

WHEN THE NORTH CAROLINA SUPREME COURT  
SAT IN THE CAPITOL  
JUDGE CECIL J. HILL<sup>1</sup>

Good judicial systems, like good laws, are shaped by the needs and thinking of the times that give them birth. The early appellate courts of North Carolina were Courts of Conference composed of the circuit-riding trial judges who reviewed decisions made by their brethren wherever sessions of trial court were held. In time, the trial and appellate divisions became distinct, both in membership and function, and finally, a permanent home was created for the Supreme Court in Raleigh.

The Supreme Court was created formally by the Act of 1818,<sup>2</sup> but it actually began with organized government in North Carolina. Perhaps it is more accurate to say that the Court's origin lies in the order created by governments that have divided their functions into legislative, executive and judicial branches. English-speaking nations gave law to the world, based on standards that, while comparable, are superior to those embodied in the political philosophy of the ancient Greeks or form of governmental administration developed by the Romans.

The North Carolina Constitution of 1776, adopted by the "representatives of the Freemen of the State of North Carolina,"<sup>3</sup> provided that the General Assembly would elect judges of the Supreme Court of Law and Equity, judges of Admiralty, and an attorney general, who would hold their offices during good behavior. Later, the "Supreme Court of Law and Equity" became the "Superior Court of Law and Equity,"<sup>4</sup> indicating that the framers of the Constitution intended "Supreme" and "Superior" to be synonymous.

1. Judge Hill is a member of the North Carolina Court of Appeals. Prior to this position he was engaged in the general practice of the law in Brevard, North Carolina and served in the North Carolina State Senate. His former law clerk, Ruth Norcia Morton, assisted him in editing this article. His faithful secretary, Mrs. Blanche Diuguid, deserves much appreciation for her work in copying this essay.

2. 1818 N.C. Session Laws, Ch. 1.

3. See *Wilson v. Jordan*, 124 N.C. 683, 711, 33 S.E. 130, 144 (1889), pointing out that, although the Constitution of 1776 was not submitted to a vote of the people for ratification, it met with general acceptance and remained unchanged until the amendment of 1835.

4. See Mallard, "Inherent Power of the Court of North Carolina," 10 Wake Forest Law Review 1, 10 (1974).

The Act of 1777 appeared to create an appellate court.<sup>5</sup> Within the framework of the Act, a full court consisted of three judges and the attorney general. While one judge was sufficient to preside over a session of trial court, two judges were required to hear and decide cases on appeal.

North Carolina had six judicial districts in 1777: Wilmington, New Bern, Edenton, Halifax, Hillsborough, and Salisbury. In 1790, the number of judges was increased to four, and two additional districts, Fayetteville and Morganton, were added. Incidentally, the principal streets abutting Union (Capitol) Square were given the same names in 1792 to coincide with the judicial districts.

The Court of Conference was organized in 1800.<sup>6</sup> A calendar of the Court of Conference dated December Term 1801 shows that appeals were heard in three of the eight districts.<sup>7</sup>

The judges and attorneys general moved throughout the State, and into what is now east Tennessee, dispensing justice. Frequently, the attorneys general and the lawyers in the courtroom were better educated and experienced than the judges who presided. In lawsuits involving the same or similar facts different opinions were rendered by different judges throughout the State, resulting in decisions with little or no precedential value.

Raleigh, founded in 1792, had no court until the early 1800's. A single case is responsible for the creation of a court in Raleigh. James Glasgow, a Revolutionary War patriot so popular that a county had been named in his honor, was elected Secretary of the State. To the horror and disbelief of his friends and neighbors, it was discovered that he had conspired with John and Martin Armstrong to cheat the State by issuing fraudulent land warrants.<sup>8</sup>

5. The law was adopted 15 November 1777. The term "Superior Court" is used when manifestly it was intended to mean "Supreme Court."

6. See Battle, "History of the Supreme Court," 103 N.C. 341-376 (1889). Although not germane to the subject of this paper it is interesting to note that between 1777 and 1790 during which period the number of judges were three, the court consisted of Samuel Ashe, Samuel Spencer, James Iredell, and John Williams. Iredell resigned to become a member of the U.S. Supreme Court and was succeeded by John Williams. Between 1790 and 1806 when the court consisted of four judges, eleven judges served; and between 1801 and 1819 when the court consisted of six judges, a total of seventeen judges served. The names of the judges and their terms are mentioned in 103 N.C. Reports 377.

7. 1 N.C. Rep. 190 (1801).

