A Summary of the Backstory to *Bayard v Singleton*

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For this 250th Anniversary, your author prepared a lengthy and detailed history and background of the celebrated case of *Bayard v Singleton*, found in 1 N.C. 5 (1787), often cited as 1 Martin 42 (1787). This North Carolina case affirmed the authority of the court to declare an act of the legislature unconstitutional sixteen years before the even more celebrated case of *Marbury v Madison* was decided by the United States Supreme Court. That longer essay is distributed electronically to all the judges. This condensed summary is designed to accompany the showing of "Loyalty on Trial: The Case of Bayard v. Singleton," a twenty-seven-minute 1994 film produced by the UNC Law Foundation. Rather than repeat the information in the materials accompanying the film, I have selected and arranged some of the backstories extracted from my longer essay. This context makes this an even more fascinating and instructive case. If these much-abbreviated observations on the case are interesting to you, I encourage you to tackle the one-hundred-page deep dive into the backstory and significance of the case and the people involved in it. If you like footnotes, references, and bibliographies, you will like it. Even if you don't, you will enjoy the drama.

Given our time constraints, I am going to briefly cover five topics:

1. The set-up for the case: Samuel Cornell and his daughter Elizabeth Cornell Bayard.
2. The case for the defendant Spyers Singleton.
3. Forfeiture laws and the politics of the day
4. The lost influence of the common law of England
5. Repercussions for judges and lawyers who stand up to do the right thing
6. Time for any Questions and Conclusion

Samuel Cornell and his Daughter, Elizabeth Cornell Bayard

This story involves the wealthiest man in the colony of North Carolina Samuel Cornell and his daughter, Elizabeth Cornell Bayard. Samuel Cornell served on the royal council which constituted the upper house of the legislature and advised the royal governor. He began serving under William Tryon in 1770 and remained loyal to England when, on the eve of revolution, Tryon's successor Josiah Martin lived in what became known as Tryon Palace here in New Bern. The cost of building Tryon's residence was fuel for the revolution. Samuel Cornell personally advanced half of the costs of building it.

Cornell also financed the 1771 War of the Regulation. The Bayards' attorney, Samuel Johnston and other participants in our case supported that war against the Regulators who revolted against royal rule under Tryon. The Regulators mobbed the courthouses, assaulted lawyers and judges, and defied the government sitting in New Bern. Johnston sponsored legislation that declared them outlaws. Tryon's militia hanged seven of the Regulators in Hillsborough. Cornell was wounded serving in the militia during the successful suppression of the rebellion. Samuel Cornell, his daughter Elizabeth, and Samuel Johnston are the most important participants setting in motion the circumstances that led to our case.

As the general assembly and patriots became more and more opposed to Governor Josiah Martin and royal rule, Cornell realized the tide was turning against him. Among other holdings, he owned two tracts of land and a house and wharf here in New Bern. Events like the Mecklenburg Resolves, the Halifax Resolves, the Edenton Tea Party, the stamp tax revolt in Wilmington, and the battle of Moores Creek Bridge all reflect the tenor of the times. Cornell, a very successful maritime merchant and owner of a merchant ship, decided to leave North Carolina for a trip to England and New York. He was in England when we declared independence in 1776. He was gone for just over two years, leaving his wife and five daughters in possession of his New Bern property. When he returned to British-controlled New York in the midst of the Revolution, he prevailed upon British General Henry Clinton to allow him to return to New Bern on the brigandine *Edwards* under a flag of truce to settle his affiars.

Cornell's departure, sojourn abroad, and return to New Bern are filled with ambiguities. His daughter Mary had married Isaac Edwards of New Bern, who became a well-known revolutionary. Cornell thought enough of Edwards, who had served under Tryon, that he gave Isaac and Mary as a wedding gift a home fronting the Neuse River that had been the former residence of Tryon while Tryon Palace was being built. Edwards is reputed to have been a prime mover in the first provincial congress meeting in New Bern in 1776. He had been elected to the second congress, but died before it convened. He had been personally condemned by royal governor Josiah Martin. Mary became a widow with two young daughters trying to survive while Cornell was in New York. Isaac died in January 1775. Cornell departed New Bern in August 1775 to "look after his business interests." He returned December 1777 to retrieve his family.

