

2019

The Venerable Judge: Henry Potter

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Recommended Citation

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

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The Venerable Judge: Henry Potter

B. SETH LUMPKINS*

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INTRODUCTION

The first half-century of the federal courts in North Carolina was orchestrated by one man; a venerable judge, whose legacy is shockingly unfamiliar to modern ears. Judge Henry Potter is the longest actively

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serving federal district judge in the Nation's history.¹ Judge Henry Potter served longer on a single court than almost any other judge and had the longest active career of any judge in the United States federal judiciary. The seasoned judge sat on the federal bench in North Carolina from May of 1801 until his death in December of 1857, just days away from his ninety-second birthday.² From his appointment to the bench by Thomas Jefferson until his death, Judge Potter faithfully executed his judicial duties for almost fifty-seven years of service.³ Potter's impressive tenure as a federal judge was also accompanied by a tenacious involvement in countless civic and business ventures that helped shape North Carolina as we know it today.

Perhaps the most peculiar, and quite frankly, disheartening aspect of Potter's legacy is that few North Carolinians recognize his name. A glimpse of Judge Potter's legacy can be found in a limited number of historical resources, most notably Willis G. Briggs's valuable work published in 1953.⁴ However, most attempts to tell Potter's story only skim the surface of his impressive life. A comprehensive picture of Potter's life is warranted, and this work attempts to fill the void. Judge Potter's legacy is somewhat overshadowed by the times that he lived in and the plethora of prominent members of society that surrounded him. Another explanation for Judge Potter's palming history may be that little comprehensive documentation, such as a collection of Judge Potter's papers, has survived or been located.

In preparation for writing this article, I uncovered previously unknown glimpses of Judge Potter's life, accomplishments, and service to both the United States and North Carolina within an array of sources. Most notably,

1. Judge Potter's reign as the longest sitting federal district court judge was uncontested from his death in 1857 until just this past August, when Judge William J. Nealon of the Middle District of Pennsylvania arguably surpassed Potter's record by three days. However, Judge Nealon had been granted senior status, a semi-retired state with a limited case load since 1989, while Judge Potter was an active judge throughout his entire tenure on the bench. Indeed, Judge Potter was the only federal judge in North Carolina and thus handled all federal cases within his jurisdiction until his death. *Nealon, William Joseph, Jr.*, FED. JUD. CTR. (last visited 16 Jan. 2019), <https://perma.cc/3SGM-Y7SG> (showing the dates of Judge Nealon's service); *Potter, Henry*, FED. JUD. CTR. (last visited 6 Nov. 2018), <https://perma.cc/9EGJ-568C> (showing the dates of Judge Potter's service); *U.S. District Courts for the Districts of North Carolina: Judges of all Districts*, FED. JUD. CTR. (last visited 16 Jan. 2019), <https://perma.cc/89FJ-5SNF> (showing that Potter was the only federal district court judge in North Carolina during his tenure).

2. *Potter, Henry*, FED. JUD. CTR. (last visited 6 Nov. 2018), <https://perma.cc/9EGJ-568C>.

3. *Id.*

4. WILLIS G. BRIGGS, HENRY POTTER, 1766–1857 (1953).

the early North Carolina newspapers that zealously covered court proceedings, current events, and associations that Potter frequented were particularly helpful in revealing the forgotten aspects of Potter's life. Further, the contents of letters buried in the state archives for years, written by Potter and his colleagues, have uncovered Potter's character and undisclosed dealings throughout his long and eventful life. Hopefully, this Article will reveal the astounding life of North Carolina's forgotten advocate and revered public servant.

I. EARLY LIFE

Henry Potter was the sixth child born to John and Mary Potter on January 5, 1766, in Mecklenburg County, Virginia.⁵ Soon after Henry's birth, the Potters relocated to Granville County, North Carolina.⁶ Little is known about Potter's formative years during the Revolutionary era, but by the time he reached the age of majority, he spent two and a half years in Philadelphia, where he witnessed what was essentially the formation of the new nation in the early 1790s.⁷ It is unclear what the young Potter's purpose in Philadelphia was at the time, but there is evidence that he was involved in state relations with the federal government.⁸ It is also suspected that Potter studied law at this time.⁹

While in Philadelphia in his twenties, Potter had the opportunity to associate with many of our nation's Founding Fathers. He witnessed George Washington deliver his first message as President to Congress in Philadelphia.¹⁰ Potter recalled Washington's enunciation being clear and distinct, but admitted that his voice did not seem to possess great volume or strength.¹¹ Further, Potter recounted Washington's regular attendance at the Christ Church in Philadelphia where the President had a "large square pew in the middle aisle, cushioned and covered with velvet" and that Washington routinely rode out on weekdays on a large gray horse as

5. *Id.* at 10–11.

6. *Id.* at 10.

7. *Id.* at 11; *Olden Times*, FAYETTEVILLE OBSERVER, Aug. 17, 1857, at 1.

8. Letter from Henry Potter to Alexander Martin, Governor, North Carolina (Oct. 29, 1791) in GOVERNORS' PAPERS: ALEXANDER MARTIN, CORRESPONDENCE, Oct. 1791 (on file with N.C. DIG. COLLECTIONS) (demonstrating Potter's involvement in the Office of the Agents for settling the Revolutionary War accounts of North Carolina with the federal government).

9. BRIGGS, *supra* note 3, at 11.

10. *Olden Times*, *supra* note 6. (In his last year of life, the ninety-one-year-old Potter recounts his early experiences in Philadelphia to a reporter at his home in Fayetteville, North Carolina).

11. *Id.*

Philadelphians would stop and observe “his fine manly presence.”¹² Potter witnessed James Madison speak and described his voice as “feeble,” but noted that “whenever [Madison] spoke the audience maintained the silence of the grave, so that all he said was distinctly heard.”¹³ Further, Potter recalled attending a large ball in Philadelphia where George Washington and John Adams were present.¹⁴ He recalled that “[o]n their entrance the crowd . . . made space for them to march to the upper end of the hall . . . but it was difficult to keep the crowd from falling in after the tall form of Washington, and thus separating the short[,] chunky Adams from [Washington].”¹⁵

As a guest at one of Washington’s social events in Philadelphia, Potter chronicled being introduced to Washington as hailing from North Carolina.¹⁶ Potter recalled that Washington engaged him in a personable conversation on the subject of Potter’s home state.¹⁷ Humorously, Potter noted that the end of his discussion with Washington resulted in a bowing match because Potter did not realize that Washington always insisted on giving the last bow.¹⁸ One could imagine the young Henry Potter, in his twenties, and the great President Washington bowing back and forth. It must have been quite the spectacle.

Further, Potter was in the presence of Alexander Hamilton, James Madison, John Adams, Thomas Jefferson, and many other Founding Fathers, whom Potter either met or heard speak “in Congress or at the Bar” in Philadelphia.¹⁹ Potter also expressed familiarity with revolutionary North Carolinians and indicated that he witnessed Richard Caswell, the first and fifth Governor of North Carolina, on horseback; knew U.S. Supreme Court Justice James Iredell; and knew early North Carolina Governors Johnston, Nash, Burke, Spaight, Ashe, and Davie.²⁰

Soon after Raleigh’s founding in 1792, Potter returned to North Carolina, where he was one of the first attorneys to reside and start a legal practice in the “infant capital city.”²¹ In 1799, Potter married Sylvia

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. BRIGGS, *supra* note 3, at 8.

Easton, the daughter of Raleigh merchant Major James Easton.²² Potter purchased two acres of land bordered by Hargett, Morgan, McDowell, and Salisbury streets and adjacent to Union Square.²³ There, Potter built his home within the same block as the First Presbyterian Church, which is still active today.²⁴ Potter described this lot as “one of the most desirable in the City for a dwelling, and at the same time, public enough for any [b]usiness.”²⁵ Potter also owned two unimproved lots south of the city limits, near the original Governor’s Palace, that now host parts of Shaw University.²⁶

As early as January of 1804, Potter advertised that he “intend[ed] to reside in the [c]ountry” and would sell his lots “upon advantageous [t]erms.”²⁷ At some point, Potter moved south of the city and dubbed his new suburban estate “Sharon.” Potter described Sharon as follows:

It contains about 49 acres of [l]and, of good quality, bordering on the City of Raleigh, and on a public road leading from the City. Sixteen or eighteen acres are cleared and under cultivation, the rest is covered with heavy forest growth, abounding with fire-wood and timber. The land contains an excellent rock quarry; is well watered by branches, and has two rock springs near the house, equal probably to any in the county. My dwelling is about 300 yards from the town line. The situation, therefore, has the advantages of town and country united, and is, in my estimation, the most desirable spot for a residence that I know in the State.²⁸

Potter’s move to the outskirts of the City of Raleigh is consistent with his apparent desire to live simply and away from the tumult of urban areas. Potter’s move to a rural plantation in Fayetteville in the 1820s is further evidence of his attraction to a secluded, agrarian lifestyle.

22. *Id.* Major Easton operated a merchant business in Raleigh at the time and it appears that Potter assisted his father-in-law with the business and advertised the selling of hardware, crockery, and groceries. *The Subscriber*, RALEIGH MINERVA, July 8, 1805, at 4. After Major Easton left Raleigh in 1806, the business appears to have been dissolved by Potter. In February of 1806, Potter advertised that he “[found] it inconvenient to attend to his mercantile business [and] has determined to bring it to an early close[.]” *Auction*, RALEIGH MINERVA, Feb. 17, 1806, at 4. Potter hosted an auction on February 17, 1806, to sell the remainder of the stock and shortly after, requested that all persons indebted to him to settle their accounts. *Id.*; *All Persons*, RALEIGH MINERVA, Mar. 31, 1806, at 4.

23. BRIGGS, *supra* note 3, at 11; *Plan of the City of Raleigh: The Seat of Government of the State of North Carolina*, STATE ARCHIVES N.C. (1817), <https://perma.cc/3Z9T-7MG4>.

24. *Plan of the City of Raleigh*, *supra* note 22.

25. *Town Property for Sale*, WKLY. RALEIGH REG., July 28, 1820, at 1.

26. *Id.*; *Plan of the City of Raleigh*, *supra* note 22. The lots were, according to Potter, “very valuable on account of their relative situation and of the handsome sites they afford for [b]uilding.” *Town Property for Sale*, *supra* note 24.

27. WKLY. RALEIGH REGISTER, Jan. 16, 1804, at 3.

28. *Sharon for Sale*, WKLY. RALEIGH REG., Nov. 29, 1822, at 4.