8. See *State v. Glasgow*, 1 N.C. 264 (1800).

To try these men, the General Assembly created an extraordinary court in 1799,<sup>9</sup> so that the trial could be held where the pertinent records were stored. This court was to consist of at least two judges, who were to meet in Raleigh to hear the case. Both the attorney general and the solicitor-general were to prosecute the case against Glasgow, and a special agent was authorized to prepare and arrange the evidence at trial. Judge John Haywood, no doubt persuaded by the \$1,000.00 fee, resigned from the judiciary to defend Glasgow. Glasgow was convicted, and the name of (Nathanael) Greene replaced that of Glasgow for the county that formerly honored him, and the black lines of expulsion were drawn around Glasgow's name in the minute books of the venerable order of Masons.<sup>10</sup>

The General Assembly was persuaded to continue the court for an additional three years to hear appeals, calling it also the "Court of Conference." By the Act of 1804,<sup>11</sup> the Court was made a court of record; the judges wrote their opinions and delivered them orally in open court. The following year the court became known as the "Supreme Court." The Court consisted of six judges; two judges constituted a quorum; and the Sheriff of Wake County became its marshal. In 1810,<sup>12</sup> the General Assembly directed the judges to write out their opinions "at full length," and the Governor to procure for the Court a suitable seal and motto.<sup>13</sup>

Finally, in 1818 the General Assembly reorganized the Supreme Court, mandated that it sit in Raleigh,<sup>14</sup> gave it strictly an appellate role, and appointed to it several excellent judges. The difficulty of transportation was a deterrent to a wide appellate practice by lawyers throughout the state, and so a body of attorneys specializing in appellate practice arose in Raleigh. A few, such as William Gaston, developed a large appellate practice, though residing chiefly elsewhere.

9. 1798 N.C. Session Laws, Ch. VII, and 1801 N.C. Session Laws, Ch. XII.

10. See Battle, *supra* at p. 853, and *State v. James Glasgow*, 1 N.C. Reprint 264 (1800).

11. 1804 N.C. Session Laws, Ch. XVIII.

12. 1810 N.C. Session Laws, Ch. II.

13. For an in-depth summary of the formation of the Court, see Battle, *supra* at pp. 851-855. Battle also has included a list of the judges from 1777 to 1 January 1819 on page 872 of Vol. 1 (reprint) *supra*. In the pages following may be found references to lists of the Chief Justices and Associate Justices as well as Attorneys General, Reporters, and Clerks.

14. 1818 N.C. Session Laws, Ch. I and Ch. II.

For the first fifty years—1818 to 1868—the judges were elected by the General Assembly to serve for life. Thereafter, the Constitution provided that they be elected by the people for terms of eight years. The selection of Chief Justice was left to the Justices themselves until 1868 when selection of Chief Justice by popular vote first occurred. In 1818, the annual salary of judges was set at \$2,500 and remained fixed at this amount as long as the Court sat in the State House and Capitol except during the Civil War when adjustments were made to compensate for depreciation in the Confederate currency.

The court initially sat on January 1, 1819, but soon began meeting in June and November. The Constitution of 1868 prescribed the first Monday in January and July for the beginning of terms. Thereafter, the Constitution of 1876 omitted this requirement, and the Legislature fixed the first Monday in February and October as the first day of each session.<sup>15</sup>

Pursuant to the mandate of the Legislature, the first Supreme Court met in the State House on Union (Capitol) Square on the morning of January 1, 1819. The frontispiece of volume 7 of the North Carolina Reports indicates the following:

Justices of the Supreme Court During the Year 1819

Chief Justice

John Louis Taylor

Associate Justices

John Hall

Leonard Henderson

Attorney General

William Drew

Clerk of the Supreme Court

Archibald D. Murphey

Marshal

Sheriff of Wake County (Ex Off.)

On the opening of court the marshal proclaimed aloud: "The law must be administered with an even and impartial hand without regard to social or other distinctions."

Apparently, the first term passed with little excitement. *The Raleigh Register* on Friday, January 15, 1819 contained the following news item:

15. Much of the information in these paragraphs is from an expanded version found in Battle's *History of the Supreme Court*, *supra*.

"The supreme court adjourned yesterday. The cases decided were:

1. *State v. Jernigan*. Exceptions to the indictment overruled.
2. *State v. Chay*. Arrest of judgment invalid.
3. *State v. J. A. Stone*. Indictment insufficient for judgment of death.
4. *State v. Dickinson, Scire Facias*. Judgment entered against the defendant.

Few of the Gentlemen of the Bar attended from a belief that much important business would not be acted upon."

Archibald D. Murphey, who later became a justice of the Supreme Court, became the Court Reporter at an authorized annual salary of \$500.00, on condition that he furnish the State free of charge eighty copies of the Reports, and the counties, sixty-two copies.<sup>16</sup> Presumably, he paid the printing cost himself. The office of Reporter was sought by aspiring lawyers, which is readily understandable in light of the dearth of reference material existing in the state and the opportunity to sell the reports at a profit.

A review of the printed cases during those early years reveals the judges met regularly, made an effort to calendar cases for the convenience of lawyers, favoring out of town attorneys regarding times at which cases would be heard,<sup>17</sup> and wrote their opinions.<sup>18</sup> The Legislature was not always pleased with the length of the opinions or the methods of disposition as evidenced by statutes requiring that opinions be written in "full length"<sup>19</sup> and be without effect until rendered orally in open court with copies delivered to the Clerk.<sup>20</sup>

Many legal propositions now accepted without question molded the federal and state constitutions during those early years.

16. See footnote 12, *supra*.

17. Farmer, Fannie Memory, "Legal Practice and Ethics in North Carolina," 30 N.C. Historical Review, p. 343 (1950).

18. The Supreme Court required hard work for the judges as well as the lawyers. Frederick Nash wrote that he did not "rightly" appreciate the work of a Supreme Court justice when he accepted appointment on the bench. He had written until after 12:00 o'clock several nights and had had trouble with his eyes ever since. See Frederick Nash to Mary G. Nash, undated, Nash Papers, N.C. Department of Archives and History, Raleigh, North Carolina.