Samuel Cornell arrived in New Bern on about December 4, 1777, but the local patriots would not allow him to disembark because he would not take an oath of loyalty to the revolutionary government. His arrival caused quite a stir. He sent a letter to our first governor after independence, Richard Caswell, claiming the benefit of a "flag of truce" and

asking to disembark to retrieve his family and fortune to take back to New York. Caswell referred the letter to the legislature which was in session in New Bern. Samuel Ashe was speaker of the senate, and Abner Nash was speaker of the house. Ashe would become a judge in our case and Nash would represent the defendant Spyers Singleton.

The initial response of the house was that there was no "flag of truce" and that Cornell was an enemy loyal to a country with which we were at war and that he should be arrested and the ship seized. Cornell submitted additional information and the house of commons approved of his "flag of truce" but thought he should not be allowed to remove any possessions. The senate thought the "flag of truce" invalid and thought he should be arrested and his ship seized. A compromise was finally hammered out in which both houses turned the matter back over to the governor having "most perfect confidence" he would do the right thing. Governor Caswell, finally agreed Cornell could disembark, inventory his property, take with him some of his possessions, and take with him his family; but he was told not to enter the town of New Bern except for that purpose. His house and lot was described as lot 10 on the historic map of New Bern, and would be the area between the convention center and Union Park, fronting on the Trent River.

The dramatic story of what happened aboard ship is not told in our film. Nor does it tell us the backstory that forms our saga. Knowing his land was about to be confiscated, Cornell took action that led to our case.

Aboard the ship, Cornell, who had served on the colonial council that comprised the upper house of the royal government, read an act pending in the 1777 general assembly requiring the confiscation of his property as a loyalist. That plan, suggested by the Continental Congress as a method to finance the revolution, was implemented in North Carolina by a bill introduced by Archibald Maclaine of Wilmington.

Samuel Cornell's family living in New Bern had avoided being labeled loyalists. Cornell's daughter Mary had married Isaac Edwards, who had become an open revolutionary. He had become so notorious in his views that Governor Martin had questioned Cornell's loyalty because of the influence of his son-in-law. This split within Cornell's own extended family has supported calling the Revolution our first civil war.

Cornell's daughter Elizabeth was fifteen years old. He conveyed part his New Bern property to her. He executed the deed aboard ship on December 19, 1777, but backdated it to December 11. He also conveyed other property to his other daughters. Immediately after that conveyance to Elizabeth, he negotiated and consummated a lease of the property in Elizabeth's name to a New Bern neighbor and fellow merchant Spyers Singleton. The three-year lease was granted upon the payment of £1,200, a most substantial sum in today's

money. Singleton took possession and according to his own affidavit paid the price. As all of this was transpiring, George Washington was leading his army into winter quarters at Valley Forge.

Cornell, his wife, his daughter Elizabeth, and Mary (now a widow with two small children) departed and returned to British-controlled New York. Cornell died in 1781 following an expedition to provide relief for the British army on the eve of the Battle of Yorktown. Elizabeth married a wealthy New York loyalist financier, William Bayard. The Bayards became a distinguished family in New York. Their graves can still be found in the historic churchyard cemetery at Trinity Church in Lower Manhattan. There are Gilbert Stuart portraits of the family.

The case for the defendant Spyers Singleton

A year after consummating his lease with Elizabeth, Spyers Singleton confronted a difficult situation: the North Carolina legislation specifically listed Samuel Cornell as a loyalist whose property was declared confiscated and to be sold. His name appears in the statute itself. The state took the position that the land Singleton leased was subject to confiscation and forfeiture.

We need to take a quick look at the court system at the time. The North Carolina Constitution was adopted in 1776. It did not eliminate the existence of the local county courts that had evolved under colonial rule. The county courts were presided over by a number of local justices of the peace appointed by the general assembly. They were sometimes called magistrates and acted like a combination of our current district courts and boards of county commissioners. They were considered the lower or "county courts."

