

HISTORY OF THE SUPREME COURT OF NORTH CAROLINA

By CHIEF JUSTICE WALTER CLARK

Prior to the adoption of our republican form of government in 1776 we had for the colony a supreme common law and equity court, styled "The General Court," which was a trial court. There was no court of appeals. The presiding officer of this was styled Chief Justice, who presided with an indefinite number of assistants who were laymen. They were probably merely advisers, for there was no statute defining their powers. When the Lords Proprietors met at the Cockpit in London on 21 October, 1669, under the fanciful Constitution drawn up by the famous John Locke, they chose Anthony Ashley Cooper, afterwards the famous Earl of Shaftesbury, as the Lord Chancellor and first Chief Justice of this colony. This was an honorary appointment, and he named as his representative John Willoughby as the first Chief Justice in this colony.

The first record that we have of any general court is that held in 1694, at the house of Thomas White, though there must have been sessions in the years prior thereto. The Chief Justice at that time was also Governor, Thomas Harvey. This court held jurisdiction of criminal and common-law cases, and also as a court of equity. Down to 1868, when the distinction between law and equity was abolished, the same judges held the courts of law and the courts of equity, though the distinction between the two as separate jurisdictions was kept up.

By the Court Bill of 1746 the seat of government was fixed at New Bern. Following the English system, all writs and processes were issued from that court, but they were returnable and triable before *nisi prius* terms to be held by the Chief Justice twice a year at three points—at Edenton, in the Northern Circuit; at Wilmington, in the Southern Circuit; and at the courthouse in Edgecombe in the Western Circuit. The supreme and principal court continued to be held twice a year at New Bern, and was styled the General Court. This latter consisted of the Chief Justice and three Associates appointed by the Governor. In 1713 Christopher Gale was Chief Justice. He was born in Yorkshire, England, and was the son of the rector of a church. The late Colonel George Little of Raleigh was his lineal descendant. He was succeeded by Tobias Knight, who was accused (but acquitted) of complicity with the pirate "Blackbeard," and he by Frederick Joues, of indifferent fame. Gale on his return from England was again appointed. In 1724 Governor Burrington removed him and appointed Thomas Pollock, but the Lords Proprietors reinstated Gale. In 1729 the Lords Proprietors ceded their rights to the crown, and in 1731 Gale was superseded by William Smith, who had been educated at an English

University, and had been admitted to the bar in England.

Governor Burrington appointed John Palin to succeed Smith, and then William Little, who was the son-in-law of Gale. On his death Daniel Hamner became Chief Justice, who in turn was replaced by William Smith, who had come back from England. In 1740 John Montgomery became Chief Justice, and was succeeded in 1744 by Edward Moseley, a man of real ability. He died in 1749, and his successors were in turn Enoch Hall, Eleazer Allen, James Hazel, and Peter Honly.

In 1746 an important change was made by the court law of that year. Up to that time the Chief Justice had sat with from two to ten assistants who were simply justices of the peace, and it is not certain even that all the Chief Justices were lawyers. Even down to the present time, though in fact since 1771, all of the judges of the Superior and Supreme Court have been lawyers, there has never been, at any time, any provision of the Constitution requiring this. Under the Act of 1746, however, three associates were appointed in lieu of the former lay assistants, and they were required to be "learned in the law."

Charles Berry became Chief Justice in 1760, and committed suicide in 1766. In 1767 the province was divided into five judicial districts—Edenton, New Bern, Wilmington, Halifax, and Hillsboro—in each of which towns a court was held twice each year by the Chief Justice and his Associates. The Chief Justice was Martin Howard, and the Associates were Richard Henderson and Maurice Moore. Judge Henderson was the father of Chief Justice Leonard Henderson, and Judge Moore was the father of Justice Alfred Moore of the United States Supreme Court. Chief Justice Martin Howard, on the outbreak of the Revolution, sided with the Tories and returned to Rhode Island, whence he had come. The Court Act of 1767 expired at the end of five years, and by reason of disagreement between the Governor and the Legislature there were no courts in the province between 1773 and 1777. After August, 1775, till the Judiciary Act, adopted 15 November, 1777, by the new State Government, the judicial functions were discharged by the committees of public safety.

Under the Provincial Government the Chief Justice was a member of the Upper House of the General Assembly, and also aided largely in the executive functions. On the other hand, the Governor granted letters of administration, probate of wills, and had other judicial jurisdiction. The Constitution of 1776, on the contrary, made both the executive and judiciary elective by the General Assembly, which was chosen annually. 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.

By the Judiciary Act of 1777 the State was divided into six districts—Wilmington, New Bern, Edenton, Halifax, Hillsboro, and Salisbury. In 1782 Morganton was added, and in 1787 Fayetteville, making eight in all. In each of these a court was held twice each year by the three judges jointly. The first judges selected were Samuel Spencer of Anson, Samuel Ashe of New Hanover, and James Iredell of Chowan. Iredell, who was later a Justice of the United States Supreme Court, soon resigned, and was succeeded by John Williams of Granville. Judge Ashe was elected Governor in 1795, but Spencer served till his death in 1794, and Williams died in 1799. **Judge Spencer's death was singular.** In old age he was asleep on a warm day in a chair under the shade of a tree. A turkey gobbler enraged by the red handkerchief which the judge had placed over his face to keep off the flies, assaulted him, causing his death.

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.