19. 1810 N.C. Session Laws, Ch. II.

20. 1811 N.C. Session Laws, Ch. V.

We accept readily the proposition that a state court has the power and duty to declare an act of the legislature unconstitutional, but few know that the Supreme Court of North Carolina shares with the Supreme Court of Rhode Island the distinction of being the first state court to do so.<sup>21</sup> On the other hand every high school student is aware of *Marbury v. Madison*,<sup>22</sup> the United States Supreme Court decision that deals with separation of powers within the federal government. The impact of the two decisions stand on equal planes within our judicial systems.

The Court and its member justices were dedicated to building a court of great reputation. In addition to the hearing of cases, it examined applicants to the bar,<sup>23</sup> and participated in the building and maintenance of the law library.<sup>24</sup> Individual justices performed other functions of government, e.g., Chief Justice Ruffin was an active member of the State Literary Fund.<sup>25</sup>

The State House, first occupied the last day of 1794, housed all branches of state government initially, except the Governor whose office was at his residence. In 1820-1824 the State House was enlarged, and four courtrooms were located in the south wing of the first floor. On June 21, 1831, the building was destroyed by fire. The Session Records of the First Presbyterian Church describe in explicit detail the terrible loss to our state. An examination by the governor revealed that a worker who was soldering on the zinc roof carried hot coals between two wooden shingles, and a spark was discharged to the dry wood of the attic ceiling. In two short hours the building was totally destroyed.<sup>26</sup>

On the day of the fire, members of the Presbyterian Church adopted a resolution offering the use of its Session House to the justices and bar of the Supreme Court, an offer which the Court accepted. This Session House was a small frame building which fronted on Salisbury Street, on which a part of the present church building stands. All sessions of Court were held in this

21. *Bayard v. Singleton*, 1 N.C. 5 (1787).

22. 1 Cranch (5 U.S.) 137, 2 L.Ed. 60 (1803).

23. Farmer, Fannie, "The Bar Examination," 29 Historical Review 160 (1952).

24. See generally York, Maury, "A History of the North Carolina State Library, 1812-1888," a research report submitted to the State Capital Foundation, Inc.

25. Coon, Chas. L., *The Beginning of Public Education in North Carolina*, Vol. 2, 727.

26. Jones, H. G., *For History's Sake*, Vicissitudes of the Records, 1794, 1903, p. 83-85.

building until mid-1840, when the new State Capitol was dedicated.<sup>27</sup>

Some of the papers of State Government, including those of the Supreme Court and the State Library, were in the State House when it burned. Apparently, however, the papers of the Clerk of the Supreme Court were saved. Nevertheless, fire consumed almost all the books in the State Library including the law books. A catalog of the library showed it included, among other books: statutes, 117 volumes; State papers, 69 volumes; general law, 23 volumes; digests, etc., 18 volumes; and reports, 71 volumes. Of the whole, only 117 volumes had been saved. Approximately 20 had been borrowed by Archibald D. Murphey, the court reporter, but none of the books was of any consequence.

During construction of the State Capitol efforts were begun to rebuild the Supreme Court library. The legislature appointed Joseph Gales, editor of the *Raleigh Register*, to this responsibility. He was somewhat successful, but a collection of old laws and legislative journals was hardly an adequate library. Simultaneously the Literary Fund Board, of which Chief Justice Thomas Ruffin was a member, began to rebuild the State Library, which included the law library. Governor David L. Swain solicited lawyer Gavin Hogg's aid in purchasing a library for the Supreme Court. Swain suggested that Hogg direct Henry D. Turner "to fill a catalog of English Reporters" previously submitted to Necklen and Johnson of Philadelphia. The effort was unsuccessful, and Judge William Gaston purchased library materials from a New York firm at a cost of \$1,361.75. Collections of statutes from other states were assembled, and a few federal documents graced the shelves.

The State Capitol was dedicated in the spring of 1840. One of the first resolutions considered by the legislature at that time was the assignment of rooms within the building.<sup>28</sup> The Resolution stated "[t]hat the room in the western projection on the third floor be assigned and set apart to the use of the Supreme Court." This room, although designated, was not completed and furnished until July 1841.

David Paton, the Scottish designer, intended to finish this room in the Gothic style, and this was partly achieved with the installation of the distinctive ribbed ceiling with its poppy head

27. The *Raleigh Register*, Thursday, June 23, 1831. Session Recorder, First Presbyterian Church, Vol. 1, p. 24.

28. 1840-41 N.C. Session Law, Resolution II. See Battle, *supra*.

pendants executed by William H. French of Philadelphia. The only other Gothic motifs to be found in the room were in the two mantels purchased from another Philadelphia merchant, John Struthers and Son. The overall room layout was similar to that of the State Library Room in the eastern projection. Three windows in the long west wall faced the wide, unpaved expanse of Hillsborough Street, and one window was positioned in the north end and one in the south end of the room. Two fireplaces, opposite each other on the north and south walls, contained the only exposed brick in the entire building and were faced with Black and Gold Gothic mantels. The positioning of these fireplaces was for the even distribution of heat throughout the courtroom. An apparent concern with another devastating fire prompted the installation of cast iron linings in many of the Capitol's fireplaces. The cast iron firebacks protected the bricks from damage from direct contact with fire which caused them to crack.

