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Chief Justice Marshall in Raleigh: The Untold Story

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Chief Justice Marshall in Raleigh: The Untold Story

J. RICH LEONARD*

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INTRODUCTION

When John Marshall was confirmed as Chief Justice in the spring of 1801, he was likely delighted that the circuit-riding duties that had plagued Supreme Court Justices since the creation of the Court were over. The recently passed Judiciary Act of 1801 divided the nation into six judicial circuits and authorized the President to appoint circuit judges to staff them.¹ The duties of the Supreme Court were reduced to holding two terms of court each year in Washington, D.C.²

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1. Judiciary Act of 1801, ch. 4, 2 Stat. 89, § 6 (1801).

2. *Id.* at § 1.

His delight would have been short-lived. The Jeffersonian Republicans who took over both houses of Congress in March of 1801 immediately set to work to undo the 1801 Act. The Judiciary Act of 1802, passed a year later, abolished these circuit judgeships.³ Instead, the Justices were commanded to ride circuit again, with each assigned to one of the six circuits.⁴ Sitting with the district judge in each circuit, they would compose a circuit court of two.⁵ The Supreme Court was reduced to a single term a year, starting on the first Monday of February.⁶

Chief Justice Marshall was assigned the fifth circuit, which at that time consisted of Virginia and North Carolina.⁷ The statute set two sessions of circuit court in each state annually. In North Carolina, they were to commence on June 15th and December 29th.⁸

The Justices groused internally about whether to raise the obvious constitutional problems with the 1802 Act.⁹ Justice Samuel Chase wanted to fight, pointing out that Article III clearly prohibited circuit judges from being removed from office by abolishing their positions.¹⁰ Ultimately, the Justices returned to circuit riding without formal complaint.¹¹

Faithful to the statute, and until shortly before his death in 1835, the Chief Justice travelled to Raleigh twice a year to convene the circuit court, totaling more than sixty terms.¹² During that time, he missed only six sessions.¹³ This Article begins to tell the largely untold story of what Marshall did here: the cases he heard, his relationship with the local district judge with whom he sat and the North Carolina bar, and the life he led here. It is an utterly fascinating bit of North Carolina judicial history.

3. Judiciary Act of 1802, ch. 31, 2 Stat. 156, § 4 (1802).

4. *Id.*

5. *Id.*

6. *Id.* at § 1.

7. *Id.* at § 4.

8. *Id.*

9. LEONARD BAKER, JOHN MARSHALL: A LIFE IN LAW 378–80 (1974).

10. *Id.*

11. *Id.* at 380.

12. 6 THE PAPERS OF JOHN MARSHALL 142 (Charles F. Hobson ed., 1990).

13. *Id.*

I. MARSHALL AND RALEIGH

A. *The City*

Shortly after Christmas, Chief Justice Marshall's thirty-two-year tenure in Raleigh commenced.¹⁴ The Raleigh to which Marshall traveled in 1802 was barely more than a village in a wilderness.¹⁵ Although the capital since 1792, Raleigh consisted of a thousand inhabitants and one hundred twenty houses.¹⁶ It had two public buildings, the brick State House constructed in 1794 and a wooden courthouse built in 1795.¹⁷ This is where the circuit court sat.¹⁸ The distance from Marshall's home in Richmond to Raleigh was 165 miles, and usually took three days and two nights on the road.¹⁹ He traveled either by stagecoach, or more frequently, drove himself in a gig, a primitive one-horse buggy little more than a seat anchored between two wheels.²⁰ In 1804, Marshall wrote to Judge Potter that "[w]ith a little breaking down, walking, & traveling in a waggon I reachd [V]irginia agreeably enough without any accident."²¹ Later in his life, a story is told of him falling asleep in his gig and getting stuck on a sapling, from which an elderly black man passing by extricated him.²²

The Chief Justice chose to take lodging in Raleigh in the boarding house of Henry H. Cooke, who advertised he could "accommodate ten or twelve Gentlemen and take a few horses to feed."²³ An early map of Raleigh shows Cooke owning several lots, so it is difficult to identify the precise location of the boarding house.²⁴ Conditions were apparently rather spartan. "The furniture of Judge Marshall's room consisted of a bed and bedstead, two

14. *Id.*

15. *Id.* at 143.

16. *Id.*

17. *Capitol History*, NORTH CAROLINA HISTORIC SITES, <https://perma.cc/34H8-DW68> (last updated Oct. 6, 2015); Martha Quillin, *New Wake Justice Center has the grandeur of a courthouse without the name*, NEWS & OBSERVER (Raleigh) (July 5, 2013), <https://perma.cc/FJ2Q-M4HJ>.

18. 1 ELIZABETH REID MURRAY, WAKE: CAPITAL COUNTY OF NORTH CAROLINA 108–09 (1983).

19. 6 THE PAPERS OF JOHN MARSHALL, *supra* note 12, at 143.

20. Leonard P. Baker, *The Circuit Riding Justices*, 1977 SUP. CT. HIST. SOC'Y Y.B. 63, 63 (1976).

21. 6 THE PAPERS OF JOHN MARSHALL, *supra* note 12, at 253 (Letter from John Marshall to Henry Potter (January 10, 1804)).

22. Baker, *supra* note 20.

23. 6 THE PAPERS OF JOHN MARSHALL, *supra* note 12, at 143.

24. *See Plan of the city of Raleigh: the seat of government of the state of North Carolina*, STATE ARCHIVES OF NORTH CAROLINA (1817), <https://perma.cc/7VMX-NEKN>.

split-bottom chairs, a pine table covered with grease and ink, a cracked pitcher and broken bowl.”²⁵ Furthermore, the Chief Justice was observed gathering firewood early in the morning because “it is not convenient for Mr. Cook[e] to keep a servant.”²⁶

Only two letters Marshall wrote from Raleigh during those years have survived, and the first is a humorous account to his wife Polly of the woes that had befallen him during his first visit. He laments losing fifteen silver dollars into the “sands of Carolina,” having fallen through the “various mendings” of his waistcoat pocket.²⁷ Even worse, upon unpacking, he realized he had come with no “pair of breeches,” and no tailor in town could be prevailed upon to make him a pair.²⁸ He would be required, he stated, to hold court “*sans culotte*,” a reference to the informal dress of French peasants.²⁹

Historians decry the scanty record of Marshall’s time in Raleigh. According to Charles Hobson, the editor of the ten volumes of Marshall’s papers, no manuscripts of his opinions here survive.³⁰ Only three of his North Carolina opinions are reported in *Brockenbrough’s Reports*,³¹ eighteen from his early years here were included in John Haywood’s North Carolina reporters,³² and one in the appendix of Thomas Devereux’s first

25. KEMP P. BATTLE, SKETCHES OF THE EARLY HISTORY OF THE CITY OF RALEIGH 26 (1877).

26. 6 THE PAPERS OF JOHN MARSHALL, *supra* note 12, at 143.