II. FEDERAL JUDGE

During the early days of his presidency, Thomas Jefferson was tasked with appointing a federal circuit judge to fill a vacant seat in North Carolina. The requirements of outgoing President Adams's Judiciary Act of 1801 called for the circuit court of the fifth circuit, held in Raleigh, to have a circuit judge.²⁹ President Adams, in his last few months of office, failed to secure a circuit judge for North Carolina after the sitting district court judge, John Sitgreaves, refused the President's appointment.³⁰

In April of 1801, North Carolina Congressman Nathaniel Macon wrote a letter directing Jefferson's attention to Raleigh's own Henry Potter as a viable option for the judgeship.³¹ President Jefferson understood Potter might be hesitant to accept the nomination because the legislation authorizing the appointment was in danger of being repealed.³² Nevertheless, Jefferson forwarded Potter's signed commission to Macon on May 14, 1801, "in the hope that reconsideration nor the influence of [Macon] & friends might induce an acceptance of it."³³ Macon forwarded the commission to Potter and wrote to Jefferson, "I have written to [Potter] fully on the appointment, and have hopes that he will accept, I have candidly stated to him, the probability of the act under which he is appointed being repealed . . ." ³⁴

The act that Macon referenced was the overhauling Judiciary Act of 1801, otherwise known as the Midnight Judges Act, passed by President Adams in the waning moments of his presidency.³⁵ The Act provided that the states be divided into districts, one consisting of the entire state of North Carolina.³⁶ The districts were classed into six circuits, with the

29. Judiciary Act of 1801, 2 Stat. 89, §§ 6–7 (1801).

30. BRIGGS, *supra* note 3, at 4.

31. Letter from Nathaniel Macon to Thomas Jefferson (Apr. 20, 1801), in 33 THE PAPERS OF THOMAS JEFFERSON 620 (Barbara B. Oberg et al. eds., 2006).

32. *Landmark Legislation: Judiciary Act of 1801*, FED. JUD. CTR. (last visited Sept. 22, 2018), <https://perma.cc/ME55-A3L8> ("Republicans interpreted the [Judiciary Act of 1801] as an attempt to weaken the state governments and secure patronage positions for Federalists . . . Thomas Jefferson, and the Republican majority in the Seventh Congress came into office intent on repeal").

33. Letter from Thomas Jefferson to Nathaniel Macon (May 14, 1801), in 34 THE PAPERS OF THOMAS JEFFERSON 109–10 (Barbara B. Oberg et al. eds., 2007).

34. *Id.* at 176–77.

35. Judiciary Act of 1801, ch. 4, 2 Stat. 89 (1801); *see* BRIGGS, *supra* note 3, at 4.

36. Judiciary Act of 1801, ch. 4, 2 Stat. 89, § 4. The circuit court in the district of North Carolina was to be held in Raleigh in June and November of each year. *Id.* at § 7.

district of North Carolina in the fifth circuit along with South Carolina and Georgia.³⁷

Thirty-five-year-old Potter didn't hesitate to accept Jefferson's commission even though he was aware that Jefferson would soon attempt to repeal the Act. On June 1, 1801, the circuit court met in Raleigh where Judge Potter produced his commission and made a "very pertinent and appropriate charge" to the grand jury and "explain[ed] in a clear and concise manner the kind of offenses to which [the court] had jurisdiction."³⁸ At the next session in November, Chief Judge Dominic A. Hall, the circuit judge for South Carolina, joined Judge Potter on the bench in Raleigh.³⁹ Three criminal trials were held concerning the passing of counterfeit bank notes.⁴⁰ The trials featured testimony from Colonel William Polk and Joseph Gales, two distinguished citizens of Raleigh, about the authenticity of the alleged counterfeit notes.⁴¹

Judge Potter held his circuit judgeship for just shy of one year and only presided over two sessions. As expected, in March of 1802, and before the next sitting of the circuit court at Raleigh, the Jefferson-backed Congress repealed the Judiciary Act of 1801 and replaced it with an act of its own.⁴² The new Judiciary Act of 1802 required the sitting Supreme Court of the United States justices to ride circuit, effectively eliminating Judge Potter's position.⁴³ Coincidentally, the North Carolina federal district judge at the time, President Washington appointee John Sitgreaves, passed away, and President Jefferson immediately nominated Potter to take his place on April 6, 1802.⁴⁴ Judge Potter's nomination as a district court judge was confirmed by Congress the next day.⁴⁵

The Judiciary Act of 1802 gave Judge Potter many new responsibilities in both the federal circuit and district courts. Potter would now preside over the newly created fifth circuit composed of the districts of Virginia and North Carolina.⁴⁶ The Act required Supreme Court justices to

37. *Id.* at § 6. At the time, the federal circuit court functioned similarly to today's federal court of appeals.

38. BRIGGS, *supra* note 3, at 6 (internal quotations omitted).

39. *Raleigh*, WKLY. RALEIGH REG., Nov. 10, 1801, at 5.

40. *Circuit Court of the U. States*, WKLY. RALEIGH REG., Nov. 24, 1801, at 1 (Baggot trial); *Circuit Court of the U. States*, WKLY. RALEIGH REG., Nov. 17, 1801, at 1–2 (Kearns' trials).

41. *See* WKLY. RALEIGH REG., Nov. 10, 1801, at 2.

42. *See* Judiciary Act of 1802, ch. 31, 2 Stat. 156, 157–63 (1802).

43. *Id.* at § 5.

44. BRIGGS, *supra* note 3, at 7.

45. *Id.*

46. Judiciary Act of 1802 § 4.

ride circuit and provided that the fifth circuit would consist of the present Chief Justice of the Supreme Court and the local district judge.⁴⁷ In the district of North Carolina, the circuit court would be held twice per year.⁴⁸ Therefore, Judge Potter was tasked with presiding over the United States circuit court in Raleigh along with the circuit-riding Supreme Court Chief Justice—Chief Justice John Marshall.

Judge Potter immediately found himself immersed in his work and often on the road. Travel at the time was arduous and time consuming. Along with his circuit court duties, Judge Potter was North Carolina's only federal district court judge.⁴⁹ Pursuant to the Act, North Carolina was divided in three districts: Albermarle, Pamptico, and Cape Fear.⁵⁰ Albermarle's court was held at Edenton, Pamptico at New Bern, and Cape Fear at Wilmington.⁵¹ The federal district courts held at these three eastern North Carolina towns were the only federal district court locations for the entire state.⁵² In Judge Potter's own words,

The District of Albermarle comprises the two [s]tate [d]istricts of Edenton and Halifax; the District of Pamlico comprises the [d]istricts of Newbern and Hillsborough, together with all that part of the District of Wilmington which lies to the [n]orthward and [e]astward of New River; and the District of Cape Fear comprises the remainder part of the State.⁵³

The host towns offered their local courthouses for use, though evidence exists of friction between the federal and local agencies. In 1833, construction of a new courthouse in Raleigh was delayed while funds were requested from Congress.⁵⁴ There is no evidence that Congress granted the request. After a new courthouse was built in Wilmington around 1841, county authorities did not allow the federal district court to use the facility during the November term.⁵⁵ The Wilmington authorities lamented that their old courthouse was accessed for many years without payment and that Congress refused to assist financially for the new construction.⁵⁶

47. *Id.*

48. *Id.*

49. *Id.* at § 7.

50. *Id.*

51. *Id.*

52. Judiciary Act of 1802, 2 Stat. 31 § 7.

53. *The Bankrupt Law*, RALEIGH REG., Jan. 21, 1842, at 3.

54. 1 ELIZABETH REID MURRAY, WAKE: CAPITOL COUNTY OF NORTH CAROLINA 400 (1983); *Court-House in Raleigh*, WKLY. STANDARD (Raleigh), Dec. 19, 1834, at 3; *New Court House*, N.C. STAR (Raleigh), May 24, 1833, at 3.

55. FAYETTEVILLE OBSERVER, Nov. 10, 1841, at 3.

56. *Id.*

Each district held court in April, August, and December, meaning Judge Potter had to travel to all three towns three times per year.⁵⁷ Under the Act, Potter held district court three weeks out of each of the above months: the first Tuesday of the month at Wilmington, the second week at New Bern, and the third week at Edenton.⁵⁸ Throughout Judge Potter's career, the district court locations never changed, but the times of holding court did. In 1853, Judge Potter's circuit tour ended at Wilmington, and he returned home to Fayetteville. On at least one occasion, his wife joined him as he traveled via steamboat on the Cape Fear River.⁵⁹ Potter probably relocated to Fayetteville to reduce travel time to the three eastern towns.

The federal courts in North Carolina attracted many well-known attorneys. To name a few, Judge Potter regularly heard arguments from William Gaston,⁶⁰ James Iredell, Jr.,⁶¹ United States Attorney Thomas Devereux,⁶² George Badger,⁶³ Duncan McRae,⁶⁴ Robert Dick,⁶⁵ Governor William Graham,⁶⁶ Bartholomew Fuller,⁶⁷ and General Robert B. Taylor.⁶⁸ Early newspapers contend that Aaron Burr was scheduled to argue an 1815 prize case in Raleigh; however, there is no evidence to suggest Burr made the trip.⁶⁹ Moreover, Judge Potter shared the federal bench in Raleigh with Chief Justice John Marshall⁷⁰ and Associate Supreme Court of the United

57. Judiciary Act of 1802, 2 Stat. 31, § 7.

58. *Id.*

59. *Marine News*, TRI-WKLY. COM. (Wilmington), May 4, 1850, at 2.

60. *Raleigh*, WKLY. RALEIGH REG., May 19, 1808, at 3. After William Gaston's death in 1844, the town of Fayetteville held a meeting where Judge Potter "rose and paid a feeling and eloquent tribute to the memory of [Gaston], whom he had known intimately for more than forty years, and to whose character . . . he bore the testimony of his highest admiration." *The Late Judge Gaston*, WHIG CLARION (Raleigh), Feb. 7, 1844, at 2.

61. *Federal Court*, WKLY. RALEIGH REG., Nov. 17, 1835, at 3.

62. *Id.*

63. *Id.*

64. *Federal Court*, WKLY. STANDARD (Raleigh), June 4, 1845, at 2.

65. *Times of Holding the Courts*, SEMI-WKLY. STANDARD (Raleigh), Aug. 6, 1853, at 4.

66. *United States Circuit Court*, WKLY. STANDARD (Raleigh), Dec. 7, 1853, at 2.

67. *U.S. Circuit Court*, WKLY. RALEIGH REG., Dec. 7, 1853, at 1.

68. *Raleigh*, N.C. STAR (Raleigh), May 12, 1815, at 3.

69. *Id.*; N.C. STAR (Raleigh), May 5, 1815, at 3; *Raleigh*, RALEIGH MINERVA, May 19, 1815, at 3.

70. Potter served with Chief Justice Marshall for approximately thirty-two years. *Marshall, John*, FED. JUD. CTR., <https://perma.cc/JFV6-2J8A>.