The Constitution of 1776 provided that the General Assembly should by joint ballot appoint judges of the Supreme Court who should hold during good behavior. The General Assembly seemed to consider that, there being no appellate court, the Superior Court filled this requirement, for there was no appellate court until one was created in 1799, consisting of all the Superior Court judges, to continue for one year, the object being to try James Glasgow, Secretary of State, and others for fraud in the issuance of land scrip in Tennessee to Revolutionary soldiers. At the expiration of one year the act was continued in force by chapter 12, Laws 1801, which provided, among other things, section 3: "No attorney should be allowed to speak or admitted as counsel in the aforesaid court." This was a repetition of a similar prejudice against lawyers which found expression in Locke's "Fundamental Constitutions of Carolina," March, 1669, which provided, section 70, that no one could plead for another in any court for money or reward. We have outlived those days, though there is still some prejudice naturally surviving against so necessary and influential a profession as ours.

This court was styled the "Court of Conference." In 1804 the court was required to file written opinions, and in 1805 the title was changed to the "Supreme Court," a tardy recognition of the constitutional provision of 1776, and the sheriff of Wake County was made marshal of the court.

In 1806 the ridings were increased to six by the election of two addi-

tional judges, and a Superior Court for the first time was required to be held twice a year in each county by a single judge.

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 been increased to 20, it was felt to be a hardship that a judge should ride his own circuit only one time in twenty, and that it was an anomaly that a judge should be required for nineteen-twentieths of his time to preside over people who had had no hand in his nomination, and the State, as in 1790, was divided into two divisions, the judges to rotate in holding only the districts of their respective divisions. Further changes in that direction are desirable and will doubtless be made.

In 1810 the judges hearing appeals in conference were authorized to elect a Chief Justice, and John Louis Taylor was the first and only judge to fill that position. A seal and motto were directed to be established by the court and the right of appeal was prescribed. Any two judges of the six, sitting in conference at Raleigh, were a quorum.

In November, 1818, the Supreme Court, contemplated forty-two years before by the Constitution of 1776, was at last created by legislative enactment, the bill being introduced by Hon. William Gaston, afterwards one of the most illustrious members of the court. The salary of the judges was fixed at \$2,500 each, the salary of the Governor at that time being \$1,900, and the salary of the Superior Court judges, previously \$1,650, was raised to \$1,800. The judges of the Superior and Supreme Courts were elected by the Legislature and held for life till 1868, when these courts were created in the Constitution, without liability of abolishment by the Legislature as formerly, and the judges were made elective by the people for the term of eight years.

The Supreme Court, created in 1818, began its existence 1 January, 1819. Its first session was held 5 January, 1819. John Louis Taylor, Leonard Henderson, and John Hall were elected, who chose Taylor for Chief Justice. John Louis Taylor was at that time the oldest judge in commission on the Superior Court bench, having been elected in 1798. He was born in London of Irish parentage, 1 March, 1769. At twelve years of age he was brought to this country by his elder brother, and received his education in part at William and Mary College in Virginia, but left before graduation. He was admitted to the bar in 1788, located in Fayetteville, and was chosen a member of the Legislature from that town, which elected a borough member, for four terms.

He removed to New Bern in 1796. He died in Raleigh in January, 1829.

Leonard Henderson was born in that part of Granville County which is now Vance, in 1772. His sister married Judge Spruce McKay, already mentioned, and his niece became the wife of Judge Boyden of the North Carolina Supreme Court. He was elected to the Superior Court in 1808 and resigned in 1816. Elected to the Supreme Court as above, he became Chief Justice in 1829, and died in August, 1833.

John Hall, the third member of the court, was the senior of the other two, having been born in Augusta County, Virginia, in May, 1767. His father was a native of Ireland. He was a graduate of William and Mary College. He removed to Warrenton, N. C., in 1792, and in 1800 was elected a judge of the Superior Court, and of the Supreme Court as above stated, on its organization. He resigned in December, 1832, and died in January, 1833.

On the death of Chief Justice Taylor, John D. Toomer was appointed by the Governor to the bench, and Judge Henderson was elected by his associates, Chief Justice.

In the meantime Archibald D. Murphey, of the Superior Court, under a provision in the act creating the court, was detailed by the Governor, by special commission, to sit in the cases where any one of the three incumbents was disqualified to sit because of having been counsel in any cause. Judge Murphey was thus assigned by Governor Branch and sat in several cases. His concurrence with Chief Justice Taylor against Judge Hall's dissent sustained the validity of the Moses Griffin will, under which New Bern has ever since possessed the "Griffin School." Judge Murphey has always been very dear to the people of this State. He was the son of Colonel Archibald Murphey, a Revolutionary soldier of Caswell County. He was born in 1777 and graduated at the University of North Carolina with the highest distinction in 1799. From 1812 to 1818 by annual election he was Senator from Orange. He was the originator of the system of internal improvements and common schools in this State. He purposed to write a history of North Carolina. In 1818 he narrowly missed election to the Supreme Court and was chosen to fill one of the vacancies on the Superior Court. His oration before the two literary societies of the University of North Carolina in 1827 was the first of a long series of these and has never been surpassed by any. Under the common law barbarism of imprisonment for debt, this distinguished man, who reflects so much honor on his State, was for some months in Guilford jail, without any fault on his part. He died in 1832.

John D. Toomer was born in Wilmington, March, 1784; was educated in part at the University of North Carolina, but did not graduate.