27. *Id.* at 145 (Letter from John Marshall to Mary W. Marshall (January 2, 1803)).

28. *Id.* at 145–46.

29. *Id.*

30. *Id.* at 143–44.

31. See REPORTS OF CASES DECIDED BY THE HONOURABLE JOHN MARSHALL, LATE CHIEF JUSTICE OF THE UNITED STATES, IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF VIRGINIA AND NORTH CAROLINA, FROM 1802 TO 1833 INCLUSIVE (John W. Brockenbrough ed., Pittsburgh, James Kay, Jun. & Brother 1837) [hereinafter REPORTS OF CASES DECIDED BY THE HONOURABLE JOHN MARSHALL]. The cases are *The Fortuna*, 9 F. Cas. 494 (C.C.D.N.C. 1815) (No. 4,954); *United States v. Cochran*, 25 F. Cas. 483 (C.C.D.N.C. 1825) (No. 14,821); and *United States v. Marshal of the District of North Carolina*, 26 Fed. Cas. 1173 (C.C.D.N.C. 1833) (No. 15,727).

32. See 2 JOHN HAYWOOD, REPORTS OF CASES ADJUDGED IN THE SUPERIOR COURTS OF LAW AND EQUITY, COURT OF CONFERENCE, AND FEDERAL COURT FOR THE STATE OF NORTH CAROLINA: FROM THE YEAR 1797 TO 1806 (1806). These cases are *Ogden v. Witherspoon*, 3 N.C. (2 Hayw.) 227 (1802); *Gibson v. Williams*, 3 N.C. (2 Hayw.) 281 (1803); *Teasdale v. Jordan*, 3 N.C. (2 Hayw.) 281 (1803); *Sanders v. Hamilton*, 21 F. Cas. 320 (1802); *Wilkins v. Murphey*, 3 N.C. (2 Hayw.) 282 (1803); *Murray v. Marsh*, 3 N.C. (2 Hayw.) 290 (1803); *McAlister v. Barry*, 3 N.C. (2 Hayw.) 290 (1803); *Hamilton v. Jones*, 3 N.C. (2 Hayw.) 291 (1803); *Hamilton v. Simms*, 3 N.C. (2 Hayw.) 291 (1803); *Jones v. Walker*, 3 N.C. (2 Hayw.) 291 (1803); *Dunlop & Co. v. West*, 3 N.C. (2 Hayw.) 346; *Mutter’s Executors v. Hamilton*, 3 N.C. (2 Hayw.) 346; ___ v. Lewis, 3 N.C. (2 Hayw.) 346; *Teasdale v. Branton*, 3 N.C. (2

North Carolina reporter.³³ Luckily, there were three vigorous newspapers in Raleigh during Marshall's tenure that covered the courts,³⁴ and descriptions of his cases are found scattered among the letters and papers of his contemporaries. Even with all of these gaps, the untold story of what he did here is endlessly fascinating, a window into the early days of the exercise of federal jurisdiction in this young city and new state.

B. *The Circuit Court's Use of the North Carolina Courthouse*

The North Carolina Circuit Court convened in the old Wake County Courthouse constructed in 1795.³⁵ It was a wooden structure situated on a half-acre lot donated by Theophilus Hunter and James Bloodworth.³⁶ The Bloodworth deed contains a reverter clause that if the lot is ever used for any purpose other than a courthouse, title reverts to his heirs.³⁷ The current courthouse is the fifth to occupy that location.³⁸ In a city with few public spaces, the courthouse was a busy place. Judicially, it was shared by the county court, the superior court authorized for Wake County in 1807, the Court of Conference (soon to be redesignated as the North Carolina Supreme Court), and also the federal circuit court.³⁹ Additionally, the city commissioners met there, and it was the only polling place in the county.⁴⁰ In a clever administrative move to save costs, local innkeeper Lewis Green, in return for installing glass in the windows and keeping the building in repair, was allowed to use it for his overflow guests when court was not in session.⁴¹

There is no evidence that the federal government paid any remuneration to the county for use of its courthouse. When a federal marshal was appointed for the district in 1808, the city commissioners provided a room in the courthouse and allowed federal prisoners to be housed in the county jail.⁴² In 1833, in response to the disastrous fires that had twice destroyed

Hayw.) 377 (1805); *Grubb v. Clayton*, 3 N.C. (2 Hayw.) 378 (1805); and *United States v. Holsclaw*, 3 N.C. (2 Hayw.) 379 (1805).

33. *Whitaker v. Freeman*, 12 N.C. (1 Dev.) 271 (1827).

34. See MURRAY, *supra* note 18, at 112–14 (discussing the establishment of *The Weekly Raleigh Register* and *The Raleigh Minerva* newspapers); see N.C. STAR (Raleigh), Nov. 3, 1808 (first edition of *The North Carolina Star*).

35. MURRAY, *supra* note 18, at 106.

36. *Id.*

37. *Id.*

38. Quillin, *supra* note 17.

39. MURRAY, *supra* note 18, at 108.

40. *Id.*

41. *Id.*

42. *Id.* at 143.

most of downtown, the decision was made to replace the wooden courthouse with a more flame-resistant brick structure.⁴³ Construction was delayed while a committee applied to the U.S. Congress for an appropriation to defray a portion of the costs in consideration of federal court being held there.⁴⁴ None was forthcoming.

II. MARSHALL'S CASES

A. *Marshall's First Term*

A fascinating case that was a precursor of later Supreme Court decisions awaited Marshall at the first term. It turned on the relationship among four different North Carolina statutes and the 1783 peace treaty that ended the Revolutionary War that was codified into North Carolina law in 1787.⁴⁵ A 1715 North Carolina statute required any action seeking recovery from a decedent to be brought within seven years of his death.⁴⁶ In 1777, the North Carolina legislature prohibited British citizens from using its courts,⁴⁷ a right restored by North Carolina's 1787 adoption of the federal treaty.⁴⁸ In 1784⁴⁹ and 1789⁵⁰ the legislature passed two laws amending and, arguably, repealing the 1715 statute. Because it was unclear whether the 1789 statute repealed the 1715 statute, a 1799 statute clarified it did not.⁵¹

Ogden v. Blackledge was a suit brought in 1798 by the administrator of a British citizen against the executor of a North Carolina citizen who had died in 1780.⁵² The plaintiff claimed that under the 1783 Treaty of Paris

43. *Id.* at 400.

