 by designating the first Monday in February and the first Monday in August.

Under Rule 7 of the Supreme Court Rules, the Court calls appeals from far eastern and western judicial districts of the state during the first week of the spring and fall terms and moves gradually toward the center of the state.

### The Superior Court

The Superior Court system has continued an orderly adjustment to its growing volume of work during the ninety-year period from 1868 to 1958.




**SUPERIOR COURT DISTRICTS**
**In 1850**

***Its Judges.*** The Superior Court system expanded to twelve districts and judges in 1868, contracted to nine in 1875, expanded again to twelve in 1885, to sixteen in 1901, to twenty in 1913, to twenty-one in 1937, and to thirty in 1955—with one judge for each district until 1955, when the pressure of work called for two judges for the 18th and 26th districts. These regular Judges were supplemented by retired judges of the Supreme and Superior Courts in 1921 (retired Superior Court judges only, in 1955) and further supplemented by special judges —eight in 1927, twelve in 1953, and four in 1955, when the number of judicial districts was increased from twenty-one to thirty.

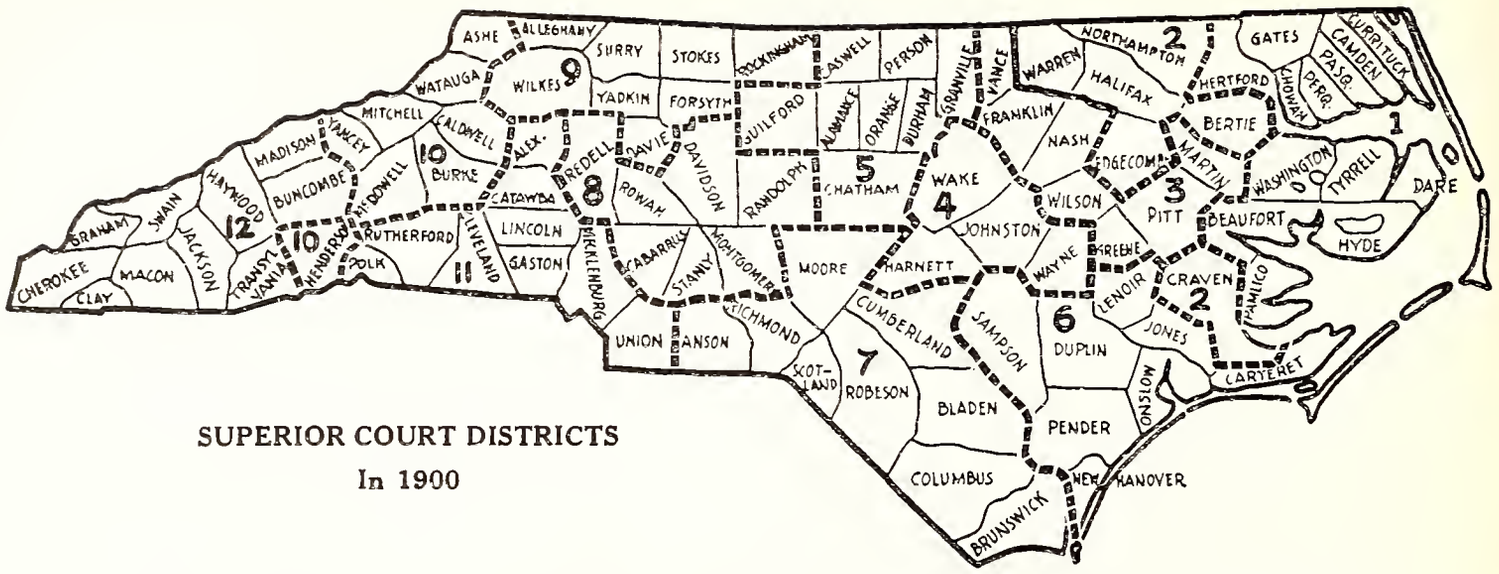
These judges rotated on a statewide basis from 1790 to 1868, from county to county within their respective districts from 1868 to 1875, again on a statewide basis from 1875 to 1915, and from district to district within their respective divisions since 1915 — changing districts every six months, and holding at least one week of court in each county of the district during each six-month term.

Special judges are assigned by the Chief Justice of the Supreme Court without limitation as to judicial district or division. During the calendar year 1957 four special judges held a total of 170 weeks of court in counties from one end of the state to the other. One, holding 40 weeks of court, went as far to the east as Pamlico County, as far west as Buncombe, north to Caswell and south to Brunswick; another, holding 42 weeks of court, went from Buncombe to Edgecombe and from Surry to Richmond; a third, holding 45 weeks of court, went from Gaston to Craven and from Rockingham to Columbus; another, holding 43 weeks of court, went from Buncombe in the West to Person in the North to New Hanover in the Southeast.

The number of weeks of regularly scheduled court varies from twenty-nine weeks in the 13th judicial district, to thirty-five in the 1st and 6th, to thirty-seven in the 22nd and 30th, to thirty-eight in the 2nd, to thirty-nine in the 23rd, 24th and 25th, to forty in the 9th, to forty-two in the 5th and 16th, to forty-three in the 4th and 29th, to forty-four in the 14th and 15th, to forty-five in the 8th, 12th, 17th and 20th, to forty-eight in the 19th, to forty-nine in the 27th, to fifty in the 3rd, to fifty-two in the 7th, to fifty-three in the 11th and 21st, to fifty-seven in the 28th, to sixty-five in the 10th, to eighty-one in the 18th, to ninety in the 26th. Twenty-three of these weeks were cancelled, and seventy-five weeks of special terms were added and apportioned to districts throughout the state.

***Its Judicial Districts.*** These districts vary in the number of counties—from one county in the 10th, 14th, 18th, 21st, 26th and 28th districts, to two counties in the 5th, 12th and 16th districts, to three counties in the 7th, 8th, 11th, 13th, 15th, 25th and 27th districts, to four counties in the 3rd, 4th, 6th, 17th, 19th, 22nd, and 23rd districts, to five counties in the 2nd, 9th, 20th, 24th and 29th districts, to seven counties in the 1st and 30th districts. They vary in geographical extent — from 229 square miles in the 14th district to 3,085 square miles in the 30th district. They vary in population — from 74,227 in the 1st district to 220,820 in the 26th district. They are grouped in four divisions — with thirty-two counties in the First Division, twenty counties in the Second, twenty-three counties in the Third, and twenty-five counties in the Fourth.

***Its Jurisdiction.*** Its general jurisdiction has continued — to try cases growing out of contract, where the amount sued for is over $200, all cases growing out of tort, and criminal cases where the punishment exceeds a $50 fine or 30 days in jail—




**SUPERIOR COURT DISTRICTS**
**In 1900**

modified by grants of concurrent jurisdiction to other courts, and with jurisdiction, as the head of the trial court system, to hear civil and criminal appeals from lower courts.

Its added powers have continued to grow, and now include appointment and supervision of receivers, referees, and commissioners for special purposes, holding hearings on writs of habeas corpus and mandamus, punishing for contempt, issuing warrants and setting bail, hearing appeals from the clerk of Superior Court, and supervising the handling of the estates of infants.

***Its Solicitors.*** The state is divided into twenty-one solicitorial districts with a solicitor for each district, elected by the people of the district for a term of four years. The solicitorial districts vary in the number of counties—two in the 7th, 12th, 14th and 19th districts, three in the 11th district, four in the 6th, 8th, 9th, and 21st districts, five in the 2nd, 4th, 10th and 17th districts, six in the 3rd, 5th, 13th, 15th, 16th and 18th districts, seven in the 20th district, and ten in the 1st district. They vary in geographical extent from 900 square miles in the 14th district to 3,777 square miles in the 1st district. They vary in population from 90,000 people in the 17th district to 343,000 in the 14th district. The solicitors travel from county to county within their respective districts, attend each criminal or mixed term of Superior Court held in the counties of the district for which they are elected, prosecute on behalf of the State all criminal actions in the Superior Court, and advise the officers of justice in their respective districts.

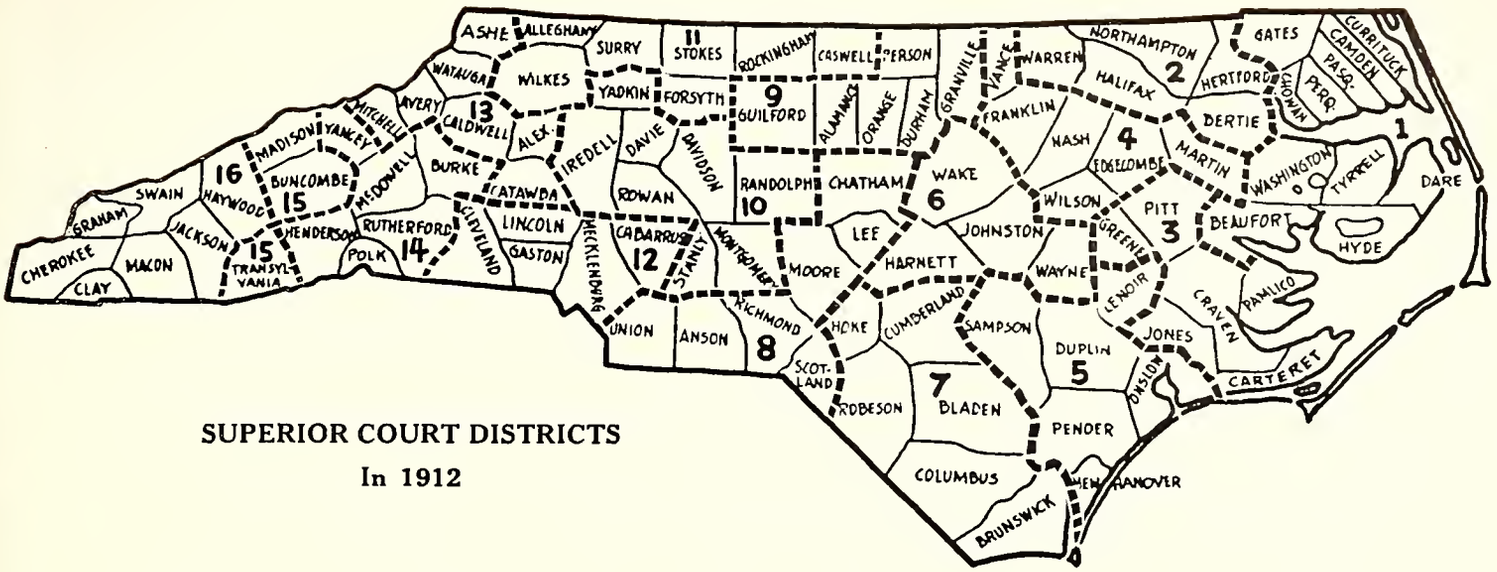
The number of regularly scheduled weeks of criminal terms and mixed criminal and civil terms of Superior Court from July 1957 through June 1958 varied from twenty-one in one solicitorial district to fifty-one in another. The number of special criminal terms during 1957 ranged from none in eleven solicitorial districts, to one in four districts, to two in two districts, to three in four districts. The combined number of weeks of criminal and mixed terms ranged from twenty-two weeks in one solicitorial district, to twenty-six in another, to twenty-eight in four districts, to twenty-nine in two, to thirty-two in three, to thirty-four in two, to thirty-five in three, to thirty-nine in two, to forty-one in one, to forty-five in one, to fifty-one in one.

***Its Clerks.*** The clerk of the Superior Court in each of the one hundred counties of the state is elected by the voters of the county for a four-year term. The clerks have such responsibilities as (1) keeping the books and records of the Superior Court, (2) acting as *ex officio* judges of probate, (3) hearing special proceedings, (4) signing judgments by default or by default and inquiry, and making orders on many procedural matters which develop in the course of civil actions, (5) docketing the judgments, issuing executions, and hearing supplemental proceedings, (6) giving ancillary remedies of claim and delivery and of attachment or garnishment, (7) issuing warrants in criminal actions, (8) approving bonds, handling fines and costs, and issuing commitments for prison sentences, in addition to keeping the files, books, and records.

***Its Jurors.*** *Requirement of jury trial.* The 1776 Constitution had provided for jury trial in civil cases in these words:

"That in all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable."

It provided for jury trial in criminal cases in these words:




**SUPERIOR COURT DISTRICTS**
**In 1912**

"That no freeman shall be convicted of any crime, but by the unanimous verdict of a jury, of good and lawful men, in open court, as heretofore used."

It provided for grand jury indictments in criminal cases in these words:

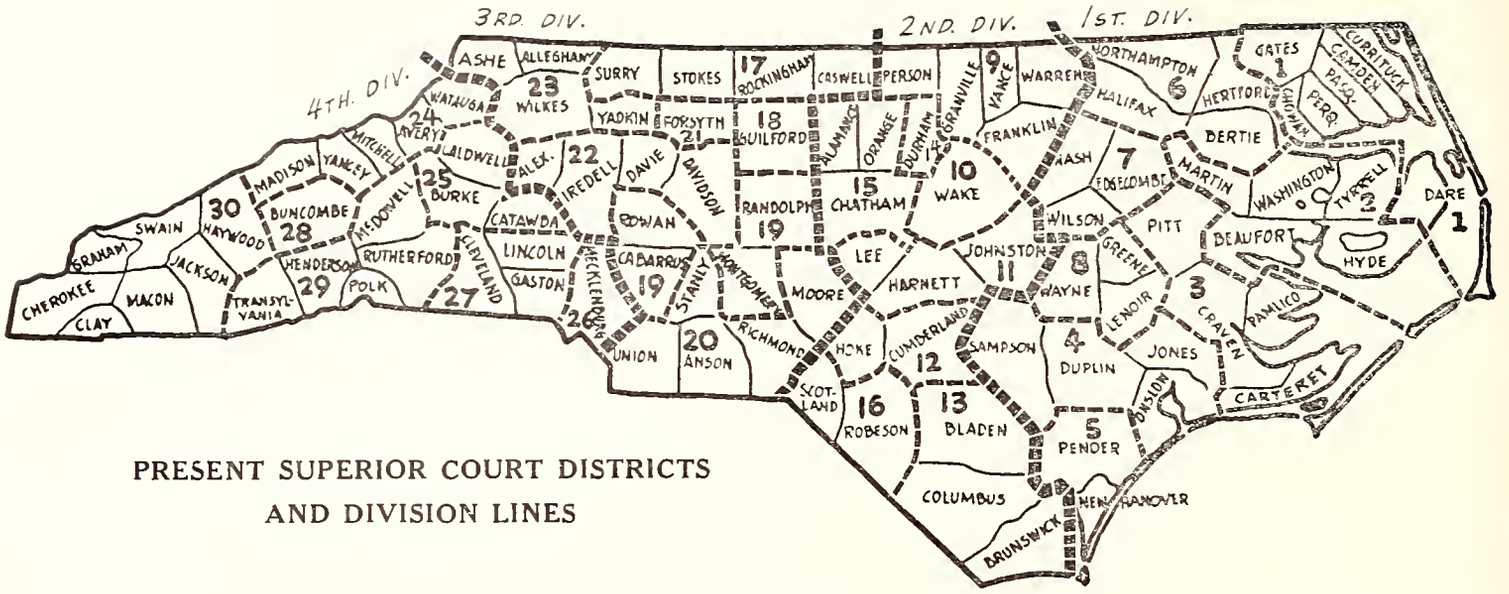
"That no freeman shall be put to answer any criminal charge, but by indictment, presentment, or impeachment."

Constitutional amendments, legislative enactments, and court decisions through the years have relaxed the stringency of these provisions by permitting parties to civil actions to waive jury trial in all cases under procedures prescribed by the General Assembly; by permitting persons accused of misdemeanors to be tried without jury in lower courts and in the Superior Courts on prescribed conditions; and by permitting the waiver of grand jury indictment for misdemeanors in lower courts and in the Superior Court under regulations prescribed by the General Assembly.

It has long been pointed out by members of the bench and bar that while the Constitution guarantees to every person the right to jury trial if he wants it, and sometimes forces him to take it when he does not want it, our present laws permit a party to a civil or criminal action to demand and get *three* jury trials—in the justice of the peace court, in most of the special act and general law lower courts, and in the Superior Court.

***Qualification of Jurors.*** In the beginning, only men who owned property were eligible for jury service. The qualified list was later expanded by successive steps to include men who had paid taxes for the preceding year, to include Negroes, to include women, and finally to include all "good and lawful persons" over 21 years old and residents of the county.