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He was elected judge of the Superior Court in 1818, but soon resigned. On the death of Chief Justice Taylor in 1829 he was appointed by Governor Owen to the Supreme Court till the Legislature met, which chose Thomas Ruffin to succeed him. Judge Toomer was afterwards in the State Senate and a member of the Constitutional Convention of 1835. In 1836 he was again elected judge of the Superior Court, but resigned in 1840. He died in **Pittsboro in 1856.**

Thomas Ruffin was born in Virginia in November, 1787. He was the son of a Methodist minister. He was educated at Princeton University. He studied law under Judge Murphey and was admitted to the bar in 1808, locating in Hillsboro. In 1813, 1815, and 1816 he was a member of the House of Commons from the borough of Hillsboro, and in the last-named year was Speaker, and was chosen judge of the Superior Court, but resigned after two years service. The first seven volumes of North Carolina Reports, down to the creation of the separate Supreme Court, 1 January, 1819, were by volunteer reporters. The act creating the court authorized the court to appoint the reporter. The first of these was Judge Murphey. Later Judge Ruffin was one of the reporters. In the summer of 1825 he was again elected judge of the Superior Court, but resigned after three years service, when in 1828 he was chosen president of the State Bank at Raleigh. In December, 1829, he was chosen by the Legislature to the Supreme Court. On the death of Chief Justice Henderson in 1833 and the appointment of Judge Gaston, he was chosen by his associates Chief Justice, and served for nineteen years, resigning from the court in 1852. In 1858, on the death of his successor, Chief Justice Nash, he was called by the almost unanimous vote of the General Assembly, though then in his seventy-second year, again to the Supreme Bench, and took his place as Associate Justice. Eighteen months later he again resigned and died in 1870 in his eighty-third year. **He raised a family of thirteen children. One of his sons, Thomas Ruffin, Jr., became a judge of the Superior and Supreme Courts.**

Joseph J. Daniel, born in Halifax County in 1784, was at the State University, but did not graduate. He studied law under General William R. Davie at Halifax. He represented that borough and the county in the General Assembly. He was elected to the **Superior Court in 1816** and, after sixteen years of service, on the death of Judge Hall was elected to the Supreme Court. He died in February, 1848. His opinions are notable for brevity and point. **He died in 1848.**

For eleven years, 1833 to 1844, Ruffin, Daniel and Gaston sat together on the Supreme Court bench, and it has never been surpassed in ability and reputation. Yet that court rendered an erroneous decision, *Hoke v. Henderson*, 15 N. C., 1 (in 1833), which gave infinite trouble till, after

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seventy years, it was overruled. It held that an office was property. This decision was not followed by any other State and its doctrine was denied by the United States Supreme Court. Still such was the veneration felt for the court that it was cited with approval more than sixty times; but, however, after being questioned in a series of dissenting opinions which called attention to its being opposed to our entire theory of government, it was finally overruled (in 1903) in *Mial v. Ellington*, 134 N. C., page 131. During its existence as authority no case ever caused more inconvenience in the administration of our State Government than this.

William Gaston was born in New Bern in 1778. His father was a native of the North of Ireland, of Huguenot descent, and graduated at the Edinburgh Medical College. Chief Justice John Louis Taylor married Judge Gaston's sister. Gaston served in the State Senate, represented the borough town of New Bern in the House of Commons, and was speaker of that body. He was a member of Congress from 1812 to 1816. His address before the literary societies at the University of North Carolina in 1832, and at Princeton in 1834, were models of their kind. He was the author of our State hymn, "The Old North State." On the death of Chief Justice Henderson in 1833 Gaston was elected to the Supreme Court. He died suddenly at Raleigh during the session of the court in January, 1844.

On the death of Judge Gaston, Frederick Nash of Orange was elected to succeed him. He was born in New Bern in 1781, when his father, Abner Nash, was Governor, and was a nephew of General Francis Nash, who was killed at Germantown. He graduated at Princeton College with distinction in 1799. In 1808 he removed to Hillsboro and represented that borough town and also the county of Orange in the General Assembly. In 1818 he was elected judge of the Superior Court, but resigned in 1826. He was again elected to the Superior Court in 1835, and upon the death of Judge Gaston in 1844 he was elected to succeed him, being then in his sixty-fourth year. On the resignation of Chief Justice Ruffin in 1852, he was elected by his associates Chief Justice, and died in 1858 in the seventy-eighth year of his age.

William H. Battle was born in Edgecombe in October, 1802, the grandson of Elisha Battle, a prominent member of the Baptist church in this State. He was the oldest of six brothers, all of whom were educated at the University. He was appointed Reporter of the Supreme Court in 1839. In 1833 and 1834 he was a member of the House of Commons from Franklin and, together with Governor Iredell and Judge Nash, was a member of the commission which compiled the Revised Statutes. He was promoted to the Superior Court in 1839. In 1843 he removed to Chapel Hill, and in 1845 he was elected by the trustees

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of the University professor of law and conducted the Law School till 1866. Among his students were three of his successors on the Supreme Bench—Davis, Shepherd, and Clark. In May, 1848, on the death of Judge Daniel, he was appointed by Governor William A. Graham to fill the vacancy till the Legislature met, which elected Richmond M. Pearson and chose Judge Battle to the vacancy created on the Superior Court bench. In 1852, upon the resignation of Chief Justice Ruffin, Judge Nash became Chief Justice, and Judge Battle was elected to the Supreme Court bench by an almost unanimous vote, irrespective of party. He filled the position till 1865 when all the State offices were declared vacant. He was then again elected to the Supreme Court and filled the post until all positions were vacated by the new Constitution in 1868, when he returned to the practice of the law. In 1876 he was chosen president of the Raleigh National Bank. In 1877 his son, Kemp P. Battle, having been elected president of the University, Judge Battle returned to Chapel Hill as Dean of the Law School. He published a Digest of the North Carolina Reports in four volumes, and edited the compilation of laws known as Battle's Revisal. He died in March, 1879, in the seventy-seventh year of his age.