44. *Id.* at 244; *Court-House in Raleigh*, WKLY STANDARD (Raleigh), Dec. 19, 1834, at 3; *New Court House*, N.C. STAR (Raleigh), May 24, 1833, at 3.

45. Act of Nov. 18, 1787, ch. 1, § 1, 1787 N.C. Sess. Laws 430, 430.

46. Act of Nov. 17, 1715, ch. 48, § 9, 1715 N.C. Sess. Laws 21, 22.

47. Act of Nov. 15, 1777, ch. 1, § 101, 1777 N.C. Sess. Laws 205, 226.

48. Act of Nov. 18, 1787, ch. 1, § 1, 1787 N.C. Sess. Laws 430, 430 (declaring the peace treaty between the United States and the King of Great Britain to be the law of the land).

49. Act of Apr. 19, 1784, ch. 23, § 2, 1784 N.C. Sess. Laws 354, 354-55.

50. Act of Nov. 2, 1789, ch. 23, § 4, 1789 N.C. Sess. Laws 466, 475.

51. Act of Nov. 18, 1799, ch. 26, 1799 N.C. Sess. Laws 143, 143 ("An Act to explain an act, passed in one thousand seven hundred and eighty-nine. . .").

52. *Ogden v. Blackledge*, 6 N.C. (2 Cranch) 272 (1804). There is confusion over the name of this case. The full title of the case according to the court minutes of the December 1802 term is *Robert Ogden, Administrator of Samuel Cornell, v. Richard Blackledge, Executor of Robert Saltler*; however, the case reporter, John Haywood, misnamed the defendant as *David Witherspoon, administrator of Abner Nash*. 6 THE PAPERS OF JOHN MARSHALL, *supra* note 12, at 146. The case is therefore called *Ogden v. Witherspoon* in the North Carolina Reports and the Haywood Reports. 3 N.C. (2 Hayw.) 227 (1802).

there could be “no lawful Impediment to the Recovery . . . Debts heretofore contracted.”⁵³ Defendant claimed that, because seven years had passed, the suit was barred under the 1715 statute.⁵⁴ Chief Justice Marshall held that the 1789 Act repealed the 1715 Act and allowed the suit to proceed.⁵⁵ Three points about Marshall’s opinion in *Ogden* are critical.

First, and several months before *Marbury v. Madison*,⁵⁶ the Chief Justice invalidated the 1799 attempt of the North Carolina legislature to breathe retrospective life into a statute that he concluded had been repealed as a violation of the separation of powers clause of the North Carolina Constitution. He stated, “[W]hether the act of 1789 be a repeal of the 9th section of 1715, is a judicial matter, and not a legislative one.”⁵⁷

Second, even more extraordinary and almost as an afterthought, is the second holding. Although constitutional law treatises say that it was not until *Fletcher v. Peck* in 1810 that the Supreme Court nullified a state statute as violative of the federal constitution,⁵⁸ Marshall did so here. He reasoned if a contract, which might be recovered on under the act of 1789, were nullified by operation of the act of 1799, the later act was void under the tenth section of the first article of the new constitution, the Impairment of Contracts Clause.⁵⁹

Third, and providing an intriguing insight into early federal jurisdiction, was that Marshall’s opinion had no force. The 1802 Judiciary Act reconstituting the circuit courts made them courts of two judges of equivalent authority, the Justice on circuit and the local district judge.⁶⁰ At this term and for the next thirty-two years, Marshall sat with North Carolina’s only district judge, Henry Potter.⁶¹ President Jefferson originally appointed Potter the prior year as a circuit judge, but that position disappeared with its abolition in the 1802 Act.⁶² Coincidentally, North Carolina’s district judge, John Sitgreaves, died unexpectedly, and Potter was reappointed to that

53. Definitive Treaty of Peace, U.S.-Gr. Brit., art. 4, Sept. 3, 1783, 8 Stat. 80, 83.

54. *Ogden*, 3 N.C. (2 Hayw.) at 228.

55. *Id.* at 229. The suit should have been barred as untimely under the 1789 act as well, however, as that was not pled, the only issue was whether the seven-year limitation in the 1715 statute barred plaintiff’s action. Act of Nov. 2, 1789, ch. 23, § 4, 1789 N.C. Sess. Laws 466, 475.

56. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

57. *Ogden*, 3 N.C. (2 Hayw.) at 228.

58. 1 RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 1.5 (5th ed. 2012).

59. *Ogden*, 3 N.C. (2 Hayw.) at 228–29.

60. WILLIS G. BRIGGS, HENRY POTTER: 1766–1857, at 3 (1953).

61. 6 THE PAPERS OF JOHN MARSHALL, *supra* note 12, at 143.

62. BRIGGS, *supra* note 60, at 7.

position.⁶³ He would hold the post for almost fifty-seven years, an unparalleled tenure in the federal courts.⁶⁴ In *Ogden*, Marshall and Potter's first major case together, they did not agree.⁶⁵ Judge Potter took the view that the 1715 and 1789 acts could be construed harmoniously, and an administrator had to qualify under both.⁶⁶ This was not a case where a tie went to the judge senior in rank. Instead, the Judiciary Act provided that the judges were to file a certificate of a division of opinion, which immediately took the case to the Supreme Court.⁶⁷ At its February 1804 term, the Supreme Court affirmed Justice Marshall's opinion based on separation of powers, leaving the impairment of contract argument for another day.⁶⁸

Marshall's first term in Raleigh involved other cases as well. Then as now, the newspapers were much more interested in criminal cases than in the civil docket. The *Raleigh Minerva* reported that "[m]uch civil business has and will be done during the present term,"⁶⁹ without any description of what those cases were.

Slavery cases were sprinkled through the Chief Justice's long Raleigh tenure. The only case other than *Ogden v. Blackledge* for which a record exists from the first term is *Sanders v. Hamilton*, which describes in terms grating to the modern ear a dispute over reimbursement for slave purchases.⁷⁰ In prior litigation, the plaintiff had lost title to slaves purchased from the defendant. This case turned on whether the defendant "warranted the wench from whom descended the slaves afterwards recovered . . . from Sanders."⁷¹

The Chief Justice authored another lengthy opinion late in his career during the 1833 Fall Term in North Carolina. In *United States v. Marshal of North Carolina*, the United States Marshal levied on four slaves of the defendant and sold them pursuant to dueling writs of execution.⁷² The contest was between the State of North Carolina and the United States, who had competing judgments against the defendant.⁷³ The United States prevailed and recovered the \$378.75 the marshal received from the sale.⁷⁴ In

63. *Id.*

64. *Id.* at 3.

