

HISTORY OF THE SUPERIOR COURT JUDGES OF NORTH CAROLINA

INTRODUCTION

On September 27, 1997 The North Carolina Supreme Court Historical Society in Greensboro, North Carolina, commemorated the establishment of the Superior Court of North Carolina in 1777. In recognition of the two hundred-twenty years of service to the State of North Carolina by the Superior Court Judges, a summary history is presented with some anecdotal material.

OATH OF SUPERIOR COURT JUDGES

-- 1777 --

"I do solemnly swear, that I will well and truly serve the State of North Carolina, in the office of Judge of the Superior court of Law of the said state. I will do equal Law and Right to all persons, rich and poor, without having regard to any person. I will not wittingly or willingly take by myself, or by any other person, any fee, gift, gratuity, or reward whatsoever, for any matter or thing by me to be done by virtue of my office, except the fees and salary by Law appointed. I will not maintain myself, or by any other, privately or openly, any plea or quarrel depending in any of the said Courts. I will not delay any person of common right, by reason of any letter or command from any person or persons in authority to me directed, or for any other cause whatsoever; and in case any letters or orders come to me contrary to Law, I will proceed to enforce the Law, such letters or orders notwithstanding. I will not give my voice for the appointment of any person to be clerk of any of the said courts, but such of the candidates as appear to me sufficiently qualified for that office; and in all such appointments will nominate without reward, the hope of reward, prejudice, favor, or partiality, or any other sinister motive whatsoever. And finally, in all things belonging to my office, during my continuance skill and judgement, do equal and impartial justice to the public and to individuals. SO HELP ME GOD."

THE EARLY YEARS

The turmoil between the colonies and England in the 1770's led to the adoption on December 18, 1776 of the Constitution of the free State of North Carolina and the creation of the three branches of government; the legislative, executive and the supreme judicial power. An Address On The History Of The Supreme Court, By Honorable Kemp P. Battle, LLD., 103 N.C. 339 (1889) at page 353. A new court law was adopted on November 15, 1777 dividing the State into six districts, with Courts to be held at Wilmington, New Bern, Edenton, Hillsboro, Halifax and Salisbury. Subsequent changes were made over the years creating new districts as growth in commerce and population demanded.

The Act of 1777 created three Judges' positions which were described in the new law as "Superior Court", a probable adoption from the Act of 1767 which used the same term, when it would have been constitutionally correct to refer to the new judicial positions as the "Supreme Court". The Judges not only acted as Trial Judges but two Judges could sit as an appellate or Supreme Court.

It is worth noting that one of the earliest and most significant decisions rendered by the Superior Court Judges sitting as an appellate court was *Bayard v. Singleton*, 1 N.C. (Mart.) 5 (1787), in which the three Superior Court Judges sitting as an appellate court ruled that the Courts do have the power and duty to declare an act of the Legislature unconstitutional, this opinion predating *Marbury v. Madison* by 15 years.

Under the Constitution of 1776, Judges held office during good behavior and were elected by the General Assembly. This selection process remained unchanged until the Constitutions of 1868 and 1876 when election was given to the people and vacancies filled by the Governor until the next general election. An Address On The History Of The Supreme Court, By Honorable Kemp P. Battle, LL.D., 103 N.C. 339 (1889) at page 363.

The first three Judges elected were Samuel Ashe of New Hanover County; Samuel Spencer of Anson County; and James Iredell of Chowan County. Iredell resigned after riding one circuit and John Williams of Granville County took his place. Iredell was subsequently appointed by President Washington to serve on the United States Supreme Court. Ashe served until 1795 when he was elected Governor; Williams served until his death in 1799 and Spencer served until his death in 1794. An Address On The History Of The Supreme Court, By Honorable Kemp P. Battle, LL.D., 103 N.C. 339 (1889) at page 354.

In 1818, the Legislature finally divided the responsibilities and created a Supreme Court, consisting of three Judges. The creation of this new appellate court did not go without criticism including objections to the extravagant salaries set at \$2,500 per year, life tenure appointments, long journeys that lawyers had to undertake from the western counties, and Superior Court Judges who resented being reversed on appeal.