Richmond M. Pearson was born in June, 1805, in Rowan; graduated at the University in 1823. He studied law under Chief Justice Henderson, and was licensed in 1826. For four years he represented Rowan in the House of Commons, and in 1835 was defeated for Congress. In 1836 he was elected to the Superior Court, to the Supreme Court in December, 1848, and became Chief Justice in 1858, and was reelected Chief Justice by the people in 1868. His judicial career covered forty-one years of unbroken service—twelve years on the Superior Court bench and twenty-nine on the Supreme Court, nineteen of them as Chief Justice. As Chief Justice he presided at the impeachment of Governor Holden in 1871. In January, 1878, on his way to Raleigh to open the spring term of court, while crossing the Yadkin River in a buggy, he was stricken with paralysis and died at Winston, 5 January, 1878, in the seventy-third year of his age.

Matthias E. Manly was the last of the judges who ascended the bench in *antebellum* days. He was born in Chatham in 1800; graduated at the University of North Carolina in 1824; studied law under his brother, Governor Manly, and located in New Bern. He was a member of the House of Commons from that borough in 1834-1835, being the last borough representative. The six towns which enjoyed that privilege were Halifax, New Bern, Wilmington, Hillsboro, Fayetteville, and Salisbury. **It was abolished by the Convention of 1835.** Judge Manly was elected judge of the Superior Court in 1840, and, after faithful service of nineteen years, he was chosen to the Supreme Court, in December,

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1859, to fill the vacancy caused by the second retirement of Judge Ruffin. His office was declared vacant in 1865 and Judge E. G. Reade was elected to succeed him. He was Speaker of the State Senate in 1866, and was elected by that Legislature to the United States Senate, jointly with Governor Graham, but they were not allowed to take their seats. He died in New Bern in 1881 in the eighty-second year of his age. **His first wife was the daughter of Judge Gaston.**

Edwin G. Reade was born in Person County in November, 1812. His father died while he was very young, and he aided to support the family by menial work on the farm and in the carriage and blacksmith shop and in the tanyard. He read law, without an instructor, in books kindly loaned to him, and received license to practice in 1835. He was elected to Congress in 1855, but declined a reelection. In 1863 he was appointed by Governor Vance to the Confederate States Senate, and in the same year was chosen judge of the Superior Court. In 1865 he was elected by the Legislature to the Supreme Court to succeed Judge Manly, being the last judge chosen by the General Assembly. In 1866 and 1867 he was elected Grand Master of the Masons. In 1868 the Supreme Court having been enlarged by the new Constitution to consist of five members, Chief Justice Pearson and Judge Reade were chosen by the people to succeed themselves, with W. B. Rodman, R. P. Dick, and Thomas Settle as their Associates. Judge Reade's term expired 1 January, 1879, when he was chosen president of the Raleigh National Bank, then somewhat embarrassed. Like Chief Justice Ruffin, under similar circumstances, he restored the credit of the bank. In 1865 he was elected almost unanimously to the State Convention and was elected its president by acclamation. It is said that in his prime he had no superior as an advocate in this State before a jury. He was on the Supreme Court thirteen years. He died in Raleigh, 18 October, 1894, in his eighty-second year.

Judge William B. Rodman was born in Washington, N. C., in June, 1817. He graduated at the University of North Carolina at the head of his class in 1836; read law with Judge Gaston and was licensed to practice in 1838. He was captain of heavy artillery at New Bern in March, 1862; was quartermaster in Branch's brigade, but was soon appointed on a military court with the rank of colonel. He was elected to the Convention of 1868 and, with Tourgee and Victor Barringer, was on the commission which prepared the new Code of Civil Procedure. He was elected by the people in 1868 to the new Supreme Court, and under the construction the court gave to the terms of the judges first elected under the Constitution, he served for ten years, and retired to practice law in 1879. He died in March, 1893.

Judge Robert P. Dick was born in Greensboro in October, 1823. His

father, Hon. John M. Dick, was judge of the Superior Court for nearly thirty years from 1832 till his death in October, 1861. Judge Dick graduated at the University of North Carolina in 1843; read law with his father and was admitted to the bar in 1845. He was United States District Attorney from 1852 till 1861. He was a member of the State Convention of 1861, and signed the Ordinance of Secession. He was State Senator from Guilford in 1864, and was appointed United States District Judge in 1865, but resigned because unable to take the "iron-clad" oath. In March, 1867, he was a member of the convention which organized the Republican party in this State, and in April, 1868, he was elected justice of the Supreme Court. In June, 1872, he was appointed United States District Judge for the newly created Western District of North Carolina. He died in September, 1898.

Thomas Settle was born in Rockingham County in 1831. His father, Thomas Settle, was a member of Congress from 1817 to 1821; speaker of the House of Commons, 1827-8, and judge of the Superior Court from 1832 till his resignation in 1854. The subject of this sketch graduated at the University of North Carolina in 1850; read law with Judge Pearson, with whom he afterwards sat on the Supreme Court, and was licensed to practice in 1854. He was a member of the Legislature from 1854 to 1859. He was Speaker of the House in 1858; and an elector on the Buchanan ticket in 1856. He entered the war in 1861 as captain of a company in the Thirteenth North Carolina Regiment. At the end of a year's service, he resigned upon his election as solicitor of his district, which position he occupied till 1868. He was a member of the Convention of 1865. In April, 1868, he was elected to the Supreme Court, but resigned in February, 1871, on his appointment as Minister to Peru. On his return from Peru in 1872 he was president of the Republican National Convention which nominated Grant for a second term. On the resignation of Judge Dick, Judge Settle, in December, 1872, was reappointed judge of the Supreme Court by Governor Caldwell, but resigned in 1876 upon his nomination as candidate for Governor against Vance. He was appointed United States District Judge for Florida in January, 1877, and died in that office 1 December, 1888, in the fifty-eighth year of his age. One of his sisters married David S. Reid, Democratic Governor and United States Senator, and another was the wife of O. H. Dockery, Republican candidate for Governor in 1888.