65. See *Ogden v. Witherspoon*, 3 N.C. (2 Hayw.) 227, 227–29 (1802).

66. *Id.* at 227.

67. Judiciary Act of 1802, 2 Stat. 156, § 6 (1802).

68. *Ogden v. Blackledge*, 6 U.S. (2 Cranch) 272, 279 (1804).

69. *Raleigh: Tuesday January 4, 1803*, RALEIGH MINERVA, Jan. 4, 1803, at 3.

70. *Sanders v. Hamilton*, 21 F. Cas. 320 (1802).

71. *Id.* at 320.

72. *United States v. Marshal of N.C.*, 26 F. Cas. 1173, 1173 (C.C.D.N.C. 1833) (No. 15,727).

73. *Id.* at 1173–74.

74. *Id.* at 1175.

United States v. Williams, a rare criminal case involving slavery, a slaveowner was charged with the murder of a slave at Oak Island, a federal crime because the State had ceded the land to the federal government to construct fortifications.⁷⁵ The jury returned a verdict of manslaughter, and the defendant was sentenced to a year in prison and a fine of one dollar.⁷⁶

B. *Criminal Cases*

The first term was also a precursor of the general nature of the criminal cases that were to come before the North Carolina Circuit Court. Federal criminal jurisdiction was extremely limited.⁷⁷ At the first session, the grand jury indicted Abraham Champion of Granville County for passing counterfeit notes of the Bank of the United States.⁷⁸ He was tried later that year at the June 1803 term,⁷⁹ with apparently a very strong prosecutorial case. “The case was so plain, that the Court did not think it necessary to charge the Jury, who, after an absence of about a quarter of an hour, returned a verdict of *Guilty*.”⁸⁰ Mr. Champion “was sentenced to two years imprisonment in Hillsborough goal, and to pay a fine of five dollars.”⁸¹ For the next thirty years counterfeit cases remained one of the most prevalent on the federal docket, along with maritime crimes, forgery, and tax violations.⁸²

C. *The Earl Granville Litigation*

The civil jurisdiction of the circuit courts was also fairly limited,⁸³ and the early years were dominated by admiralty and land cases, usually involving title under pre-Revolutionary British ownership. In 1801, one of the largest land title cases ever heard in the federal courts was filed in the North Carolina Circuit Court.⁸⁴ In 1663, King Charles II granted title to the

75. WKLY. RALEIGH REG., Nov. 18, 1830, at 3.

76. *Id.*

77. *Timelines of Federal Judicial History: The Jurisdiction of the Federal Courts*, FED. JUDICIAL CTR., <https://www.fjc.gov/history/timeline/8271> (last visited Aug. 2018) (outlining the criminal and civil jurisdiction of the federal courts from the Constitutional Convention to present day).

78. *Raleigh: Tuesday January 4, 1803*, *supra* note 69.

79. WKLY. RALEIGH REG., June 20, 1803, at 3.

80. *Id.*

81. *Id.*

82. *Timelines of Federal Judicial History*, *supra* note 77.

83. *Id.* (outlining the criminal and civil jurisdiction of the federal courts from the Constitutional Convention to present day).

84. PETER GRAHAM FISH, *FEDERAL JUSTICE IN THE MID-ATLANTIC SOUTH: UNITED STATES COURTS FROM MARYLAND TO THE CAROLINAS 1789–1835*, at 155–56 (2002).

Carolinas to Cavaliers and Lords Proprietor.⁸⁵ In 1729, seven of the eight Lords Proprietor had lost interest in a failing economic enterprise and re-conveyed their title to the King.⁸⁶ Lord John Carteret, later Earl Granville, did not.⁸⁷ By Act of Parliament, Carteret's one-eighth interest was set off.⁸⁸ This "district encompassed 300,000 acre swath of North Carolina" bordered by the Virginia line and a line approximately sixty miles south across the entire state.⁸⁹ Prior to the Revolution, Earl Granville set up land offices to authorize entry and make grants.⁹⁰ All of the newly-created Wake County fell within the Granville grant.⁹¹

In 1776, North Carolina adopted its first Constitution. The twenty-fifth section declared, "[A]ll the territories, seas, waters, and harbors, with their appurtenances, lying between the line above described [Virginia and South Carolina] . . . are the right and property of the people of this State, to be held by them in sovereignty[.]"⁹² Taking the view that this extinguished Earl Granville's sovereign title, North Carolina began to make large grants within the Granville tract.⁹³ In 1801, the Granville heirs brought two test cases to challenge this assertion, *Devisees of Earl Granville v. Allen* and *Devisees of Earl Granville v. Davie*, the latter case involving one of North Carolina's most famous Revolutionary leaders, William R. Davie.⁹⁴

Interest in this litigation dominated the news about the court from its first setting in 1804 until its ultimate trial by jury in 1806. The *Raleigh Register* reported on January 2, 1804, the case would not be taken up because the plaintiff was not ready, apparently over the strenuous objection of General Davie, who "had put himself to great inconvenience to attend the Court, being prepared and desirous of having his cause tried at this term."⁹⁵ The same paper reported in May of 1804 the parties were ready for trial at the upcoming June term, "[n]o doubt the importance of this cause . . . will

85. *Id.* at 155.

86. Henry G. Connor, *The Granville Estate and North Carolina*, 62 U. PA. L. REV. 671, 672-73 (1914).

87. *Id.*

88. *Id.* at 673.

89. FISH, *supra* note 84, at 155.

90. Connor, *supra* note 86, at 673.

91. See FISH, *supra* note 84, at 155 (showing on Map 8 the Granville land tract indicated by two parallel lines encompassing Wake County).