***Exemption of Jurors.*** The laws of 1804 exempted from jury service "all regular ministers of the Gospel of every denomination, and all regular bred physicians or practitioners of physic and surgery." By degrees the General Assembly has added to these exemptions through the years until the laws today exempt a woman who is ill, who is required to care for children under twelve years of age, or whose care is required for some member of her family who is ill, members of voluntary fire companies, Confederate veterans, "all members of the armed forces of the United States on active duty," "all practicing physicians, licensed druggists, telegraph operators who are in the regular employ of any telegraph company or railroad company, train dispatchers who have the actual handling of either freight or passenger trains, regularly licensed pilots [nautical], regular ministers of the gospel, officers or employees of a State hospital for the insane, active members of a fire company, funeral directors and embalmers, printers and linotype operators, all millers of grist mills, all United States railway postal clerks and rural free delivery mail carriers, locomotive engineers, firemen, brakemen and railroad conductors in active service, radio broadcast technicians, announcers, and optometrists, registered or practical nurses in active practice and practicing attorneys at law, and all members of the national guard, North Carolina State guard and members of the civil air patrol, naval militia, officers reserve corps, enlisted reserve corps, and the naval reserves, who comply with and perform all duties required of them as members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, and the naval reserves. . . ."




PRESENT SUPERIOR COURT DISTRICTS
AND DIVISION LINES

## Lower Courts

The Committee looks around and sees a lower court system consisting of (1) justice of the peace courts, (2) mayors' courts, (3) "special act" courts, (4) "general law" courts, (5) juvenile courts, (6) domestic relations courts, and (7) administrative courts — fourteen to fifteen hundred in all, established by different people, in different places, for different purposes, at different times — with interlocking, overlapping and conflicting relationships. This system, or lack of system, in the lower courts is better understood by looking at the ways in which they came into the picture.

We will look first at three short-lived experiments of the General Assembly from 1875 to 1900; second, at the justices of the peace as the oldest of our present lower courts; third, at the mayors' courts; fourth, at the courts established by the General Assembly by "special acts" from 1905 to 1917; fifth, at the "general laws" passed by the General Assembly from 1917 to 1957 authorizing the establishment of lower courts; sixth, at the "general law" amendments to "general law" courts; seventh, at the "special act" amendments to "general law" and "special act" courts; eighth, at the variations in "special act" and "general law" courts today; ninth, at the confusion caused by these variations in "special act" and "general law" courts in the basic jurisdiction of the justices of the peace and the Superior Courts; tenth, at two radical departures from the traditional pattern in the juvenile and domestic relations courts, and the administrative courts.

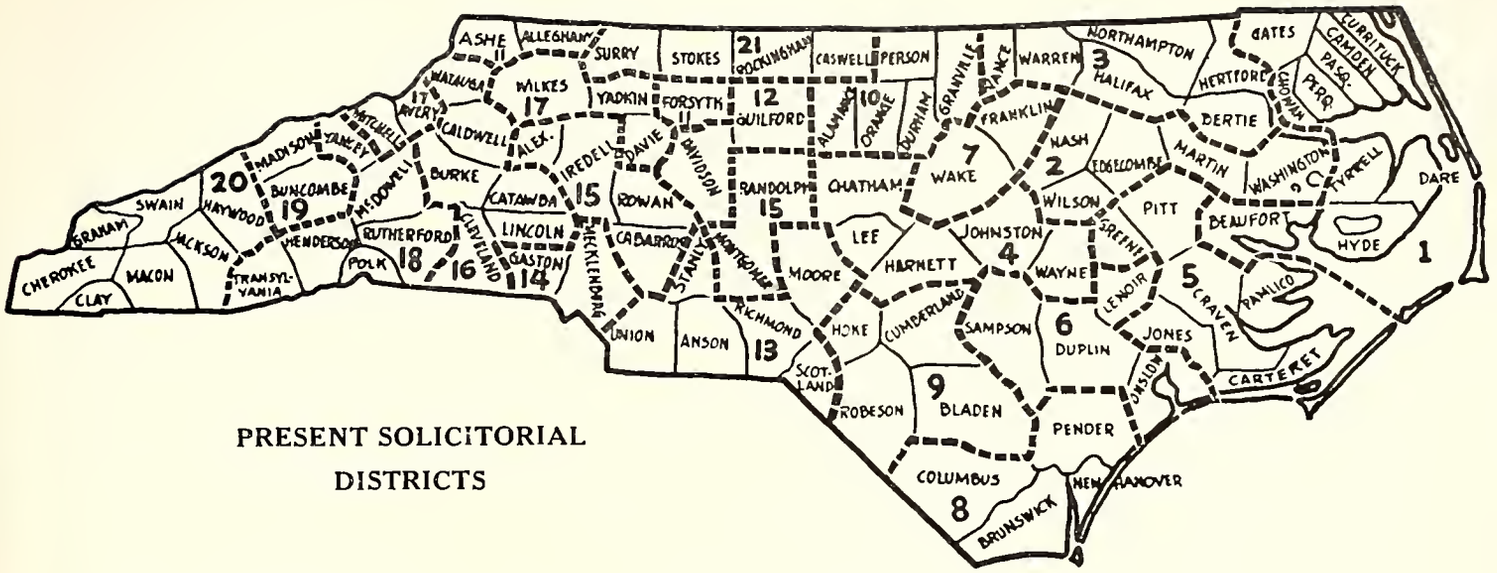
### Short-Lived Experiments From 1875 to 1900

Under the broadened powers "to allot and distribute" jurisdiction given by 1875 amendments to the 1868 Constitution, the General Assembly tried three experiments in swift succession.

1. **Revival of the old County Court.** In 1876 the General Assembly authorized all counties in the state to restore the old county court of pre-war days as a sort of middle ground between the justice of the peace and the Superior Court. A few counties tried it in nostalgic longing for the "good old days," found that the good old days which had not gone with war were going with Reconstruction, saw that the old pattern did not fit the new day, and soon abandoned it.

2. **A new type of County Court.** In the same year — 1876 — the General Assembly authorized the counties of New Hanover and Wake, which had no liking for the pre-war county courts, to try another type of criminal court with "exclusive" original jurisdiction, formerly exercised by the Superior Court, over all misdemeanors and felonies committed within their respective counties, and with appeals by-passing the Superior Court and going directly to the Supreme Court.

3. **The coming and going of the Circuit Court.** In 1885 the General Assembly authorized the counties of New Hanover and Mecklenburg to organize a criminal circuit court, with exclusive appellate jurisdiction from the justice of the peace in criminal cases, with exclusive original jurisdiction of all other crimes, and with appeals to the Superior Court on questions of law only. In 1898 the General Assembly converted this criminal circuit court for the counties of New Hanover and Mecklenburg into the Eastern Criminal Circuit Court with jurisdiction over the counties of New Hanover, Mecklenburg, Craven, Edgecombe, Halifax, Robeson,




**PRESENT SOLICITORIAL DISTRICTS**

Vance and Warren. The counties of Cumberland and Nash were added in 1897 and Northampton and Wilson in 1899; Vance was excluded in 1897 and Warren in 1899.

A similar development was going on in the west. After 1876 the General Assembly established a County Court for Buncombe County, converted it into the Buncombe County Criminal Court in 1889, replaced this County Criminal Court with a Western Criminal Circuit Court in 1895 — with jurisdiction over the the counties of Buncombe, Haywood, Henderson and Madison. Burke, Caldwell, Forsyth, McDowell, Surry and Yancey were added later.

These legislative experiments were cut down by the Supreme Court in *Rhyne v. Lipscomb*, 122 N.C. 650, 29 S.E. 57 (1898) — stopping the budding practice of appeals from these Eastern and Western Circuit Courts to the Supreme Court and requiring all appeals from all "courts inferior to the Supreme Court" to go through the Superior Courts.

In 1899 the jurisdiction of the Eastern Circuit Court was limited to the counties of New Hanover, Mecklenburg, Edgecombe, Robeson, Halifax, Cumberland, Craven, Nash, Warren, Wilson, and Northampton — with appeals going to the Superior Court. In the same year the Western Circuit Court was limited to the counties of Burke, Caldwell, Forsyth, Surry and Yancey — with appeals going to the Superior Court. In 1901, both Eastern and Western Criminal Circuits were abolished. The legislative experiments beginning in 1876 had frazzled out.

### Justice of the Peace Courts

*Methods of selecting the justice of the peace have fluctuated through the years.* From 1868 to 1875 he was elected by the voters in each township. From 1877 to 1895 he was appointed by the General Assembly. From 1895 to 1917 he was selected by the General Assembly and by the voters in each township. From 1917 to 1949 he was selected by (1) the voters in each township, (2) the General Assembly or (3) the Governor. In 1949 the General Assembly gave the resident Superior Court judge in twenty-seven counties power to appoint justices of the peace, when authorized by the county commissioners. In 1955 the Governor's power of appointment was transferred to the resident judge of the Superior Court; and today justices of the peace may be (1) elected by the voters in each township, (2) designated in "omnibus bills" by the General Assembly, and (3) appointed by the resident judge of the Superior Court.

*Their terms of office have fluctuated with the years* — two years from 1868 to 1876, six years from 1876 to 1895, two years for those elected by the voters from 1895 to 1958, and two, four or six years for those appointed by the General Assembly from 1895 to 1943, four years for those appointed by the Goverror from 1917 to 1955, and two years for all justices of the peace selected by any method today.

*The number authorized has fluctuated through the years.* In 1868 two were authorized for each township, and a larger number in cities and towns and in townships where cities and towns were located. In 1877 one was authorized for each township, another for each township with a city or town, and still another for every 1,000 people in a city or town. In 1883 two more were authorized for each township. In 1895 three were authorized for each township, another for each 1,000 people in a city or town within the township, and an unlimited number by legislative appointment by special acts.

*The number appointed by special act of the General Assembly has fluctuated through the years.* 1,050 were appointed in 1899; 1,790 were appointed in 1901; 1,013 were appointed in 1903; 1,232 were appointed in 1905; 1,422 were appointed in 1907; 1,486 were appointed in 1909; 1,126 were appointed in 1911; 1,451 were appointed in 1913; and 1,576 were appointed in 1915.

A 1917 amendment to the Constitution prohibited the General Assembly from appointing justices of the peace by private, local or special act or resolution.

The number appointed by the General Assembly by special act the Constitution to the contrary notwithstanding—or by "omnibus bill" since 1917—has fluctuated through the years. 1,197 were appointed in 1919; 1,580 were appointed in 1921; 1,431 were appointed in 1923; 1,337 were appointed in 1925; 1,072 were appointed in 1927; 944 were appointed in 1929; 1,407 were appointed in 1931; 1,382 were appointed in 1933; 1,041 were appointed in 1935; 1,283 were appointed in 1937; 760 were appointed in 1939; 502 were appointed in 1941; 703 were appointed in 1943; 511 were appointed in 1945; 743 were appointed in 1947; 803 were appointed in 1949; 740 were appointed in 1951; 726 were appointed in 1953; 660 were appointed in 1955; and 692 were appointed in 1957.

*The number authorized today is uncertain.* There are 1,027 townships in North Carolina, and the statute authorizes election of 3,081 justices of the peace in these townships. Add a justice of the peace "for every one thousand" people living in an incorporated city or town, and the authorized number ranges from a low of nine in the counties of Camden and Graham, to a high of 152 in Mecklenburg County. Add the indeterminate number of justices of the peace which may be appointed by the General Assembly in every legislative session, and add the indeterminate number which may be appointed by resident judges of the Superior Court and the number goes to an uncertain total.

***Number "Active" Today.*** According to the records of the Law Enforcement Officers' Benefit and Retirement Fund, 940 justices of the peace were "active" in North Carolina in 1957. These 940 were scattered through the state in numbers ranging from zero in one county to forty-four in another. According to the records, around 100 justices of the peace work full-time on the job, around 300 work part-time; and around 540 handle a transaction now and then. The full-time justice of the peace usually has a fixed working place and regular hours of work, and some of them hold their courts and tend to their business with dignity and dispatch, winning the confidence of those who bring them business, and bringing income in fees and costs and perquisites of office to an amount greater than the salary of a Superior Court judge.

Most of the part-time justices are "birds on the wing," and litigants find them on a "catch as catch can" basis. With no fixed time or place for tending to judicial business, the part-time justice of the peace can tend to business anytime or anywhere, and the records show him trying cases in his back yard, on his front porch, in the rear end of a grocery store over chicken crates, over a meat counter in a butcher shop, in an automobile, over the plow handles, in a printshop, in a garage, in an icehouse, in a fairground ticket booth, and in a funeral parlor.

*The fees charged in criminal cases heard and disposed of by justices of the peace vary*: from $1.75 in one court, to $1.90 in another, to $2.00 in another, to $2.25 in another, to $2.50 in another, to $2.75 in another, to $2.80 in another, to $3.00 in another, to $3.10 in another, to $3.25 in another, to $3.40 in another, to $3.50 in another, to $3.65 in another, to $3.75 in another, to $4.00 in another, to $4.25 in another, to $4.50 in another, to $4.75 in another, to $5.00 in another, to $5.50 in another, to $5.75 in another, *They vary among justices of the peace of the same county*: from $2.25 by one justice of the peace, to $2.70 by another, to $2.80 by another, to $3.85 by another in one county; and from $1.70 by one justice of the peace to $2.80 by another; from $2.25 by one to $4.00 by another; from $3.75 by one to $5.75 by another in other counties.

Fees charged by justices of the peace in preliminary hearings run as high as or higher than fees charged for cases heard and disposed of by them. They vary from no fee for this function by one justice of the peace to $2.00 by another, to $2.25 by another, to $2.40 by another, to $2.50 by another, to $2.75 by another, to $3.25 by another, to $3.50 by another, to $3.75 by another, to $4.00 by another, to $4.25 by another, to $4.50 by another, to $4.75 by another, to $5.00 by another, to $5.25 by another.

*Costs of court vary in cases heard and disposed of by justices of the peace*: from $4.50 by one justice of the peace to $5.00 by another, to $6.75 by another, to $6.90 by another, to $7.00 by another, to $7.25 by another, to $7.50 by another, to $7.75 by another, to $7.80 by another, to $8.00 by another, to $8.10 by another. to $8.15 by another, to $8.25 by another, to $8.75 by another, to $9.00 by another, to $9.50 by another, to $9.75 by another, to $10.00 by another, to $10.25 by another, to $10.35 by another, to $10.50 by another, to $10.55 by another,

to $11.00 by another, to $11.25 by another, to $11.40 by another, to $11.50 by another, to $12.00 by another, to $13.50 by another, to $14.00 by another, to $15.00 by another.

***Jurisdiction.*** In addition to his power to try smaller civil and criminal cases, every justice of the peace has power to perform marriage ceremonies, take acknowledgment or proof of the execution of written instruments—deeds, mortgages, deeds of trust, assignments, powers of attorney, contracts for the conveyance of land, leases, and any other instruments required to be registered—take the private examination of married women in their business transactions with their husbands, supervise the allotment of years' allowances to the widows and children of deceased persons, and to perform miscellaneous duties.

His jurisdiction in civil and criminal cases reached its high-water mark in the 1868 Constitution which gave him "exclusive" original jurisdiction over all civil actions, founded on contract, where the sum demanded did not exceed $200, and when the title to real estate was not in controversy —and in later years over tort cases involving not more than $50, and "exclusive" original jurisdiction of criminal actions where the punishment could not exceed a fine of fifty dollars or thirty days in jail. Ever since 1868 the measure of his jurisdiction has fluctuated with the value of the dollar. The 1875 amendments took away his "exclusive" criminal jurisdiction and left it in the discretion of the General Assembly. A decision of the Supreme Court in 1906 upheld a statute giving to a mayor or city court jurisdiction to the exclusion of the justice of the peace over offenses committed within city limits, *State v. Baskerville,* 141 N.C. 811, 53 S.E. 742 (1906). The successive establishment of city and county courts with concurrent power in civil and criminal cases since the turn of the century has siphoned off the greater volume of his business without subtracting from his jurisdiction.

### Mayors' Courts

A second system of lower courts came in with the mayors' courts. The town and city developed in North Carolina in the early 1700's, with power to pass ordinances for the better government of the town, not inconsistent with the laws of the state—to be enforced by private suits for civil penalties in courts of justices of the peace.