North Carolina Manual, 1993-1994, Chapter Four, The Supreme Court of North Carolina: A Brief History, at page 606.

"The Constitution of 1868 made the Supreme and Superior Courts constitutional offices and beyond repeal by legislative action. It also made the judges elective by the people for the term of eight years."

History Of The Supreme Court Of North Carolina by Chief Justice Walter Clark, 177 N.C. 617 (1919) at page 618.

ROTATION
(RIDINGS)

... ". The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed." Constitution of North Carolina (1970) as Amended; Article IV, Sec. 11.

"In 1790, Halifax, Edenton, New Bern, and Wilmington districts were constituted the Eastern Riding, and Morganton, Salisbury, Fayetteville, and Hillsboro, the Western. The number of judges was increased to four, by the election of Judge Spruce McKay, and two judges were assigned to hold the courts, jointly, in each riding."

History Of The Supreme Court Of North Carolina by Chief Justice Walter Clark; 177 N.C. 617 (1919) at page 619.

Because of hardships due to distances imposed on the people in trying to attend to court business, in 1806 changes were made in the Court system. Superior Courts were to be held semiannually in each county by a single judge. "The counties were grouped into six circuits, called also ridings, but the judges were to ride in rotation." History Of The Supreme Court Of North Carolina by Honorable Kemp P. Battle, at page 358.

"Till 1856 these judges met and themselves allotted the ridings, the only restriction being that no judge should hold the same riding twice in succession. In 1857 this was changed to require the judges to hold every district in the whole State in regular rotation. By the Constitution of 1868 judges of the Superior Court each held only his own district. In 1878 this was changed back to require the Superior Court judges to ride the entire State in rotation. In 1910 the number of districts having increased to 20, it was felt to be a hardship that a judge should ride his own circuit only one time in twenty, . . . and the State, as in 1790, divided into two divisions."

History Of The Superior Court Of North Carolina, Chief Justice Walter Clark, 177 N.C. 617 (1919) at page 620.

Modern day Superior Court Judges continue their "ridings" through the present four divisions and 40 Judicial Districts.

Rotation has been part of the legal debate for many years. The pros and cons of rotation have been captured in three excellent law review articles. Open Court, Rotation of Superior Court Judges, by John A. Livingstone, N.C. Law Review, Volume 6, 927-28, at pages 110-117; The Rotation of Superior Court Judges by William H. Bobbitt, Judge, Superior Court, N.C. Law Review, Volume 26, 1947-48, at pages 335-349; and the Rotation of Superior Court Judges, by J. Francis Paschal, N.C. Law Review, Volume 27, 1948-49, at pages 181-203.

The arguments against and for rotation have been summarized by J. Francis Paschal in his article at pages 201-202:

- (Con)". . . it renders almost impossible the definite fixing of individual responsibility for the swift and efficient administration of justice; that it is often a stimulus to delay when a lawyer, for any reason however trivial, prefers to take his chances with a judge

other than the one in his district; that it often forces a judge to spend in travel much time he could, with great profit to himself and the State, devote to other things; that, despite heroic efforts, it frequently results in a judge being unavailable when he is needed. Nor has anyone dared to assert that the system, as it has operated and as it operates now, is at all adapted to the effective disposition of chambers matters."

• (Pro)"However great the burdens of rotation, it is said that we must bear them for a variety of reasons. These can be briefly recapitulated: rotation is one of our oldest traditions; it gives us a state-wide judiciary; it has exerted a unifying influence on the people of the State; it broadens the outlook of the judge; it guarantees an independent and impartial judiciary."

CONFERENCE OF SUPERIOR COURT JUDGE

The Conference of Superior Court Judges had its conceptual beginnings in the early 1930's as some Superior Court Judges gathered on the Fourth of July weekends at the old Ocean Terrace Hotel at Wrightsville Beach, North Carolina. Apparently led by Judge W.C. (Buck) Harris, these Judges sat and rocked while discussing the array of judicial problems.

The first Conference of the Superior Court Judges of North Carolina convened on July 14, 1939 at the Mt. Mitchell Game Refuge with 21 Judges present. Elected as officers were Judge W. C. (Buck) Harris of Raleigh, President; Judge J. Will Pless, Jr. of Marion, Vice President; and Henry L. Stevens, Jr. of Warsaw, Secretary-Treasurer.