92. N.C. CONST. OF 1776, art. I, §25.

93. Thornton W. Mitchell, *The Granville District and Its Land Records*, 70 N.C. HIST. REV. 103, 122 (1993).

94. Connor, *supra* note 86, at 677.

95. *Raleigh: Monday, January 2, 1804*, WKLY. RALEIGH REG., Jan. 2, 1804, at 3.

excite a lively interest in its decision, and produce a crowded court.”⁹⁶ Procedural wrangling followed because the plaintiff offered a demurrer to the evidence of the defendant, which at the January 1805 session was asserted to have been inappropriately pleaded.⁹⁷ At the June 1805 term, the Court agreed, struck the demurrer, and set the case for trial by jury at the December 29, 1805 term.⁹⁸

In the ruling on the demurrer, Chief Justice Marshall’s difficulty with hearing the case became clear. He and other family members had been involved in purchasing a huge tract of land in the Northern Neck of Virginia from Lord Fairfax in a situation similar to that playing out in North Carolina. That title would be litigated in the famous case of *Martin v. Hunter’s Lessee*,⁹⁹ which went twice to the Supreme Court.¹⁰⁰ The Chief Justice candidly announced from the bench in June of 1805 “he could not consistently with his duty and the delicacy he felt, give an opinion in the cause.”¹⁰¹

The English agents representing the Lord Granville heirs were distraught at the Chief Justice’s decision. They had earlier been encouraged by the favorable sentiments of Justice Marshall and opined:

[T]he Judge’s reasons for withdrawing from the cause partakes more of political acquiescence than the dignified, official independence we had a right to expect from his character. . . . Mr. Marshall had certainly no interest in our cause, he ought to have governed the proceedings of a Court over which he presided, according to such opinion—it has very much the appearance of shirking to popular impressions.¹⁰²

Arguments and evidence commenced on Friday morning, January 3, 1806, before District Judge Henry Potter, presiding alone with a jury, the Chief Justice having departed the city after concluding more routine business of the court.¹⁰³ William Gaston, the most famous lawyer in the state at the time and later a North Carolina Supreme Court justice,¹⁰⁴ represented the

96. *Raleigh: Monday, May 21, 1804*, WKLY. RALEIGH REG., May 21, 1804, at 3.

97. Connor, *supra* note 86, at 688–89.

98. *Id.*

99. *Hunter v. Martin*, 18 Va. (4 Munf.) 1, 1 (1815), *rev’d sub nom. Martin v. Hunter’s Lessee*, 14 U.S. (1 Wheat.) 304 (1816).

100. *Fairfax’s Devisee v. Hunter’s Lessee*, 11 U.S. (7 Cranch) 603 (1812); *Martin v. Hunter’s Lessee*, 14 U.S. (1 Wheat.) 304 (1816).

101. *Raleigh: Monday, June 24, 1805*, WKLY. RALEIGH REG., June 24, 1805, at 3.

102. Connor, *supra* note 86, at 690.

103. *Raleigh: Monday January 6, 1806*, WKLY. RALEIGH REG., Jan. 6, 1806, at 3.

104. See Ronnie W. Faulkner, *William J. Gaston (1778-1844)*, N.C. HISTORY PROJECT, <https://perma.cc/35KV-E4D6> (last accessed Oct. 2018).

Granville heirs.¹⁰⁵ Judge Duncan Cameron was counsel for the defendant landowners.¹⁰⁶ Arguments continued all day into the evening and carried over to Saturday.¹⁰⁷ On Saturday afternoon, Judge Potter charged the jury.¹⁰⁸

Judge Potter's charge is a candid and eloquent statement of the enormous significance of the case and the pressure he was under in deciding it alone. It is worth quoting at some length:

In deciding a cause of much importance, even between individuals whose rights alone are to be affected, it is to be supposed that the Court must possess great solicitude, lest, by a misguided judgment it may do a wrong to one of the parties, for which it may relent when it is too late. How much more must be the concern of the Court in the present case, where on the one hand, not only an individual may be greatly injured, but the national honor questioned; and on the other hand, the rights of thousands depend upon the decision.

In any case of such general concern and public expectation, I should ponder, though the case should be clear; I should hesitate, though my own mind doubted not; and I should distrust my own judgment, though I had confidence in its powers. Embarrassing, therefore, was the case now under judgment, which had created a contrariety of opinion among the most learned in the law, and had shadowed my own intellects with much doubt and difficulty. This weight and difficulty was greatly increased too, by the loss of that guidance and support which I fondly expected, and, but for the peculiar situation in which he was placed, I should have derived from the Chief Justice.¹⁰⁹

Aware of the importance of the case, Judge Potter then delivers as a jury charge a formal opinion discussing the issues argued to him.¹¹⁰ Ultimately, he concludes that the Bill of Rights of the North Carolina Constitution clearly extinguished Lord Granville's title and instructs the jury to so find.¹¹¹ According to the *Raleigh Minerva*, the jury did so in about fifteen minutes.¹¹²

Although a popular result in North Carolina, the leaders were uneasy about what might happen with the appeal to the Supreme Court.¹¹³ In 1809, Governor Stone expressed grave concern about the possible outcome there, and he warned the Legislature it should be prepared to compensate citizens

105. *Raleigh: Monday January 6, 1806*, RALEIGH MINERVA, Jan. 6, 1806, at 3.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Coventry v. Collins*, RALEIGH MINERVA, Jan. 13, 1806, at 1.

110. *Id.*; *Judge Potter's Charge Concluded*, RALEIGH MINERVA, Jan. 20, 1806, at 1-3.

111. *Coventry v. Collins*, *supra* note 109; *Judge Potter's Charge Concluded*, *supra* note 110.

112. *Coventry v. Collins*, *supra* note 109; *Judge Potter's Charge Concluded*, *supra* note 110.

113. Connor, *supra* note 86, at 690.

if the titles from the State should be undone there.¹¹⁴ The leading historian on early Wake County has speculated that the tepid population growth the county saw in this decade was in part due to westward migration of citizens uneasy about whether title to their land could be protected.¹¹⁵

This was not to be an issue. The great mystery, and deserving of further investigation, is why this major case, perhaps involving title to more land than any other ever brought, never was heard by the Supreme Court. Some letters do suggest that postponements were sought because the growing hostilities with Great Britain, culminating in the War of 1812, would make a decision in favor of the English heirs unlikely.¹¹⁶ For whatever reason, the appeal languished from term to term on the Supreme Court docket until it was dismissed uncontested on February 4, 1817.¹¹⁷ It may be merely a coincidence that the parallel litigation in Virginia resulted in the Supreme Court sustaining the similar English title of Lord Fairfax in *Hunter v. Martin's Lessee*¹¹⁸ (a case in which the Chief Justice had a vital interest in that preferred outcome), and as Chief Justice, he had complete control of the calendar that never saw the contrary North Carolina decision called for argument.