States Justices Philip P. Barbour,⁷¹ Peter V. Daniel,⁷² and James M. Wayne.⁷³

III. POTTER'S RELATIONSHIPS ON THE BENCH

Throughout his time on the court, Judge Potter developed strong relationships with his fellow justices. Although Judge Potter's familiarity with many distinguished figures is impressive, Potter's relationship with Chief Justice John Marshall would turn out to be a union that Potter cherished deeply. Judge Potter sat on the federal circuit court bench in Raleigh with the great Chief Justice twice annually for over three decades, from 1803 until Chief Justice Marshall's death in 1835. One citizen who witnessed Potter and Marshall sitting together in Raleigh recalled the differences in each of their appearances. "Judge Marshall was tall and lean, with a singularly intellectual face. Judge Potter short, and showing the good living of which he was known to be so fond, with a commonplace kindly face."⁷⁴

As one would suspect, the two esteemed jurists differed in opinion on both interpretations of law and, presumptively, the role of the judiciary. Chief Justice Marshall and Judge Potter disagreed on one of the first cases they heard together at the circuit court. Almost immediately, the two judges disagreed over the proper construction of two North Carolina statutes, specifically whether one act repealed language in the other.⁷⁵ This case ended up becoming the first certified to be heard by the Supreme Court of the United States pursuant to the Judiciary Act of 1802; the relevant provision provided that a division of opinion in the circuit court would be heard at the next session of the Supreme Court.⁷⁶ The Supreme Court, with Chief Justice Marshall on the bench, ultimately ruled against

71. *Republican Whig Ticket*, WKLY. RALEIGH REG., May 17, 1836, at 3. Potter and Justice Barbour were colleagues on the bench for almost five years. *Barbour, Philip Pendelton*, FED. JUD. CTR., <https://perma.cc/E5R7-YF5S>.

72. *The Federal Court*, N.C. STAR (Raleigh), Nov. 16, 1842, at 3. Potter and Justice Daniel served on the bench together for just over one year. *Daniel, Peter Vivian*, FED. JUD. CTR., <https://perma.cc/L7JS-JQEB>.

73. *Federal Court*, RALEIGH REG., Dec. 12, 1843, at 3. Potter and Justice Wayne served on the bench together for approximately fourteen years before Potter's death in 1857. *Wayne, James Moore*, FED. JUD. CTR., <https://perma.cc/QP3B-TK2V>.

74. *Id.*

75. *Ogden v. Blackledge*, 6 U.S. (2 Cranch) 272, 273 (1804).

76. Judiciary Act of 1802 § 6.

Judge Potter's interpretation of the North Carolina statute.⁷⁷ This was not the only time the Supreme Court had to resolve a clash between Potter and Marshall.

Fortunately for Potter, he was not always on the losing end. Another disagreement between Potter and Marshall made its way to the Supreme Court.⁷⁸ This time, despite Marshall's participation in the proceedings, the Court disagreed with Marshall's position and agreed with Potter.⁷⁹ This was "always a feather in [Potter's] cap."⁸⁰

In another session of court, Judge Potter reportedly alleged that the court had leanings, to which Chief Justice Marshall replied, "[t]his court has no leanings. It endeavors to administer the law as it finds that law in the statute books . . ." ⁸¹

Despite their occasional differences on the bench, the two colleagues grew quite fond of each other and formed a bond of respect and admiration. The two would often attend dinner parties together in Raleigh along with other prominent North Carolinians.⁸² Before the May 1835 session, Judge Potter received a letter from the Chief Justice stating that Marshall's health would prevent his attendance in Raleigh.⁸³ A concerned Potter sent a letter to the Chief Justice after the session had concluded, telling Marshall that he was "very anxious to know the present state of [Marshall's] health" and informing him that he was missed both in social circles and on the bench in Raleigh.⁸⁴ Further, Potter begged Marshall not to resign his seat on the court "until a sense of duty shall compel [him to]," explaining that the loss of Marshall to the nation, especially during political crisis, "principally excite[d] [Potter's] fears."⁸⁵

77. *Ogden*, 6 U.S. (2 Cranch) at 279. The Court's opinion noted that *Ogden* would serve as precedent for future appellate procedure under the Judiciary Act of 1802. *Id.* at 274.

78. *Reminiscences of the Bench and Fayetteville Bar*, FAYETTEVILLE OBSERVER, July 5, 1894, at 2.

79. *Id.*

80. *Id.*

81. *New York Correspondence*, OBSERVER (Raleigh), May 31, 1879, at 2.

82. JOSEPH GREEN COGSWELL & ANNA ELIOT TICKNOR, *LIFE OF JOSEPH GREEN COGSWELL AS SKETCHED IN HIS LETTERS* 191 (1874). Notably, the Chief Justice attended a large public dinner in honor of Joseph Gales at Raleigh's Eagle Hotel in May of 1833. *Dinner to Mr. Gales*, N.C. STAR (Raleigh), May 17, 1833, at 2.

83. *United States Circuit Court*, WKLY. STANDARD (Raleigh), May 15, 1835, at 3.

84. Letter from Henry Potter to John Marshall, Chief Justice, Supreme Court of the United States (May 20, 1835), in 12 *THE PAPERS OF JOHN MARSHALL* 487 (Charles Hobson, ed. 2014); <https://perma.cc/W9K4-FQJN>.

85. *Id.*

Potter's fears about Chief Justice Marshall's declining health were realized when news of Marshall's death arrived shortly thereafter. On November 13, 1835, the Bench and Bar of the Circuit Court met at the courtroom in Raleigh where Judge Potter presented a eulogy in honor of the late Chief Justice. Judge Potter's eulogy casts a light on the nature of their relationship and reveals the magnitude of Chief Justice Marshall's importance to Judge Potter as both a jurist and friend. Potter eloquently stated:

I cannot omit, upon this occasion, some expressions of my personal feelings towards 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 too ingenuous to conceal from me anything which was calculated to develop the whole man; and the more I knew him, the more I admired him. 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, peculiarly qualified for the discharge of the various delicate and important duties of the [b]ench. 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.⁸⁶

In Judge Potter's words, the Chief Justice was a companion and friend whose loss was immensely devastating. The Chief Justice made such a lasting impression on Potter that, when asked about their relationship long after Marshall's death, Potter recalled his "feelings of friendship and admiration which [Marshall's] pure life was so well calculated to excite."⁸⁷ It is unfortunate that more evidence of the social interactions between the great Chief Justice Marshall and Judge Potter has not survived all these years, as one could only imagine the stories arising from their remarkable thirty-two-year relationship.

After Chief Justice John Marshall's death in 1835, President Andrew Jackson's Supreme Court appointee, Justice Philip Barbour, was assigned to the circuit encompassing North Carolina. A collegial relationship already existed between Judge Potter and Justice Barbour because Potter

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

87. *Olden Times*, *supra* note 6.

actively supported Barbour's campaign for Vice President of the United States.⁸⁸ The May 1836 session of federal circuit court in Raleigh was Justice Barbour's first assignment after his appointment to the high court, and Judge Potter administered Barbour's Supreme Court of the United States oath of office in open court at the Wake County Courthouse.⁸⁹

Judge Potter had lasting professional and social relationships with his Supreme Court colleagues; however, he never hesitated to disagree with them, even though he sometimes would defer to the Justices' decisions. During Potter's first circuit court session with Justice Daniel⁹⁰ in May of 1841, Potter found himself unsettled by a jury conviction in an admiralty case before the circuit court.⁹¹ Thereafter, he wrote a candid letter to fellow lawyer and friend, John Heritage Bryan, noting that he and Justice Daniel agreed as to the law of the case and that he had asked Justice Daniel to charge the jury with an application of the law to the facts.⁹² In Potter's opinion, Justice Daniel did not sufficiently charge the jury and Potter felt a strong inclination to charge the jury himself. However, he restrained from doing so, fearing that it would be improper.⁹³

The incident involving Justice Daniel was not the only time Potter clashed with a Supreme Court Justice. On one occasion, Potter and Justice Wayne⁹⁴ clashed over the authority to appoint a clerk of the circuit court in North Carolina after the role became vacant in 1857.⁹⁵ Both judges appointed their own respective clerk, and a dispute ensued over which judge had authority to appoint a clerk while the court was not in session.⁹⁶

IV. THE COURT UNDER JUDGE POTTER

Judge Potter heard a variety of criminal cases including counterfeiting, mail robbery, forgery, and even a murder trial. Further, he heard civil cases

88. See *In Cumberland County*, N.C. STAR (Raleigh), June 15, 1832, at 2.

89. *Republican Whig Ticket*, *supra* 70.

90. See *Daniel*, *supra* note 71.

91. See Letter from Henry Potter, Judge, to John Heritage Bryan, Attorney (May 24, 1841), in North Carolina State Archives, John Heritage Bryan Collection, P.C. 6.4, at 373; *Federal Court*, RALEIGH REG., May 7, 1841, at 3.

92. Letter from Henry Potter, Judge, to John Heritage Bryan, Attorney, *supra* note 90.

93. *Id.*

94. See *Wayne*, *supra* note 72.

95. *U.S. Circuit Court: The Clerkship*, SEMI-WKLY. STANDARD (Raleigh), Sept. 16, 1857, at 3.

96. *Id.*

mostly relating to admiralty, bankruptcy, patent, and property.⁹⁷ The federal judiciary's jurisdiction during Judge Potter's lifetime was quite limited, which led to the occasional limited docket. A Fayetteville newspaper jested that a May 1853 session of district court "met on Monday morning, continued in session probably twenty minutes, and then adjourned for six months."⁹⁸ Of course, this was not always the case, as Potter was involved with many demanding matters in both the district and circuit courts that required substantial amounts of time and attention and dealt with subjects that were tremendously impactful on the citizens of North Carolina.

1. *The Circuit Court Cases*

An interesting procedural function of the federal courts at the time is that cases appealed from the district court were heard on appeal at the circuit court in the same district.⁹⁹ This means that Judge Potter, while sitting on the circuit court with the circuit-riding Supreme Court Justice, would hear appeals from decisions he made in the district court below. This procedural process seems unconventional by today's standards. Because the Judiciary Act failed to provide a standard addressing judges hearing their own appeals, it is unclear as to the amount of influence Judge Potter had in the circuit court when his previous decisions were challenged.¹⁰⁰

One of many examples of Judge Potter hearing his own appeals occurred in an admiralty case litigated in the North Carolina district court at Cape Fear. Judge Potter, as district judge, ruled in favor of condemnation of the ship *Mary of Portland*.¹⁰¹ Counsel for the ship's owner appealed Judge Potter's decision to the federal circuit court, where both Chief Justice Marshall and Judge Potter heard the appeal in November of 1810.¹⁰² The Chief Justice ultimately reversed Judge Potter's decision below.¹⁰³

Many fascinating cases came before Judge Potter during his lengthy time on the bench in North Carolina. During the November 1813 session of the circuit court at Raleigh, Judge Potter presided alone as Chief Justice

97. See, e.g., *Federal Court*, *supra* note 63 (stating that Judge Potter presided over a robbery case on Tuesday and a patent case on Wednesday).

98. *District Court*, FAYETTEVILLE OBSERVER, SEMI-WKLY., May 9, 1853, at 2.

99. See generally Judiciary Act of 1802, 2 Stat. 31 (1802).

100. See *id.*

101. *Raleigh*, RALEIGH MINERVA, Nov. 15, 1810, at 2.