Access to the room was through a double-leafed door near the north end of the east wall. In keeping with the room's symmetrical arrangement a false door of similar design was constructed at the south end of the same wall. Its purpose was strictly visual and served to balance the chamber's design. The only other ornamental woodwork in the room was the high baseboarding and wainscoting beneath each of the windows. The flooring of the chamber was of native pine and seems to have been finished.<sup>29</sup>

Furnishings within the court chamber were sparse. The justices' bench, tables, chairs and other necessities were obtained from William Thompson, the Raleigh cabinetmaker who crafted the desks and chairs of the two legislative chambers.<sup>30</sup>

Raymond Beck, Capitol Researcher, conjectures in his research paper entitled, "The Cabinet of Minerals Room," ". . . that since the effect of the double doors can only be obtained by viewing them from the west wall, the justices' bench was centered on the east wall between the two sets of doors. Thus the room was bisected east to west, with the opposing counsel seated on the north and south sides of the room. The court reporter sat to the rear of the room and near one of the windows for adequate lighting, since the room was usually not well lighted until early

29. Beck, Raymond L., "The Cabinet of Minerals Room (1840-1977)," Ch. II, pp. 17-18.

30. Sanders, John, "Preliminary Report on the North Carolina State Capitol," unpublished manuscript, 1971, p. 97. Hereinafter cited as Sanders, "Preliminary Report."

afternoon. Records are not clear regarding whether candles or oil lamps were used to light the chamber, but it is certain that over the years both were used to some degree."<sup>31</sup>

The law library used by the justices was also located in the east wing on the third floor of the Capitol in the state library room.<sup>32</sup>

When the room on the third floor was first used by the Supreme Court Thomas Ruffin was Chief Justice, and Joseph J. Daniel and William Gaston were Associate Justices. The Attorneys General were John R. Daniel and Hugh McQueen. William H. Battle was reporter, but upon his election as a judge of the Superior Court he was succeeded by James Iredell. The clerks were John L. Henderson and Edmund B. Freeman. The Sheriff of Wake County continued to act as marshal until 1841 when the Court was authorized to appoint its own marshal.<sup>33</sup>

The Court did not occupy this room on the third floor long. During the 1842-43 session, the Legislature moved the Supreme Court and the library from its third floor quarters to the northeast suite on the first floor, the offices currently occupied by the Secretary of State. While no reason is stated for the move, we can assume that it arose at least partly from a desire to spare the three justices, all in their sixties, as well as the attorneys and other attendants, the long daily climb up two flights of stairs to reach the third floor courtroom.

No record has been found regarding the arrangement of furnishings in the new Courtroom located in the northeast corner of the Capitol. Old records of E. B. Freeman, the Clerk of Court, indicate the bench used by the justices on the third floor was lowered from the second floor gallery of the Capitol rotunda to the first floor for use in the Court's new location. The floor in the new room was carpeted. New shelving was installed; doors were rehung. Cloth was placed on tables and bookcases built. Supplies were purchased. Altogether the "exorbitant" sum of \$400.00 was spent for the suite's renovation and supplies.<sup>34</sup> Among the records of the Clerk of Court are receipts for sums expended. These re-

31. *Supra*, pp. 18-19.

32. 1842-43 N.C. Public Laws, Ch. XIV, Sec. 1, pp. 82-83.

33. Battle, *supra*, p. 861. (We note the Sheriff of Wake County continued to serve as Marshal *ex officio* for some time afterward.)

34. Edmund B. Freeman served as Clerk for a third of a century. See page 746 herein for a poem concerning his last years.

ceipts occasionally include personal items charged to the Clerk such as "2 papers turnip seeds at 25 cents, or 1 pt. peas for mother at 17 cents." Such personal items probably were paid for by the Clerk from his own money and simply listed on the official receipts issued by the supplier to avoid writing separate receipts.<sup>35</sup>

Whether the justices conferred in the courtroom or in the adjoining office is not clear. Nor has a record been found at this time showing whether each had so much as a desk of his own. Of course they had no clerks or copyists—only the Clerk of Court and possibly a messenger who may have also been the marshal.

The adjoining office, nearest the rotunda, appears to have been used by lawyers and staff. Perhaps the best description of the office is one written by Joseph Lacy Seawell:

"Incomparable, if one exists, is the ingleside in any public office today with that in the office of the Clerk of the Supreme Court of North Carolina . . . years ago. The Clerk's office was then the out-of-town lawyers' loafing place, and there they lingered sometimes the entire afternoon, especially in winter. Good fellowship, stories, personal experiences—droll and dramatic—and rare repartee prevailed over professional controversies, as these congenial brethren of the bar incessantly smoked and chewed tobacco.