The Conference of Superior Court Judges has been directly or indirectly influential in many of the vast improvements in the Court System through its Pattern Jury Instructions, Bench Book, legislative suggestions, and its Continuing Judicial Education programs. Much of the Conferences' success is due to the Institute of Government and its dedicated staff.

Although there had been much discussion about the use of robes in the Courtroom by Superior Court Judges, Superior Court Judges did not begin wearing robes until January 1, 1958. A History Of the Conference Of Superior Court Judges Of North Carolina by Hamilton H. Hobgood, Judge of the Superior Court, Retired, (1981) at page 20.

Historically, Superior Court Judges have been individualists and some things seem to never change. "Written polls of judges over the years on various propositions have proven to be unsatisfactory. If the judges are in agreement, there is no need for a poll. If they are in disagreement, there is no value in a poll. Several polls have resulted in about one-third of the judges being for the proposition, one-third being against, and one-third not voting." A History Of The Conference of Superior Court Judges Of North Carolina by Hamilton H. Hobgood, Judge of the Superior Court, Retired (1981) at page 31.

UNUSUAL EVENTS

There are many wonderful stories and articles about events involving the Superior Court Judges. Limitations of space do not permit a recounting of the numerous stories that abound. The following are recited because each fell into the category of the unusual.

- **Turkey Gobbler Attack**

Of all the Superior Court Judges who have served, Judge Spencer's death may have been the most unusual.

Judge Spencer, in declining health, was at his home in Anson County in August, 1794. "He was sitting on his piazza with red cap on his head, when it attracted the attention of a turkey gobbler. The judge being sleepy began to nod. The turkey mistaking the nodding and the red cap for a challenge to battle made violent and unexpected attack on His Honor that he was thrown from his chair on the floor and was so beaten and bruised that he died in a few days." History of Anson County, North Carolina, 1750-1976, by Mary L. Medley, at pages 68-69. The family of Judge Spencer countered this version by indicating that death was probably caused by a peck on the hand causing an infection resulting in erysipelas which later brought on Judge Spencer's death. History of Anson County, North Carolina, 1750-1976, by Mary L. Medley, at page 69.

- **Assassination**

The most violent death of any sitting Superior Court Judge occurred in 1947. The assassination is captured in the headlines and front page article of The Daily Advance, Elizabeth City, North Carolina. Monday, Evening, March 17, 1947, Final Edition, and reported as follows:

G. E. Pritchard Kills Judge Thompson And Self . . .

Judge C. Everette Thompson, resident judge of the First Judicial District since 1938 was shot and instantly killed as he sat reading in the living room of his residence on West Church Street shortly after 9 o'clock last night by George E. Pritchard, who then turned the shotgun upon himself, firing a charge of buckshot into his abdomen, dying 20 minutes later in Albemarle Hospital.

Pritchard, who was awaiting commitment to the State's Prison to serve a year's sentence for libel imposed in Beaufort County Superior Court last November and recently confirmed by the State Supreme Court, left seven copies of a letter in which he declared his intent to kill himself but which contained no direct threat upon the life of Judge Thompson though mentioning him, among others, as the object of a long standing grievance."

Dueling Judges

- **Judge Alfred Moore**

Alfred Moore was a former Superior Court Judge from 1798-1800 and subsequently was appointed to the United States Supreme Court and served for a brief period of time before retiring because of ill health and thereafter settling in Brunswick County.

Benjamin Smith, a man of wealth and notoriety as well as a reputation for dueling, had a disagreement with his cousin, Judge Alfred Moore. Judge Moore because of ill health could not physically meet any challenge to duel. The issue was taken up by Judge Moore's brother, Captain Maurice Moore, who challenged Smith to a duel. The North Carolina authorities tried to prevent the affair because dueling was illegal in the state, but the parties simply moved across the state line into South Carolina and proceeded with the duel. Smith received a ball in the right side. Captain Moore was unhurt. Smith was transported back to Wilmington, North Carolina, where he recovered. Smith later served as Governor of North Carolina from December, 1810 to December, 1811.