D. National Affairs

National affairs intruded into the work of the North Carolina Circuit Court. In 1807, President Jefferson resolved the continuing disputes with France and England by asking Congress to embargo all trade with both countries.¹¹⁹ This ill-advised move was quickly perceived to be catastrophic. In 1808, the federal grand jury in Raleigh stepped outside its assigned role to ask the Governor to call an immediate session of the North Carolina legislature for the purpose of suspending all debt collection laws while the embargo was in place, to respond to the “pecuniary distresses in which the country is involved.”¹²⁰ The embargo was “annihilating that commerce which gave us the wealth of the world in exchange for the produce of our country.”¹²¹

114. *Id.* at 690–91.

115. MURRAY, *supra* note 18, at 129.

116. Connor, *supra* note 86, at 692.

117. *Id.* at 693.

118. *Fairfax's Devisee v. Hunter's Lessee*, 11 U.S. (7 Cranch) 603 (1812); *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816).

119. BAKER, *supra* note 9, at 525–27.

120. *Raleigh: Thursday, May 19, 1808*, WKLY. RALEIGH REG., May 19, 1808, at 3.

121. *Id.*

Another national issue was the focus of the case of the *United States v. Brig Diana*¹²² in 1812. At issue was the force of two proclamations of President Madison, one reinstating trade with Great Britain and another again suspending it.¹²³ The brig *Diana* had left the port of Ocracoke for a British port in August of 1809 shortly after President Madison had again suspended trade with Great Britain, and was seized as violating the embargo.¹²⁴ The Chief Justice disagreed.¹²⁵ He concluded that although Congress had clearly given the President authority to reinstate commerce with Great Britain, it had not given him authority to change his mind.¹²⁶ Concluding that the President's August proclamation had no force, he dismissed the libel against the vessel.¹²⁷ With his usual candor, he admitted "he had not full confidence" in this opinion and hoped the issue would be finally settled on appeal to the Supreme Court.¹²⁸

E. Admiralty Cases

The records of the North Carolina Circuit Court show its regular involvement with prize and admiralty cases, and none was more prominent than the 1815 case of *The Fortuna*.¹²⁹ Raleigh was astir before the argument with the expectation that Aaron Burr himself would appear to represent the ship owners, but it is unclear whether he in fact did.¹³⁰ *The Fortuna*, sailing under a Russian flag, had been seized by an armed privateer and brought into Wilmington harbor.¹³¹ There, Judge Potter had sustained the seizure, and the appeal was before the Chief Justice.¹³² Because this is one of only three of his opinions that survives intact, it is a fascinating look into his work as a trial judge.

The Fortuna was a fascinating case of deception. Although sailing under a Russian flag, there had been discovered a parcel of papers "found concealed in a tin box, carefully let into an old piece of timber, to wit, part

122. See 7 THE PAPERS OF JOHN MARSHALL 320–21 (Charles F. Hobson ed., 1993); see also *Raleigh: Friday, Nov. 22, 1811*, WKLY. RALEIGH REG., Nov. 22, 1811, at 3.

123. 7 THE PAPERS OF JOHN MARSHALL, *supra* note 122, at 320.

124. *Id.*

125. *Id.* at 320–21.

126. *Id.*

127. *Id.* at 321.

128. *Id.* at 320–21.

129. REPORTS OF CASES DECIDED BY THE HONOURABLE JOHN MARSHALL, *supra* note 31, at 299.

130. N.C. STAR (Raleigh), May 5, 1815, at 3.

131. REPORTS OF CASES DECIDED BY THE HONOURABLE JOHN MARSHALL, *supra* note 31, at 299–300.

132. *Id.* at 299, 301–02.

of the frame or belfr[y of a vessel, by means of a mortice hole, which said mortice hole was covered with a piece of wood, in a way to elude observation.”¹³³ These papers showed the Russian flag was a complete ruse and the ship was really a disguised British vessel.¹³⁴ Notwithstanding the probity of this evidence (which apparently did not detain Judge Potter long), the Chief Justice, for some twenty pages, laboriously examines and discusses every exhibit and affidavit before arriving at the same conclusion and affirming the court below.¹³⁵ Reflected in this decision and perhaps others is the fact the Chief Justice had never been a trial judge before his elevation to the top judicial post. His thorough but tedious examination of the evidence suggests more the methodology of an appellate judge than that of a trial judge accustomed to evaluating and ruling on evidence.

Two years earlier, the Chief Justice had not been persuaded that duplicate papers irrefutably established fraud. In the *United States v. The Matilda*,¹³⁶ the *Matilda* had left New Bern bound for St. Bartholomew, a permissible neutral port.¹³⁷ However, the ship also carried a forged set of British licenses authorizing it to bring goods into British ports.¹³⁸ The Chief Justice considered credible the testimony of the captain, who acknowledged that these were solely to prevent against seizure by British cruisers if stopped at sea, and invalidated the seizure.¹³⁹

III. THE APPELLATE STRUCTURE

Running throughout the North Carolina cases was the oddity of an appellate structure in which the decisions of the Justices on circuit went to the Supreme Court of which they were a member, and there were no firm recusal rules. In fact, one of the early objections to circuit riding was the impropriety of this appellate procedure.¹⁴⁰ Although Marshall routinely refrained from hearing appeals from his own judgments, other Justices were

133. *Id.* at 301.

134. *Id.* at 306.

135. *Id.* at 299–315.

136. *United States v. The Matilda*, 26 F. Cas. 1200 (C.C.D.N.C. 1813) (No. 15,741).

137. *Id.* at 1200.

138. *Id.* at 1201.

139. *Id.* at 1204.

140. BAKER, *supra* note 9, at 374 (quoting Chief Justice John Jay, “Appointing the same men finally to correct in one capacity, the errors which they themselves may have committed in another, is a distinction unfriendly to impartial justice. . . .”).

not so circumspect.¹⁴¹ Justice Story, on more than one occasion, sat on appeals from his decisions in the circuit court.¹⁴²

Equally odd was that appeals from the district court where Judge Potter presided alone went to the Circuit Court of which he was a member.¹⁴³ In this instance it does seem clear that the district judge did not have equivalent jurisdiction to hear his own appeal.¹⁴⁴ Thus, in November of 1810, at a session that reflects both Marshall and Potter were sitting, the Chief Justice summarily reversed a decision of Judge Potter condemning a vessel, instead restoring title to its owner.¹⁴⁵ No rules of procedure governed how trial courts were actually to function with two presiding judges, although most scholars assume seniority controlled.¹⁴⁶ In the famous treason trial of Aaron Burr in the Virginia Circuit Court over which the Chief Justice and Virginia District Judge Cyrus Griffin jointly presided, the almost verbatim record reflects that, although Judge Griffin had a prime seat, he uttered not a single word.¹⁴⁷