"The embryous tyranny of the telephone was the fascinating novelty of a toy; the process of transcription had quickened only from quill to Spencerian pen, and masculine officialdom was still unimpaired. Hence, a habitat dearth of telephones, typewriters, women, electric lights and heating-pipes. In lieu of utilities of a busier but less happy day—large gas chandeliers, a big fireplace with a blazing fire and comfortable seats all around. Tenfold court business, science, and the suffrage amendment have long since rendered such environments and social conviviality impossible and intolerable. But anyway and alas! Such charming loiterers are now no more; they have all dispersed and wandered from the fireside's ruddy glow and some have reached a fairer region far away."<sup>36</sup>

35. E. B. Freeman, *Accounts and Receipts*, Sup. Ct., 1839-1965.

36. Seawell, Joseph Lacy, *Law Tales for Laymen*, p. 9, "Old Yesterdays in Court."

In 1846 the lawyers from the western part of the State induced the General Assembly to order a term of the Supreme Court held in Morganton on the first Monday in August for the convenience of people residing west of Stokes, Davidson, Union, Stanly and Montgomery counties—with the consent of all parties involved. The judges, attorney general, and reporter attended. James R. Dodge, Esquire, of Surry County, was appointed by the judges as clerk of that court in May 1847. Six Morganton cases were reported in volume 39 of the North Carolina Reports. Although the cases were well-written, they were regarded as less sound legally, the Court having no law library to consult.<sup>37</sup> The practice of holding court in Morganton seems to have continued until 1860, after which no cases are reported from that city.

In 1855 the legislature enacted an income tax on surgeons, practicing physicians, practicing lawyers, and all other persons, ministers of the gospel excepted, whose practice, salaries or fees, when added together yielded an annual gross income of five hundred dollars. The tax charged was three dollars on the first five hundred dollars of income and two dollars for every additional five hundred up to fifteen hundred dollars. For every additional five hundred above fifteen hundred dollars a tax of five dollars was assessed.<sup>38</sup>

Chief Justice Frederick Nash asked Attorney General Joseph B. Batchelor for an opinion as to whether the words “all other persons” to whom the income tax statute directed itself embraced all persons holding office under state government. If so, did the legislation cover officers whose salaries were protected by the Constitution? Again, if so, was the act constitutional? The Chief Justice noted: “You will at once perceive the delicacy of the position in which the Act places the judges of the state.” The Attorney General opined that the power to tax the salaries of judges would be tantamount to a power to diminish their salaries during term, which was forbidden by the constitution. The power to levy taxes on all other salaries was not questioned. The Attorney General further noted: “[W]hile it was, therefore, the purpose of the convention to place the salaries of these officers . . . beyond the control of the Legislature by direct legislation, it would be to attribute to them a degree of utter folly opposed to the reputation for wisdom which they have long enjoyed, to con-

37. 39 N.C. 456 (1847).

38. 1856 N.C. Session Laws, Ch. 37, § 39 (Revenue Laws).

clude that they have left open this indirect way to accomplish the same purpose . . . that body [the convention] desired to secure it [the judiciary] against all influences which might sway it from the fearless, faithful, impartial and independent discharge of its duties.

“The Judiciary is the weakest branch of the government; it has neither force nor will, but merely judgment, and must ultimately depend upon the aid of the executive arm for the efficacious exercise of this faculty. The legislature is the most powerful branch, and has a constant tendency to the accumulation of power. The judicial can never make encroachments on the other branches, but requires all the prohibition which it can be given to defend itself from encroachments by them.”<sup>39</sup>

The Attorney General's comments indicate the high esteem in which the judiciary was held by members of the bar at that time. His comments also reveal how the people of that period viewed the judiciary's position in government.

By authority granted under an Act of 1810 any party dissatisfied with a ruling of the Superior Court could remove the case to the Supreme Court. The Act of 1818 gave Justices of the Supreme Court all the powers of the Superior Court Judges except the power to convene. Any party could appeal from the first sentence or decree of the Superior Court on giving security to abide by the judgment or decree of the Supreme Court, which was authorized to render judgment upon review of the whole record. Equity cases could be removed to the Supreme Court for hearing by motion and affidavit, showing that removal was required for purposes of justice. No parol evidence was received by the Supreme Court, nor was a jury impaneled to try issues. Nevertheless, witnesses were allowed to authenticate exhibits or other documents.<sup>40</sup> Under this provision virtually all important equity cases were removed, so that the Superior Court Judge escaped the responsibility of giving an opinion in the matter. The Constitutions of 1868 and 1876 put a stop to such practices by confining the jurisdiction of the Supreme Court to appeals on matters of law or legal inference.<sup>41</sup> At long last North Carolina truly had a Supreme Court with solely appellate duties and jurisdiction.

39. 48 N.C., Reprint Appendix, p. 4.

40. 1810 N.C. Session Laws, Ch. II and 1818 N.C. Session Laws, Ch. I.

41. 1 N.C. Rep. (Reprint) 861, *supra*.

Between 1818 and 1888, the character of the judiciary's work changed greatly. The Civil War and Reconstruction, the Constitution of 1868, and the adoption of the Code of Civil Procedure transplanted from New York to North Carolina wrought profound changes in the character of human rights, the treatment of debt, and the method of practice in the courts. Our State Constitution originally was based on the premise that legislators would be so honest and have so great a stake in the land that they could be entrusted with unlimited powers. They controlled the state departments and had full discretion in matters of legislation, taxation, borrowing, and spending.