102. *Id.*

103. *Id.*

Marshall remained in Richmond to attend to his ill wife.¹⁰⁴ At that term, Potter's compassion was revealed when a young boy named Finch Carter was convicted for taking a private letter, containing no money, from the mail he was to carry from Washington to Tarboro.¹⁰⁵ From the bench, Judge Potter scolded Carter and stated that Carter's young age, imprisonment before trial, and the probability that other persons had instigated the theft mitigated the severity of the crime.¹⁰⁶ At sentencing, Judge Potter made clear that he would have sentenced Carter to the full extent of the law absent the mitigating circumstances; instead, he sentenced Carter to ten days imprisonment.¹⁰⁷

At the November 1830 session of federal circuit court in Raleigh, Judge Potter and Chief Justice Marshall presided over a rare murder trial. Joseph L. Williams was indicted for the murder of a slave named Ferdinand, which allegedly occurred on Oak Island at the mouth of the Cape Fear River.¹⁰⁸ The federal court had jurisdiction, as a Raleigh newspaper explained, because North Carolina had ceded jurisdiction over Oak Island to the United States to erect fortifications.¹⁰⁹ After retiring for only a few minutes, the jury returned a verdict finding Mr. Williams guilty of manslaughter and sentenced him to imprisonment for one year and a fine of one dollar.¹¹⁰ The Williams murder trial is the only known homicide case that Potter presided over throughout his lengthy career.

Another interesting criminal case heard in the circuit court before Judge Potter and Justice Barbour¹¹¹ was the trial of Andrew Loftis and Calvin Smith for robbing the mail. Loftis and Smith were both stage drivers in the western part of the state accused of using false keys to steal a large sum of money from mail bags they were entrusted to deliver.¹¹² The Court rejected crucial testimony offered by the arresting officer; therefore, both men were acquitted.¹¹³ After Loftis' acquittal, the authorities reopened their investigation after he reportedly bragged about escaping the

104. *Raleigh*, WKLY. RALEIGH REG., Nov. 19, 1813, at 3.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Federal Court*, WKLY. RALEIGH REG., Nov. 18, 1830, at 3.

109. *Id.*

110. *Id.*

111. *See Barbour*, *supra* note 70.

112. *Federal Court*, N.C. STAR (Raleigh), Nov. 15, 1837, at 3; *Federal Court*, WKLY. STANDARD (Raleigh), Nov. 15, 1837, at 2.

113. *Federal Court*, N.C. STAR, *supra* note 111. The grand jury did not return a bill against Smith, so he was not tried. *Id.*

punishment of the law.¹¹⁴ Ultimately, Loftis was tried again at the next session of the circuit court in May of 1838, found guilty, and sentenced to ten years imprisonment.¹¹⁵ The media humorously described the conviction as “a striking case of ‘hallooing before getting out of the woods.’”¹¹⁶

The most high-profile and consequential circuit court case Judge Potter heard was a suit by the English heirs of Lord Granville claiming title to a vast amount of land in North Carolina. The land in question had been seized by the State from the Granville heirs during the Revolutionary War and thereafter deeded to North Carolinians.¹¹⁷ The Granville heirs, represented by the revered William Gaston, filed a suit in 1801 seeking to eject the landowners who purchased the seized land from the State.¹¹⁸ The matter is believed to be the largest land dispute in American history, with the disputed land covering approximately two-thirds of the State of North Carolina.¹¹⁹

To everyone’s surprise, Chief Justice Marshall recused himself from hearing the matter and left the thirty-nine-year-old Judge Potter alone to preside over the momentous case. In June of 1805, the Chief Justice announced from the bench that based upon his stance on the construction of the treaty of peace between Great Britain and the United States, he had formed an opinion upon the matter that he did not believe he could change.¹²⁰ Chief Justice Marshall’s opinion was probably formed based upon his financial interest in a Virginia organization that purchased portions of the Fairfax estate from English heirs, thus creating a conflict of interest.¹²¹

North Carolinians were highly interested in the case; as one Raleigh newspaper noted, “[n]o doubt the importance of this cause to a large number of our [l]and-holders, will excite a lively interest in its decision, and produce a crowded court.”¹²² Upon commencement of the trial in January of 1806, Chief Justice Marshall departed Raleigh and left Judge

114. *U.S. Circuit Court*, WKLY. STANDARD (Raleigh), May 16, 1838, at 2.

115. *Id.*

116. *Id.*

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

118. *Id.* at 155–56.

119. Henry G. Connor, *The Granville Estate and North Carolina*, 62 U. PA. L. REV. 671, 678 (1914).

120. *Raleigh*, WKLY. RALEIGH REG., June 24, 1805, at 3.

121. FISH, *supra* note 116, at 156.

122. *Raleigh*, WKLY. RALEIGH REG., May 21, 1804, at 3.

Potter to hear counsel's arguments alone.¹²³ After the taxing trial, Judge Potter issued a protracted and candid charge to the jury carefully explaining his analysis of the case and pertinent law.¹²⁴ He described the difficulty of deciding the case as it "had shadowed [his] own intellects with much doubt and difficulty" and lamented that the "weight and difficulty was greatly increased . . . by the loss of [the] guidance and support which [he] fondly expected . . . from the Chief Justice."¹²⁵ Judge Potter concluded his charge by instructing the jury that it was his opinion that the law was in favor of the defendants.¹²⁶

Potter's charge to the jury was of great public interest and offers a valuable insight into his judicial philosophy. It is apparent that Judge Potter suspected that the North Carolina jury would patriotically decide in favor of the North Carolinian defendants over the Englishmen. In an attempt to address this concern, Judge Potter lectured the jury after arguments. He stated that "the meanest individual, of whatever nation or clime, had a right to demand a fair and impartial trial . . . [and] it was peculiarly the duty of the [c]ourt and [j]ury to divest themselves . . . of all bias, whether from favo[r] or prejudice."¹²⁷ Judge Potter also "advised them not to consider the national character of the parties, but to treat them as entirely unknown to them, or to consider them perfectly equal in point of favo[r]."¹²⁸

Thereafter, the question went to the jury. After about fifteen minutes, they returned a verdict in favor of the defendants and in agreement with Judge Potter.¹²⁹ Plaintiff's counsel then appealed the case to the Supreme Court of the United States where it sat on the docket until a dismissal was entered in 1817,¹³⁰ a length of time that has been shrouded in mystery to this day. Governor David L. Swain later described that the case involved the "most intricate legal questions, and the title to property of greater value than any other ever litigated before an American tribunal."¹³¹

123. *Raleigh*, WKLY. RALEIGH REG., Jan. 6, 1806, at 3.

124. *Circuit Court of the United States*, RALEIGH MINERVA, Jan. 13, 1806, at 1.

125. *Id.*

126. *Judge Potter's Charge concluded*, RALEIGH MINERVA, Jan. 20, 1806, at 1.

127. *Circuit Court of the United States*, *supra* note 123.

128. *Id.*

129. *Raleigh*, RALEIGH MINERVA, Jan 6, 1806, at 3.

130. Connor, *supra* note 118, at 691–93.

131. FISH, *supra* note 116, at 155–56.

2. *The Bankruptcy Cases*

Judge Potter also presided over many bankruptcy cases in federal district court. The short-lived Bankruptcy Act of 1841 dramatically changed the composition of Judge Potter's docket.¹³² The Act attempted to establish a uniform system of bankruptcy throughout the United States by providing individuals and businesses the opportunity to file for bankruptcy under enumerated circumstances.¹³³ Congress designated the federal district court in every district to hear all matters and proceedings in bankruptcy arising under the Act.¹³⁴ Because the Act required that public notice of petitions must be given in the newspaper,¹³⁵ North Carolina newspapers were overwhelmed with bankruptcy notices from Judge Potter's district courts. Judge Potter expressed concerns with the ambiguities of the Act, but ensured North Carolinians that he would apply the Act according to its "spirit and the best of [his] ability."¹³⁶

The Act caused a plethora of bankruptcy petitions—an administrative nightmare for Judge Potter. In an effort to increase efficiency, Judge Potter was forced to think creatively. He announced that he would hold court in February of 1842 at his home in Fayetteville every day, except Sundays, for the purpose of receiving bankruptcy petitions.¹³⁷ Once he received the petition, he would then refer the matter to the proper district where a hearing could be conducted at the appropriate time.¹³⁸ Judge Potter noted that because he could not be in three districts at once and used this procedure out of necessity, he believed that his actions were within the spirit of the Act in holding court at his home.¹³⁹ He felt this unique procedure was the only way to carry the bankruptcy law into effect.¹⁴⁰

To alleviate confusion surrounding the Bankruptcy Act, Judge Potter tailored and published bankruptcy rules and forms, which were sold in bookstores across the state.¹⁴¹ Further, Judge Potter frequently explained

132. Act of Aug. 19, 1841, ch. 9, 5 Stat. 440 (1841) (repealed 1843).

133. *Id.*

134. *Id.* at § 6.

135. *Id.* at § 7. Notices in local papers suggest that Judge Potter's son, Harry Howard Potter, was the "Acting Clerk of Court in Bankruptcy." *United States: N. Carolina District*, FAYETTEVILLE OBSERVER, Mar. 9, 1842, at 1.

136. *The Bankrupt Law*, *supra* note 52.

137. *Id.*

138. *Id.*

139. *In Bankruptcy*, FAYETTEVILLE OBSERVER, Feb. 16, 1842, at 3.

140. *Id.*

141. *See For Sale at this Office*, WILMINGTON CHRON., June 22, 1842, at 3; GREENSBORO PATRIOT, Feb. 15, 1842, at 3; *Rules in Bankruptcy*, FAYETTEVILLE OBSERVER, Aug. 31, 1842, at 4; *Rules in Bankruptcy*, FAYETTEVILLE OBSERVER, Feb. 16, 1842, at 3.

bankruptcy proceedings and laws in local newspapers.¹⁴² In November of 1842, Judge Potter advertised the dates the court would be in session and expressed the importance of adhering to the new bankruptcy rules.¹⁴³ Judge Potter lamented that, at his last holding of district court, the amount of defective notices and lack of petitioner attendance caused an excessive amount of continuances, which hindered the efficiency of the court.¹⁴⁴ By September of 1842, six hundred and eighty-four petitions had been filed throughout the State of North Carolina.¹⁴⁵ Later that month, Judge Potter granted two hundred and eleven decrees of bankruptcy and continued sixty at a special session at the District of Cape Fear.¹⁴⁶ In a candid letter written to his close colleague, John Heritage Bryan, Potter stated that he was “greatly pressed & oppressed with bankruptcy business” but had two clerks to assist him.¹⁴⁷ Apparently, Potter was delighted when he found out that Congress was working to repeal the Bankruptcy Act, writing that “[b]ankrupts must make hay while the sun shines. A cloud is hovering over them & a storm will soon sweep them off the [d]ockets.”¹⁴⁸ Congress relieved Potter’s sufferings when the Act was repealed in 1843.¹⁴⁹

3. Potter’s Continued Practice

Unheard of in today’s judiciary, Judge Potter continued to practice law even after his appointment to the federal bench. Before Congress passed an act in 1812 barring federal judges from the practice of law, Potter regularly practiced in the state courts in both civil and criminal matters.¹⁵⁰

Even as a federal judge, Potter was never timid to use his legal knowledge to zealously represent North Carolinians. Judge Potter wrote to Governor David Stone in October of 1809, describing the facts of a case he believed warranted an executive pardon.¹⁵¹ Potter was present at the Orange Superior Court in Hillsborough, presumably representing his own client, and witnessed a trial for conspiracy in which the superior court

142. *Id.*

143. *U.S. District Court of N. Carolina*, FAYETTEVILLE OBSERVER, Nov. 23, 1842, at 3.

