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Magazine Clipping - Early Courts of NC - R C Lawrence

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Early Courts of Carolina

There has been a tremendous change in the structure of our courts in North Carolina and Mr. Lawrence tells you of some of these changes and also about the men who were among the early legal lights.

By R. C. LAWRENCE

MODERN lawyers would have but little use for John Locke who drew up the Fundamental Constitution of Carolina in 1669, wherein it was declared to be a "base and vile thing to plead for money or reward" in any court. Notwithstanding this, the lawyers managed to get along somehow.

It is said there were no court-houses in the State prior to 1722, which I consider a doubtful statement in view of the ancient relic down at Edenton where the ivy grew right through the brick wall into the register's office; or the antique over at Elizabethtown, which is certainly older than the Tory Hole; or the one over at Yanceyville, where they still show you the room in which John W. Stephens was killed during the days of reconstruction.

George Blanford Under the Lords Proprietors

Under the Lords Proprietors, the judicial power was vested in: (a) Precinct courts, which were held by four magistrates, appointed by the Colonial Governor; (b) General courts, which were presided over by a Chief Justice and seven assistants; and (c) Courts of Chancery which were presided over by the Governor and the Deputies of the Lords Proprietors.

In 1746, there was a remodeling of the judicial structure, and the "General Court" was held twice a year by the Chief Justice and three associates at New Bern. The Chief Justice was appointed and commissioned by the King; the associate judges by the Governor and his Council.

In 1767 Carolina was divided into six judicial districts — Wilmington, Newbern, Edenton, Halifax, Hillsboro, and Salisbury — and the courts were held at each place TWICE A YEAR by the Chief Justice and his associates. County Courts were held in each county by the magistrates.

The first publication of North Carolina statutes was gotten out by Swann at Newbern in 1752, and was

called the "Yellow Jacket." Between that date and 1850 there were eight editions of revised statutes issued, and numerous others down to our present Consolidated Statutes.

Colonial judges had some queer ideas and wrote some curious epistles. Judge Maurice Moore writes to Col. Edmund Fanning up at Hillsboro: "AS MUCH AS I HATE WRITING, I am determined to scratch this side down with a bad pen and worse ink. . . ."

A Complete Revision

The first legislature to meet under the State Constitution (at Newbern in 1777) revised the whole statute law; and superior courts were authorized to be held semiannually at Wilmington, Newbern, Edenton, Halifax, Hillsboro, and Salisbury. Three judges were elected: John Williams of Granville; Samuel Ashe of New Hanover, and Samuel Spencer of Anson. Morganton was made a judicial district in 1782, and Fayetteville in 1787.

Equity jurisdiction was given to the superior courts by the act of 1782. In 1790 a fourth judge was added, the State was divided into two circuits and an Attorney General was appointed. In 1806, superior courts were created in every county, and additional judges named.

There was also an appellate court. By the act of 1799 the judges of the Superior Court were directed to meet twice each year at Raleigh to hear appeals in either legal or equitable cases, the court being styled the "Court of Conference." In 1805 the name was changed to that of the Supreme Court.

In 1818, the court as now constituted was created, the Superior Court judges no longer constituted the court, but the General Assembly elected three judges who constituted the court and held their office during good behaviour. The first members of the court were: John Louis Taylor

of Cumberland, Chief Justice; Leonard Henderson of Granville; and John Hall of Warren. Thomas Ruffin began his great career on this bench in 1829, and became greatest of Southern lawyers; Joseph J. Daniel sat from 1832 to his death in 1848; the great William Gaston from 1835 to his death in 1844; Frederick Nash of Orange became a member of the court in 1844; and Chief Justice Pearson sat on the court from 1848 until his death long after the Civil War. He was the author of the famous phrase "the judiciary is exhausted."

Some Early Judges

Among the early superior court judges were: Samuel Ashe of New Hanover, who became Governor in 1795; Alfred Moore of Brunswick, appointed justice of the Supreme Court of the United States in 1799; David Stone of Bertie, elected Governor in 1808; Archibald D. Murphey, father of our public school system; James Iredell, appointed a justice of the Supreme Court of the United States; Willie P. Mangum of Orange, United States Senator; George E. Badger of Wake, Secretary of the Navy, United States Senator, and nominated as justice of the Supreme Court of the United States, but whose nomination was withdrawn on account of the opposition of certain Southern Senators; Robert Strange of Cumberland, United States Senator; David L. Swain of Buncombe, elected Governor in 1832, president of the university; Romulus M. Saunders of Caswell, Minister to Spain, and John W. Ellis, Governor of the State at the beginning of the Civil War.

I do not know whether it was John Locke or not, but some gentleman who evidently had Locke's dislike for lawyers, composed the following epitaph for a member of the Bar:

"Here lies a Dodge who dodged all
all good

And dodged a deal of evil
Who after dodging all he could
He could not dodge the devil."