When rural-minded justices of the peace did not prove too zealous in enforcing town and city ordinances, the way was open for the establishment of mayors' courts with jurisdiction, first of town and city ordinance violations, and later of the smaller misdemeanors committed within the town or city limits. By the 1850's the General Assembly was authorizing suits for civil penalties for violation of town ordinances to be brought before the mayor of the town as well as the justice of the peace, thus insuring a more rigorous execution of town policies—and the mayor's court was started on its way.

The growth of mayors' courts was speeded by the 1868 Constitution giving the General Assembly power to establish "special courts for the trial of misdemeanors in cities and towns." Pursuant to this provision the General Assembly established mayors' courts by special act in Henderson in 1869, in Greensboro in 1870, and in Charlotte, Waynesville and Wilkesboro in 1871. The 1871 General Assembly defined ordinance violations as misdemeanors and gave to the mayor of every city and town the criminal jurisdiction of a justice of the peace within the city limits. By 1917 special provisions for mayors' courts were made in the charters of 247 towns and cities; a hundred forty-four of these mayors' courts are reported in operation today.

Since 1868 the General Assembly has increased the subject-matter jurisdiction of many mayors' courts to include a multiplicity of specific misdemeanors beyond the jurisdiction of the justice of the peace — the number and type differing with every special act and charter provision — and in many towns and cities to go beyond the jurisdiction of the justice of the peace to include all crimes below the grade of felony. Twelve mayors' courts operating today are in this category.

By degrees the General Assembly has increased the territorial jurisdiction of some of these mayors' courts to a half mile beyond city limits, a mile, a mile and a half, two miles, two and a half miles, five miles, to the limits of the graded school district, and to all town property outside city limits.

These mayors' courts have cut down the volume of business of the justice of the peace in criminal cases to the vanishing point. And the Supreme Court has upheld legislative grants of jurisdiction in criminal cases to the complete exclusion of the justice of the peace within city limits — if not beyond. *State v. Baskerville,* 141 N.C. 811, 53 S.E. 742 (1906); *State v. Doster,* 157 N.C. 634, 73 S.E. 711 (1911).

The mayor's process is served by different officers in different places — in some by town police, in others by the township constable, in others by the county sheriff or his deputies, and in others by "any lawful officer."

By the 1890's the volume of business in many cities and towns was outgrowing the capacities of

a mayor who made his living in private enterprise and served as chief executive of his city on the side, and the mayor's court evolved into the city court — separated from the mayor's office — with criminal jurisdiction, or civil jurisdiction, or both, in varying amounts and in varying territories. Such courts were established in Asheville in 1891, in Winston in 1899, in Charlotte and Raleigh in 1905, and from time to time in other places. By degrees the subject-matter jurisdiction of these city courts was increased along the same lines as the mayors' courts, and the territorial limits were increased in similar fashion. Counties followed this lead from 1907 to 1917—with county courts varying in subject-matter jurisdiction and in territorial jurisdiction. Then came the combination city-county court. All of these courts cut down the civil and criminal business of the justices of the peace — sometimes to the vanishing point—in the differing territories in which they operated.

### "Special Act" Courts—From 1905 to 1917

In the years that followed, the General Assembly established a multiplicity of courts by "special acts" — a hundred or more by 1917. Most of them were established after 1900. Seventy of them are operating today. Sixty-three of the seventy operating today were established in the twelve-year period from 1905 to 1917. Hundreds of special act amendments have been made to these special act courts, resulting in a confusing variety of differences in civil and criminal jurisdiction, practice and procedure, costs of court, methods of selecting court personnel, lengths of term, methods of filling vacancies, causes for removal, amounts and methods of compensation, records, and the multiplicity of procedures involved in the administration of justice in the courts.

Complaints against this multiplying miscellany of courts found expression with the President of the North Carolina Bar Association in 1915:

> In the main these courts which have been in some places a great and continuing benefit, in other of indifferent success and in some a real stench in the nostrils of the public spirited citizens will remain until they are repealed and abolished, some by local action, others by legislative action in response to local demand. There is no doubt that the experiment with these courts has served a useful purpose. It has satisfied many that the experiment is not, and cannot be, a permanent success. It has, in every instance, taken care of the local condition arising from the total inadequacy on the part of the Superior Courts to cope with local business and dispatch the criminal dockets.
>
> In the main it appears that it is a costly experiment, and while in some instances the advocates of these courts have been long and loud in their demands for them on the ground of the dispatch of business, the consequent saving in witness attendance, and in the supposed costly and unwieldly machinery of the Superior Court, yet with the cost of these courts, both direct and indirect, a tendency to multiply offenses in many instances for the express purpose of increasing the fees of the officers, a tendency to disregard the rights of the state, or the defendants, or both, according to the local sentiment, the temptation to make these courts responsive to local demands, a tendency to multiply recorders, prosecuting officers, and process servers, and to make the courts return a big yield in money, have, to a large measure, subverted the real and intended functions of such courts, and to make them fast turn into paths of disrepute.
>
> If I could present a moving picture showing these various local courts and their varying session, their many modes of procedure, explaining the manner in which crimes are changed by crossing a township or county line, as the case may be, and the manner in which each local court bill was drafted to circumvent the plain letter of the Constitution, and above all how the city, town, township, and county have been substituted for the State in the administration of the criminal law, you would be ready to designate the entire system a crazy quilt court system, a veritable judicial Pandora's Box, creating judicial and court chaos.
>
> These local courts not only trespass upon the jurisdiction of the Superior Courts and the J. P. Courts, but in attempting to occupy their supposed jurisdictional domain they have given us a system of courts that are the most expensive, less effective, and more demoralizing to the profession of law than any system ever attempted in this State.

In response to widespread sentiment of this sort throughout the state a Constitutional amendment in 1917 provided: "The General Assembly shall not pass any local, private or special act or resolution: (1) relating to the establishment of courts inferior to the Superior Court; (2) relating to the appointment of Justices of the Peace; . . . (3) relating to pay of jurors; . . . .

"The General Assembly shall have power to pass general laws regulating the matters set out in this section."

### "General Law" Courts—From 1917 to 1957

*The 1919 General Assembly Plan for a Uniform System of Lower Courts.* Mindful of the 1917 prohibition against "private, local and special acts," the 1919 General Assembly passed a law "to establish a uniform system of recorders' courts for municipalities and counties in the State"—(1) a Municipal Recorder's Court, (2) a County Recorder's Court, and (3) a Municipal-County Court.

(1) The Municipal Recorder's Court section of the 1919 plan authorized the governing body of any municipality with a population of at least 5,000 to call on the voters within the city limits to decide whether to establish a municipal recorder's court with the power to try all misdemeanors committed within the city limits and within a radius of two miles beyond; and authorized the county commissioners to confer civil jurisdiction up to $1,000 in contract and up to $500 in tort on any municipal recorder's court established in a municipality with a population of 10,000 to 25,000 inhabitants. (2) The County Recorder's Court section of the 1919 plan authorized the board of county commissioners of any county to call on the voters of the county to decide whether to establish a county recorder's court with the power to try all misdemeanors committed within the county. (3) The Municipal-County Court section of the 1919 plan authorized the board of county commissioners and the governing body of any county seat town with a population of 2,000 or more, by joint resolution, to call on the voters of the county to decide whether to establish a Municipal-County court with the power to try all misdemeanors committed within the county or the county seat, but outside the limits of other municipalities in the county with a population of 2,000 or more.

When this general law was introduced, legislators sent pages scrambling to the Speaker's desk with amendments exempting forty-seven counties. Forty-seven percent of the bill was thus lost on the floor of the General Assembly; and before long the other fifty-three percent was challenged in the courts. A county recorder's court was established in Iredell County under the provisions of this act. It convicted a defendant for selling liquor, and he appealed from the conviction on the ground that a legislative enactment applying to fifty-three of one hundred counties was not a general law but a "private, local, and special act," violating the 1917 amendment. The Supreme Court felt that a little more than half a loaf was better than no bread and that fifty-three percent of the legislative purpose was worth saving; that as long as the law was on the books the forty-seven counties which had taken themselves out might bring themselves in, as the advantages of uniformity appeared; and that the one hundred percent goal desired in the beginning might be achieved in the end. *In Re Harris*, 183 N.C. 633, 112 S.E. 425 (1922).

But this hope died almost aborning. Four more counties were excluded in 1921, and another in 1923. But in 1921 the tide turned; six more counties were brought within the law in 1921, one in 1925, two in 1927, six in 1929, six in 1931, one in 1935, one in 1941, one in 1947, and two in 1953—leaving a total of twenty-six counties and the municipalities within them still excluded from the act. Courts established under this general law were thus added to the special act courts established prior to 1917.

The *Harris* case blighted any hope that the 1919 general law providing for a uniform system of lower courts would gradually absorb into a uniform pattern nearly a hundred special act courts which had been established under the sheltering wing of the Constitution from 1905 to 1917. And even the resurrection of the hope faded under the developing doctrine that any law applying to a specific class or type of counties, townships, cities and towns was a general law so long as there was sufficient substance in the classification to justify the court in holding that the distinction was not without a difference.

In the forty years from 1917 to 1957 fourteen types of general laws have been passed by the General Assembly under this doctrine, establishing fourteen types of "uniform courts" in adjoining, dovetailing, or overlapping areas.

*The 1919 general law was followed by a 1923 general law* authorizing the board of county commissioners of any county in the state to call on the voters of the county to decide whether to establish a General County Court, with power to try all misdemeanors committed within the county and with unlimited civil jurisdiction in both contract and tort. It excluded eighteen counties by name from the operation of this law in 1924 and all other counties having courts already established under special acts, excluded another county in 1925, and another in 1927, and brought in one of the twenty counties specifically excluded in 1929, four in 1931, one in 1937, two in 1953, and one in 1957.

*The 1923 general law was followed by two 1925 general laws* authorizing any county in the state to establish a County Court and a County Civil Court. The first authorized the "board of county commissioners of any county in this State upon the petition of a majority of the resident practicing attorneys within the county" to establish "an inferior court with civil jurisdiction only," to be called a "County Court," with "exclusive original jurisdiction in all civil actions, matters, and proceedings, including all proceedings whatever ancillary, provisional and remedial to civil actions founded on contract or tort, wherein the superior court now has exclusive original jurisdiction; Provided, that the sum demanded or the value of the property in controversy shall not exceed three thousand dollars ($3,000)." Thirty-two counties were originally excluded from this law and one was added in 1955, bringing sixty-nine counties within its operation.

The second 1925 act authorized the "board of county commissioners of any county" to establish a "County Civil Court" with civil jurisdiction, to be exercised concurrently with the Superior Court, in contract and tort "wherein the amount demanded shall not exceed the sum of five thousand dollars." Ten counties were originally excluded from this law and one was added in 1955, bringing ninety-one counties within its operation.

*The 1925 general law was followed by a 1931 general law* authorizing the "boards of county commissioners of any two or more adjoining counties within the same judicial district, upon a petition to the Governor signed by a majority of the resident licensed attorneys at law in those counties, to establish by a resolution adopted by a majority vote of each of the boards," a District County Court for the participating counties with the same jurisdiction as the "General County Courts"—that is, the power to try all misdemeanors committed within the limits of any of the participating counties and with unlimited civil jurisdiction in actions founded on both contract and tort. This act made no specific exemptions but applied only to those counties subject to the General County Court Law, and could be utilized only by a county adjoining some other county which was also subject to the General County Court Law and which lay in the same judicial district. As the judicial districts were arranged, only thirty-eight counties could participate in establishing District County Courts, if they had wanted to do so.

Another 1931 general law authorized the board of county commissioners "of any county" to establish by resolution a "County Criminal Court" with power to try all misdemeanors committed within the limits of the county, "except as to offenses over which justices of the peace have final jurisdiction." Sixty-five counties were excluded from this law; three have since been brought within it—one in 1935, one in 1939, and one in 1951.

*The 1931 general laws were followed by another general law in 1937* authorizing "a majority of the members of the board of county commissioners of any county in the State" to establish a "County Civil Court" with jurisdiction, to be exercised concurrently with the Superior Court, of all contract and tort actions "wherein the amount demanded shall not exceed the sum of one thousand five hundred dollars" and "in all actions and proceedings for divorce and alimony, or either, and to make such orders respecting the care, custody, tuition and maintenance of the minor children of the marriage as may be proper."

*The 1937 general law was followed by another general law in 1939* authorizing "the members of the board of county commissioners of any county in the State" to establish a "Special County Court" with civil jurisdiction concurrent with the Superior Court, "in all actions founded on contracts wherein the amount demanded shall not exceed the sum of fifteen hundred dollars ($1500.00)" and "in all actions not founded on contracts where the amount shall not exceed the sum of one thousand dollars ($1,000.00)," or with criminal jurisdiction to try all misdemeanors committed within the limits of the county, or with both the civil jurisdiction and the criminal jurisdiction specified. Sixty counties were excluded from this law.

*The 1939 general law was followed by another general law in 1955* authorizing "a majority of the members of the board of county commissioners of any county in the State" to establish a "County Civil Court" with jurisdiction in both contract and tort actions "wherein the amount demanded shall not exceed the sum of three thousand dollars ($3,000.00)" and "in all actions and proceedings for divorce and alimony, or either, and to make such orders respecting the care, custody, tuition and maintenance of the minor children of the marriage as may be proper." This law applied "only to counties having a total population in excess of 100,000 according to the latest federal census," thus excluding all but seven counties from its operation.

*The 1955 general law was followed by another general law in 1957* authorizing "the members of the board of county commissioners of any county in the State" to establish a County Court with jurisdiction in both contract and tort actions "wherein the amount demanded or the value of the property in controversy shall not exceed the sum of three thousand dollars ($3,000.00)" and with criminal jurisdiction to try all misdemeanors committed within the limits of the county. One county has established a court under this act.

### "General Law" Amendments to "General Law" Courts—From 1917 to 1957

This multiplying process did not stop with the tailoring of general laws to fit specific types of local situations; it went on to permit a multiplicity of general law amendments to these multiplying types of general laws. To illustrate:

*The 1919 "Municipal Recorder's Court" law was amended,* in 1921 (1) to provide a method of extending the territorial jurisdiction of the court throughout the township and along with it to extend the municipal police jurisdiction; (2) to make the rules for serving process in this court conform to the practice in the Superior Court and eliminate the necessity of filing written pleadings in civil actions within the concurrent jurisdiction of the

justice of the peace; (3) to raise the jury deposit from $3.00 to $5.00 in civil actions; and (4) to provide that civil judgments of the court are not liens on realty until docketed in the Superior Court. *The law was amended in 1925* (5) to reduce the municipal population required to establish the court from 5,000 to 1,000; (6) to increase the territorial jurisdiction of the court from two miles beyond the city limits to five miles; (7) to authorize the municipal governing body to provide schedules of fees for the recorder, the clerk, and the prosecuting attorney; (8) to provide that the recorder may be the mayor of the town, and (9) to prevent the territorial jurisdiction of the court from extending into any other municipality or outside the county. *The law was amended in 1933* (10) to eliminate the requirement that the town have less than 25,000 population in order for the county commissioners to confer civil jurisdiction on the court. *It was amended in 1943* (11) to eliminate the provision authorizing the recorder to be the mayor, *in 1945* (12) to revise the sentencing powers of the recorder, *in 1947* (13) to eliminate the requirement of an election to establish the court in municipalities with population of over 20,000, and (14) to provide a method of establishing the court without an election in other municipalities, and *in 1955* (15) to provide that, where the municipality is located on a county line, the fines and forfeitures go to the county in which the crime is committed.

*The 1919 County Recorder's Court act was amended,* in 1921 (1) to permit establishment of the court without a popular election, (2) to change the expiration date of the recorder's term of office, (3) to fix the fees of the recorder and the prosecuting attorney, (4) to permit removal of cases to the court from the justice of the peace upon filing a written request rather than an affidavit, (5) to require transfer of cases between the recorder's court and the Superior Court when persons are incorrectly bound over to either court by a justice of the peace, (6) to authorize the recorder to amend warrants at any time before judgment, (7) to authorize the county commissioners to confer civil jurisdiction on the court, (8) to make rules for serving process conform to those of the Superior Court, (9) to eliminate the necessity of filing written pleadings in civil cases within the concurrent jurisdiction of the justice of the peace, (10) to fix the jury deposit at $5.00 in civil actions, (11) to provide that civil judgments of the court are not liens on realty until docketed in the Superior Court, and (12) to require trials *de novo* in the Superior Court on appeals from the county recorder's court. *It was amended in 1925* (13) to permit the recorder to sentence convicts to the roads of any county in an adjoining judicial district, *in 1935* (14) to empower deputy clerks of the Superior Court to act as clerks to the recorders' courts in all but eleven counties, and (15) to authorize the appointment of special deputy clerks to serve as clerks to the recorders' courts in all but fourteen counties, *in 1943* (16) to allow the county commissioners to establish the court away from the county seat, and *in 1945* (17) to revise the sentencing powers of the recorder.