The composition of the legislature changed immediately after the Civil War, due mainly to the disenfranchisement of ex-confederates and the enfranchisement of blacks. In drafting the Constitutions of 1868 and 1876 the Conventions placed distrust in the legislature as a body, obviously as a reaction toward "Radical" Reconstruction officials and their policies enacted into laws in this state during the interim years. As a result the judicial and executive branches were made independent of the legislature.

The Civil War was an ordeal in the history of the Court. Our Supreme Court neither arrested improperly the laws passed to aid the war power, nor embarrassed the military authorities by unreasonable interference. As a result, defying unpopularity and threats, the judges issued writs of habeas corpus that were executed in the camps within the sound of enemy cannon. Decisions of the Court that favored the military powers of the Confederate government have been ratified by the Federal judicial authorities.<sup>42</sup>

When the Civil War began, the Court continued to meet in Raleigh, but abandoned the August sessions at Morganton. Throughout the period Chief Justice Richmond Pearson, and Justices William H. Battle and Matthias E. Manly were on the bench, and Sion H. Rogers served as Attorney General. All served the judiciary and North Carolina well. The types of cases on the calendar broadened to include questions involving conscription into the Confederate Army and state militia, eligibility for public office, and the State's relationship with the Confederacy. Writs of Habeas Corpus increased in number as did appeals involving them.

The Government of North Carolina collapsed early in 1865 under military pressure. General John M. Schofield took command

42. Battle, *supra*, p. 367.

of the state and proceeded to restore peace, order and loyalty to the United States.<sup>43</sup> The State remained under military rule from the date of Federal occupation until the end of 1865. Military rule was imposed again from March 1867 through July 1868, and Federal troops remained in North Carolina until 1877. In spite of these unwanted conditions, the State made some progress. President Andrew Johnson, having been a resident of Raleigh as a boy, issued first a general amnesty proclamation and immediately followed this with a proclamation ordering a provisional government for North Carolina.<sup>44</sup> By this proclamation the President appointed William W. Holden as provisional governor. Holden immediately assumed the duties of office, and, among other things, appointed the former members of the Supreme Court to their former positions. Judge Matthias Manley was the only secession Democrat appointed to an office.<sup>45</sup> Judge Manley appears not to have assumed the duties of associate justice, however, probably because he could not take the required oath, and Edwin G. Reade joined Battle and Pearson on the Supreme Court for the June 1866 term. The number of justices continued to be three until the Constitution of 1868 increased it to five. The Convention of 1875 once again reduced the Court's membership to three, but in 1888 it was returned to five.

Edmund B. Freeman was appointed Deputy Clerk of the Supreme Court in 1831 and served under two Clerks, William Roberts (Robards) and John L. Henderson. In 1843, he became the Clerk. Freeman died June 20, 1868. The following lines penned by Mrs. Mary Bayard Clarke, though not perfectly accurate historically, indicate the warmth with which he was regarded:

43. Lefler and Newsome, *The History of a Southern State, North Carolina*, p. 461.

44. Zuber, *N. C. During Reconstruction*, p. 2-3.

45. Ashe, *History of North Carolina*, Vol. II, p. 1020.

“The old clerk sits in his office chair,  
 And his head is white as snow;  
 His sight is dim and his hearing dull,  
 And his step is weak and slow;  
 But his heart is stout and his mind is clear  
 As he copies each decree,  
 And he smiles and says as the judges pass,  
 ‘Tis the last court I shall see.’  
 But he lingers on till his work is done,  
 To pass with the old regime,  
 When he lays his pen with a smile aside,  
 To stand at the Bar Supreme;  
 For the Old Clerk dies with the Court he served  
 For forty years save three;  
 And breathes his last as the judges meet  
 To sign their last decree.”

Just prior to 1869, the legislature passed a resolution directing the committee on public buildings to furnish a convenient room in the Capitol Building for the use of the Superintendent of Public Instruction. On the first Monday in January, 1869, the Court attempted to convene, only to find the courtroom occupied by a Rev. Samuel Stanford Ashley, the Superintendent of Public Instruction. The books of the Supreme Court library had been removed and new fixtures erected on which were piled school books. The office of the Clerk was occupied by a Mr. Henderson Adams, State Auditor, and all the Court records had been placed in the rotunda of the Capitol. The Court peremptorily ordered the Superintendent of Public Instruction and the Auditor to vacate the offices, but they refused to obey the Court's order. However, Ashley, under protest, and not waiving any of his rights, permitted the Court to enter the room and open court; and the Clerk of Court was allowed to use a table in the room. The justices undertook to hear arguments from day to day in the courtroom, restricted by the presence and pretensions of Ashley, who continued to conduct the business of his office without regard to the court. Evening sessions by the Court for consultation were held in another room. A few days after this collision of officialdom, the General Assembly repealed the resolution providing rooms for the Superintendent, and he vacated the courtroom.

On February 5, 1869, Adams, the auditor, was called before the Court and ordered to vacate his office. He replied that he would do so when he was given another convenient room. On the 8th of February Adams was threatened with a contempt of court

attachment if he failed to surrender the office by the following day. He still refused and was attached for contempt and placed in the custody of the Court Marshal, D. A. Wicker.