The History of Brunswick County, North Carolina by Lawrence Lee (1980) at pages 139-140.

• **Judge Duncan Cameron**

Judge Duncan Cameron who served as a Superior Court Judge from 1814-1816 also was involved in a duel. There are no details but the event is simply reported as follows: "Honorable Duncan Cameron and William Duffy, met near Hillsboro; Judge Cameron wounded. Duffy represented Fayetteville in the legislature of 1806."

Wheeler's Reminiscences, Craven County, at page 135.

Robeson, Sampson & Duplin County Bars Cited for Contempt

One of the great stories about the relationship, or the lack thereof, between the judiciary and the bar is captured in The State of Robeson by Robert C. Lawrence (1939) in a section at pages 88-92 that Mr. Lawrence entitled "The Famous Peebles Contempt Case." The article is quoted in its entirety so as to not diminish the visual images and feelings that spring from the writing of Mr. Lawrence who was himself a participant.

"As I look back on this famous case after the lapse of thirty-five years, I am chiefly impressed with the foolish things done by those involved on both sides of the controversy. The parties were all lawyers, and should have known how to restrain themselves. But reason does not reign when anger has its sway, and anger certainly had its sway at that time. I do not feel that the final results reflected credit upon either side."

Judge Robert B. Peebles of Northampton county was a captain in the Confederate army, served with distinction in both branches of the legislature, and was the foremost figure in this section of the State. He was a brave and incorruptible man and an able lawyer. But he was lacking in judicial temperament, was inclined to partizanship (sic) in the trial of cases, and was intemperate in his habits. In 1904, he had but recently tried a famous murder case at Raleigh, where his conduct had brought down upon him severe criticism from the Bar and press of the State. When the time approached for him to hold court in Robeson, our Bar, under the leadership of Col. N. A. McLean, determined not to set a calendar, and not to try any cases before him.

Court convened. There being no printed calendar (as we had not set a calendar) his honor got out the original docket and one by one called over every case upon it -- several

hundred in number. As each case was called, Col. McLean would say 'continued by consent.'

When the entire docket had been called, his honor turned a cold and fishy eye upon Col. McLean and demanded to know why the entire docket had been continued. The Colonel declined to say unless forced to speak by the court. His honor ruled that the Colonel must speak. The Colonel then said that the reasons impelling the Bar were his honor's want of judicial temper, his intemperate habits, and his partisanship. 'Very well,' said the Judge, 'court is adjourned.'

"His honor proceeded to his home, where he wrote an affidavit charging that the conduct of our Bar was such as to bring the court into disrepute, and the Judge had this affidavit signed by one of his friends at Jackson. Upon this affidavit, the Judge signed an order requiring our Bar to show cause before him, at Fayetteville, why we should not be attached for contempt of court, and either fined or imprisoned in the discretion of the court. This order was served by the Sheriff, and the Lumberton law offices hummed with activity. Our Bar prepared to give battle to the court. As I now recall, the members of our Bar served with this rule were:

"Colonel N. A. McLean, (Governor), Angus W. McLean, J. Gilchrist McCormick, Stephen McIntyre, E. J. Britt, Robert E. Lee, Wade Wishart, D. Preston Shaw, R. B. Morrison, B. F. McLean, Leon T. Cook, the writer and possibly two or three others.

"The Bar employed as counsel: Charles W. Tillett, of Charlotte, outstanding North Carolina lawyer; Charles M. Busbee, prominent member of the Raleigh bar; John D. Shaw, Jr., shrewd trial lawyer, of Laurinburg. Numerous lawyers volunteered their services, including that able lawyer, Union L. Spence, of Carthage, whose proffer of aid was gladly accepted. Judge Peebles was represented by Col. Charles W. Broadfoot and Hon. George M. Rose, both able Fayetteville lawyers, acting as 'friends of the Court.'

"We did not care to try the case at Fayetteville, where public sentiment was perhaps not unanimous in our favor, so in order to get an entirely friendly atmosphere, we made a motion for removal to Lumberton. As the law on this was clearly with us, his honor granted our motion.