*The 1923 "General County Court" Law was amended in 1924* (1) to authorize the county commissioners to establish the court without a popular election, (2) to provide a method by which the county commissioners could abolish the court, (3) to require the transfer from the Superior Court of criminal cases within the jurisdiction of the county court to that court upon its establishment, (4) to permit the transfer of civil cases to the court from the Superior Court, (5) to give the court concurrent criminal jurisdiction with any special courts of cities and towns within the county, (6) to eliminate a provision fixing the salary of the judge and prohibiting him from practicing law in other courts, (7) to authorize the county commissioners to appoint the judge rather than have him elected by popular vote, (8) to eliminate a provision fixing a minimum salary for the prosecuting attorney, (9) to give the sheriff and the clerk the same fees as in the Superior Court, and (10) to require that the costs in civil and criminal actions be "taxed and collected as now provided by law." *It was amended in 1925* (11) to permit the county commissioners to establish the court without a popular election in those counties having two or more cities with populations of more than 20,000, (12) to authorize the county commissioners to appoint the solicitor and fix his term of office, (13) to permit the process of the court in cases above the jurisdiction of the justice of the peace to be executed in other counties and to permit changes of venue from the court to the Superior Courts of other counties, and (14) to conform the pleading procedure to that of the Superior Courts. *It was amended in 1927* (15) to reduce the requirement of two cities with populations of over 20,000 for the county commissioners to establish the court without an election to a requirement of one such city, *in 1931* (16) to permit the judge in all but forty counties, in his discretion, to require the drawing of eighteen to twenty-four jurors for jury service, *in 1933* (17) to permit the clerk of the court in all but forty counties to issue criminal warrants, (18) to authorize the judge to transfer civil cases to the Superior Court for trial, (19) to require motions for removal of cases to federal court to be heard by the judge of the county court with the right of appeal to the Superior Court, and (20) to revise the appellate procedure in civil

cases, *in 1935* (21) to confer concurrent jurisdiction in divorce and alimony cases upon the court and to authorize deputy clerks of the Superior Court in all but eleven counties to perform the duties of clerk to the court, *in 1937* (22) to confer upon the court concurrent jurisdiction to appoint receivers and supervise receiverships, (23) to require that demand for jury trial in civil cases be made in the pleadings, (24) to eliminate the requirement of the $3.00 jury deposit in criminal cases, and (25) to fix the time for docketing appeals in the Superior Court, and *in 1957* (26) to reduce from 20,000 to 15,000 the requisite city population authorizing the county commissioners to establish the court without a popular election.

*The 1925 act authorizing the establishment of county civil courts with jurisdiction up to $3,000 was amended in 1947* (1) to clarify the provisions on filing pleadings and *in 1955* (2) to include another county. *The 1925 act* authorizing the establishment of county courts with civil jurisdiction up to $5,000, was amended *in 1955* to include another county. *The 1931 act* authorizing adjoining counties within the same judicial district to cooperate in establishing one court under the general county court law was amended in 1943, with regard to the contribution of the participating counties to the salaries of court personnel. *The 1931 county criminal court act* exempted sixty-five counties from its operation. Three of these counties have since been made subject to the act—one in 1935, one in 1939, and one in 1951. Otherwise, the act has been subject to only one general amendment, in 1947, with regard to the issuance and service of process.

The two county civil court acts of 1937 and 1955, respectively, the special county court act of 1939, and, of course, the county court act of 1957 have not been subjected to any general amendments. One county has utilized the 1937 civil court act; one county has utilized the 1939 special county court act; and one county has utilized the 1957 county court act; the 1955 civil court act has not yet been used.

### "Special Act" Amendments to "General Law" and "Special Act" Courts—From 1917 to 1957

In 1926 the Supreme Court held that "there is nothing in . . . [the 1917 amendment] which prohibits the Legislature from increasing or decreasing the jurisdiction of these inferior courts already in existence. The prohibition is against the *establishment* of courts inferior to the Superior Court, by any local, private or special act or resolution." *State v. Horne*, 191 N.C. 375, 131 S.E. 753. In 1933 it held (1) that the General Assembly may delegate to local authority the power to establish inferior courts provided for by general laws, and (2) that the constitutional requirement that the judges and clerks of the inferior courts be elected was not violated by legislation authorizing the boards of county commissioners, themselves, to "elect" inferior court judges. *Meedor v. Thomas*, 205 N.C. 142, 170 S.E. 110. These decisions left the General Assembly free to make changes in any general law or special act court from session to session until it was completely "re-created" if not "re-established"—free to do by successive special acts in successive years what it could not do by one special act in one year. The result is a system of courts comprised of (1) the special act courts now in existence established from 1905 to 1917, (2) the general law courts now in existence established from 1917 to 1957, (3) the general law amendments to the general law courts, and (4) the special act amendments to both special act and general law courts.

In the thirty-year period after the 1917 prohibition, a multiplicity of private, local, or special acts were passed relating in one form or another to lower courts. Eight acts directly established inferior courts without reference to local procedure, option, or approval. Five amended a city's charter so as to grant power to the mayor to constitute himself a court with certain specified jurisdiction and powers. One re-established a court which had previously been abolished. One re-designated an existing court by changing its name. Two amended a general statute in order to allow the establishment of an inferior court. Eight granted city commissioners or aldermen authority to establish a traffic bureau for handling certain minor traffic violations. Thirteen directly authorized the local officials to establish inferior courts. Twenty directly appointed a particular justice of the peace for a certain county. Two appointed numerous justices of the peace for several counties.

One hundred eleven acts were passed relating to the jurisdiction of lower courts—extending the jurisdiction of a court to an area not previously included, extending jurisdiction to include other types of litigation, giving a mayor's court concurrent jurisdiction with the Superior Court of offenses committed within the city limits and reducing a court's area of jurisdiction and excluding certain types of litigation.

One hundred and forty-four acts were passed affecting the procedure to be followed in lower courts. They include provisions for jury trial if requested by a party, or transfer of a case to the Superior Court upon request for a jury trial, provisions relating to costs of court, terms of court, appeals from a justice of the peace, court calendar, issuance and service of process, the rules of prac-

tice to be followed, and duties, records, and standards for justices of the peace.

Twenty-five acts directly abolished a previously constituted court and provided for the transfer of dockets to another judicial agency. Others amended a city charter to take away the mayor's judicial authority. Others provided procedure to be followed in abolishing a court.

Hundreds of acts related to a variety of personnel matters, such as prescribing the method of appointment or election of a judge, solicitor, or stenographer, authorizing the appointment of a court official such as assistant clerk, defining or enlarging the duties of court personnel, establishing the office of public defender, setting the term of office for one or more of the court officials, increasing salaries, reducing salaries, changing from salaries to fees and from fees to salaries, giving local boards power to fix salaries, taking away the power of local boards to fix salaries, and fixing salaries by special acts.

One hundred seventy-six acts were passed relating to juries and jurors, the pay of jurors, methods of drawing petit jurors, excepting persons engaged in certain occupations from serving on juries, setting the terms for grand jury service, prescribing the procedure for drawing grand jurors, and creating a jury commission, and prescribing the duties, powers and qualifications for its various members.

Every legislative session since 1947 has witnessed the passage of a further multiplicity of private, local or special acts relating in some way, shape, or form to these special act or general law courts.

### Variations in "Special Act" and "General Law" Courts Today

Lower court procedures vary to the point that every court is almost, if not quite, a law unto itself—as they run the gamut of permutations and combinations in their multiplying differences: (1) in their differing jurisdictions—civil or criminal or both, (2) in their differing practices and procedures—from filing complaints and answers in civil actions to final judgment and execution, (3) in their differing practices and procedures in criminal cases from issuance of warrants, to bail or jail, to verdict and judgment and sentence, (4) in their differing methods of selection, tenure, removal, filling vacancies, and retirement of personnel, (5) in the differing records they are required by law to keep, the ways in which they keep them, and the uses or lack of uses made of them, and so on, almost ad infinitum.

Today there are two hundred and fifty-six courts in North Carolina with jurisdiction greater than that of a justice of the peace and less than that of the Superior Court. With minor variations, these courts fall into one of two broad classes: (1) courts established by special acts of the General Assembly from 1905 to 1917, and (2) courts established under general laws of the General Assembly from 1919 to 1957.

Seventy of these courts were established by special acts of the General Assembly. Fifty-seven were created prior to 1917—one in 1905, three in 1907, nine in 1909, ten in 1911, twenty in 1913, twelve in 1915, and two in 1917. Twelve are mayors' courts that received added jurisdiction by special act—four in 1905, and one each in 1907, 1913, 1925, 1929, 1933, 1935, 1947, and 1953. One was established by special act in 1949, but the local governing body undertook to correct this apparent violation of the Constitution by passing a resolution under the authority of Chapter 7, Article 24, of the General Statutes providing for the establishment of courts under general laws.

One hundred and eighty-six of these courts have been established under fourteen types of general laws enacted by the General Assembly since 1919—twenty-seven Municipal Recorders' Courts, thirty-four County Recorders' Courts, one Municipal-County Court, five General County Courts, one Civil County Court with jurisdiction in cases involving not more than $1,500, ten County Criminal Courts, one Special County Court, one County Court of the type authorized in 1957, six Domestic Relations Courts, and 100 Juvenile Courts. No courts have been established under the general laws of 1925, providing for two types of Civil County Courts, nor of 1931, providing for District County Courts, nor of 1955, providing for Civil County Courts of another type. Juvenile courts, domestic relations courts, and administrative courts will be considered later in this report.

Beginning in 1919, when two courts were established under the first of the general enabling acts, general law courts have been continuously added—two in 1921, one in 1922, three in 1924, one in 1925, one in 1926, four in 1927, two in 1928, five in 1929, five in 1931, two in 1932, two in 1934, three in 1935, one in 1936, three in 1938, two in 1939, three in 1941, one in 1943, one in 1945, one in 1947, two in 1948, two in 1949, one in 1950, four in 1951, five in 1953, two in 1954, five in 1955, one in 1956, one in 1957, and twelve at dates not shown in available records.

*The criminal jurisdiction of these courts varies.*

(1) One court has no criminal jurisdiction.

(2) Three courts have jurisdiction over offenses within the jurisdiction of a justice of the peace plus certain other specified crimes. One court may try the

added crimes of assault and battery, with or without a deadly weapon, carrying a concealed weapon, gambling, violations of the liquor law, drunk driving, and violations of the traffic laws as set out in Chapter 407, Public-Local Laws, 1937. To this list another court adds violations of the driver's license laws, and to these lists a third court adds petit larceny, forcible trespass, forcible entry and detainer, abandonment, and nonsupport.

(3) Ten courts have jurisdiction over all misdemeanors except offenses within the jurisdiction of a justice of the peace.

(4) One court has jurisdiction over all misdemeanors; but it may try offenses within the jurisdiction of a justice of the peace only if no justice "has taken cognizance" of the offense for six months.

(5) Eighteen courts have jurisdiction over all misdemeanors, including those within the jurisdiction of the justice of the peace, with short lists of specific crimes particularly mentioned. One statute lists larceny and receiving stolen goods knowing them to be stolen when the property does not exceed $10 in value. Nine list larceny and receiving property not over $20 in value. One lists larceny and receiving property not over $100 in value. One lists larceny and receiving property not over $20 in value and all manner and kind of false pretenses. One lists larceny and receiving property not over $20 in value, and violations of the liquor law. Three list larceny and receiving property not over $20 in value, forcible trespass, and false pretenses. One lists selling and giving cigarettes to minors, and crimes against the public health. One lists larceny and receiving stolen property not over $20 in value, forcible trespass, false pretenses, and violations of the liquor law.

(6) Thirteen courts have jurisdiction over all misdemeanors—including offenses within the jurisdiction of a justice of the peace, with long lists of specific crimes particularly mentioned. Here is a typical list:

> Carrying concealed weapons; gaming; keeping gambling houses; keeping bawdy houses; larceny or receiving stolen goods, knowing them to be stolen, wherein the value of the article or articles stolen does not exceed (a specified amount); failure to list taxes; assault and battery with a deadly weapon, or when serious damage is done; cruelty to animals; resisting officers; malicious injury to real or personal property; trespassing on lands after being forbidden; forcible trespass; enticing servants to leave masters; indecent exposure of person; retailing spirituous liquors without a license; selling or giving away spirituous liquor to a minor; selling or giving away cigarettes to a minor; obtaining advances by false pretenses; bastardy; disposing of mortgaged property; and all other crimes against the public health. . . .

(7) One hundred and one courts have jurisdiction over all misdemeanors without mentioning any particular crimes.

(8) Two courts have jurisdiction over all misdemeanors and may take submissions in all noncapital felony cases.

(9) One court has jurisdiction over all misdemeanors and over felonies where the punishment cannot exceed one year in the state penitentiary—but only where no jury trial is demanded.

The jurisdiction of those courts with power to try all misdemeanors is defined by four types of catch-all clauses. To illustrate:

(1) Eight courts have jurisdiction over "all other crimes against the public health as contained in Chapter 81 of the Revisal of 1905, and acts amendatory thereof, where the punishment does not exceed a fine of $200 and imprisonment for one year, and all crimes which under the common law are misdemeanors wherein the punishment is in the discretion of the court."

(2) One court has jurisdiction over "all crimes against public health as contained in Consol. Stats. of North Carolina, Chapter 118, and acts amendatory thereof; all misdemeanors, as contained in Chapter 82 of the Consol. Stats. of North Carolina, and acts amendatory thereof, where the punishment does not exceed a fine of $500 and imprisonment for two years; violations of Sections 4218, 2351, 4348, 4440 of the Consol. Stats., and acts amendatory thereof; violations of the provisions of Chapter 77 of the Public Laws of the Extra Session of 1908, relating to the selling and giving away of cocaine and other kindred products, and acts amendatory thereof; and all crimes which under the common law are misdemeanors; or which are now or may hereafter be declared by statute to be misdemeanors, wherein the punishment is in the discretion of the court, and misdemeanors which are by statute or otherwise punishable as misdemeanors at common law. . . ."

(3) Five courts have jurisdiction over "all other crimes and misdemeanors now existing under the laws of North Carolina and as they may hereafter be added to, substituted or amended, where the punishment does not exceed a fine of two hundred dollars and imprisonment for two years, and all crimes which under the common law are misdemeanors wherein the punishment is in the discretion of the court. . . ."

(4) One hundred and twenty-two courts have jurisdiction over "all other criminal offenses committed within . . . [the court's territorial jurisdic-

tion] below the grade of felony as now defined by law. . . ."

Territorial jurisdiction varies from the city limits in fourteen courts, to one mile beyond the city limits in another, to three miles beyond the city limits in another, to five miles beyond the city limits in twenty-four courts, to all of the city property which lies beyond the city limits in another, to the area of the watershed of the city reservoir lying beyond the city limits in another, to one township in ten courts, to two townships in three courts, to three townships in five courts, to four townships in seven courts, to five townships in one court, to six townships in one court, to thirteen townships in one court, to fifteen townships in one court, to the entire county except in municipalities other than the county seat having a population of 2,000 or more in one court, and to the entire county and all towns therein in seventy-six courts.

Many courts have criminal jurisdiction to the exclusion of all other courts. Forty have this jurisdiction within the city limits over offenses within the jurisdiction of a justice of the peace; thirty-two special act courts have exclusive jurisdiction over town ordinance violations; and thirty-five have exclusive jurisdiction over crimes above the jurisdiction of a justice of the peace and below the jurisdiction of the Superior Court. Nine general law courts have exclusive jurisdiction within the city limits to hold preliminary hearings in felony cases. The exclusive jurisdiction of one court is limited to a period of sixty days following the commission of the crime, of another to thirty days, of four others to six months, and of one to twelve months—after which time in each instance the Superior Court assumes concurrent jurisdiction.