IV. AN EFFECTIVE JURIST

Hints in the record throughout the Chief Justice's time in North Carolina suggest that he was an able and efficient administrator. Early on, he criticized the clerk for not entering judgment upon verdicts and noted "the papers of this court were kept very loosely, on slips of paper, which were often removed from the office, as applied for by individuals."¹⁴⁸ He had no patience for a U.S. Marshal who had seized property under a writ of execution but neglected to sell it, and allowed the plaintiff to recover damages for what the property would have brought at sale.¹⁴⁹ A plaintiff who sought the modern equivalent of a preliminary injunction was told to try his case: "[W]e will not grant an injunction so as to stay trial."¹⁵⁰ When the

141. *See id.*

142. *United States v. Hudson*, 11 U.S. (7 Cranch) 32 (1812) (sat on the appeal); *United States v. Coolidge*, 14 U.S. (1 Wheat.) 415 (1816) (sat on the appeal); *The Marianna Flora*, 24 U.S. (11 Wheat.) 1 (1825) (wrote the opinion upholding his decision in the lower court).

143. BAKER, *supra* note 9, at 548.

144. *Id.*

145. *Raleigh: Thursday, November 15, 1810*, RALEIGH MINERVA, Nov. 15, 1810, at 2.

146. R. Kent Newmyer, *Justice Joseph Story on Circuit and a Neglected Phase of American Legal History*, 14 AM. J. LEGAL HIST. 112, 117-18 (1970).

147. BAKER, *supra* note 9, at 470.

148. *Jones v. Walker*, 3 N.C. (2 Hayw.) 291, 292 (1803).

149. 6 THE PAPERS OF JOHN MARSHALL, *supra* note 12, at 399.

150. FISH, *supra* note 84, at 128.

evidence the plaintiff expected did not develop, the Chief Justice was not sympathetic. He stated,

[I]f a plaintiff supposing himself ready, press for trial, and it is found on trial that the testimony he relied on cannot be given in evidence as he expected and he be nonsuited, the allegation of surprise shall not prevail to set aside the nonsuit.¹⁵¹

As every judge knows, the occasional case persists for an inordinate amount of time. Such was the counterfeiting trial of *United States v. Collins*, which repeatedly appeared on the court's docket for four years until Collins was ultimately acquitted because the original note had become so defaced by handling it no longer matched the indictment.¹⁵² His co-defendant, Twitty, was acquitted the following year, presumably for the same reason.¹⁵³

The Chief Justice's good humor is also evident. On one of his later trips to Raleigh, a new court crier forgot his basic duty to open court, and, after a moment, Justice Marshall proceeded with his grand jury charge.¹⁵⁴ Realizing his mistake, the crier jumped up and commanded the Chief Justice to stop.¹⁵⁵ The courtroom watched in astonishment as the Chief Justice obeyed, and the crier proceeded with the formal court opening.¹⁵⁶ Instead of the expected contempt citation, Marshall simply began his charge anew.¹⁵⁷

The Chief Justice wisely navigated the press during his career in Raleigh. As was the custom with the circuit courts, the first order of business at each session was to charge the grand jury. In the early days of the Republic, the Federalist justices had seized this opportunity to explain the powers and authority of the new federal government and, on occasion, to castigate those who opposed it.¹⁵⁸ These charges had become so polemical that Justice Chase's Baltimore charge became one of the allegations in the bill of indictment on which he was tried and acquitted by the Senate in 1804.¹⁵⁹ Chief Justice Marshall was more circumspect. The Raleigh paper reported that the Chief Justice delivered an "elegant and learned charge," but declined to allow it to be published, a rule from which he never departed.¹⁶⁰

151. *Murray v. Marsh*, 3 N.C. (2 Hayw.) 290, 290 (1803).

152. *Raleigh: Thursday, November 15, 1810*, WKLY. RALEIGH REG., Nov. 15, 1810, at 3.

153. *Raleigh: Friday, November 15, 1811*, WKLY. RALEIGH REG., Nov. 15, 1811, at 3.

154. *Chief Justice Marshall*, WKLY. RALEIGH REG., Sept. 11, 1846, at 1.

155. *Id.*

156. *Id.*

157. *Id.*

158. George L. Haskins, *Law Versus Politics in the Early Years of the Marshall Court*, 130 U. PA. L. REV. 1, 4 (1981).

159. BAKER, *supra* note 9, at 436.

160. *Raleigh: Tuesday January 4, 1803*, *supra* note 68.

His facility and quickness with complex legal issues for which he was noted (he delivered the landmark opinion in *McCulloch v. Maryland* from the bench three days after oral argument concluded)¹⁶¹ shines through in the North Carolina cases. In 1812, in *Peck v. Williamson*,¹⁶² he dealt with the meaning of the Full Faith and Credit Clause of the Constitution on a very important question that “ha[d] not yet been decided in this court, nor in the Supreme Court.” He concluded the Clause was not self-executing, but only had the effect prescribed by Congress, and Congress had taken no action.¹⁶³ Thus the North Carolina court only gave the same deference to the Massachusetts judgment that it had at common law.¹⁶⁴

In the 1825 case of *United States v. Cochran*,¹⁶⁵ the collector of the Port of Wilmington had embezzled \$145,000 and fled the state. In a trunk he deposited at a bank, he had left \$10,000 for his sureties to pay the performance bond they had executed on his behalf, which they promptly did.¹⁶⁶ The United States took the view that the money should be credited against the principal and the sureties remained liable.¹⁶⁷ Not so, reasoned the Chief Justice. A debtor has a right to direct how his payments shall be credited, and he saw nothing askew in the sureties being released by the payment.¹⁶⁸ In another case, an observer commented that “[w]hen he began to speak the darkness which seemed to hover over the case began to disappear like the darkness of night when the sun begins to rise.”¹⁶⁹

In only one case does the equanimity the Chief Justice always demonstrated seem to have been tested. In May of 1826, a fellow traveler wrote of crossing paths in the town of Monroe on the Roanoke River with the Chief Justice, who was on his way to Raleigh to hold court.¹⁷⁰ He reported that a case of libel was to come on at that term, “which the judge seemed to dread exceedingly.”¹⁷¹ The case was between two ministers,

161. Charles F. Hobson, *Defining the Office: John Marshall as Chief Justice*, 154 U. PA. L. REV. 1421, 1445 (2006).

162. 8 THE PAPERS OF JOHN MARSHALL 340–41 (Charles F. Hobson ed., 1995).