As Adams, in the custody of the Marshal, passed the Office of the Governor, he asked and was permitted to see the Governor. The Marshal described the event in a subsequent affidavit written in response to a contempt of court citation: “[T]he Governor said that the prisoner should not go to jail; that a number of persons were present who aided and encouraged the Governor and your affiant being alone and unassisted was unable to take the prisoner to jail by reason of resistance and superior force.”

The Court sent a letter of protest to the Governor, who replied that he claimed no other power to interfere with the execution process of the Court than by the pardoning power. He expressed his desire to maintain the comity “so happily existing between the departments.” The Marshal amended his affidavit, eliminating all references to any hostility between the Governor and the Court. Mr. Adams submitted a letter announcing he had vacated the Clerk's office and pledging his respect for the Court. Thereafter the Court, although divided, ruled that the Auditor had purged himself of contempt by vacating the office.<sup>46</sup>

Another clash occurred between the Executive and the Judiciary in July 1870. By executive proclamation, the Governor declared that Alamance, Caswell, and several other counties were in “a state of insurrection” and placed them under military rule. Several citizens in the various counties were imprisoned. They petitioned Chief Justice Pearson for a writ of habeas corpus, alleging they were unjustly and illegally detained by the military commander, a Col. Kirk. The Chief Justice issued a Writ directing Col. Kirk to deliver the petitioners to the Marshal of the Court so that the Chief Justice might inquire into the lawfulness of their imprisonment. Kirk refused to obey the writ and was upheld by the Governor who claimed to hold the prisoners under military discipline. After a lengthy hearing, the Chief Justice wrote:

[I] declare my opinion to be that the privilege of the writ of habeas corpus has not been suspended by the action of His Excellency; that the Governor has power, under the Constitution and the laws, to declare a county to be in a state of insurrection, to take military possession, to order the arrest of all suspected persons, and to do all things necessary to suppress the insurrection, but he has no power to disobey the

46. Seawell, Joseph Lacy, *Law Tales for Laymen*, p. 187.

writ of habeas corpus, or to order the trial of any citizen otherwise than by jury. According to the law of the land, such action would be in excess of his power.

The judiciary has power to declare the action of the Executive, as well as the Acts of the General Assembly, when in violation of the Constitution, void and of no effect. Having ceded full faith and credit to the action of His Excellency, within the scope of the power conferred upon him, I feel assured he will in like manner give due observance to the law as announced by the judiciary . . .

Chief Justice Richmond Pearson concluded: "[I] have discharged my duty; the power of the Judiciary is exhausted, and the responsibility must rest on the Executive."

In a letter of reply, the Governor explained reasons why he found it necessary to declare the Counties of Alamance and Caswell in a state of insurrection, pointing out these counties were controlled by the Ku Klux Klan. The Governor repeated that, under the circumstances, he could not surrender the prisoners taken by Kirk under his orders until civil authority was restored. On the 15th of August 1870 the Governor notified the Chief Justice that the time for release had arrived.

Subsequently, a petition for a Writ of Habeas Corpus issued by Federal District Court Judge Brooks of Elizabeth City required appearance of the prisoners in Court. No evidence was presented by the state, and the prisoners were discharged.<sup>47</sup> Thus ended quietly a challenge to the authority of both the executive and judiciary with mutual respect for both branches of government.

It is not the purpose of this essay to review the lives and achievements of judges and justices who served the Supreme Court between 1830 and 1888. This has been done in two excellent treatises: one prepared by Kemp Battle and published in 103 N.C. Rep. 474 entitled "History of the Supreme Court" and reprinted in Vol. 1 of the N. C. Reports; the second by Justice Walter Clark entitled "History of the Supreme Court of North Carolina" and printed in 177 N.C. 617 (1919). However, it is fitting that Thomas Ruffin be singled out for mention as the greatest jurist of this turbulent period.

47. Seawell, *supra*, p. 191, et seq. See 64 N.C. 802-832 for a complete record of this famous trial.

Ruffin was a Virginian by birth, but after his formal education elsewhere came to North Carolina and continued his studies under Archibald D. Murphey. The breadth of his interests—as an agriculturist, a banker, a churchman, a trustee of the University of North Carolina, a legislator, a presidential elector, a representative at the pre-Civil War Peace Conference—is evidence of his stature in this period.

Nevertheless, it is as a judge that Ruffin is chiefly known and remembered. In the quarter-century of his service he established a reputation that spread wherever English law was followed. Authorities on constitutional law rank him a pioneer on the order of a John Marshall or a Lemuel Shaw. He was noted for his decisions on both the common law and equity. His 1460 opinions embrace a wide range of the substantial issues of civil and criminal law. They are noted for their breadth of view, form of reasoning, strength and simplicity of language, and the character of their conclusions. Though respecting precedent, he was not hampered by it in administering justice, and his opinions are notable for their lack of cited authority.

His career afforded him an opportunity to view the law from many angles. He was a practicing attorney, a reporter to the Supreme Court, a superior court judge, and Chief Justice of the Supreme Court. It is fitting that a building later occupied by the Supreme Court was named in his honor.<sup>48</sup>

During the half century following the gold rush in California a rapid expansion westward resulted in the addition of new states to the Union. Simultaneously, industrialization spread across North Carolina, resulting in growth in all branches of government. With the increase in the number of counties in the State came a leap in the number of trial courts and consequently of appeals to the Supreme Court.