"Each side then proceeded to ransack eastern North Carolina for affidavits. Governor McLean and the writer secured most of the affidavits for our side, many in number, all containing allegations of intemperance on the part of the Judge. His honor, assisted by Charles U. Harris of the Raleigh Bar, secured voluminous affidavits from scores of people to the effect that the designers had never seen the court under the influence of liquor. The affidavits got so voluminous that the writer carried ours in the largest brief case he could find, whereas those filed by the Judge were so numerous that a large basket was required to hold them. Wherever the Judge went he would be closely followed by Mr. Harris, carrying the basket containing the affidavits.

"Court convened for the trial at Lumberton, both sides as angry as men can get. The 'prisoners' were all present -- many accompanied by their wives. His honor gallantly came down from the bench and shook hands with the ladies, but simply glared at their

unfortunate husbands. A throng of people were present, crowding the court room and overflowing into the corridors and court yard.

"Our counsel proceeded to read our affidavits. Among these were ones from Col. E. W. Kerr and R. C. Sutherland, prominent members of the Sampson Bar, and one from a Duplin lawyer whose name I cannot now recall. These affidavits, along with many others, alleged intemperance on the part of the Judge. When these were read, his honor stated that the hearing would be suspended temporarily until he could prepare some papers. The court began writing, and curiosity, especially on the part of the Bar, mounted. The Judge finally inquired of the Sheriff (George B. McLeod) if he could carry out any orders the court might give him. The Sheriff (naturally a warm partisan of the Bar) replied that he did not know. 'Well, make up your mind quick before I get a new Sheriff,' said the Judge, in the face of a bitterly hostile audience. The Sheriff then said he would serve any papers the court wished served, and the court handed down papers which proved to be attachments for contempt against the Sampson and Duplin lawyers whose affidavits we had read.

"But we did not allow these gentlemen to be arrested. We phoned them what had happened, and they came immediately to Lumberton to be met by a host of people, attended by a brass band, and were escorted to the best rooms our hotel provided, -- to such an extent did feeling have its way!

"The next day, his honor, 'of his own knowledge' found as a fact that the Sampson and Duplin lawyers had signed affidavits which were untrue and which reflected upon the court. The court therefore found them guilty of contempt and fined each \$250.00 and costs.

"Of course our counsel also acted as counsel for the gentlemen who had given us affidavits, and we determined to apply to a supreme court justice for writs of habeas (sic) corpus. The Sampson and Duplin lawyers therefore refused to pay their fines and went into the technical custody of the Sheriff. Writs of habeas corpus were at once sued out before that great lawyer and beloved North Carolinian, Justice Henry G. Connor, of the Supreme Court.

"Came the hearing on the writs of habeas corpus. Justice Connor invited his colleague, Justice Robert M. Douglas, to sit with him. Charles W. Tillett of our counsel opened the argument, and his speech was so fiery, and his attack upon Judge Peebles so caustic, that justice Douglas left the bench and did not return. Justice Connor heard Mr. Tillett's argument, then adjourned the hearing for a few minutes, and sent for counsel on both sides. At the hearing before Justice Connor, Judge Peebles was present himself, and was represented by ex-chief justice James E. Shepherd as his counsel.

"Justice Connor told counsel for both sides that in his opinion the affair had gone far enough and should be stopped. He suggested that the Bar sign a statement that it meant no disrespect to the court (our grievance was with the man, not the court) and that Judge Peebles strike out his judgment against the Sampson and Duplin lawyers, and dismiss the

proceedings against them and against us. This suggestion was accepted by both sides and the case was ended. The final judgment further provided that all the proceedings be 'expunged' from the records. This was done by drawing a red line diagonally across each page of the record!"

OATH OF SUPERIOR COURT JUDGES

-- 1997 --

I do solemnly swear (or affirm) that I will administer justice without favoritism to anyone or to the State; that I will not knowingly take, directly or indirectly, any fee, gift, gratuity or reward whatsoever, for any matter or thing done by me or to be done by me by virtue of my office, except the salary and allowances by law provided; and that I will faithfully and impartially discharge all the duties of Superior Court Judge of the Superior Court Division of the General Court of Justice to the best of my ability and understanding, and consistent with the Constitution and laws of the State, so help me, God.

Author

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