Our constitution of 1776 begins with a "Declaration of Rights." Article IV read: "That the legislative, executive, and supreme judicial powers of government, ought to be forever separate and distinct from each other." Article XIII created the "Supreme Court of Law and Equity" consisting of judges elected by the legislature to serve for life under good behavior. This court was commonly called the "Superior Court" or "Superior Court of Law and Equity." It was the sole and highest court. From it, there was no appeal. The three elected judges served together, rotating twice a year for sessions at Wilmington, New Bern, Edenton, Halifax, Hillsboro, and Salisbury. Morganton was added in 1782, and Fayetteville in 1787. There was no "chief judge." Samuel Ashe from New Hanover, James Iredell from Edenton, and Samuel Spencer from Anson were the first three judges elected. Iredell resigned after traveling one yearly circuit. John Williams of Williamsboro in Granville was elected by the general assembly as his successor.

Singleton availed himself of a provision in the confiscation statute that allowed him to file a petition in the county court for relief. The statute required a transfer of the issue to the superior court for a jury trial if requested. The county court heard his initial plea and denied his request for relief on the merits, but Singleton's petition required the justices of the peace to transfer the entire matter to the superior court for a jury trial upon request. Singleton contended that the deed from Cornell to his daughter Elizabeth was valid, that the lease he held was valid, and the property was not subject to confiscation. James Iredell was the attorney general at the time. Abner Nash represented Singleton. A jury returned a special verdict (we have the original in our state archives). Based upon the special verdict, the presiding judges (Ashe, Spencer, and Williams) ruled against Singleton. They found the deed to Elizabeth was void and the property was subject to confiscation.

Singleton was allowed to remain on the property for a time, but a subsequent act of the legislature again identified the Cornell property as subject to confiscation and ordered it sold within the year. It is at that point that Singleton purchased the property from the commissioner of confiscated properties for £2,160, which was a substantial sum.

Singleton was a businessman who owned an armed merchant ship. He had served in the legislature, and had served as a justice of the peace. He knew the lawyers and the lawyers knew him. After he attempted to validate Elizabeth Bayard's conveyance, he now held title free and clear under the commissioner's deed as the confiscated property of a loyalist. Cornell was and remained a staunch loyalist until his death in British occupied New York. He became ill while on a British military campaign and died in New York shortly before the Battle of Yorktown.

Forfeiture laws and the politics of the day

The issue of confiscated properties and treatment of former loyalists became a divisive political issue, both in the general assembly and society at large. It became one of the major issues in the negotiations of a peace treaty following the American victory at the Battle of Yorktown. In negotiating the terms of the Treaty of Paris, the British negotiators strenuously wanted the property of loyalists returned or full compensation paid. Our negotiators (John Adams, Ben Franklin, and John Jay) agreed on granting a full pardon to former loyalists, but balked at compensating for property already confiscated and sold. In the end, the American negotiators agreed to "strongly encourage" the independent states to restore and compensate for forfeited property, but openly told the states that it was only a recommendation and not mandatory. Two factions evolved in North Carolina on the issue.

Attorney Samuel Johnston had served in the legislature under royal rule and continued to serve after independence. He served as the president of the committee that drafted our first state constitution in 1776, with its declaration of rights. Abner Nash and Samuel Ashe both served with him on that committee. Johnston was a strong proponent of dealing fairly with former loyalists. James Iredell had been a customs officer under the royal government, but resigned to support the revolution. He supported Samuel Johnston's position. Samuel Johnston was his older brother-in-law and Iredell had studied law under him. Johston became his mentor as well as his brother-in-law. Both Johnston and Iredell defended the rights of former loyalists. So did a young firebrand lawyer named William Richardson Davie, who would go on to become the "Father of the University of North Carolina." A legislator from down in Wilmington, Alexander Maclaine, shared that view. But a majority of the legislators did not. Abner Nash was a leader of that oppositional wing who had little sympathy for former loyalists. Abner Nash had been Singleton's lawyer in the earlier litigation. He was also speaker of the house when Cornell attempted to remove his property under the flag of truce back in 1777.