163. *Id.* at 340.

164. *Id.*

165. REPORTS OF CASES DECIDED BY THE HONOURABLE JOHN MARSHALL, *supra* note 31, at 274–79.

166. *Id.* at 275–76.

167. *Id.*

168. *Id.* at 278–79.

169. FISH, *supra* note 84, at 128 (quoting John Menan Patrick, *John Menan Patrick Papers 1810-1818*, May 12, 1816).

170. 10 THE PAPERS OF JOHN MARSHALL 289 (Charles F. Hobson ed., 2000) (Interview with Jared Sparks, Monroe, N.C. (May 9, 1826)).

171. *Id.*

Reverend Jonathan Whitaker, a Presbyterian, and Reverend Frederick Freeman, a Unitarian.¹⁷² Both were from New England,¹⁷³ although presumably one had moved to North Carolina by the time of filing suit to provide diversity jurisdiction. In a letter the Chief Justice wrote the next week to Justice Joseph Story, he recounted that the case had not been tried that term.¹⁷⁴ Although he reported “[t]hey have taken the depositions of almost all New England” and the case was ready, “the combatants seemed to fear each other, and the cause was continued in the hope that one more effort might produce a reference, if not a compromise.”¹⁷⁵

The Chief Justice’s hopes were in vain. At the November 1826 term, the jury trial consumed four days and ended with a verdict for the plaintiff for \$1,800.¹⁷⁶ This was not to be the end of the matter, for the court had allowed the defendant to plead in the alternative, asserting both that the statements were not made and that they were also true.¹⁷⁷ At the May 1827 term, the Chief Justice decided he had erred by allowing the plea of justification to be used by plaintiff to prove the libel, and set aside the verdict.¹⁷⁸ In November of 1828, a second jury again found for the plaintiff, this time for \$2,000.¹⁷⁹ Marshall’s characterization that “one had charged the other with very serious crimes”¹⁸⁰ was accurate. The letter introduced into evidence asserted that Reverend Whitaker was in the habit of “whipping his wife,” had been charged with “stealing wood,” and was an imposter whose credentials were forged.¹⁸¹

The Chief Justice’s three decades in Raleigh ended as they began, with the excitement of a major land case that would determine title to much of western North Carolina. The newspaper reported that the “[c]ity is at present quite thronged with strangers” for the trial of *Latimer v. Poteet*.¹⁸² The complex issue at the May 1833 term was whether grants from the State of North Carolina ran afoul of several treaties with the Cherokee Nation that

172. *Id.* at 292 n.2.

173. *Id.* at 291.

174. *Id.*

175. *Id.*

176. *Raleigh Register: Tuesday, Nov. 24, 1826*, WKLY. RALEIGH REG., Nov. 24, 1826, at 1.

177. *Id.*

178. *Whitaker v. Freeman*, 12 N.C. (1 Dev.) 271, 288–89 (1827).

179. 10 THE PAPERS OF JOHN MARSHALL, *supra* note 170, at 292 n.2 (Letter from John Marshall to Joseph Story (May 31, 1826)).

180. *Id.* at 291.

181. *Whitaker*, 12 N.C. (1 Dev.) at 272.

182. *Federal Court*, WKLY. RALEIGH REG., May 14, 1833, at 3.

reserved lands for the tribe.¹⁸³ The precise issue for the jury was whether the boundary line required by the treaties had been appropriately run and on which side the disputed land lay.¹⁸⁴ Despite a charge very favorable to the sanctity of the treaties and the presumptive correctness of the boundary line, the jury found for the landowners in possession.¹⁸⁵ The Supreme Court affirmed the judgment.¹⁸⁶

CONCLUSION

The story of Marshall in Raleigh would not be complete without including the story of Judge Henry Potter, the North Carolina District Judge who sat beside him for thirty-two years and was the Chief Justice's most consistent colleague throughout his career. Historians have not been kind to Judge Potter, referring to his "long and mediocre career."¹⁸⁷ This is likely due to the fact that Potter was no better than Marshall at keeping records, so no collection of Potter papers covering his fifty-seven years on the federal bench exists. But they have not looked closely enough, for what contemporaneous sources reveal is a thoughtful and hardworking judge who was engaged in every important civic endeavor of his time. In fact, research about the Chief Justice has generated such an equivalent fascination with Judge Potter that a separate article about him will be published in this issue.¹⁸⁸

On November 13, 1835, the Bench and Bar of the North Carolina Circuit Court met in Raleigh to commemorate the late Chief Justice. Judge Potter's heartfelt and eloquent eulogy is the best testament to the enormous impact of the great Chief Justice, and a fitting place to end:

I cannot omit, upon this occasion, some expressions of my personal feelings toward the late CHIEF JUSTICE. After an intimate acquaintance of thirty-two years with that great and good man, I must be supposed to have acquired some knowledge of his character. Indeed I knew him well. . . . He was great without an effort; and the social and gentle virtues found in his heart their native soil. With a clear perception of truth, and an undeviating pursuit of it, unwarped by partiality or prejudice; with a logical and lucid mind, well disciplined and adjusted for close and patient investigation; and with an integrity beyond all price, he was, above all others of my acquaintance,

183. *Lattimer's Lessee v. Poteet*, 39 U.S. (14 Pet.) 4, 4–5 (1840).

184. *Id.*

185. *Id.*

186. *Id.*

187. FISH, *supra* note 84, at 213.

188. See B. Seth Lumpkins, *The Venerable Judge: Henry Potter*, 41 CAMPBELL L. REV. 145 (2019).

peculiarly qualified for the discharge of the various delicate and important duties of the Bench. As a companion and friend, and as the great luminary of our profession, I do most sincerely mourn his loss. His equal, as a jurist, and as a man, taking him all in all, I expect never to behold; for in him were happily blended all the constituent qualities of the really great man. His striking characteristics were, a clear head, a vigorous intellect, a logical mind, and an honest heart. In fine, he was a profound thinker and a matchless reasoner.¹⁸⁹

North Carolina judges and historians have always been understandably modest about our place in federal judicial history, particularly since no Supreme Court Justice has come from this state in more than two centuries. We might reconsider that view, as it turns out that the greatest federal jurist in our nation's history was enmeshed in the legal, political, and social culture of our state for more than three decades. It is a story worth telling.

189. *Tribute to Chief Justice Marshall*, N.C. STAR (Raleigh), Nov. 19, 1835, at 3.