144. *Id.*

145. *In Bankruptcy*, FAYETTEVILLE OBSERVER, Sept. 21, 1842, at 3.

146. *Id.*

147. Letter from Henry Potter to John Heritage Bryan, Attorney, (Aug. 3, 1842) (on file at the North Carolina State Archives, John Heritage Bryan Collection, P.C. 6.10).

148. *Id.*

149. Act of Mar. 3, 1843, ch. 82, 5 Stat. 614 (1843).

150. Act of Dec. 18, 1812, ch. 5, 2 Stat. 788 (1812); BRIGGS, *supra* note 3, at 12–13.

151. Letter from Henry Potter to David Stone, Governor, North Carolina (Oct. 9, 1809) (on file at the North Carolina State Archives, 33 G.P. 139).

judge ruled that an indictment was sufficient to support a conviction.¹⁵² Potter did not agree with the ruling, and thereafter the defendant requested that Judge Potter assist counsel with a motion to arrest the judgment.¹⁵³ Potter assisted with no success as the superior court judge disagreed and sustained the judgment.¹⁵⁴ The adamant Potter then wrote to Governor Stone, "I was firmly of the opinion, as I am still, that the bill contained no specific charge for which a man could be legally punished . . . [and] the conviction was improper."¹⁵⁵ Potter then asked the Governor to completely pardon the defendants, however it is unknown if Governor Stone acted upon Potter's recommendation.¹⁵⁶

In another unique instance, Judge Potter assisted North Carolina Attorney General Fitts in the 1810 prosecution of John Owen for the murder of Patrick Conway in Raleigh.¹⁵⁷ At trial, Judge Potter addressed the jury with a lengthy speech where "he combatted one by one, the several positions and arguments of [Owen's] counsel; maintained that the chain of evidence harmonized; was complete in all its parts; consistent with itself, the circumstances of the murder, and the situation of the prisoner."¹⁵⁸ Potter further noted that the arguments of Henry Seawell "only proved that innocent men might [sometimes] suffer. It was not pretended that they were convicted upon improper or insufficient evidence."¹⁵⁹ Further, Potter lectured the jury that "[s]uch convictions are misfortunes, which the frailties of humanity cannot always prevent consistently with the good of society. If the mere possibility of innocence was sufficient to save the accused, the secret and solitary crime of murder would seldom be punished."¹⁶⁰

Potter's lengthy speech was reportedly delivered after midnight and continued until day-break.¹⁶¹ The editors of the Raleigh newspaper lamented that they were too fatigued to take any notes after sitting and watching for nearly twenty hours.¹⁶² The jury, having been occupied throughout the night and early morning, ultimately found Owen guilty after

152. *Id.*; N.C. STAR (Raleigh), Oct. 5, 1809, at 3.

153. Letter from Henry Potter, *supra* note 150.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Trial of John Owen, Charged with the Murder of Patrick Conway*, N.C. STAR (Raleigh), Apr. 12, 1810, at 1.

158. *Id.* at 3.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

two hours of deliberation.¹⁶³ Judge Potter thereafter appeared for the State when the case was heard on appeal at the Supreme Court of North Carolina in July of 1810.¹⁶⁴

Even after 1812, Judge Potter was tapped to be the executor of a few renowned North Carolinian's estates, most notably, Governor David Stone after his death in 1818.¹⁶⁵ During his administration of Stone's estate, Potter moved in the Wake County Court for allowance of commissions as administrator.¹⁶⁶ This dispute ultimately made it to the Supreme Court of North Carolina in 1822 where the Court granted Potter \$809.19.¹⁶⁷ Chief Justice John Louis Taylor wrote the opinion, which prescribed the rules for executor compensation in North Carolina.¹⁶⁸

V. CIVIC SERVICE & BUSINESS VENTURES

The above-mentioned aspects of Judge Potter's life, along with many more, show that he was a humble public figure serving in many different capacities much different than the role of federal judges today. His extensive experience and skills qualified him to solve complex issues and take on demanding ventures. As a federal judge, he was accessible to the people and was willing to serve outside of the parameters of his judicial role. Miraculously, along with his judgeship and practice of law, Judge Potter immersed himself in numerous business ventures and civic service.

1. Potter's Assignments from the North Carolina General Assembly

By January of 1793, Potter was back in North Carolina and possibly residing in Williams-borough, Granville County.¹⁶⁹ That year, the North Carolina General Assembly, sitting at New Bern, appointed Potter to collect evidence of North Carolina's Revolutionary War expenses, which would aid settlement of the state's accounts with the federal government.¹⁷⁰ Potter embarked on what he referred to as his "mission" in New Bern,

163. *Id.*

164. *Raleigh*, WKLY. RALEIGH REG., July 12, 1810, at 3.

165. *State of North Carolina*, WKLY. RALEIGH REG., Nov. 27, 1818, at 3.

166. *Potter v. Stone*, 9 N.C. (2 Hawks) 30, 30 (1822).

167. *Id.* at 32.

168. *Id.*

169. Letter from Henry Potter to Richard Spaight, Governor, North Carolina (May 16, 1793) in 11 GOVERNOR'S LETTER BOOK 47-48 (on file at North Carolina State Archives) (stating that Potter was receiving mail at Williams-borough, Granville County).

170. *Id.*

diligently collecting pertinent documents there and in Hillsborough.¹⁷¹ Potter then travelled to the nation's capital, Philadelphia, in May of 1793 to deliver the collected documents to the North Carolina agents.¹⁷² Unbeknownst to Potter, an Act of Limitation had been issued, meaning that if Potter failed to deliver the documentation by a certain date, the debt would lapse and North Carolina would be barred from recovery.¹⁷³ Upon notice of the Act, the North Carolina agent in Philadelphia, Abisha Thomas, desperately sent an express to locate Potter and inform him of the urgent situation.¹⁷⁴ The express miraculously found Potter on the road in Petersburg, Virginia, and Potter made it to Philadelphia two days before North Carolina's claim lapsed.¹⁷⁵ Potter wrote to Governor Spaight that "the express was a stimulus to my exertions . . . and had I not arrived in time the consequences might have been fatal for the Commissioners are as inflexible as the Grand Monarch."¹⁷⁶ Abisha Thomas praised Potter's efforts and petitioned the Governor to give Potter a large reward.¹⁷⁷ However, Potter only asked Governor Spaight to reimburse his expenses and grant a moderate allowance.¹⁷⁸

In 1817, the North Carolina General Assembly passed legislation establishing a committee of three persons to revise and consolidate the operative laws of the State.¹⁷⁹ The purpose of this was to make state laws more easily accessible to North Carolinians.¹⁸⁰ Furthermore, in response to confusion regarding a 1778 act, which attempted to provide which pre-Revolution laws continued to be in force, the legislation instructed the committee to identify statutes of the parliament of Great Britain still in force within the State.¹⁸¹ The General Assembly appointed Judge Potter, Supreme Court of North Carolina Chief Justice John L. Taylor, and Bartlett

171. *Id.*; Letter from Henry Potter to Richard Spaight (Jan. 10, 1793), in 11 GOVERNOR'S LETTER BOOK 12 (on file at North Carolina State Archives).

172. Letter from Henry Potter to Richard Spaight, *supra* note 170.

173. Letter from Abisha Thomas to Henry Potter (1793), in 11 GOVERNOR'S LETTER BOOK 36-37 (on file at North Carolina State Archives).

174. *Id.*; Letter from Abisha Thomas to Richard Spaight, Governor, North Carolina (May 18, 1793), in 11 GOVERNOR'S LETTER BOOK 47-48 (on file at North Carolina State Archives); Letter from Henry Potter to Richard Spaight, *supra* note 170.

175. Letter from Abisha Thomas to Richard Spaight, *supra* note 173.

176. Letter from Henry Potter to Richard Spaight, *supra* note 170.

177. Letter from Abisha Thomas to Richard Spaight, *supra* note 173.

178. Letter from Henry Potter to Richard Spaight, *supra* note 170.

179. Act of Nov. 17, 1817, ch. 16, 1817 N.C. Sess. 17-18.

180. *Id.*

181. *Id.*; Act of Apr. 14, 1778, ch. 5, 1778 N.C. Sess. 8.

Yancey¹⁸² to carry out the task.¹⁸³ Three years later, the trio reported their findings to the General Assembly, which then authorized Judge Potter to manage publication.¹⁸⁴ The work, published in 1821 and known as “Potter’s Revisal,” produced 119 British statutes from the rule of Edward I in 1235 to 1771—all of which were still considered the law in North Carolina.¹⁸⁵ In 1820, The General Assembly again appointed Judge Potter and Chief Justice Taylor to examine all the North Carolina laws in force regarding insolvent debtors.¹⁸⁶ The legislature requested that Judge Potter propose a system of bankruptcy laws aimed to prevent imprisonment of the honest debtor.¹⁸⁷

2. *The Governor’s Residence*

In 1813, the North Carolina General Assembly passed legislation to provide better accommodation for the Governors of North Carolina.¹⁸⁸ Judge Potter was among the group of prominent leaders appointed as Commissioners for the purpose of funding, designing, constructing, and selecting a location for the Governor’s residence in Raleigh.¹⁸⁹ The Commissioners had authority to enter into construction contracts for the Governor’s residence, which included suitable offices and outhouses, a principal building, and such other buildings as the Commissioners thought necessary.¹⁹⁰ To raise funds for the project, Judge Potter and the Commissioners auctioned the Governor’s current lot, a considerable portion of the public lands contiguous to Raleigh.¹⁹¹ The resulting Governor’s “Palace” was built at the foot of Fayetteville Street where Memorial Auditorium is located today.¹⁹²

182. Bartlett Yancey was a prominent North Carolinian “lawyer, congressman, and longtime state senator.” W. Conrad Gass, *Yancey, Bartlett*, NCPEDIA (1996), <https://perma.cc/XP4K-ZM4Z>.

183. Act of Nov. 20, 1819, ch. 9, 1819 N.C. Sess. Laws 13–14; *Revisal of the Laws*, RALEIGH MINERVA, Dec. 26, 1817, at 3.

184. Ch. 9, 1819 N.C. Sess. 13–14. The General Assembly provided that two hundred copies would be made and submitted to the Secretary of State for distribution to the Superior and County Courts of North Carolina. *Id.*

185. BRIGGS, *supra* note 3, at 13.

186. *Saturday, December 16*, HILLSBOROUGH RECORDER, Dec. 27, 1820, at 3.