*The civil jurisdiction of these courts varies.* Forty-one of the special act courts are known to have civil jurisdiction varying from a maximum of $200 in contract and $50 in tort to $5,000 in both contract and tort; seventeen of the general law courts have civil jurisdiction conferred by statute varying from a maximum of $500 to an unlimited amount in both contract and tort; fifty-three general law courts may have civil jurisdiction of cases involving a maximum of $1,000 in contract and $500 in tort, but only if conferred by the boards of commissioners of the counties in which they are located. Twenty-seven general law courts may have civil jurisdiction conferred upon them only if the respective municipalities in which they are located have a population of 10,000 or more inhabitants.

*The contract jurisdiction of these courts varies.* Contract claims in special act courts cannot exceed the sum of $200 in six courts, $500 in ten courts, $1,000 in fifteen courts, $1,500 in one court, $2,000 in two courts, $2,500 in two courts, $3,000 in two courts, and $5,000 in three courts. In the general law courts contract claims may not exceed $500 in one court, $1,000 in sixty courts, $1,500 in two courts, and $3,000 in two courts. In five courts there is no limit on the amount.

*The tort jurisdiction of these courts varies.* In the special act courts tort claims may not exceed the sum of $50 in six courts, $200 in three courts, $500 in seventeen courts, $700 in one court, $1,000 in six courts, $2,000 in one court, $2,500 in three courts, $3,000 in two courts, and $5,000 in two courts. In the general law courts tort claims may not exceed $500 in sixty-one courts, $1,000 in one court, $1,500 in one court, $2,000 in one court, $3,000 in one court. In five courts there is no limit on the amount.

*These courts vary in the combinations of contract and tort jurisdiction.* Six of the special act courts are limited to $200 in contract and $50 in tort, three to $500 in contract and $200 in tort, six to $500 in both contract and tort, one to $500 in contract and $1,000 in tort, eleven to $1,000 in contract and $500 in tort, one to $1,000 in contract and $700 in tort, three to $1,000 in both contract and tort, one to $1,500 in contract and $1,000 in tort, one to $2,000 in contract and $1,000 in tort, one to $2,000 in both contract and tort, two to $2,500 in both contract and tort, two to $3,000 in both contract and tort, one to $5,000 in contract and $2,500 in tort, and two to $5,000 in both contract and tort. One of the general law courts is limited to $500 in both contract and tort, fifty-nine to $1,000 in contract and $500 in tort, one to $1,000 in both contract and tort, one to $1,500 in contract and $1,000 in tort, one to $1,500 in both contract and tort, one to $3,000 in contract and $2,000 in tort, one to $3,000 in both contract and tort. Five courts have no limits in either contract or tort.

*These courts have other varying civil jurisdiction in miscellaneous cases.* Eleven courts have divorce and alimony jurisdiction; five have jurisdiction to "try title to lands and to prevent trespass thereon and to restrain waste thereof . . .;" five have jurisdiction to issue injunctions and restraining orders in actions pending in the Superior Court; five have jurisdiction to appoint receivers; one is specifically empowered to revoke licenses of professional bondsmen; three are specifically granted jurisdiction over claim and delivery proceedings, two being limited to $1,000 limits and one to $1,500 limits; one has jurisdiction over uncontested mortgage foreclosures; and thirty-six have jurisdiction over penalties and forfeitures.

*Methods of selecting judges in these courts vary.* Ninety-nine judges are elected by the voters of the

governmental unit(s) comprising their particular court's jurisdiction; six township court judges are elected in the county elections after being nominated in township primaries; four judges may be either elected or appointed by boards of county commissioners at the option of those boards; twenty-five judges are appointed by the governing body of the city or county which operates the court; three judges are appointed by the Governor; one judge is appointed by the resident Superior Court judge; one judge is appointed by a commission of elections composed of the Chief Justice and two Associate Justices of the Supreme Court; and eleven judge-mayors are selected in the manner for selecting mayors.

*Methods of selecting solicitors vary.* Forty-five solicitors are elected by the qualified voters of the governmental unit(s) comprising the court's jurisdiction; six are elected by the county voters after being nominated in the primary by the township voters only; six may be either elected by popular vote or appointed by the board of county commissioners according to the discretion of the county commissioners; fifty-four solicitors are appointed by the governing body of the city or county which sponsors the court: three are appointed by the Governor; one is appointed by a commission of elections composed of the Chief Justice and two Associate Justices of the Supreme Court; one is appointed by the resident Superior Court judge; and one is appointed by the mayor. No provision is made for a solicitor in eleven courts exercising criminal jurisdiction, and no method of selection is prescribed for the solicitors in twenty-one courts.

*Methods of selecting clerks of court vary.* Four clerks are elected by the people; forty-eight are appointed by the governing body of the governmental unit sponsoring the court; two are appointed by the joint action of county and municipal authorities; one is appointed by the joint action of the judge and the governing body; one is appointed by the judge; five may either be appointed or be some other officer serving *ex officio;* sixty-six are clerks of Superior Court serving *ex officio;* eight are town officers serving *ex officio;* and six are solicitors of their respective courts serving *ex officio.* In eight courts there is no provision for a clerk, and in one court no method for selecting a clerk is stipulated.

*Terms of office for judges of these courts vary.* One judge serves a one-year term; ninety-eight serve two-year terms; thirty-three serve four-year terms; three serve four-year terms, if elected, but "at pleasure" if appointed; twelve who are also mayors, serve terms coterminous with that as mayor; and three serve terms not stipulated.

*Terms of office for solicitors vary.* Two solicitors serve one-year terms; seventy serve two-year terms; twenty serve four-year terms; five serve four-year terms, if elected, but "at pleasure" if appointed; five serve at the pleasure of their appointers; and thirty-six serve terms not stipulated. One court has no criminal jurisdiction and therefore no solicitor; and in eleven courts with criminal jurisdiction there is no provision for a solicitor.

*Terms of office for clerks of court vary.* Five clerks serve one-year terms; forty serve two-year terms; four serve four-year terms; ten, who may be either clerk of Superior Court serving *ex officio* or who may be appointed, serve two-year terms if appointed; three clerks serve at the pleasure of their appointers; seventy-one serve *ex officio* terms co-extensive with their official terms; and nine clerks have no terms stipulated. For eight courts there is no provision for a clerk.

*Oaths of office vary.* Seventy judges are required to take the oath of office prescribed for justices of the peace; twenty-eight take the oath prescribed for judges of the Superior Court; twelve take the oath prescribed for members of the local governing body; one takes the oath prescribed for members of the General Assembly; and two take a special oath. No particular oath is prescribed for thirty-seven judges. The oath of office for solicitors in nineteen courts is that prescribed for solicitors of the Superior Court. No specific oath is stipulated in any of the other courts. The oaths of office for clerks of court vary. Only seven of the clerks other than those serving in an *ex officio* capacity are required to take oaths—that of the clerk of Superior Court in five instances, that of the county officials in one instance, and an unspecified oath in one instance. One of the clerks of Superior Court who serves *ex officio* is required to take an additional oath.

*The methods and amounts of compensation of judges vary.* One hundred and thirty-six judges are compensated by salary; five are paid by fees; two are paid fees and/or a salary at the discretion of the governing body; and no method or amount of compensation is specified for the judges of seven courts. Salaries of judges are prescribed entirely by the governing body for seventy-four courts, are fixed as to the maximum limits and/or minimum limits for thirty-three courts, and are fixed entirely by law for twenty-nine courts. Fixed salaries and maximum limits on permissible salaries range from a low of $100 per year in one court to a high of $9,000 a year in two courts. Within that range, one salary is $480; two are $600; one is $780; one is $900; one is $972; one is $1,058; three are $1,200; four are $1,500; one is $1,600; nine are $1,800;

five are $2,400; two are $2,500; one is $2,580; one is $2,700; one is $2,835; four are $3,000; one is $3,100; one is $3,300; five are $3,600; two are $4,000; two are $4,200; one is $4,400; three are $6,000; three are $7,000; one is $25-100 per day of court held; one is $50 per day of court held; and one is $75 per day of court held.

*The methods and amounts of compensation of solicitors vary.* One hundred and thirty solicitors are compensated by salary; three are compensated by fees; one is compensated by either fees or salary in the discretion of the governing body; and no method or amount of compensation of solicitors of four courts is mentioned. Solicitors' salaries are prescribed by the governing body within maximum and/or minimum amounts fixed by statute in twenty-eight courts; and are fixed entirely by law in twenty-six courts. Fixed salaries and the maximum limits on permissible salaries range from a low of $50 a year in one court to a maximum of $7,500 in one court. Within that range, one salary is $66; two are $900; one is $972; two are $1,200; one is $1,300; seven are $1,500; six are $1,800; two are $2,000; ten are $2,400; two are $2,700; four are $3,000; one is $3,300; one is $3,400; one is $3,600; two are $3,800; one is $4,000; one is $4,200; one is $4,800; three are $5,000; one is $6,100; one is $25-100 per day of court held; and one is either $900 per year or $5 per conviction. One of the four fee-compensated solicitors is paid $6 per conviction; the other three receive undisclosed fees.

*The methods and amounts of compensation of clerks of court vary.* Fifty-two Superior Court clerks serving *ex officio* may receive additional compensation for their services in amounts not shown. Five town officers serving *ex officio* are allowed additional compensation for their services — one is allowed $300 extra per year, another $600 extra per year; another $1,800 extra per year, and two are allowed extra amounts fixed by the governing body. Ten Superior Court clerks and one solicitor serving *ex officio* are specifically denied additional compensation for their services to these courts. Sixteen *ex officio* officers, including fifteen Superior Court clerks, five town officers, and five solicitors, are neither specifically given nor denied additional compensation. Nineteen elected or appointed clerks are paid either fixed or partially fixed salaries which range in designated amounts from a low of $25 per year in one court to a high of $4,600 in another. Within that range, one stipulated amount is $96 per year; one is $300; one is $400; four are $600; one is $900; one is $1,500; one is $1,800; one is $2,400; one is $2,700; one is $3,150; one is $4,400; two are $4,500; and one is up to $75 per day of court held. Twelve appointed or elected clerks are paid salaries in an amount fixed by the governing body of the governmental unit sponsoring the court; one appointed clerk is compensated by fees; and no provision for compensation of twenty-seven clerks is stated.

*Provisions for the removal of judges vary.* For nineteen special act courts there are stated grounds for removal of judges: for six courts, immorality, incompetence, or continued neglect of duties; for seven courts, wilful or habitual failure to perform duties, or for corruption, extortion, felony conviction, intoxication — one court adding to these grounds physical or mental incompetence to perform duties; for two courts misfeasance, malfeasance, or nonfeasance in office; for two courts, "for cause;" for one court, being drunk during term of office, becoming unfit or incompetent, or wilfully failing to perform the duties of office; and for one court, misfeasance, malfeasance, or nonfeasance in office, as well as any degree of intoxication caused from the use of alcholic liquors during term of office except from use for medical purposes. No provision is stated for the removal of the judges of any of the general law courts or of fifty-four special act courts.

The removal of a judge is effected by the governing body of the governmental unit sponsoring the court in ten instances and by the judge of Superior Court after a full hearing in ten instances. No method for removing judges is specified in two of the statutes stating grounds for removal.

*Provisions for the removal of solicitors vary.* In ten special act courts there are stated grounds for the removal of solicitors: for seven courts, wilful or habitual neglect or failure to perform duties, or for corruption, extortion, conviction of felony, or intoxication, — one court adding to these grounds physical or mental incompetence to perform the duties of office; for two courts without cause at any time; and for one court, "at any time upon 30 days notice." No grounds for the removal of the solicitors of general law courts and of sixty special act courts are stipulated.

The removal of solicitors is effected by the governing body of the governmental unit sponsoring the court in three instances and by the judge of Superior Court after a full hearing in seven instances.

*Provisions for the removal of clerks of court vary.* For seven special act courts there are stated grounds for the removal of clerks of court: for three courts, incompetence and neglect of duties; for two courts, "for cause;" for one court, incompetence, immorality and neglect of duties; and for one court, being drunk during term of office, be-

coming unfit or incompetent, or wilfully failing to perform the duties of office.

The removal of clerks of court is effected by the governing body of the governmental unit sponsoring the court in five instances and by the judge of Superior Court after a hearing in one instance. No method for removing the clerk of one court is specified, although grounds for removal are stated.

*The methods of filling vacancies in the office of judge vary.* Vacancies occurring in the office of judge are filled for the remainder of the term in 112 courts by the governing body of the governmental unit(s) sponsoring the court, in six courts by the Governor, in one court by a commission of elections composed of the Chief Justice and two Associate Justices of the Supreme Court, in one court by the mayor, in one court by the senior resident Superior Court judge, and in one court the substitute judge takes the office. There are no specific provisions for filling vacancies in the judical office in twenty-eight courts.

*The methods of filling vacancies in the office of solicitor vary.* Vacancies occurring in the office of solicitor are filled for the remainder of the term in thirty-five courts by the governing body of the governmental unit(s) sponsoring the court, in three courts by the Governor, in one court by the recorder, in one court by the resident Superior Court judge, in one court by the clerk of Superior Court, in one court by a commission of elections composed of the Chief Justice and two Associate Justices of the Supreme Court, and in one court by the same method used to fill vacancies in the Superior Court. There are no provisions for filling vacancies in the solicitor's office in 106 courts; indeed, eleven courts with criminal jurisdiction fail to provide for a solicitor.

*Vacancies occurring in the office of clerk* are filled for the remainder of the term in twenty-eight courts by the governing body of the governmental unit sponsoring the court. In 122 courts there is no provision for filling vacancies occurring in this office, except that where the clerk is clerk of the Superior Court serving *ex officio,* the vacancy is filled by the resident Superior Court judge.

*Provisions regulating the private practice of law by judges and solicitors of these courts vary.* In ten instances the judges and solicitors are permitted to practice law "in matters in which . . . they are in no way connected by reason of . . .[their offices]or in courts in the State in matters which have not been heard or will not be heard. . ." in the courts of which they are officers; twenty-five judges and two solicitors may practice law but cannot associate with other lawyers who practice in their courts; six judges may practice law but not in matters associated or connected with cases heard or pending in their courts; one judge . . . "shall not by reason of his term of office be prohibited from practicing the profession of attorney at law in other courts except as to matters pending in connection with or growing out of said county court"; one solicitor is allowed to practice law in civil matters only; one judge is permitted to conduct "outside business"; one judge *may be* forbidden to practice law; three judges *are* forbidden to engage in any outside practice; and one vice-recorder is permitted to practice law without restriction, even in his own court. Although there is no specific provision with respect to the outside practice of law by the judges of 101 courts and the solicitors of 125 courts, it is important to note that Canons of Ethics of the North Carolina State Bar do restrict the law practices of the judges and solicitors of these local courts in the effort to avoid any conflict of interest.

*Record keeping requirements in these courts vary.* Twelve of the special act courts are required to keep records of costs and fines; thirteen are required to keep records of cases (including names, dates, punishments, etc.); eleven are required to keep records of all proceedings (including minute dockets and records of precepts and other process); six are required to keep records "as in the Superior Court"; one is required to keep records as prescribed by the judge; and six are required merely to "keep records."

Thirty-seven clerks of the general law courts are required to keep accurate records of all "costs, fines, penalties, forfeitures, and punishments . . . imposed," the names of all offenders and offenses tried, and the dates of all trials; five clerks are required to "keep separate records, criminal and civil, for the use of " those courts; one clerk of a civil court must "keep separate records for the use of " that court; and thirty-four clerks of Superior Court serving these courts *ex officio* are required to "keep criminal dockets . . . in the same manner as . . . [they keep] criminal dockets in the Superior Court." In addition to these requirements the clerks of twenty-seven of these courts are required to "keep a permanent docket for recording all the processes issued by the court" and to keep "a record of all cases which shall be disposed of in the court and the disposition made thereof." For sixty-one of these courts which may have civil jurisdiction the statutes fail to provide for the keeping of records of civil proceedings, and for three courts the statutes fail to require the keeping of any type of records.

*Sixteen courts must make an accounting of all*

*fines and costs collected.* Thirteen courts must render monthly accountings. Otherwise, no accountings are specifically required, although twenty-seven courts must keep their records "open to inspection of any of the city authorities, or other person having business relating to the court."

*Provisions for jury trials in criminal cases vary.* Sixty courts offer jury trials to defendants in criminal cases; thirty-nine transfer criminal cases to the Superior Court on demand for jury trial; thirteen transfer criminal cases either to another intermediate court or to the Superior Court upon demand for jury trial; one conducts jury trials only when the punishment for the offense charged does not exceed a fine of $50 or imprisonment for thirty days, otherwise it transfers the case to the Superior Court for trial by jury; the judges of two courts may in their discretion transfer criminal cases to the Superior Court for jury trial; in four courts the right to trial by jury is specifically denied, without provision for transfer to another court for jury trial; for eight courts which provide civil jury trials, there is no provision relating to jury trials in criminal cases; and in twenty-two courts there are no provisions whatever relating to jury trial.