Nathaniel Boyden was born in Conway, Mass., 16 August, 1796. He was a soldier in the War of 1812. He entered Williams College in 1817 and graduated in Union College, New York, in July, 1821. His father was a Revolutionary soldier who died in 1857, being ninety-four years of age.

Judge Boyden came to Guilford County in 1822. He was admitted to the bar in 1823 and represented Surry in the House of Commons in 1838 and 1840. In 1844 he represented Rowan in the State Senate, and in 1847 he was elected a member of the Thirtieth Congress. He declined reelection and continued to practice law till raised to the bench. He attended forty-eight courts each year and practiced regularly in twelve counties. He was a member of the State Convention of 1865, and in 1868 was elected as a Republican to the Fortieth Congress. Upon Judge Settle's first resignation he was appointed by Governor Caldwell, in May, 1871, to the Supreme Court. He was then in his seventy-fifth year. He died in 1873 after a service of two and one-half years.

William P. Bynum was born in June, 1820, in Stokes County. He graduated at Davidson College with the highest honors, in 1843; he read law with Judge Pearson, with whom he afterwards sat on the Supreme Court, and was admitted to the bar in 1844. His license was the last signed by the lamented Gaston, who died so suddenly. In 1861 he was appointed by Governor Ellis lieutenant-colonel of the Second North Carolina Regiment. His future associate on the Supreme Court, Judge Faireloth, was quartermaster of this regiment. Judge Bynum was in the battles around Richmond and at the first battle of Fredericksburg. After the death of Colonel Tew he became colonel. Early in 1863 he was elected solicitor, and returned home. He filled that position for eleven years, till he was appointed to the Supreme bench on the death of Judge Boyden, and served till the expiration of his term, 1 January, 1879, when he returned to practice in Charlotte, where he died 30 December, 1909, in his ninetieth year.

William T. Faireloth was born in Edgecombe in January, 1829, and graduated at Wake Forest College in 1854. His means were limited and he taught school in vacation to pay his expenses in college. He studied law with Judge Pearson and was admitted to the practice in 1856 and located in Goldsboro. He served during the war as quartermaster, and surrendered at Appomattox. He was a member of the Convention of 1865, and of the succeeding Legislature, by which he was elected solicitor. He was a member of the State Convention of 1875, as were Judges Avery and Shepherd. In November, 1876, he was appointed by Governor Brogden to the Supreme Court to fill the vacancy caused by the second resignation of Judge Settle. His term expired 1 January, 1879, and he returned to practice in Goldsboro. He was defeated in 1884 for Lieutenant-Governor on the Republican ticket, and in 1890 he was the candidate of the same party for justice of the Supreme Court against Justice Walter Clark, and was again defeated. In 1894 he was nominated by the Republicans and Populists and elected

Chief Justice. He died suddenly at his home in Goldsboro, 30 December, 1900.

William Nathan Harrell Smith, sixth Chief Justice, was born in Murfreesboro in September, 1812. His father was a native of Connecticut, a graduate of Yale, and a physician, who removed to this State in 1802 and died in 1813. Judge Smith graduated at Yale in 1834 and studied law in its law school. Among his college-mates were Morrison R. Waite, later Chief Justice of the United States Supreme Court, W. M. Evarts, since Secretary of State; Samuel J. Tilden and Edwards Pierpont, Minister to England. He obtained license to practice law in North Carolina, but soon removed to Texas. After a stay of six months he returned to this State and served in both Houses of the General Assembly, by which, in 1848, he was elected solicitor and served eight years. He was elected to Congress in 1858, and though it was his first term came within one vote of being elected Speaker. He served in the Confederate Congress the four years of the war. In 1870 he removed to Norfolk to practice law, but in 1872 he removed to Raleigh. Upon the death of Chief Justice Pearson he was appointed Chief Justice in January, 1878, by Governor Vance, and in June he was nominated for Chief Justice and elected for a term of eight years, and eight years later the bench, then consisting of Smith, Ashe, and Merrimon, were reelected, the first two being then each in his seventy-fifth year. He died in November, 1889.

The court, from 1868 to 1 January, 1879, consisted of five judges, all of whom were Republicans except Judge Smith, who was appointed in January, 1878, to fill out the unexpired term of Chief Justice Pearson. The court was reduced 1 January, 1879, to three in number, all Democrats, Judge Smith being reelected, with Judge Thomas S. Ashe and John H. Dillard as Associates.