187. *Id.*

188. Act of Nov. 15, 1813, ch. 8, 1813 N.C. Sess. Laws 7–8.

189. *Id.*

190. *Id.*

191. *Id.*; *Interesting Sale*, WKLY. RALEIGH REG., Mar. 18, 1814, at 3.

192. I MURRAY, *supra* note 53, at 207.

In 1819, the General Assembly again appointed Judge Potter to sell state-owned lands to provide for the repair and enclosure of the Governor's residence.¹⁹³ The Governor's residence housed North Carolina's governors until 1865 when the home was vacated by Governor Vance upon the arrival of Sherman's Army during the Civil War.¹⁹⁴

3. Potter's Involvement in Education

Potter was a zealous advocate for education in North Carolina. As early as September of 1799, Potter began his service to the University of North Carolina as a member of the Board of Trustees.¹⁹⁵ Potter served the University in many capacities from at least 1796 until a year before his death, approaching an astonishing sixty years of service.¹⁹⁶ Potter served as secretary of the Board of Trustees and participated on numerous committees, including the Committee of Visitation and the Committee of Examination.¹⁹⁷ Pursuant to an 1801 act by the General Assembly, the Board of Trustees of the University was authorized to raise money through a lottery.¹⁹⁸ The Board appointed Potter as a Commissioner to oversee two fundraising lotteries in June and December of 1802.¹⁹⁹ The funds generated from the lotteries assisted in the completion of the "main [b]uilding of the University."²⁰⁰ Potter also personally contributed money in 1809 for the erection of a main building.²⁰¹ In addition, he served as a member of the University's Dialectic Society in 1813.²⁰²

To celebrate Potter's fiftieth year of service to the University, Governor Charles Manly specially invited Potter to the June of 1849 commencement ceremony.²⁰³ Governor Manly referred to Potter as

193. Act of Nov. 20, 1819, ch. 4, 1819 N.C. Sess. Laws 10–11; *History of Wake*, RALEIGH NEWS, July 7, 1876, at 5.

194. BRIGGS, *supra* note 3, at 15.

195. *University*, N.C. MINERVA & FAYETTEVILLE ADVERTISER, Nov. 12, 1796, at 3.

196. BRIGGS, *supra* note 3, at 16. Potter began his involvement with the University of North Carolina around 1799. *See id.*

197. *Id.*; *University*, RALEIGH MINERVA, June 11, 1807, at 3 (Visitation); *University*, WKLY. RALEIGH REG., May 18, 1802, at 3 (Examination).

198. Act of Nov. 16, 1801, ch. 8, § 1, 1801 N.C. Sess. Laws 174.

199. *Scheme of a Lottery*, WKLY. RALEIGH REG., May 4, 1802, at 2; *Scheme of Lottery No. II*, RALEIGH MINERVA, July 20, 1802, at 4.

200. 1 KEMP P. BATTLE, HISTORY OF THE UNIVERSITY OF NORTH CAROLINA 126–27 (1907); *Scheme of a Lottery*, RALEIGH MINERVA, Feb. 16, 1802, at 4.

201. BRIGGS, *supra* note 3, at 16.

202. CATALOGUE OF THE MEMBERS OF THE DIALECTIC SOCIETY, INSTITUTED IN THE UNIVERSITY OF NORTH CAROLINA 45 (June 3, 1795) <https://perma.cc/S2C2-KKVA>.

203. *A Merited Compliment*, RALEIGH REG., May 16, 1849, at 2.

“[being] at all times and especially in the early and darkest periods of [the University’s] history, one of her most efficient and steady supporters.”²⁰⁴ Potter humbly replied to the invitation stating that “[the University] now fulminates aloft without intervening nebula to cloud her brightness—and it is our pride to know that she now bears a favorable comparison with the best Colleges in the Union.”²⁰⁵ Whether Potter actually attended the commencement is unclear since he expressed concerns that his duty to attend the circuit court in Raleigh would prevent his attendance.²⁰⁶

Potter also advocated for the establishment and improvement of local educational institutions for children. In November of 1801, Potter, along with other leading citizens, petitioned the General Assembly to establish a school for boys and girls in Raleigh.²⁰⁷ The petitioners noticed there was no academy in the capital city and lamented at having to send their children to distant institutions.²⁰⁸ Agreeing with their request, the General Assembly designated Burke Square to the Trustees of the Raleigh Academy to build the academy.²⁰⁹ Potter was heavily involved in many aspects of the Raleigh Academy as trustee.²¹⁰ In 1815, Potter was appointed by the Raleigh Academy to receive applications for free education from the State’s poor.²¹¹

After relocating to Fayetteville, Potter continued his involvement in education as a member of the Fayetteville School Committee, where he was appointed President in 1827.²¹² Further, Potter was a trustee of Pomona Academy near Raleigh;²¹³ a trustee of The Donaldson Academy and Manual Labor School in Fayetteville;²¹⁴ on the council of advice at the Fayetteville Literary, Scientific and Military Academy;²¹⁵ on the school

204. *Id.*

205. *Id.*

206. *Id.*

207. 1 CHARLES LEE COON, *THE BEGINNINGS OF PUBLIC EDUCATION IN NORTH CAROLINA: A DOCUMENTARY HISTORY, 1790–1840*, 25–26 (1908) <https://perma.cc/G5G6-AYFG>.

208. *Id.*

209. *Id.* at 27.

210. *Raleigh Academy*, RALEIGH MINERVA, June 14, 1810, at 4.

211. *Raleigh Academy*, WKLY. RALEIGH REG., Jan. 20, 1815, at 3.

212. *Fayetteville Academy*, FAYETTEVILLE OBSERVER, Mar. 8, 1827, at 4; *School Committee for 1828*, FAYETTEVILLE OBSERVER, Jan. 10, 1828, at 1; *Southern Female Classical Seminary*, RALEIGH REG., Nov. 6, 1827, at 4.

213. *Pomona Academy*, RALEIGH REG., June 16, 1829, at 1.

214. *The Donaldson Academy and Manual Labor School*, FAYETTEVILLE OBSERVER, Mar. 19, 1833, at 3.

215. *Fayetteville Literary, Scientific and Military Academy*, FAYETTEVILLE OBSERVER, May 13, 1830, at 3.

committee for the Fayetteville Female Seminary,²¹⁶ and assisted Governor Morehead with the establishment of Edgeworth Female Seminary.²¹⁷ Potter also offered school children in Fayetteville a place to live, on reasonable terms, at his private boarding home.²¹⁸ A letter written in 1838 sums up Potter's outlook on education, in which Potter noted "[w]e should . . . endeavor to keep our [children] straight . . . and I know of no better way for doing this, than by a judicious system of [e]ducation, with proper instructors and suitable books. . . ."²¹⁹

4. A Celebrated Public Official

Judge Potter's notoriety led him to be considered for significant positions in many organizations and legislative efforts. In late 1799, the County Court in Raleigh ordered that a market-house be built on Fayetteville Street to benefit the citizens of Raleigh and provide a venue for the local farming community to sell surplus produce.²²⁰ Potter was appointed by the County Court to serve as a Commissioner with the responsibility to oversee the erection of the market-house.²²¹ In December of 1800, the General Assembly nominated Potter for a superior court judgeship although his name was withdrawn after the vote for unknown reasons.²²² Eighteen years later, Judge Potter was also considered for a seat on the infant Supreme Court of North Carolina.²²³

Potter served several terms as a Raleigh City Commissioner.²²⁴ As an elected Commissioner, Potter was responsible for, among other things, the spending of tax revenue.²²⁵ In April of 1811, volunteer citizens of Raleigh were apportioned into classes to participate in the General Watch for the City.²²⁶ As a member of the General Watch, the federal judge would patrol

216. *Fayetteville Female Seminary*, FAYETTEVILLE OBSERVER, Oct. 18, 1837, at 1.

217. *Edgeworth Female Seminary*, FAYETTEVILLE OBSERVER, Apr. 10, 1849, at 3.

218. *Private Boarding House*, FAYETTEVILLE OBSERVER, Feb. 26, 1829, at 4.

219. FAYETTEVILLE OBSERVER, Feb. 14, 1838, at 2.

220. *Raleigh*, WKLY. RALEIGH REG., Oct. 22, 1799, at 2.

221. *Id.*

222. *General Assembly*, WKLY. RALEIGH REG., Dec. 16, 1800, at 2; *Wednesday, Dec. 3*, WKLY. RALEIGH REG., Dec. 9, 1800, at 2.

223. BRIGGS, *supra* note 3, at 13.

224. *Id.* at 15.

225. 1 MURRAY, *supra* note 53, at 144. As a Commissioner, Potter was involved in an interesting lawsuit brought by the Raleigh Commissioners against the city's appointed auctioneer to recover proceeds of auctioned items. The matter was ultimately decided at the Supreme Court of North Carolina. *Comm'rs v. Holloway*, 10 N.C. (3 Hawks) 234 (1824).

226. N.C. STAR (Raleigh), Apr. 26, 1811, at 3.

the streets of Raleigh with his neighbors.²²⁷ The General Assembly also appointed Potter in 1815 to collect information on other states' prison infrastructure in an early effort to measure the feasibility of establishing North Carolina's first state-sponsored penitentiary.²²⁸

As a celebrated public official, Judge Potter annually participated in Independence Day celebrations by traditionally reading aloud The Declaration of Independence to crowds at the State Capitol and presiding over celebratory dinners at the State House.²²⁹ This annual reading of the Declaration continued after Potter's move to Fayetteville.²³⁰

Judge Potter was often entrusted to receive prominent visitors to Raleigh. In March of 1825, America's Revolutionary War ally Marquis de Lafayette visited Raleigh for two days and nights on the Frenchman's tour of the United States.²³¹ Judge Potter was appointed to a Committee of Arrangements tasked with the preparation for honoring and entertaining Lafayette.²³² That same year, Vice President John C. Calhoun visited Raleigh for three days where he was honored with a dinner at the Eagle Hotel.²³³ The dinner was hosted by Governor Hutchins Burton along with Judge Potter, who offered a patriotic toast.²³⁴

5. Improving Commerce: Potter's Involvement with the State Bank and State Transportation

By the early 1800s, the young City of Raleigh was expected to become a crucial financial center in North Carolina.²³⁵ In 1805, the North Carolina General Assembly appointed Judge Potter to receive subscriptions in Wake County to the newly incorporated State Bank of North Carolina.²³⁶ The long-planned State Bank of North Carolina officially opened its headquarters in Raleigh in 1810.²³⁷ By June of 1811, Judge Potter was one

227. *Id.*; BRIGGS, *supra* note 3, at 14–15.

228. *The Penitentiary Question*, WKLY. STANDARD (Raleigh), Mar. 18, 1846, at 3; *Raleigh*, WKLY. RALEIGH REG., Dec. 22, 1815, at 3.