*Provisions for jury trials in civil cases vary.* Ninety-six courts offer jury trials in civil cases; five courts transfer civil cases to the Superior Court for trial upon demand for a jury, one court doing so only when the amount in controversy exceeds the sum of $2,000, and another doing so only when the amount exceeds $200 in contract or $50 in tort; four courts having jury trials in criminal cases fail to provide for civil jury trials; and six courts specifically deny jury trials in civil actions.

*The number of jurors in those courts offering jury trials varies.* In criminal jury trials, fifty courts have six-man juries; ten have twelve-man juries; and for two courts there is no provision regarding the number of jurors. In civil trials, twenty-one courts have six-man juries; two have six or twelve-man juries depending on the demand; seventy courts have twelve-man juries, two having them only in cases outside of the original jurisdiction of a justice of the peace (up to $200 in contract and $50 in tort); and for three courts there is no provision regarding the number of jurors.

*The number of persons comprising the jury panel in these courts varies.* Among the special act courts, a jury panel of twelve persons is drawn in twenty-one courts, of eighteen persons in two courts, of eighteen to twenty-four persons in one court, and up to twenty persons in one court. There are no provisions regarding the number of jurors drawn in ten special act courts.

Among the general law courts, there is a variance between civil and criminal cases as to the number of jurors comprising the jury panel. In civil cases, a panel of twelve persons is drawn in three courts, of eighteen persons in fifty-eight courts, of eighteen to twenty-four persons (in the judge's discretion) in five courts. In criminal actions, a panel of twelve persons is drawn in thirty-five courts, of fourteen persons in one court, of fifteen persons in one court, of sixteen persons in one court, of eighteen to twenty-four persons (in the judge's discretion) in four courts.

*The boxes from which jurors' names are drawn in these courts vary.* In the special act courts, jurors' names are drawn from a special jury box in eight courts; they are drawn from the Superior Court box in six courts, and in one township court from a special box in one town in the county and from the Superior Court box otherwise. Jurors for civil terms in the general law courts are drawn from the Superior Court jury box in all courts, but jurors for criminal terms are drawn from special boxes in thirty-four courts and from the Superior Court box in only eight courts.

*The requirements for and amounts of jury deposits or taxes vary.* Eighteen special act courts require jury taxes in varying amounts. Six courts require $3.00; two require $5.00; five require $6.00; one requires $.50 per name drawn; and one each requires $15.00, $18.00, $20.00, and $36.00. Twelve general law courts require jury taxes ranging from $5.00 to $15.00 in criminal cases. The general law courts offering jury trials in civil cases require a jury tax ranging from $3.00 to $6.00.

*The times when terms of court are held vary.* Twenty-three courts are required to hold terms daily except Sunday and holidays. Eight courts are required to hold terms on one specified day of each week; fifty-eight courts must hold terms on at least one day of each week as designated by the governing bodies of the political subdivisions operating those courts; and seven courts are required to hold terms at least one day of each week with no provision as to the particular day. Two courts must hold terms every Monday, Wednesday, and Friday, one court every Monday and/or Saturday, one court on the first and third Mondays of each month, one court on the second and fourth Tuesdays of each month, one court on the second Monday of each month, and ten courts on the second Tuesday of each month. One court is required only to hold a term once per month, two courts twice per month, and one court four times per month. Five courts must hold terms of court "as often as necessary," one at times designated by the governing body, one "whenever matters before

the court require attention," and one as fixed by the judge and clerk after conferring with the local bar.

Five courts must hold civil and criminal terms of court on separate days. One court holds criminal terms on Tuesday and Thursday of each week and a civil term on Wednesday; one court holds terms daily except for the second and fourth Wednesdays of each month, on which days civil terms are held; one court holds criminal terms on Monday and Saturday of each week and a civil term on Friday; two courts must hold, in addition to weekly criminal terms on days designated by the boards of county commissioners, civil terms on one day per month — the first Monday of the month in the case of one court and a day designated by the county commissioners in the case of the other court. For sixteen courts there are no statutory provisions as to the time and frequency of court terms.

*The provisions for the issuance of process vary.* Provisions governing the issuance of process returnable to the special act courts sometimes distinguish between the issuance of arrest warrants and civil summons. The following persons are authorized to issue warrants returnable to special act courts: in nine courts, only the judge; in fourteen courts, only the clerk; in one court, only the police desk officers; in twelve courts, the judge and clerk; in seven courts, the judge, clerk, and police desk officers; in six courts, the judge, clerk, and solicitor; in one court, the judge, clerk, and a "warrant officer"; in one court, the clerk and police desk officers; and in one court, the judge, clerk, and substitute judge. Eighteen special act courts have no special provisions concerning the authority to issue warrants.

The following named persons are authorized to issue civil summons returnable to the special act courts: in fourteen courts, the clerk only; in two courts, the judge only; in seven courts, the judge and the clerk; in five courts, the judge, clerk, and solicitor; and for thirteen courts having civil jurisdiction no authority to issue summons is prescribed.

The provisions governing the issuance of process returnable to the general law courts do not ordinarily distinguish between criminal and civil process. In five general law courts, only the clerk is specifically empowered to issue process; in ten courts, the clerk, justices of the peace and mayors may issue process; for twenty-seven courts the recorder, vice-recorder, presiding justice, clerk, and deputy clerk are designated; in thirty-four courts the clerk, deputy clerk, recorder, or justices of the peace may issue process; for one court only the clerk and deputy clerk are named; and for one court the clerk and two desk sergeants of the police department appointed deputy clerks of court are designated. No express statutory provision is made for the issuance of process in two general law courts.

The statutory authority given to these officers to issue process returnable to the lower courts is not exclusive in nature, however; and persons other than those specifically named may also be allowed to exercise this authority under law.

*The provisions for service of process vary.* The authority to serve process returnable to the lower courts is conferred upon various officers. In five courts, process is served by city officers; in eighteen courts, by either city or county officers; in two courts by a special officer; in fifteen courts, by the sheriff "or other lawful officer"; in twenty-seven courts, by the sheriff, "other lawful officer," or township constable; and in five courts, by publication in appropriate cases. No specific statutory provision is made for the service of process returnable to the remaining courts.

The provisions governing the time limitations placed upon the return of process also vary. No specific statutory provision is made as to when a warrant must be returned to any of the general law courts and to sixty-four of the special act courts. In three courts, however, warrants must be returned within thirty days; in three other courts, warrants are merely returnable "forthwith."

A return date deadline for civil process is specified for only five of the general law courts — that date being ordinarily the first Monday of the month next succeeding issuance. The return dates of civil process returnable to the special act courts are as follows: in one court, within three to ten days from issue; in one court, within ten days from issue; in one court, within five to thirty days from issue, in cases within the jurisdiction of a justice of the peace where the defendant resides in the county — otherwise, fifteen to thirty days; in one court within ten to thirty days from issue; in one court, within ten to thirty days if defendant is a resident of the county — otherwise, fifteen to thirty days; in two courts, not sooner than ten days after service; in three courts, within thirty days of issue; in one court, by the first Monday after the 10th day after service; in one court, on the first Tuesday after service; in four courts, on the first Monday after service had by the preceding Wednesday; in one court, on the first Monday of the term after service had at least ten days before; in one court, on the first day of the following term but at least ten days after issue; and in one court, as provided in the Superior Court.

*Territorial limitations on the running of process vary.* The criminal process of 121 courts runs any-

where in the state under express statutory authority. The civil process of seven courts runs anywhere in the state only if the case involved is above the maximum jurisdiction of a justice of the peace; otherwise the civil process of these courts is limited to service within the county. The civil process of at least sixty-one courts is expressly limited to service within the county where the court is located regardless of the amount involved. Of those courts which may have process running out of the county, sixty-four must have a seal affixed to that process in order for it to be effective.

*The methods of pleading in civil actions vary.* In fifteen courts, all pleadings are required to be in writing; in seventy-four courts written pleadings are expressly required in all cases except those where the court is exercising concurrent jurisdiction with the justices of the peace; in one court, oral pleadings are permitted in cases involving less than $2,000 unless the summons runs out of the county; in six courts, written pleadings, though not expressly required, are contemplated by the acts authorizing establishment of the courts; in one court, written pleadings are not required in any case; and in two courts, pleadings are to conform with the pleading requirements of the Superior Court. No statutory methods of pleading are stated for twelve courts with civil jurisdiction.

*Twenty-three courts have varying provisions for the time of filing complaints in civil actions.* In four courts, the complaint is filed upon the issuance of summons; in one court, within five days of the issuance of summons; in one court, at least ten days after the issuance of summons; in one court, upon the issuance of summons only if the amount in controversy is above the jurisdiction of a justice of the peace; in two courts, at least five days before return day; and in fourteen courts, on the day summons is returned. In twenty-three special act courts and sixty-five of the general law courts with civil jurisdiction, there are no provisions with respect to the time for filing the complaint in a civil action.

*Twenty-nine courts have varying provisions for the time of filing answers in civil actions.* In one court, the answer is filed within ten days of the service of summons for county residents and within thirty days for nonresidents; in four courts, within ten days of service of summons and complaint; in one court, within ten days of service of summons or within five days of service of complaint; in one court, at least ten days after service of summons; in one court, within ten days of serving the complaint; in one court, within twenty days after filing of complaint and issuance of summons; in two courts, within thirty days after service of summons and complaint; in one court, upon return date of the summons; in one court, within three days after return day; in one court, within five days after return day; in two courts, within ten days after return day; in two courts, by Wednesday following a return by the preceding Monday; in two courts, by the Friday after return day; in one court, on the Saturday following return day; in one court, "during the term to which the summons is returnable"; and in two courts, by the date of trial. Five general law courts require the filing of an answer within twenty days after return day, except that if a copy of the complaint is served with the summons, answer must be filed within 20 days after service of complaint. No time is specified for the filing of an answer in seventeen special act courts and in sixty-five general law courts.

*Nine special act courts have provisions relating to the date for the trial of civil actions following the service of complaint and answer.* One court provides for trial on the Monday after answer is due; another on the second Monday after return day; another on the sixth day after return; three on the first Monday after return; another at the next term of court after answer is filed; another at the first civil term after the date fixed for filing answer; and another on the first Tuesday after return. No date is specified for the trial of civil actions in thirty-two special act courts and in sixty-five general law courts.

*Methods of practice and procedure in civil cases in these courts vary.* Procedures "as in justice of the peace courts" are used in nine courts in all cases, and in seven courts in cases within the original jurisdiction of a justice of the peace; procedures "as in Superior Court" are used in seventy-eight courts in all cases, and in eight courts in cases above the jurisdiction of a justice of the peace; procedures "as in the Revisal of 1905" are used in one court in civil cases; and procedures "as in the Consolidated Statutes" are used in three courts in civil cases.

*Methods of practice and procedure in criminal cases in these courts vary.* Procedures "as in justice of the peace courts" are used in twelve courts in all criminal cases, and in only those criminal cases within the original jurisdiction of a justice of the peace in twenty-seven courts. Procedures "as in Superior Court" are used in all criminal cases in fourteen courts, and only in criminal cases above the jurisdiction of a justice of the peace in twenty-seven courts.

*The method of hearing appeals from these courts in the Superior Court varies.* From ninety-three courts, all appeals are tried *de novo;* from thirty-seven courts, criminal appeals are heard *de novo* and

civil appeals are heard only on questions of law; from ten courts, which have criminal jurisdiction only, appeals are heard *de novo;* from one court, which has only civil jurisdiction, appeals are heard only on questions of law; from one court, criminal appeals are heard *de novo,* and no method for hearing civil appeals is specified. There is no statutory provision as to the method of hearing appeals from eight courts.

*The costs in these courts vary.* In criminal cases the basic costs vary from $7.30 in one court, to $9.10 in another, to $9.85 in another, to $10.00 in another, to $10.50 in another, to $11.00 in another, to $12.00 in another, to $13.00 in another, to $13.50 in another, to $14.00 in another, to $14.20 in another, to $16.00 in another, to $16.15 in another, to $16.50 in another, to $17.00 in another, to $17.50 in another, to $18.45 in another, to $19.45 in another, to $20.00 in another, to $20.95 in another, to $22.50 in another, to $24.10 in another, and to $25.80 in another.

In civil cases the costs vary from $4.50 in one court, to $5.50 in another, to $6.50 in another, to $7.00 in another, to $7.50 in another, to $8.00 in another, to $9.50 in another, to $10.00 in another, to $10.50 in another, to $11.50 in another, and to $12.00 in another.

**Variations in special act and general law courts confuse the criminal and civil jurisdiction of Superior Courts and justices of the peace.**

***Effect on Criminal Jurisdiction of the Superior Court.*** From 1868 to 1875 Superior Courts exercised exclusive jurisdiction over all crimes where the punishment could exceed a $50.00 fine or a month in jail, and Superior Court judges rotating through the 100 counties in the state exercised the same jurisdiction in every county. Since 1875 the Superior Courts have continued to exercise exclusive jurisdiction over all felonies, and Superior Court judges rotating through 100 counties continue to exercise exclusive jurisdiction in every county, with the exception of one county which has a recorder's court with jurisdiction to try felonies when the punishment may not exceed one year in the state prison and where no jury trial is demanded.

But since 1875 the General Assembly has cut down on the original jurisdiction of the Superior Court in differing counties in differing degrees to the point that Superior Court judges rotating through the state rarely know the situation they will face in going from one county to another.

In fourteen counties they find no lower courts other than justices of the peace, and exercise their 1868 jurisdiction over all crimes where the punishment may exceed a $50.00 fine or thirty days in jail. At the other extreme, in twenty-two counties they find that the General Assembly has given exclusive jurisdiction of misdemeanors to one or more lower courts in each county to the exclusion of the Superior Court except by way of appeal.

Between these extremes they find that the General Assembly has cut down on Superior Court jurisdiction in varying degrees either by giving jurisdiction over all misdemeanors (to the exclusion of the Superior Court) to particular courts throughout the county or to particular courts covering particular areas within the county, *e.g.,* either to one or more mayor's courts within city limits or to city courts within and beyond city limits for varying distances, or to township courts, or to county courts covering particular areas in the county not already covered by one or more of the foregoing mayor, city, or township courts; sometimes this jurisdiction is granted to the exclusion of the Superior Court, sometimes to the exclusion of the Superior Court within city limits and concurrently beyond the city limits; and always the Superior Court is left with its 1868 jurisdiction in any areas not covered by lower courts with jurisdiction beyond the justice of the peace.

***Effect on Civil Jurisdiction of Superior Court.*** From 1868 to 1875 the Superior Courts, as we have seen, exercised exclusive original jurisdiction of all civil actions founded on contract, wherein the sum demanded might exceed two hundred dollars, or wherein the title to real estate was in controversy, and a similar jurisdiction over tort actions involving more than $50 in later days.

In thirty-three counties the Superior Courts continue to exercise their 1868 civil jurisdiction—with no other lower courts with civil jurisdiction of any sort or size within these counties. In one county, at the other extreme, the General Assembly has cut down on the civil jurisdiction of the Superior Court by giving a lower court jurisdiction, to the exclusion of the Superior Court, of all civil actions brought within the county and involving not more than $500.

In other counties of the state, between these extremes, the General Assembly has cut down on the civil jurisdiction of the Superior Court in differing degrees in different counties by giving concurrent civil jurisdiction with the Superior Courts to one or more lower courts within town or township limits, or within and beyond these limits for varying distances to the county line; this concurrent jurisdiction varies in maximum amounts in contract cases from $500 to an unlimited amount, and in types of actions from contract to tort, and in varying combinations of types and amounts.

***Effect on Criminal Jurisdiction of the Justice of the Peace.*** In similar fashion the General Assembly has cut down on the original criminal jurisdiction of the justice of the peace in differing degrees in differing counties to the point that many justices of the peace are uncertain as to their own jurisdiction within their own counties.

