Brief Review of the Supreme Court of North Carolina

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BRIEF REVIEW OF THE SUPREME COURT OF NORTH CAROLINA

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The Supreme Court of North Carolina, as a separate appellate organization, and not merely as a "Court of Conference" composed of the Superior Court judges and a continuation thereof, with some modifications, under the Act of 1805, was created by legislative enactment in November, 1818, which went into effect January 1, 1819. The author of this bill was Honorable William Gaston, who afterwards became one of the most illustrious members of the Court. For fifty years, or until the adoption of the Constitution of 1868, the Court was composed of three members, who were elected by the Legislature for life or until 1868 when both the manner of election and the tenure of office were changed. In the Constitution of that year, a separate "Judicial Department" of the State, consisting of certain designated courts, was provided for, without liability to abolishment by the Legislature as formerly, and the justices of the Supreme Court, as well as the judges of the Superior Courts were made elective by the people, the election of each being for a term of eight years.

From 1868 to January 1, 1879, the Supreme Court was composed of five justices, when it was reduced to three by constitutional amendment. On January 1, 1889, just ten years later, by another amendment, the number of the justices was again increased to five, and it has since consisted of that number.

The opinions published in the first six volumes of our reports were written by the "Court of Conference" and the Supreme Court prior to 1819. These reports contain some interesting curios of the law. In *Williams v. Cabarrus*[1] is to be found a discussion of the ethics which should govern in horse-racing; and it was decided in the case that where there was a stakeholder, an action by the winning party to recover the bet, was to be brought against the stakeholder and not against the losing party. This, of course, was before the Act of 1810, making all betting illegal. In the same volume appears the case of *State v. Carter*,[2] where the judgment pronounced on a

[1] *Williams v. Cabarrus* (1793) 1 N. C. 54.

[2] *State v. Carter* (1801) 1 N. C. 406.

conviction of murder, was arrested because in the indictment, the letter "a" was omitted from the word "breast" in describing the place of the wound. The Act of 1811 did away with such refinements. It should be said, however, in explanation of this decision that, on account of the number of capital offences known to the law at the time, the judges were not disposed to go beyond the rule of decided cases where human life was at stake.

Quite a singular comment is made by the reporter on the case of *Clark v. Arnold.*[3] He says: "The reporter is bound by his duty to the public to question at least one part of this decision." Then, after giving his reasons why he thought the court was in error, he courteously adds: "But let it be remembered, once for all, that I impute this, as well as every other mistake of Judge Hall, to the hurry of business. I believe the government at this time has no officer who more deserves its confidence. Yet I cannot agree to disseminate wrong legal opinions out of the respect to the opinion of any one."

From the 7th to the 62nd volumes, both inclusive, will be found the opinions of the Supreme Court for the first fifty years of its existence, or from 1818 to 1868. During this time, there were in all thirteen Judges who became members of the Supreme Court, of whom Judge Gaston alone had not seen previous service on the Superior Court bench. The opinions of the Court, consisting of five members immediately following the Civil War, are published in the volumes from the 63rd to the 79th, both inclusive. From the 80th to the 100th volumes, both inclusive, will be found the opinions of the Court, consisting of three members for the 10-year period from 1879 to 1889. The remaining volumes contain the opinions of the Court, consisting of five members, since that time or since 1889. The opinions written during the present term of Court will appear in the 191st volume.

As compared with the thirteen Judges who were on the Supreme Court bench prior to 1868, thirty-three, including the present incumbents, have sat as members of the Court since that time. Fifteen of the members since the Civil War had seen previous service on the Superior Court before coming to the Supreme Court, while eighteen, during this time, came directly from the bar. Thus, in all, since the creation of the Supreme Court as a separate appellate organization on January 1, 1819, 46 members have participated in its deliberations. Thirteen have served as Chief Justice. We have had two Ruffins, father and son, and two Connors, also father and son.

[3] *Clark v. Arnold* (1803) 3 N. C. 287.

As to religious persuasion, we have had 3 Roman Catholics, 4 Baptists, 6 Methodists, 7 Presbyterians, 1 Freethinker, and 25 Episcopalians.

John Louis Taylor, the first Chief Justice, was born in England. Chief Justices Ruffin and Shepherd and Judge Hall were native Virginians. Justice Boyden was born in Massachusetts, and Justice Clarkson in South Carolina. The remaining 40 were natives of this State.

For eleven years, from 1833 to 1844, Ruffin, Daniel and Gaston sat together as members of the Supreme Court, and it may be doubted as to whether this or any other State, ever had an abler bench. The present Court is still young in service—no member having yet served as much as six years—but we yield to none in our devotion to the law as an instrument for the establishment of justice and for the preservation of peace and good order among the people of the State. Each has fully consecrated himself to the discharge of his duties and is entirely content to await the verdict of the future.

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