229. *Fourth of July*, WKLY. RALEIGH REG., July 11, 1823, at 2; *Raleigh*, RALEIGH MINERVA, July 6, 1809, at 3; *Raleigh*, RALEIGH MINERVA, July 9, 1807, at 2; *Raleigh*, WKLY. RALEIGH REG., July 11, 1803, at 2; *Raleigh Register*, WKLY. RALEIGH REG., June 27, 1823, at 3.

230. FAYETTEVILLE OBSERVER, July 9, 1829, at 3.

231. 1 MURRAY, *supra* note 53, at 222.

232. *Lafayette*, N.C. STAR (Raleigh), Sept. 24, 1824, at 2.

233. 1 MURRAY, *supra* note 53, at 221.

234. RALEIGH REG., Nov. 15, 1825, at 3.

235. 1 MURRAY, *supra* note 53, at 128.

236. Act of Nov. 18, 1805, ch. 5, 1805 N.C. Sess. Laws 2.

237. 1 MURRAY, *supra* note 53, at 128.

of nineteen stockholders elected to be a Director of the Raleigh branch and was nominated to be President of the bank by Joseph Gales.²³⁸ Unfortunately for Potter, he had to run against the revered Colonel William Polk, who won the Presidency by a landslide—Potter merely received four votes to Polk's thirteen.²³⁹ Despite this loss, Potter still remained an influential leader of the State Bank. In 1812, the Directors resolved to build a headquarters in downtown Raleigh and Judge Potter was part of the committee tasked with contracting for the materials and the construction of the building.²⁴⁰ The headquarters, located on New Bern Avenue, was completed in 1814 and is now the oldest brick building in Wake County.²⁴¹ Judge Potter served as a Director of the bank until he resigned in 1825.²⁴²

Wake County's inadequate commercial infrastructure became an issue as the population grew. In response, a group of North Carolinians chose to partake in an effort to render the Neuse River navigable.²⁴³ As a result, the Neuse River Company was incorporated by a private act of the General Assembly.²⁴⁴ Potter assisted in an effort to raise funds and oversee the business.²⁴⁵ When the company changed ownership in 1812, it was managed by a group known as The Neuse River Navigation Company.²⁴⁶ Judge Potter was elected to be a Director of the company and named President in 1818.²⁴⁷ Under Potter's presidency, the Company launched an experimental vessel from Wake County, which made it to New Bern in fifteen days.²⁴⁸ The hardships of taming the Neuse, lack of financial support, and popularity of railroads, among other things, caused the company to go out of business in 1825.²⁴⁹

The Neuse River Navigation Company was not the only transportation company Potter was involved in. Potter also managed a line of

238. *State Bank*, RALEIGH MINERVA, June 21, 1811, at 3.

239. *Id.*

240. *Notice*, N.C. STAR (Raleigh), Aug. 14, 1812, at 1.

241. 1 MURRAY, *supra* note 53, at 129; *Plan of the City of Raleigh*, *supra* note 22 (Lots 192 and 193); *Plan of the City of Raleigh: First Published in the Year 1834*, N.C. MAPS (1867), <https://perma.cc/3ZH3-WWSD> (Lot 192).

242. *State Bank*, RALEIGH REG., Dec. 9, 1825, at 3.

243. 1 MURRAY, *supra* note 53, at 132.

244. Act of 1801, ch. 187 (on file with author).

245. *An Act to Establish a Company for the Purpose of Facilitating the Navigation of Neuse River*, WKLY. RALEIGH REG., Feb. 9, 1802, at 4.

246. 1 MURRAY, *supra* note 53, at 132.

247. *Id.*, at 133–34; *Neuse River Navigation*, WKLY. RALEIGH REG., June 25, 1819, at 3; *Neuse River Navigation*, WKLY. RALEIGH REG., Dec. 3, 1813, at 3.

248. 1 MURRAY, *supra* note 53, at 134; *Neuse Navigation*, WKLY. RALEIGH REG., June 18, 1819, at 3.

249. *Id.*

stagecoaches called the Raleigh & Plymouth Stages that offered convenient access to northern states through Raleigh.²⁵⁰ In Fayetteville, Potter participated in efforts to establish and expand railroads connecting major cities in North Carolina and other states.²⁵¹

Along with Potter's involvement with many serious ventures, Potter used his prominence to promote commercial products. Interestingly, Judge Potter was apparently afflicted with constant severe indigestion and in turn was the "poster boy" for Beckwith's Anti-Dyspeptic Pills, a product advertised in newspapers across the State.²⁵² In an 1835 advertisement, Potter wrote that he considered the pills so valuable that he made sure his supply was never depleted.²⁵³ Furthermore, newspapers advertised Potter's recommendation of a shoe polish²⁵⁴ and his endorsement of a Fayetteville dentist.²⁵⁵ Another idiosyncratic role that Potter performed was willingly safeguarding the lost and found property of Fayetteville citizens.²⁵⁶ Further, Potter often brazenly advertised in local newspapers asking individuals to return borrowed books to him that he deemed overdue.²⁵⁷

6. *An Author and a Scholar*

Judge Potter authored a book in 1816 popularly known as "Potter's Justice of the Peace."²⁵⁸ In his own words, Potter authored the book to serve as a guide to "not only Justices of the Peace, but also . . . Sheriffs, Coroners, Clerks, Constables and other Officers; and indeed to every citizen."²⁵⁹ Judge Potter reasoned that the "increased population of the State—the augmentation of Justices of the Peace and other Civil Officers; and a growing thirst for useful knowledge, enhanced by the cultivation of

250. *Raleigh & Plymouth Line of Stages*, WKLY. RALEIGH REG., July 16, 1819, at 4; *Raleigh & Plymouth Stages*, RALEIGH MINERVA, Dec. 11, 1818, at 4. Advertisements show that the stage ran from Raleigh to Plymouth in two days and arriving in time to take the steam boat to Edenton. From Edenton, the traveler could conveniently take the stage to Norfolk, Virginia. *Id.*

251. *Rail Road Convention*, WKLY. RALEIGH REG., Nov. 20, 1846, at 4; *Town Affairs*, FAYETTEVILLE OBSERVER, Dec. 9, 1830, at 3.

252. *Beckwith's Anti-Dispeptic Pills*, WILMINGTON DAILY HERALD, Jan. 31, 1855, at 2; *Beckwith's Anti-Dyspeptic Pills*, WKLY. RALEIGH REG., Dec. 23, 1834, at 1; *Beckwith's Anti Dyspeptic Pills*, WKLY. RALEIGH REG., May 26, 1835, at 1.

253. *Beckwith's Anti Dyspeptic Pills*, *supra* note 251.

254. *Superior Boot and Shoe Polish*, WKLY. STANDARD (Raleigh), Sept. 17, 1851, at 3.

255. *Dentistry*, FAYETTEVILLE OBSERVER, Oct. 30, 1828, at 4.

256. *Umbrella*, FAYETTEVILLE OBSERVER, Sept. 10, 1829, at 3.

257. *Blackstone's Commentaries*, WKLY. RALEIGH REG., Aug. 18, 1820, at 4; FAYETTEVILLE OBSERVER, Mar. 28, 1848, at 3.

258. *North Carolina Books*, RALEIGH REG., Dec. 24, 1829, at 1.

259. HENRY POTTER, *THE OFFICE AND DUTY OF A JUSTICE OF THE PEACE* [iv] (1816).

[l]iterature and [s]cience, [had] greatly increased the demand” for citizens to be informed of “the [c]ivil [p]olity, the [m]unicipal [r]egulations, and the [a]dministration of the [l]aws, under which they live, and by which they consent to be governed.”²⁶⁰ Judge Potter’s goal was to inform North Carolinians of profound changes in the law and provide them with the benefit of accessible precedents and forms of proceedings.²⁶¹ Joseph Gales published the book and declared that Potter’s work was more complete than any former publication of the kind.²⁶² Twelve years after its publication, Potter’s popular book warranted a second edition, in which he included all new acts of importance, precedents, and subjects.²⁶³

7. *Community Involvement*

On June 11, 1816, a devastating fire quickly destroyed fifty-one buildings on Fayetteville Street in downtown Raleigh.²⁶⁴ To mitigate the losses of the fire’s greatest victims, Judge Potter was appointed as part of a fundraising committee.²⁶⁵ The fire relief committee solicited the citizens of Raleigh and neighboring towns to contribute to a relief fund.²⁶⁶ Judge Potter was also part of a Fayetteville-based committee tasked to raise funds to aid the victims of Charleston, South Carolina’s devastating blaze in 1838.²⁶⁷

Judge Potter was heavily involved in the American Colonization Society.²⁶⁸ The Society was a national organization advocating for the settlement of free persons of color on the west coast of Africa—a concept noticeably irrational when compared to modern convictions.²⁶⁹ Colonization Society founders wished to eradicate the slave-based agrarian economy but felt that freed slaves would be unable to assimilate in America.²⁷⁰ Potter was chosen as manager of the Raleigh-based chapter of

260. *Id.* at [iii].

261. *Id.*

262. *A New Justice of Peace*, WKLY. RALEIGH REG., Feb. 14, 1817, at 4.

263. HENRY POTTER, *THE OFFICE AND DUTY OF A JUSTICE OF THE PEACE* [iii] (2d ed. 1828).

264. 1 MURRAY, *supra* note 53, at 145.

265. *The Late Fire*, N.C. STAR (Raleigh), June 21, 1816, at 3; *The Late Fire*, RALEIGH MINERVA, June 21, 1816, at 3.

266. *Id.*

267. *Awful Calamity*, FAYETTEVILLE OBSERVER, May 2, 1838, at 3.

268. *The American Colonization Society*, WKLY. RALEIGH REG., June 18, 1819, at 3.

269. EARLY LEE FOX, *THE AMERICAN COLONIZATION SOCIETY 1817–1840*, 54 (1919).

270. ERIC BURIN, *SLAVERY AND THE PECULIAR SOLUTION: A HISTORY OF THE AMERICAN COLONIZATION SOCIETY* 13 (2005).

the society²⁷¹ and continued his involvement in Fayetteville.²⁷² In 1819, Potter was chosen to draft a letter expressing the North Carolina Colonization Society's loyalty to their parent society.²⁷³ This letter was to be sent to Bushrod Washington, Justice of the Supreme Court of the United States and President of the American Colonization Society.²⁷⁴ In Potter's letter to Justice Washington, he wrote that freeing the slaves and providing them with means of social happiness was a cause worthy of support.²⁷⁵ While we cannot know Potter's motivations, we do know that Potter owned slaves and continued his ownership while involved in the Society.²⁷⁶

Further, Potter was an active freemason and, by March of 1800, was the Grand Treasurer of the Grand Lodge of North Carolina.²⁷⁷ At the time, the Grand Lodge in Raleigh included many other leading North Carolinians.²⁷⁸ After moving to Fayetteville, Potter joined the Phoenix Lodge No. 8.²⁷⁹

8. Potter's Church Involvement

Judge Potter was also extensively involved with his church and religious societies. In November of 1813, Judge Potter was a founding member and manager of the Bible Society of North Carolina, an organization formed to raise funds to purchase and distribute Bibles across

271. *The American Colonization Society*, *supra* note 267.