In many counties they exercise their 1868 jurisdiction over all misdemeanors where the punishment cannot exceed a $50 fine or thirty days in jail. In many counties at the other extreme, the General Assembly has cut down on this 1868 jurisdiction in the following ways: by giving city courts jurisdiction over the foregoing misdemeanors to the exclusion of the justice of the peace within particular city limits; by giving concurrent jurisdiction in other cities and towns, townships, and counties to one or more mayors' courts, or to one or more of the lower courts created by special act before 1917, or to one or more of the lower courts created under general laws since 1917, or to all of them together; by giving this concurrent jurisdiction in some places within city limits only, and in others for varying distances in miles and fractions of miles beyond city limits to county lines. Thus the jurisdiction of the justice of the peace has been left a thing of shreds and patches.

***Effect on Civil Jurisdiction of the Justice of the Peace.*** In similar fashion the General Assembly has cut down on the civil jurisdiction of the justice of the peace in differing degrees in differing counties. In thirty-four counties they exercise their 1868 civil jurisdiction supplemented by their $50 tort jurisdiction — with no other lower courts sharing civil jurisdiction. In other counties the General Assembly has cut down on this civil jurisdiction by giving concurrent jurisdiction with justices of the peace to one or more lower courts within city limits, or township limits or county limits — maybe not without reason, but certainly without rhyme.

***Effect on Appeals from the Justice of the Peace to the Superior Courts.*** With the total civil and criminal jurisdiction divided between the justice of the peace and the Superior Court in 1868, appeals lay direct from the justice of the peace to the Superior Court — with trial *de novo* in all criminal actions, on questions of law only in civil actions where the judgment was for less than $25, and by trial *de novo* in all civil actions where the judgment exceeded $25.

The 1875 constitutional amendment continued the requirement for trial *de novo* on appeal in criminal cases, but merely provided in civil cases that the aggrieved party "may appeal to the Superior Court from the same" without stipulating any method for hearing the appeal. Shortly thereafter, the General Assembly provided that *all* appeals from a justice of the peace to the Superior Court should be tried *de novo*.

In many cases the General Assembly has assumed that appeals from a justice of the peace or a mayor's court may be routed through intermediate courts. Procedures vary from county to county. In forty-three counties, all appeals go directly to the Superior Court. In seven counties, appeals from the justices in one city go to the city court and all other appeals go directly to the Superior Court. In another county, appeals from the justices in two towns go to the municipal courts in those two towns and the other appeals go directly to the Superior Court. In another county, appeals from justices in four towns go to the municipal courts in those towns and all other appeals go to the Superior Court. In another county, appeals from justices in four townships go to the township court and the remainder go directly to the Superior Court. In another county, appeals from all justices go to one of six township courts — covering the entire county. In thirty-six counties, all appeals from justices go to the county recorder's court. In six counties, appeals from the justices in one town go to the municipal court in that town and the remainder go to the county recorder's court. In another county, all civil appeals go to the civil county court and criminal appeals go to the Superior Court. In another county, appeals from the justices in three towns go to the municipal courts in those towns and the remainder go to the Superior Court. And in another county, appeals from the justices in five towns go to the municipal courts in those towns and the remainder go to the Superior Court.

In *State v. Baldwin,* 205 N.C. 174 (1933), the Supreme Court held that statutes requiring appeals from a justice of the peace to go to a county recorder's court were intended to relieve congestion in the Superior Court and should take precedence over a more general statutory provision permitting appeal from a justice of the peace to the Superior Court. In the following year in *McNeeley v. Anderson,* 206 N.C. 481 (1934), the Court considered the question in the light of the constitutional provision and strongly intimated that the appellant from a justice of the peace court may properly require that his appeal go directly to the Superior Court, even though it might go to a lower court with his consent.

All appeals from ninety-three courts are tried *de novo.* In thirty-seven courts, criminal appeals are tried *de novo* and civil appeals are tried only on questions of law. In ten courts having criminal jurisdiction only, appeals are tried *de novo.* In one court, with civil jurisdiction only, appeals are heard only on questions of law. In one court, crimi-

nal appeals are tried *de novo* and no method for hearing civil appeals is specifically prescribed. Eight courts have no specific provisions giving the method for hearing appeals.

### Juvenile and Domestic Relations Courts.

In 1919 the General Assembly by general law established a new type of court—the Juvenile Court—not included in the special act and general law courts with their common law traditions and techniques. The jurisdiction of these courts is based on the age of the offender, rather than on the type of offense, and goes far beyond the notion of a "criminal act" as the basis of jurisdiction, to include any juvenile who is "neglected, dependent or delinquent or in danger of becoming so."

The summons replaces the warrant. The hearing in the informal proceedings replaces the arraignment, indictment, trial, and technical rules of evidence. The detention room replaces the jail. The adjudication replaces the correction and the sentence. The training school, boarding home and foster care replace penal institutions.

The juvenile court has jurisdiction over dependent and neglected children and takes from all trial courts all offenses—both felonies and misdemeanors—of children under 14 and all misdemeanors and felonies where the punishment cannot exceed ten years in prison committed by children from 14 to 16, unless the juvenile court judge waives jurisdiction to the Superior Court. All appeals go to the Superior Court.

There are 106 juvenile and domestic relations courts existing in North Carolina today for the trial of boys and girls under sixteen years of age, ninety-two county juvenile courts, two joint city-county juvenile courts, six city juvenile courts, three county domestic relations courts and three city-county domestic relations courts.

The jurisdiction of all the juvenile courts is the same, and the jurisdiction of all domestic relations courts is the same, but the jurisdiction of the juvenile courts varies from that of the domestic relations courts. The jurisdiction of the 100 juvenile courts includes cases involving children under sixteen years of age who are (or are in danger of becoming) delinquent, dependent, or neglected (these terms are spelled out in some detail in the statutes), or whose custody is subject to controversy.

This same jurisdiction is expanded in the domestic relations courts to include cases involving (1) abandonment and non-support of a child, spouse, or needy parent (including bastardy actions, and suits under the Uniform Reciprocal Enforcement of Support Act), (2) an assault or battery by an adult on a juvenile or by one spouse on the other (including affrays between husband and wife), (3) adults contributing to the delinquency, dependency, or neglect of a juvenile, (4) the receiving of stolen goods from a juvenile, and (5) violations of the school attendance laws.

These courts vary as to the method by which the judge is selected. For five of these courts the judge is appointed by the joint action of a county and city governing body; for four he is appointed by a board of county commissioners; for six he is appointed by a governing body of a city, and for ninety-one of the counties he is the clerk of the Superior Court, an elected official.

Vacancies are filled by the appointing authority in the case of appointed judges and by the succeeding clerk of court in the case of clerk-of-court judges.

These courts vary in the use of probation personnel. Some of them use the personnel of the county departments of public welfare for this service, whereas others have probation personnel on the staff of the court. They vary in the number, qualifications, salary, and methods of selecting probation personnel.

These courts vary in the use of a solicitor to represent the State at the hearing of cases. Four of the domestic relations courts have a solicitor, two of the domestic relations courts do not have one, and none of the juvenile courts has a solicitor.

There is some consistency and some variation as to the records and reports of these courts. All of these courts report official (hearing held) juvenile cases to the State Board of Public Welfare on uniform forms. Fourteen of these courts also report unofficial cases (cases disposed of without a hearing) but the other ninety-two do not. There are no uniform records or reporting by the domestic relations courts of their cases other than juvenile cases.

### Administrative Courts

A new type of agency appeared in the state in the 1890's to handle problems beyond the personnel, machinery and equipment of the courts—problems involving judicial decisions in the context of administrative procedures and investigative techniques.

The first of these agencies was the Railroad Commission, established by the General Assembly in 1891. This agency was expanded into the Corporation Commission in 1899, to the Utilities Commissioner (with two associate commissioners) in 1933, and to the Utilities Commission in 1941, with "general power and control over the public utili-

ties and public service corporations of the State, and such supervision as may be necessary to carry into full force and effect the laws regulating the companies, corporations, partnerships, and individuals hereinafter referred to, and to fix and regulate the rates charged the public for service, and to require such efficient service to be given as may be reasonably necessary." The Commission was authorized "to formulate rules of practice."

The Supreme Court upheld the legislative grant of judicial powers to this Commission as "a Court of general jurisdiction as to all subjects embraced in the Act," under the authority of the 1875 amendment to the Constitution giving the General Assembly power "to allot and distribute" jurisdiction in its discretion to courts which may be established by law. In a later decision the court referred to such agencies as "administrative courts." *Express Co. v. R. R.*, 111 N.C. 463 (1892).

Under its power to establish "Courts inferior to the Supreme Court," since the turn of the century the General Assembly has established similar agencies with judicial powers in many fields, "with the right of appeal to the Superior Court as in all other lower Courts." To illustrate:

The General Assembly established the Industrial Commission with power to hear and determine disputes as to employers' liability for compensation to employees under the Workman's Compensation Act; the Employment Security Commission with power to determine what, if any, benefits a person who is discharged from employment is entitled to receive; the Motor Vehicles Department with power to revoke, suspend or restore driver licenses; the Tax Review Board with power to review decisions of the Commissioner of Revenue on a taxpayer's tax liability when the taxpayer elects to contest the decision without paying the tax; and so on.

The General Assembly has provided a multiplicity of agencies or officials with quasi-judicial functions which are subject to statutory review by the Superior Court—for example, the State Board of Assessment, the State Board of Alcoholic Control, the State Banking Commission, the Building Code Council, the State Board of Elections, the State Board of Paroles, the Eugenics Board, the Stream Sanitation Committee, and nearly a hundred others.

Other officials and agencies have acquired powers which are subject to judicial review—the Secretary of State in the administration of the Securities Law, the State Board of Education, provided for in the Constitution of 1868, and the Department of Agriculture, established in 1877.

To illustrate further: The General Assembly has established around twenty-five occupational licensing boards all of which are given some judicial powers subject to judicial review: the Board of Medical Examiners in 1859, the Board of Pharmacy in 1881, the Board of Embalmers and Funeral Directors in 1901, The Board of Veterinary Medical Examiners in 1903, the Board of Osteopathic Examination and Registration in 1907, the Board of Examiners in Optometry in 1909, the Board of Architectural Examination and Registration in 1915, the Board of Chiropractic Examiners and the Board of Nurse Examiners (registered nurses) in 1917, the Board of Chiropody Examiners in 1919, the Board of Registration for Engineers and Land Surveyors in 1921, the Licensing Board for Contractors and the Board of Certified Public Accountant Examiners in 1925, the Board of Barber Examiners in 1929, the Board of Examiners of Plumbing and Heating Contractors in 1931, the Board of Law Examiners and the Board of Cosmetic Art Examiners in 1933, the Board of Dental Examiners in 1935, the Board of Examiners of Electrical Contractors and the Licensing Board for Tile Contractors in 1937, the Board of Nurse Examiners (practical nurses) in 1947, the Board of Opticians and the Examining Committee of Physical Therapists in 1951, and the Real Estate Licensing Board in 1957.

Most of these administrative courts are given the power to make their own rules, in their judicial as well as their administrative proceedings. To illustrate: The Utilities Commission has the power "to formulate and promulgate rules of practice." The Industrial Commission is authorized to "make rules. . . for carrying out the provisions of" the Workmen's Compensation Act. The Board of Law Examiners has the power "to formulate and adopt rules of professional ethics and conduct," and "rules of procedure governing the trial of any such person [accused of unethical conduct] which shall conform as near as may be to the procedure now provided by law for hearings before referees in compulsory references." The Board of Medical Examiners has the power "to prescribe such regulations as it may deem proper, governing applicants for license." The Board of Pharmacy has "the power and authority. . .to adopt such rules, regulations, and bylaws, not inconsistent with this article, as may be necessary for the regulation of its proceedings and for the discharge of its duties imposed under this article. . . ."

The General Assembly has provided for appeals from many of these administrative courts on questions of law only. To illustrate: The function of the Superior Court in reviewing a decision of the Utilities Commission is only to "decide all relevant questions of law, interpret constitutional and statu-

tory provisions, and determine the meaning and applicability of the terms of any Commission action." An award of the Industrial Commission is "conclusive and binding as to all questions of fact," appeals lying from that agency to the Superior Court "for errors of law, under the same terms and conditions as govern appeals in ordinary civil actions." A decision of the Board of Medical Examiners is reviewed by a Superior Court "judge without a jury, upon the record" and must be upheld "unless the substantial rights of the applicant have been prejudiced because the decision of the Board is in violation of law or is not supported by any [admissible] evidence . . . or is arbitrary or capricious."

A different approach to judicial review of decisions of administrative tribunals is shown by the statutory provisions requiring that appeals from the Board of Law Examiners "shall be in accordance with rules or procedures as may be approved by the Supreme Court as may be submitted . . . [by the council of the North Carolina State Bar]. . . or as may be promulgated by the Supreme Court."

## THE COURTS OF TOMORROW

As it was the task of the lawmakers in the 1660's and the years that followed to adapt the courts of a closely-knit England to the needs of a people living in scattered settlements in a New World, as it was the task of the lawmakers of the 1860's to adapt the courts of a social order which was dead to a social order which was still unborn, so it is the task of The Committee on Improving and Expediting the Administration of Justice in North Carolina in the 1950's to adapt the courts of today to the needs of a people in swift and accelerating transition from a rural to an industrial society, with steam, electricity and oil propelling us by waterway, railway, highway, and airway, and with atomic power casting its shadow before.

### Vantage Points

In coming to grips with the problems involved in this task the Committee of the 1950's has vantage points its predecessors did not have. It can see courts as courts, as the lawmakers of 1868 could not see them. It can see the place of the lower courts in our judicial system as men of the 1860's could not see them, the place of the juvenile, domestic relations, and administrative courts as men of the 1860's could not see them, the place of the Superior Court as men of the 1860's could not see it, and the place of the Supreme Court as men of the 1860's could not see it.

*The Committee of the 1950's has a better view of courts as courts—separated from legislative and executive agencies—than did the lawmakers of the 1860's.* As long as the Governor as executive and his Council as legislative body held the General Court as judges, their performance in any one role was mixed with performance in the other. The coming of a Chief Justice and Associate Justices in the 1800's to absorb judicial functions freed the Governor and Council for executive and legislative duties and put the spotlight on courts as courts at the state level.

Transferring legislative and executive responsibilities of the county courts into the hands of county commissioners in 1868, and their judicial responsibilities to the justice of the peace and the Superior Court, put the spotlight on the talents of justices of the peace as judges on the county level rather than as legislators or executives, as it had been put on Superior Court judges as judges over a hundred years before.

Taking the legislative and executive responsibilities from the township trustees (who were also justices of the peace) in 1876 put the spotlight on judicial performance alone.

The evolution of the mayor's court into the city court in the 1890's freed the mayor from judicial responsibilities and put the spotlight on the city court judge as judge rather than as local legislator and executive.

*The Committee of the 1950's can see the place of the lower courts in our judicial system as men of the 1860's could not see it.* The justice of the peace system grew according to plan and pattern from the 1660's to the 1860's but not since that time. The 1868 Constitution gave justices of the peace in North Carolina the greatest chance of their history. It expanded their jurisdiction in civil and criminal cases beyond what it had ever been before. It provided for increasing their numbers to take care of future growth in judicial business. This burden was sometimes greater than many of them could bear; and from time to time the General Assembly has created other courts which have absorbed the greater part of the business intended for the justice of the peace in the 1868 Constitution.

If it may be fairly said that the courts of the justice of the peace lost the plan and pattern of this growth by the turn of the century, it may also be fairly said that other lower courts did not have a plan or pattern to start with and have not acquired one along the way. The 1868 Constitution divided all civil and criminal jurisdiction between the justice of the peace and the Superior Court. The

special act courts for cities and towns came in as an after-thought to take care of a limited and temporary objective—to try the petty misdemeanors of freed men who were leaving the plantations and flocking to cities and towns without means of livelihood. The two courts established under this provision in 1868 were abolished in 1869 and 1871, and the mayors' courts, coming in to serve one purpose, stayed to serve another.

The effort to revive the old county courts after 1875 died aborning. The few counties trying it found that they could not go back to a "normalcy" which had disappeared. The discretionary powers given to the General Assembly in the 1875 amendments "to allot and distribute" civil and criminal jurisdiction among courts inferior to the Superior Court was a gift of power to use without a plan to go by. The circuit court experiments in the 1880's and 1890's which would have destroyed the symmetry of the Superior Courts frazzled out by 1900.

With no statewide plan or pattern offered to the General Assembly by the authors of the Constitution of 1868 and the amendments of 1875, and no statewide plan offered by the General Assembly to the localities of the state, each locality started looking out for itself. One hundred eleven special act courts established from 1905 to 1917 were local answers to a General Assembly policy of helping only those who helped themselves. They were not planned; like Topsy they "just growed."