Thomas S. Ashe was born in July, 1812, in Alamance and was a great grandson of Judge Samuel Ashe, already mentioned as one of the three judges who constituted the entire judiciary of North Carolina from 1777 to 1795, when he became Governor. Judge Thos. S. Ashe graduated at the University of North Carolina in 1832 in the same class with James C. Dobbin, Secretary of the Navy under President Pierce, and United States Senator Thomas L. Clingman. He studied law under Chief Justice Ruffin and located at Wadesboro in 1836. He represented his county in both branches of the General Assembly and was solicitor from 1848 to 1852. He declined the nomination for Congress in 1858. During the war he was a member of the Confederate Congress, both in the House and Senate. He was a Democratic candidate for Governor in 1868, but was defeated by Governor Holden. In 1872, and in 1874, he was elected to the United States Congress. In 1878 he was elected

to the Supreme Court of North Carolina to succeed Judge Reade, and in 1886, was renominated by acclamation and reelected, being then in his seventy-fifth year. He died in Wadesboro in 1887.

John H. Dillard was born in Rockingham County in November, 1819. For a year and a half he was at the University of North Carolina, but left on account of ill health and graduated at the Law School of William and Mary in 1840; he began the practice of law in Virginia, but returned to this State in 1846. In 1862 he entered the army as captain in the Forty-fifth North Carolina Regiment and served one year. In 1868 he removed to Greensboro; in 1878 he was elected to the Supreme Court, but resigned in February, 1881, after a service of a little more than two years. He died in Greensboro, 6 May, 1896.

Thomas Ruffin, the fourth son of Chief Justice Thomas Ruffin, was born at Hillsboro in September, 1824. He graduated at the University of North Carolina in 1844. He read law under his father and began practice in Caswell County. He represented Rockingham in the Legislature, and in 1856 he was elected Solicitor, serving four years. In 1861 he entered the army as a captain in the Thirteenth North Carolina Regiment, but in October, 1861, he was appointed by Governor Clark a judge of the Superior Court to fill the vacancy caused by the death of Judge John M. Dick. He rode the fall circuit, but resigned in March, 1862, being appointed lieutenant-colonel of his regiment. He was wounded at South Mountain, September, 1862, and resigned the following March. Later he was appointed a member of the army court in the Army of the West. After the war he was a partner with Judge Dillard and John A. Gilmer at Greensboro, but his health becoming impaired, he abandoned the practice and removed to Hillsboro where he became an insurance agent. In 1875 he returned to the bar and formed a partnership with John W. Graham. Upon the resignation of Judge Dillard in February, 1881, he was appointed to the Supreme Court, and the next year was nominated and elected. He resigned in September, 1883, to resume the practice of law. He died at Hillsboro in 1889.

Augustus S. Merrimon was born in Transylvania County in September, 1830. In 1860 he was elected to the House of Commons, and in 1861 he entered the army as quartermaster with the rank of captain, but was soon elected solicitor and served till the end of the war. He was elected a judge of the Superior Court in 1866, but resigned in August, 1867, rather than obey orders issued by military authority. He was a candidate of the Democratic party for the Supreme Court in 1868, but was defeated with his ticket. He was candidate for Governor in 1872 and was again defeated, but in 1873 he was elected United States Senator and served till 1879. On the resignation of Judge Ruffin in

1883 he was appointed to the Supreme bench and was reelected at the next election. On the death of Chief Justice Smith, November, 1889, he was appointed by Governor Fowle Chief Justice and served three years, till his death in November, 1892.

Joseph J. Davis was born in April, 1828, in what is now Vance County. His grandfather was a soldier in the Revolution. He attended Wake Forest College one year and then went to the University of North Carolina, but did not graduate. He read law under Judge Battle and was admitted to the bar in 1850. In 1862 he entered the army as captain in the Forty-seventh North Carolina Regiment and was taken prisoner in Pettigrew's charge at Gettysburg, 3 July, 1863, and was a prisoner till near the close of the war. In 1866 he was elected to the Legislature from Franklin, and in 1874 he was elected a member of Congress from the Raleigh district and served six years. In 1887, upon the death of Judge Ashe, he was appointed to the Supreme Court and was nominated and elected to the same position the following year. He died in August, 1892.

Alphonso C. Avery was born in 1835 in Burke; graduated at the University of North Carolina in 1857; studied law under Chief Justice Pearson; was admitted to the bar in 1860; served in the Confederate Army, rising to the rank of major; was State Senator in 1866 and a member of the Constitutional Convention in 1875; was elected judge of the Superior Court in 1878 and was reelected in 1886; upon the increase of the Supreme Court to five in number he and Judge Shepherd were elected the two additional judges and took his seat in January, 1889. At the expiration of his term, 1 January, 1897, he returned to the practice and died in Morganton in June, 1913.

James E. Shepherd was born in Nansemond County, Virginia, 26 July, 1845. During the war he was a telegraph operator in Virginia. He studied law under Judge Battle; was admitted to the bar in 1869, and was a member of the Constitutional Convention of 1875. He was appointed to the Superior Court by Governor Jarvis in August, 1882, and, by subsequent election, he continued until promoted to the Supreme Court, where he took his seat 1 January, 1889. On the death of Judge Merrimon he was appointed by Governor Holt, in November, 1892, Chief Justice, but was defeated at the election in 1894, and returned to the practice in January, 1895. He died at a hospital in Baltimore, where he had gone for treatment, in February, 1910.

Walter Clark was born in Halifax County, 19 August, 1846; graduated at the University of North Carolina in 1864; saw service in the war 1861-5 (except one year while at the University of North Carolina), attaining the rank of lieutenant-colonel. When the number of the Superior Court judges was increased from 9 to 12 in 1885, he was

appointed by Governor Scales, 15 April, 1885, one of the additional Superior Court judges and was elected in 1886 by the people. Upon the appointment of Judge Merrimon as Chief Justice he was appointed by Governor Fowle to succeed him as Associate Justice of the Supreme Court, 16 November, 1889, and was elected by the people for the unexpired term in 1890. In 1894 he was elected for the full term of eight years, being nominated by the Democratic party and endorsed by the Republican and Populist parties. In 1902 he was nominated and elected Chief Justice and was renominated and reelected in 1910 and in 1918.