272. FAYETTEVILLE OBSERVER, Apr. 27, 1837, at 3. After relocating to Fayetteville, Potter continued his involvement in the Society and was appointed to the "Colonization Committee" tasked with advancing the interests of the Society at an 1837 meeting held at the Fayetteville Episcopal Church. *Id.*

273. *Colonization Society*, WKLY. RALEIGH REG., May 21, 1819, at 3; *Extract from the Minutes of the Synod of N.C.*, NEWBERN SENTINEL, May 22, 1819, at 2. The letter drafted by Judge Potter appeared in the National Intelligencer, a prominent newspaper published in Washington D.C. *Id.*

274. *Id.*

275. *Colonization Society*, *supra* note 272.

276. *Auction*, RALEIGH REG. Jan. 2, 1824, at 3; *Forty Dollars Reward*, RALEIGH MINERVA, Oct. 3, 1803, at 4.

277. RALEIGH MINERVA, Mar. 11, 1800, at 6.

278. *Id.* Members included William Polk, John Louis Taylor, Montfort Stokes, Waightstill Avery, and many more.

279. FREEMASONS PHOENIX LODGE NO. 8 (FAYETTEVILLE, N.C.), MINUTE BOOK OF PHOENIX LODGE NO. 8 (Dec. 1837–Nov. 1854). The minute book indicates that Potter visited the Phoenix Lodge No. 8 in February of 1849 as a member of Columbus Lodge No. 102. Potter subsequently petitioned for membership in the Phoenix Lodge No. 8 on Mar. 5, 1849. *Id.*

the state.²⁸⁰ The Potters were founding members of the First Presbyterian Church established in Raleigh in early 1816.²⁸¹ Judge Potter drafted the organization plan, and as trustee for the church, Potter deeded property on the corner of Morgan and Salisbury streets for the future location of the church building.²⁸² As early as February of 1816, Potter, along with six other designated members, was authorized as a Commissioner to contract for the construction of the church building.²⁸³ The church was completed in February of 1818 and was the first brick church built in Raleigh.²⁸⁴ The Potters paid over five hundred dollars to reserve a pew, which was sold upon their move to Fayetteville for \$60.00.²⁸⁵

The Raleigh church recognized Judge Potter's service, noting that "in [the Church's] early struggle for existence, no one labored more zealously, or more ably; and none more effectually upheld the hands, or encouraged the hearts of its early Preachers."²⁸⁶ The First Presbyterian Church in Raleigh is still active at the same location today; however, the original brick building was replaced in 1899.²⁸⁷

After moving to Fayetteville in 1826, Potter joined the First Presbyterian Church where he was a longtime clerk of the Session, served as head of the Sabbath School, and spearheaded efforts to rebuild the church after much of Fayetteville was destroyed by fire in May of 1831.²⁸⁸ Further, Potter represented the Presbytery of Fayetteville at meetings of the North Carolina Synod, where he was appointed to a committee of Bills and Overtures in 1829.²⁸⁹ Judge Potter also served as the President of the Presbyterian Sabbath School Society in Fayetteville and was heavily involved in the Temperance Society.²⁹⁰ Potter was regularly appointed as a

280. *Bible Society*, WKLY. RALEIGH REG., Dec. 3, 1813, at 3; *Bible Society of North-Carolina*, RALEIGH MINERVA, Sept. 15, 1815, at 4. Judge Potter remained heavily involved with the Bible Society for many years. In 1844, he was invited to address the members North Carolina Bible Society in celebration of the society's thirty-second anniversary. *North Carolina Bible Society*, RALEIGH REG., Dec. 13, 1844, at 3.

281. BRIGGS, *supra* note 3, at 18.

282. *Id.*; 1 MURRAY, *supra* note 53, at 178.

283. *Church to be Built*, N.C. STAR (Raleigh), Mar. 1, 1816, at 4.

284. 1 MURRAY, *supra* note 53, at 178-79.

285. BRIGGS, *supra* note 3, at 18.

286. *The Convention of 1835*, FAYETTEVILLE OBSERVER, May 21, 1885, at 4.

287. 1 MURRAY, *supra* note 53, at 178.

288. HARRIOT SUTTON RANKIN, HISTORY OF FIRST PRESBYTERIAN CHURCH, FAYETTEVILLE, NORTH CAROLINA 17, 23-24, 27, 112 (1928).

289. *Minutes of the Synod of North Carolina*, FAYETTEVILLE OBSERVER, Nov. 26, 1829, at 2.

290. *Communicated for the Observer*, FAYETTEVILLE OBSERVER, Apr. 13, 1831, at 3.

delegate to represent the North Carolina State Temperance Society at the Southern Temperance Convention held in Fayetteville.²⁹¹

VI. LATER LIFE & LEGACY

Judge Potter was a man remarkably dedicated to serving and making an impact in the lives of others. As a tireless public servant, it is not surprising that Judge Potter held his position at such an advanced age.²⁹² Potter's judgeship was desired by many attorneys in North Carolina. In his later age, while residing in Fayetteville, many attorneys were constantly on the lookout for the day when Judge Potter "would give up the ghost."²⁹³ However, it seemed that the tenacious Judge Potter would never abandon his drive to serve, even though many rumors circulated across the state regarding his demise.²⁹⁴

An attorney practicing in Raleigh realized Potter's tenacity when he asked a friend traveling to Fayetteville to verify rumors of Judge Potter's death.²⁹⁵ Upon the friend's arrival in Fayetteville, "whom should he see but Judge Potter with a large fat turkey in his hand!"²⁹⁶ Although rumors of his death were unfounded, Potter's age and the demanding circuit schedule began to take its toll on his health.²⁹⁷ As early as 1854, Potter's health became an issue. For example, Potter had an alarming illness while on his way back to Fayetteville after a fatiguing session of district court in Wilmington.²⁹⁸

On June 1, 1857, Judge Potter presided over his last session of federal circuit court in Raleigh at ninety-one years of age.²⁹⁹ At his advanced age, Potter was described as having a sprightly intellect, active habits, and a

291. *State Temperance Convention*, NORTH-CAROLINIAN (Fayetteville), Feb. 24, 1844, at 3; *Temperance Convention*, WKLY. RALEIGH REG., Oct. 6, 1835, at 3. In 1851, a Temperance Society publication printed in Fayetteville called "The Temperance Communicator" went out of business and Judge Potter was appointed trustee to assist in the sale of the defunct company's assets. *A Printing Establishment for Sale*, FAYETTEVILLE OBSERVER, Feb. 25, 1851, at 1.

292. See *infra* note 299. Potter continued to serve as a federal district court judge until his death at age 91. See *Miscellany: A Venerable Judge*, TRI-WKLY. COM. (Wilmington), Aug. 22, 1857, at 1.

293. *New York Correspondence*, *supra* note 80.

294. DAILY J. (Wilmington), Nov. 13, 1851, at 2.

295. *New York Correspondence*, *supra* note 80.

296. *Id.*

297. FAYETTEVILLE OBSERVER, SEMI-WKLY., Nov. 18, 1851, at 3.

298. *Judge Potter*, FAYETTEVILLE OBSERVER, Nov. 27, 1854, at 1.

299. *Time of Holding the Courts*, SEMI-WKLY. STANDARD (Raleigh), July 4, 1857, at 4; WKLY. STANDARD (Raleigh), June 3, 1857, at 3.

buoyant flow of spirits that were greater than many young men.³⁰⁰ Potter continued to travel on his circuit until he became dangerously ill while holding district court at Edenton in October of 1857.³⁰¹ Potter's illness was reported as life-threatening.³⁰² However, the tenacious Judge Potter returned to his residence in Fayetteville shortly thereafter while suffering "somewhat from influenza," but was not incapacitated.³⁰³ Wilmington sources reported that an ailing Potter passed through the town on his journey home but did not believe Potter was in any immediate danger.³⁰⁴ Of course, after his return home, the resilient Judge Potter maintained his intention to leave that same week to hold court at Wilmington.³⁰⁵ Unfortunately, Judge Potter never made it to Wilmington because his sickness confined him to his bed in Fayetteville for at least four weeks.³⁰⁶ However, he wasn't defeated; instead he presided over the District of Cape Fear session of federal district court at his home in Fayetteville.³⁰⁷ The November 1857 session—Judge Potter's last session—lasted only one day and consisted of considerable business involving marine cases.³⁰⁸

A few weeks later, Judge Potter died at his home in Fayetteville on the afternoon of December 20, 1857, just days before his ninety-second birthday.³⁰⁹ Approaching the end of his life, Judge Potter allegedly "suffered much in body, but his mind was clear and calm, repos[ed] in [f]aith on his [r]edeemer, wait[ed] for 'the end of the earth,' expecting it, and surprised that it was so long deferred."³¹⁰ "Truly, 'his end was peace.'"³¹¹ Potter's funeral was held on December 22, 1857, at the Fayetteville Presbyterian Church, followed by his burial at Cross Creek cemetery beside his wife who had predeceased him four years earlier.³¹² Major publications across the nation lamented his death and published descriptions of Judge Potter's life and accomplishments.³¹³

300. *Olden Times*, *supra* note 6.

301. *Illness of Judge Potter*, SEMI-WKLY. STANDARD (Raleigh), Oct. 24, 1857, at 3.

302. *Id.*

303. *Judge Potter*, RALEIGH CHRISTIAN ADVOC., Oct. 29, 1857, at 2.

304. *Judge Potter*, WILMINGTON J., Oct. 30, 1857, at 2.

305. *Id.*

306. *Death of Judge Potter*, FAYETTEVILLE OBSERVER, SEMI-WKLY., Dec. 21, 1857, at 3.

307. *U.S. District Court*, WKLY. STANDARD (Raleigh), Dec. 2, 1857, at 1.

308. *Id.*

309. *Id.*; BRIGGS, *supra* note 3, at 19.

310. *Death of Judge Potter*, *supra* note 305.

311. *Id.*

312. *Id.*; BRIGGS, *supra* note 3, at 20.

313. *Obituary*, N.Y. HERALD, Dec. 26, 1857, at 3.

Following his death, the citizens of Fayetteville called a town meeting to pay tribute to their “venerable friend and esteemed fellow citizen.” There, it was resolved that “by [Potter’s] death [Fayetteville] has lost one of its most distinguished citizens; the State of North Carolina a public servant, who largely contributed to the codification of her laws and the founding of her University, and the nation its oldest judicial officer.”³¹⁴ Judge Potter must be remembered as a leading jurist and tireless public servant whose story reveals the early history of the federal courts and the character of the men who laid the foundation for those courts. Judge Potter’s legacy can be summed up in his own words, “[y]ou know that a conscientious discharge of duty brings with it its own reward.”³¹⁵

314. *Town Meeting*, FAYETTEVILLE OBSERVER, SEMI-WKLY., Dec. 28, 1857, at 2.

315. *A Merited Compliment*, *supra* note 202.