The 1917 prohibition of special act courts called for a comprehensive system of lower courts on a statewide scale—a system which the 1919 General Assembly tried to provide but failed when forty-seven counties refused to go along. The Supreme Court's decision in the *Harris* case that a general law did not need to be a statewide law meant that a statewide system of lower courts was not likely to be achieved by general laws. Fourteen different types of general laws covering differing fractions of the state have advertised forty years of failure of the 1917 unifying principle of general laws, and have left the last condition of the lower court system worse than the first.

### Necessity for a Lower Court System

The logic and experience of three hundred years demonstrate the necessity of a system of lower courts within quick and easy reach of the rank and file of the people for the trial of the lesser civil and criminal cases.

This was true in the early days of our history when North Carolina was a series of scattered settlements, isolated and insulated from each other and the outside world, and made up of people who made their living and lived at home; it was true when quick trial of disputed issues avoided the necessity of bail or jail, where people knew each other to the point that bail was quickly or easily arranged when trial was delayed, and where the stranger within the gates was the exception rather than the rule.

It is truer still today when railway, highway and airway are knitting the state together so completely that a person in Currituck County in the morning may be in Cherokee, five hundred miles away, by evening; when thousands of people every day are going through North Carolina from North and South, and the State, as one of its largest revenue-producing enterprises, is spending tens of thousands of dollars every year inviting tourists to the state.

This need for local courts was met to some degree at least by a system of neighborhood justices of the peace in the horse-and-buggy days. The General Assembly has pointed to the inadequacy of this system to keep up with the needs of later days by giving concurrent jurisdiction to mayor and city courts—first within city limits and then in varying distances beyond the city limits to the county line—, by giving concurrent jurisdiction to county courts outside of city limits, by giving concurrent jurisdiction to combination city-county courts within and without city limits, and by giving jurisdiction to mayor or city courts within city limits to the exclusion of the justice of the peace altogether in many places. But there are many places where the justice of the peace is the sole reliance of law-enforcing officers for issuing warrants, trying minor offenses, and holding hearings to decide on probable cause and bail or jail in binding over to a higher court.

Chief Justice Winborne pointed up the problem of the lower courts in our judicial system in talking to the North Carolina Bar Association in 1957: "There are in this State many courts below the Superior Court level. These courts are of varied composition and jurisdiction and are subject to no effective control from within or from without. They should be consolidated into a general uniform court system with an executive head to provide administrative supervision and assistance. The system should be of sufficient breadth of flexibility to provide adequate court coverage on that level throughout the State."

The task of the Court Study Committee does not stop with efforts to find a unifying principle to bring the multiplicity of lower courts into a comprehensive system. It is charged with responsibility of looking at the structure and the workings of the judicial system in all its parts, and as a whole which is greater than the sum of all its parts, in the effort to find ways and means of "expediting and im-

proving the administration of justice" throughout North Carolina.

*The Committee of the 1950's sees the place of the Superior Court in our judicial system as men of the 1860's could not see it.* From colonial beginnings to 1868 the Superior Court was the undisputed head of our system of trial courts, with all appeals from justices of the peace going to their respective county courts, and all appeals from the county courts going to the Superior Courts. From 1868 to the 1890's it was the undisputed head of our system of trial courts, with appeals from justice of the peace courts, special courts and other lower courts going to the Superior Court as the sole avenue to the Supreme Court. The legislative challenge to this pre-eminent position in the circuit courts of the 1890's, with similar jurisdiction and direct appeals to the Supreme Court, was struck down by Supreme Court decision at the turn of the century as the court affirmed the position the Superior Court has occupied for three hundred years as the unifying head of the system of trial courts in North Carolina.

In addition to its trial court duties the Superior Court has to a limited extent exercised the powers of an intermediate appellate court. From Colonial days to 1868 it had jurisdiction to hear appeals and grant "writs of error" to all of the lower courts on questions of law as well as fact; from 1868 to 1875, it had jurisdiction to hear appeals from justices of the peace "on questions of law only" in civil actions involving more than $25. Appeals from thirty-eight special act or general law courts go to the Superior Court on questions of law only in civil actions involving varying amounts—from $1,000 in contract and $500 in tort in 28 courts, to $1,500 in contract and $1,000 in tort in one court, to $1,500 in contract and $1,500 in tort in another court, to $2,500 in both contract and tort in another court, to $3,000 in both contract and tort in another court, to $5,000 in contract and $2,500 in tort in another court, and to an unlimited amount in both contract and tort in five courts.

Appeals from many "administrative courts" go to the Superior Courts, on questions of law only or both law and fact, under a variety of differing procedures. To illustrate:

From Colonial days to 1868 the clerk of court in each county was an administrative officer. The 1868 Constitution gave the Superior Court clerk in each county some of the judicial functions previously exercised by the pre-war county courts, including probate and a variety of other special proceedings. In 1919 the General Assembly by "general law" added the duties of juvenile court judge. Throughout the years the clerk's office has become the dumping ground for a multiplicity of miscellaneous functions having no relation to the administration of justice in the courts, from either judicial or administrative viewpoints, and often interfering with the performance of those functions.

Solicitorial districts were separated from judicial districts in 1955 and solicitors of the Superior Court found themselves with unequal work loads varying from twenty-one weeks of criminal court in some districts to fifty-one weeks in others; they are in a position similar to that of Superior Court judges before the Chief Justice of the Supreme Court was given power to equalize work loads by assigning special and emergency judges for special terms of court wherever needed, and regular judges under certain circumstances. A resolution of the 1957 General Assembly calls this and related matters to the attention of the Committee on Improving and Expediting the Administration of Justice with a specific request for recommendations.

For years the Judicial Council and members of the bench have recommended: (1) extension of the power of accused persons under proper safeguards to waive the right of jury trial in misdemeanors and non-capital felonies, (2) the power to waive grand jury indictments in corresponding circumstances, (3) changes in methods of selecting juries, and (4) reduction of present exemptions from jury service.

*The Committee of the 1950's sees the place of the Supreme Court in our judicial system as men of the 1860's could not see it.* It was rooted in the necessities of logic and experience in the early 1800's when differing decisions of Superior Court judges, riding different circuits throughout the state, called for a tribunal to give final and authoritative pronouncements of the law—to guide judges of the Superior Courts, to guide judges of the county courts, to guide justices of the peace, and to guide lawyers at the bar.

***Unifying Influence of Supreme Court in the Field of Law.*** From its formal beginnings in the General Assembly of 1818 the Supreme Court has gradually rid itself of incidental functions such as the trial of equity cases, the examination of applicants for admission to the bar, and the chore of hearing most if not all tort claims against the State, and has concentrated its powers on its appellate functions, with its unifying power running throughout the legal system.

This unifying influence of the Supreme Court in the field of law was extended by the General Assembly in 1925 as it created "a judicial conference for the continuous study of the organization, rules and methods of practice and procedure of the judicial system of the State of North Caro-

lina, and the practical working and results produced by the system," headed by Justices of the Supreme Court. This unifying influence was continued by the 1947 General Assembly as it created a Commission including Supreme Court Justices for the "comprehensive study of needed improvements in the administration of justice in the State of North Carolina." It was extended still further by the 1949 General Assembly as it put the Chief Justice, or his personal representative, at the head of a Judicial Council charged with a "continuing study of the administration of justice in this State and the methods of administration of each and all of the courts of the State, whether of record or not of record," receiving "reports of criticisms and suggestions pertaining to the administration of justice in the State," recommending "to the Legislature, or the courts, such changes in the law or in the organization, operation or methods of conducting the business of the courts, or with respect to any other matter pertaining to the administration of justice, as it may deem desirable."

Recent years have seen a further extension of the unifying influence of the Supreme Court from the field of law to the field of judicial administration. This extension of reponsibility is registered in a 1950 amendment to the Constitution: "The General Assembly may provide by general laws for the selection or appointment of special or emergency Superior Court judges not assigned to any judicial district,who may be designated from time to time by the Chief Justice, to hold court in any district or districts within the State. . . .The Chief Justice, when in his opinion the public interest so requires, may assign any Superior Court judge to hold one or more terms of Superior Court in any district."

Pursuant to this amendment shifting the regulation of the exchange and assignment of Superior Court judges from the Governor to the Chief Justice, since 1950 the General Assembly has authorized the Chief Justice (1) to regulate and control exchanges and assignments of judges of the Superior Court within stated limits, (2) to collect statistics on the work of the Superior Courts to guide him in determining where special terms of court need to be held and where terms of court are not needed and should be cancelled, (3) to order special terms of court when it appears to him that such terms are needed due to an accumulation of criminal or civil actions, to cancel a term of court when it appears to him that such term is not necessary due to the lack of sufficient official business, and (4) to change a term of court from civil to criminal, from criminal to civil, or from civil or criminal to mixed.

To help him carry out these administrative duties, the General Assembly has given him an Administrative Assistant and transferred the duty of collection of civil statistics from the Attorney General to the Chief Justice—"The statistical data as to civil litigation, heretofore required by G.S. 114-11 to be furnished to the Department of Justice by clerks of the superior court and other court officials, shall be furnished to the Chief Justice. . .and any clerk or officer of any court in this State who shall wilfully fail or refuse to furnish such statistical data . .. shall be subject to a fine of $200."

*Chief Justice Barnhill in the 1930's.* Thus the General Assembly has on its own motion gone a long way down the trail blazed by Justice Barnhill—later Chief Justice of the Supreme Court of North Carolina—who, in talking to the North Carolina Bar Association in the 1930's said:

> We need to provide an administrative supervisory agency, not of the judges, but of the courts and the dockets, so that the lawyers and the people alike may be correctly informed as to the work being done, the number of cases being disposed of, and the reasons for the present condition of our dockets. This will necessarily lead to a better understanding of the work of the judge and of the needs of the system. The supervisor, or agent, in charge of such a department should be placed under the direction of the Chief Justice and he should be charged with the duty to check every docket in the state, to ascertain and report the cases pending, the reasons for the condition of the docket as he finds it, and to make recommendations for the adjustment of the court terms in such manner as will remedy present conditions. This agency should be required to report the time consumed in the trial of causes in the several courts, the number of cases disposed of and the number continued. He should be required to obtain and give information as to the cases continued by consent, or for cause, or by the judge *ex mero motu.*

*Chief Justice Winborne in the 1950's.* In this tradition Chief Justice Winborne said to the North Carolina Bar in 1957:

> The courts exist primarily for the benefit of the litigants and of the State; the operation of our courts has become a big business; the primary concern of those responsible for the administration of our courts should be to assure the maintenance of a proper and orderly flow of litigation at a minimum expense to litigants and taxpayers. . . .There should be more administrative control over our courts. We have gone along too long with a series of individualized, autonomous courts over which there is no prescribed control . . . .
>
> Let me emphasize that administrative supervision has nothing to do with the proper ex-

ercise by judges of their judicial functions in the determination of matters before them. Time does not permit me to go into the functions that properly lie within the field of court administration but I did want to mention this important limitation. We should have an executive head whose business it is to provide unified administrative control of our entire court system.

The beginnings of a workable system have been established. The administrative power of the Chief Justice extends only to the Superior Court. With the hoped for simplication of our local courts the administrative control of the Chief Justice could be extended to all the courts and his powers in this respect broadened.

These ideas are not original with me. They are the results of research and experiment spanning the last half century. Their workability has been conclusively demonstrated. It is hoped that the Bench, Bar and public of this State, working together harmoniously, will seek and find whatever weak points there may be in our system of justice and take the proper steps to correct them.

Chief Justice Winborne gave pith and point to this conclusion by saying:

During the fiscal year 1956 there were 7,050 days of Superior Court scheduled. 5,455 or 77.4% of these court days were utilized. There may be many and varied causes for the difference in these figures. Indeed without knowing what the causes are, it would not be fair to place the responsibility on the shoulders of anyone or to lay the blame, if any, upon anyone. Nevertheless it is interesting to visualize the effect of perfect utilization of the time scheduled.

Let us take the 1,595 court days' difference. At the rate of 8½ cases per court day,which was the rate of disposition in this State last year, 13,557 more cases could have been tried or otherwise disposed of by our Superior Courts, if the Courts had remained in session and had been utilized through Friday of each week. Since there were 23,026 cases left on the Superior Court dockets at the end of the year, it is obvious that at least a substantial part of the 1,595 days could have been used.

This unused judicial time, from whatever cause it may have resulted, demands the attention and consideration of both Judges and lawyers to the end that if the cause be remediable, provision be made to prevent future repetition thereof. In other words it would seem to require full cooperation between the lawyers and Judges to the end that sufficient cases be calendared for trial at each term and that the court remain open for the trial of cases calendared.

***Unifying Influence in the Field of Rule Making.*** From its formal beginning in 1818 the Supreme Court has exercised the power to make its own rules. The 1818 General Assembly also gave the Supreme Court power to "prescribe and establish, from time to time, rules of practice for the Superior Courts, which the clerk shall certify to the judges of the Superior Courts, who shall cause the same to be entered on the records of said Court." Chapter 963, Laws of 1818. This law continued to stand and was restated by the 1921 General Assembly in these words: "The Supreme Court is hereby vested with the power to prescribe from time to time the modes of making and filing proceedings, actions, and pleadings, and of entering orders and judgments and recording the same, and to prescribe and regulate the practice on appeals to the Supreme Court, and in the trial of actions in the Superior Court, and before referees. . . ."

In 1889 the Supreme Court asserted the power to make its own rules to the exclusion of the General Assembly. *Horton v. Goin,* 104 N.C. 400, 10 S.E. 470. It has not extended this assertion of rule-making power to practice and procedure in the Superior Courts.

Beginning with the Railroad Commission in 1891, the General Assembly has created a multiplicity of administrative agencies, with more or less extensive judicial powers in administrative contexts, and has given these agencies power to make their own rules and regulations—with only enough exceptions to prove the rule.

For years the members of the bench and bar in North Carolina have argued that the unifying influence of the Supreme Court should be extended still further by giving it the power to make rules of practice and procedure for the Superior Courts and all the lower courts in the trial court system.

Chief Justice Winborne added his voice to this growing chorus in 1957: "Our courts are being operated by the judiciary under rules of procedure laid down by the Legislature. If the judiciary is to be held accountable for the manner in which the courts are operated it should be given the power to formulate and promulgate rules of procedure. And it would seem proper that provision be made for change and for amendment when expedient to the administration of justice. Vesting of the rule-making power in the court is essential to the progress of judicial administration."

*The Committee of the 1950's has a better vantage point than its predecessors for looking at our judicial system in all its parts.* It knows that "continuity with the past," in the words of Mr. Justice Holmes, "is not a duty; it is only a necessity." The life of a court system, like the life of the law, has not been so much logic as it has been experience. The court system in North Carolina from the 1660's to the

1860's grew out of English common law traditions The court system from the 1860's to the 1950's grew out of North Carolina traditions from colonial beginnings through the Revolution to the Civil War. And the courts of tomorrow will grow out of the courts of today.

That is why this Committee has insisted on tracing the evolution of the courts in North Carolina through constitution, statute and decision, in public laws and public-local laws, and in private, local and special acts, for nearly three hundred years.

It found these laws scattered through the books to the point that many times in many places judges, solicitors, lawyers, and law-enforcing officers held differing opinions as to the jurisdiction of the courts in which they were appearing—practicing by ear and not by note.

That is why this Committee is looking for all the light it can get from the experience of other states, and of the federal courts in this and other states—knowing that no plan or pattern of courts for the administration of justice will work in North Carolina simply because it works in New Jersey, or in Missouri, or in the federal courts, but because it grows out of the logic and experience of our life and history.

As it looks for ways and means of fashioning a system of courts for tomorrow as good as or better than the best we have today, the Committee on Improving and Expediting the Administration of Justice in North Carolina is not stepping on the toes of those who have gone before; it is standing on their shoulders. It has in mind the intructions given to the men in the 1660's to build a system of courts "to do equal justice to all men to the best of their skill and judgment, without corruption, favor or affection." It has in mind the admonition of Governor Hodges in the 1950's when he said: "I hope and believe that the results of the study will furnish the people of the state a guide book for the improvement in the administration of justice at all levels, both in the immediate future and for the years to come."


**Maurice V. Barnhill**

*Associate Justice 1937-1954*
*Chief Justice 1954-1956*

**William A. Devin**

*Associate Justice 1935-1951*
*Chief Justice 1951-1954*