James C. McRae was born in Fayetteville, October, 1838, and was licensed to practice law in 1859. He saw service in the Confederate Army, 1861-65, reaching the rank of major. He was elected to the Legislature in 1874. He became judge of the Superior Court in July, 1882, and at the expiration of his term in 1890 he returned to the bar. Upon the death of Judge Davis he was appointed by Governor Holt, in August, 1892, to succeed him, and was elected for the unexpired term. He was defeated for reelection by the Republican nominee in 1894, and returned to the practice of law. In 1900 he accepted the position of professor of law at the University of North Carolina, where he died in October, 1909.

Armistead Burwell was born in Hillsboro in October, 1839, the son of Rev. Robert Burwell, the Presbyterian pastor at that place. He graduated at Davidson College in 1859, with first honors, and was engaged in teaching in Arkansas when the war broke out. He served throughout the war with troops from that State, reaching the rank of captain, and was severely wounded in 1864 before Atlanta. He resumed teaching in Charlotte after the war, studied law and was licensed to practice in 1869; he was State Senator in 1880. He was appointed by Governor Holt to the Supreme Court in November, 1892, but was defeated in the election by the Republican candidate in 1894, and resumed practice at Charlotte, where he died in May, 1913.

David M. Furches was born in Davie County in April, 1832. His grandfather, Tobias Furches, was a prominent Baptist preacher. Judge Furches was educated at Union Academy in Davie and studied law under Chief Justice Pearson, obtaining license to practice in the Superior Court in 1857. He located in Mocksville, where he was county attorney, removing to Statesville in 1866. He was a member of the State Convention in 1865; was defeated for Congress in 1872; for the Supreme Court in 1888; and for Governor in 1892. He was appointed judge of the Superior Court in 1875 to succeed Anderson Mitchell, and served till January, 1879. He was elected to the Supreme Court as a Republican and took his seat 1 January, 1894. Jointly with Judge Douglas, he was impeached by the Legislature of 1901 for issuing an

order to the State Treasurer to pay out money which had been forbidden by an act of the Legislature, *White v. Auditor*, 126 N. C., 570. The charge was sustained by a majority of the Senate, but did not receive the necessary two-thirds vote to convict and remove from office. He resumed the practice of law at the end of his term in 1903 and died in 1908.

Judge Walter A. Montgomery was born in Warrenton in February, 1845. He served in the Twelfth North Carolina Regiment, 1861 to 1865, being promoted to second lieutenant in 1864, and was paroled at Appomattox. He was admitted to practice in 1867. In 1873 he removed to Memphis, Tenn., but returned to this State in 1876. In 1894 he was elected to the Supreme Court to fill an unexpired term for two years, and in 1896 he was elected for the full term of eight years. On its expiration he returned to the practice, 1 January, 1905.

Robert M. Douglas was born in January, 1849. He was the son of Stephen A. Douglas, who was United States Senator from Illinois and candidate for President in 1860. He was Private Secretary to the Governor of North Carolina in 1868 and Private Secretary to President Grant, 1869 to 1873, and United States Marshal of North Carolina, 1873 to 1883. In 1886, then 37 years of age, he was admitted to the bar; in 1896 was elected to the Supreme Court for the term of eight years, and at the end of his term returned to practice at Greensboro. He died in February, 1917.

Charles Alston Cook was born in Warrenton in October, 1848. He was at the University of North Carolina, but graduated at Princeton in 1870; represented his county in both Houses of the General Assembly; was United States District Attorney in 1889 to 1893. In January, 1901, he was appointed by Governor Russell to the Supreme Court, to fill the unexpired term of Judge Furches, appointed Chief Justice. His term expired 1 January, 1903. He removed to Muskogee, Oklahoma, where he became a member of the House of Representatives, and died in 1917.

Platt D. Walker was born in Wilmington 25 October, 1849; was a student at the University of North Carolina; studied law at the University of Virginia and was admitted to the bar in 1870; he practiced law in Richmond County and moved to Charlotte in 1876. He was elected Associate Justice of the Supreme Court, taking his seat 1 January, 1903; was reelected in 1910 and in 1918.

Henry G. Connor was born at Wilmington, July, 1852; was admitted to the bar in 1873; was a member of the State Senate and House, being Speaker of the latter in 1899. He was judge of the Superior Court eight years, 1885 to 1893. He was elected Associate Justice of the Supreme Court and took his seat 1 January, 1903. Was appointed

United States District Judge for the Eastern District of North Carolina, 1 June, 1909, which position he still fills.

George H. Brown was born in Washington, N. C., May, 1850. He was educated at Horner's School at Oxford and was admitted to the bar in 1873. He was judge of the Superior Court, 1889 to 1904, and was elected to the Supreme Court, taking his seat 1 January, 1905, and was reelected in 1912.

William A. Hoke was born at Lincolnton, 25 October, 1851; educated at private schools; studied law under Chief Justice Pearson, and was admitted to the bar in 1872. He was State Senator in 1889, and judge of the Superior Court, 1891 to 1904; elected to the Supreme Court, taking his seat 1 January, 1905, and was reelected in 1912.