During this period the law library continued to grow and recover from the fire of 1831. As new states were added to the Union, so were volumes of their new statutes and their new state court reports, in addition to the continued expansion of statutes from the North Carolina Legislature and opinions from our State Supreme Court. Exchanges were made by the law librarian with other states for statutes and reports. Textbooks and treatises became more common and were added to the library. Codes and statutes were assembled in the executive office, and reports from the various states were transferred to the law library.

48. Dictionary of American Biography, Vol. VIII, pp. 216-217 (1935).

In 1866 a catalog of the Supreme Court Library was published. Although the law library was in the Courtroom, the state librarian managed it at the time. Circulation was restricted to the governor, judges, reporters of the Supreme Court, and members of the General Assembly. It was not until 1871 that the law library was placed under the superintendence of the Clerk of the Court.<sup>49</sup> A law librarian later supervised the collection.

The state library contained 16,395 volumes in 1879. By March of 1885 the number of books had increased to 32,000 volumes, including the law library, and by 1887 the total number had increased to 40,000 volumes.<sup>50</sup> Pleas for a new library in the annual messages of the librarian to the legislature met with unenthusiastic response. Finally, in 1877 Governor Curtis H. Brogden endorsed the request of the librarian, and in his message to the Legislature suggested that a new building for the supreme court and the state library would be appropriate.<sup>51</sup>

In 1885, the General Assembly passed legislation authorizing the Governor and Council of State to add to and alter the Agriculture Building to provide suitable rooms for the Supreme Court and all its needs.<sup>52</sup> In response, the Legislature appropriated \$10,000 and authorized the use of prison labor for the project. The warden of the penitentiary inspected the Agriculture Building (formerly a hotel) and concluded it would be difficult to accomplish the purpose of the legislature, but advised that a new building which would be more suitable for the purpose could be erected on the adjoining lot for the money appropriated. Thus, the building was constructed. On March 5, 1888 the building known as the Supreme Court/State Library Building was assigned to the Supreme Court by Governor Scales and accepted by Chief Justice William N. H. Smith.<sup>53</sup> There were set aside rooms for the argument of cases, judicial chambers, a clerk's office, and a library.<sup>54</sup>

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49. History of the North Carolina State Library 1812-1888, Maury York, September 1977.

50. See "Librarian's Report," Document No. 11, Public Documents, 1883, and Library Board Minutes, p. 345.

51. See "Librarian's Report," Public Document No. 7; "Public Documents," 1876-77, and "Governor's Message," Public Document No. 1, Public Documents, 1876-77.

52. Acts of 1885, Ch. 121, p. 188.

53. Raleigh News and Observer, Vol. XXV, p. 2.

54. Laws of 1888, Ch. 121 and 398.

For the first sixty-nine years (1819-1888) the Supreme Court held its sessions in the State House and Capitol, except for the period when the Capitol was being rebuilt following the destruction of the State House by fire in 1831. For the next twenty-six years (1888-1914) the Court was housed in the Supreme Court/State Library Building, known as the State Department Building after 1913, now the Labor Building on Edenton Street. Then for the next twenty-six years it sat in the State Administration Building, now known as the Court of Appeals Building and previously as the Ruffin Building. On September 4, 1940, it was moved to the Justice Building, where it now sits.

SPECIALIZED AREAS OF THE SUPREME COURT  
ON WHICH HISTORIES HAVE BEEN WRITTEN

Clark, Walter, "History of the Supreme Court Reports of North Carolina and the Annotated Reprints," 22 N.C. Reprint 9 (1922).

Battle, Kemp P., "An Address on the History of the Supreme Court," 1 N.C. Reprint 835, 103 N.C. 474 (1888). In the appendix of this famous speech may be found a list of the judges, justices, reporters, clerks, and attorneys general from 1777 to 1935.

List of Early Attorneys—35 N.C. Reprint 345 (1852). In addition to the names of practicing attorneys the annotator adds the following footnote:

"Note—Beginning with 63 N.C., January Term, 1867, the list of those to whom license to practice law was issued at each term has been printed in the Reports, but there is no record of those to whom license was granted prior to that date, except in 1843-45, in Vol. 46 of the reports. Thinking it may be of interest to the profession a list of all the lawyers practicing in North Carolina in 1952 is inserted therein. Annotator."

Clark, Walter, "History of the Supreme Court of North Carolina," 177 N.C. 617 (1919). Chief Justice Clark gives an interesting thumbnail sketch of each member of the Court through 1918, as well as various historical facts.

Denny, Emery B., "History of the Supreme Court of North Carolina from January 1, 1919, until January 1, 1969." 274 N.C. 611. The article gives brief biographies of the justices during the period, together with the names and terms of office for the Chief Justices and Associate Justices to 1968.

Also, see 271 N.C. 750, Appendix for a list of the Judges from 1777 to 1 January 1818, a list of the members of the Supreme Court since 1818, together with lists of Reporters, Clerks of Court, Marshals, Librarians, and Attorneys General to 1967.