James S. Manning was born in Pittsboro in June, 1859; graduated at the University of North Carolina, where he studied law and was admitted to the practice in 1880, locating at Durham. Was a member of the State House of Representatives in 1907 and State Senate in 1909. He was appointed by Governor Kitchin, in June, 1909, to fill the unexpired term of Judge Connor, returned to the practice of law 1 January, 1911, and was elected Attorney-General for term beginning January, 1917.

William R. Allen was born at Kenansville in March, 1860; graduated at Trinity College, N. C.; studied law under his father and was licensed to practice law in 1881, locating at Goldsboro. He represented Wayne in the General Assembly in 1893, 1899, and 1901; he was appointed judge of the Superior Court in August, 1894, but was defeated by his Republican opponent and returned to the practice 1 January, 1895. He was again elected to the Superior Court and served eight years, from 1 January, 1903, when having been elected to the Supreme Court, he took his seat there 1 January, 1911, and was reelected in 1918.

The Supreme Court of North Carolina, as a separate organization and not merely as a court of conference of Superior Court judges, began 1 January, 1819. It therefore rounded out a century 1 January, 1919. It has had, including the present incumbents, forty judges. The court consisted of three members from 1 January, 1819, to 1868. It was composed of five judges from 1868 to 1 January, 1879; it then consisted of three judges to 1 January, 1889, and since that date of five judges. Of the forty judges Chief Justice Taylor was born in England; Chief Justice Ruffin, Shepherd and Judge Hall in Virginia; Judge Boyden in Massachusetts; the other thirty-five were natives of this State.

Chief Justice Ruffin was in his eighty-third year when he died, Judge Manly in his eighty-second, and Judge Bynum in his ninetieth—all three after their retirement; but Chief Justice Taney of the United States Supreme Court died in office in his eighty-eighth year, soon after deliver-

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ing the opinion in the *Merryman case*, and Lord Halsbury is still the highest judicial officer in England, chairman of the Law Committee in the House of Lords, in his ninety-fifth year.

Judge Settle was the youngest judge, ascending the bench at thirty-seven. Next came the elder Ruffin, Pearson, Murphey, Shepherd, and Clark, who all went on at forty-three. Judge Furches went on at sixty-two, becoming Chief Justice at sixty-eight; Judge Nash at sixty-three, and was in his seventy-second year when made Chief Justice.

Judge Smith went on the bench at sixty-five, and Judge Ashe at sixty-six, as was Faircloth when taking his seat a second time, after an interval of sixteen years. Judge Boyden was seventy-four when appointed, and yet served two and a half years. Smith and Ashe were in their seventy-fifth year when elected a second time. There is probably no other case of two out of three judges of the highest court of a State being reelected at such age. The longest service (except the writer's) has been Pearson's, twenty-nine years and three weeks, and the elder Ruffin, nearly twenty-five years (counting both times he was on the bench), and each of these was nineteen years Chief Justice. The writer has been on the Supreme Court since 16 November, 1889.

As to religious persuasion, three have been Roman Catholics, Gaston, Manly and Douglas; two Baptists, Faircloth and Montgomery; four Methodists, Merrimon, Clark, Cook, and Allen; seven Presbyterians, Nash, Reade, Dick, Smith, Dillard, Avery, and Burwell; one Free-thinker, and the remaining twenty-three Episcopalians.

For the first fifty years—1818 to 1868—the judges were chosen for life by the General Assembly. For the last fifty years—1868 to 1918—they have been elected by the people and for terms of eight years. During the first fifty years, 13 judges ascended the Supreme Bench of whom Judge Gaston was the only one who had not seen previous service on the Superior Court Bench. Of the 27 judges who have gone on the Supreme Court during the last fifty years, 15 went direct from the bar to that bench, i. e., Rodman, Dick, Settle, Boyden, Bynum, Faircloth, Smith, Ashe, Dillard, Davis, Burwell, Montgomery, Douglas, Walker and Manning. Three—Chief Justice Ruffin, Settle, and Faircloth—after leaving the bench for some years—afterwards returned to it.

Gaston, Boyden, Smith and Reade had previously served in the U. S. Congress and Chief Justice Merrimon in the U. S. Senate. Reade and Ashe served in the C. S. Senate and Ashe and Smith in the C. S. House.

Judges Dick, Settle and Connor were appointed to the U. S. District Court while members of the State Supreme Court.

Judge Boyden had been a soldier in the War of 1812 though he was not appointed to the Supreme Court till 1871, in his seventy-fifth year.

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Thirteen saw service in the Confederate Army—Rodman, Settle, Bynum, Faithcloth, Dillard, Ruffin, Jr., Merrimon, Davis, Avery, Clark, Burwell, and Montgomery.

The Superior Court in 1777 consisted of three members, and notwithstanding the requirement for a Supreme Court in the Constitution of 1776 remained the sole court of higher jurisdiction for forty-two years. It was gradually increased from three judges in 1777 to eight judges in 1868, when the Constitution increased the number to twelve. On 1 January, 1879, this number was reduced to nine, which was again increased to twelve in 1885. In 1901 it was increased to sixteen, and in 1913 to twenty. In 1915 the State was divided into two divisions and the Superior Court judges were required to rotate by holding successively only the districts in their own division instead of the entire State.

The Superior and Supreme Courts were legislative creations till 1868, the judges being elected by the Legislature for life terms. The Constitution of 1868 made them constitutional officers, elective by the people for terms of eight years. The number of Supreme Court judges is fixed by that instrument, but the Legislature can increase or diminish the number of Superior Court judges. In the event of a vacancy, either on the Superior or Supreme Court bench, the Governor appoints until the vacancy is filled at the next general election.

RALEIGH, N. C., 4 January, 1919.