Efforts of Samuel Johnston to provide legislative relief to and protection for former loyalists with respect to compensation or recovery of their property were frustrated by the opposition of a majority in the general assembly, led by Abner Nash. Samuel Johnston made a strategic decision to turn to the courts for relief. The Treaty of Paris contained a provision that said no impediments would be imposed against former loyalists seeking vindication of their legal rights. Elizabeth and her sisters now lived in New York. They had lost all of their property in North Carolina and were perfect models to frame the issue. Their father, Samuel Cornell, had served with Samuel Johnston in the colonial general assembly: Cornell served on the royal governor's council while Johnston served in the house of commons from 1771 through 1775. Johnston had also spent time in New York as a commissioner to establish the state's boundary line. While we do not know the exact circumstances under which Johnston undertook the representation of our plaintiffs, we can infer that these relationships led to it.

Johnston filed a series of twemty-eight lawsuits in New Bern on behalf of the Cornell sisters seeking recovery of both real and personal property that had been confiscated. All the suits were either ejectments, trover (conversion), or detinue (wrongful detention); and were based on the confiscation of the property because their father, Samuel Cornell, was a loyalist. A number of those lawsuits were on behalf of Elizabeth Cornell Bayard. One of those lawsuits was against Spyers Singleton to recover the New Bern property.

The majority in the assembly had little sympathy for loyalists. Most of them had sacrificed dearly for the cause of the American Revolution. When Johnston filed his multiple lawsuits

in New Bern, Nash and other legislators spearheaded legislation that sought to protect the purchasers of confiscated property: those like Nash's client Spyers Singleton. The new statute required the court to immediately dismiss, without trial, any case filed seeking the recovery of confiscated property, if the defendant filed an affidavit stating the fact of his purchase of the property with a deed issued by the commissioners of confiscated property. This provision revoked and nullified a provision that had existed in every iteration of the confiscation laws up to that point that preserved the right of a jury trial on that issue. Abner Nash represented Spyers Singleton by submitting such an affidavit and moving for a dismissal of all the related cases, including ours.

The lost influence of the common law of England

The first hearing on *Den on Demise of William Bayard and Wife vs. Fen* was at the May 1786 session. Both Den and Fen are legal fictions under common law pleadings designed to avoid the complexities of a suit on title. The case was filed as an action for trespass which everyone knew was a legal fiction. "Den" is John Den, and "Fen" is Richard Fen, made-up names consistent with forms developed under Blackstone and English pleadings. Although the word demise can have other meanings, in this action, a demise is a grant of a right to land, and includes a lease for term of years.

In our state archives, we have a copy of the original complaint that appears to be in Samuel Johnston's handwriting. The complaint reads as though John Den on behalf of Bayard is suing Richard Fen. Then follows a notice, again in what appears to be Johnston's handwriting, to Spyers Singleton, served by the sheriff, that says:

> *I being sued in this Action as a casual ejector and having no claim or title to the same do advise you to appear the first day of the next Superior Court to be held at Newbern for the District at Newbern by some attorney of that court and then and there by a Rule to be made of the same Court to cause yourself to made Defendant in my stead otherwise I shall suffer a Judgment to be entered against me and you will be turned out of possession. Your loving friend, Richard Fen*

The "casual ejector" is the fictitious defendant, Richard Fen. Singleton appeared and was substituted as the real defendant by agreement. The case then became *Den on Demise of Bayard v. Fen* and *Spyers* Singleton. Time has eliminated the fictitious "casual ejector" John Fen but our records retained the surname of our fictitious plaintiff Richard Den. By these archaic pleadings, from a form straight out of Blackstone, the issue was put before the court as a trespass and ejectment, as opposed to a lawsuit to determine title directly. But title is what the case was all about.

At the first hearing in May of 1786, Nash presented the affidavit and moved for dismissal as required by the new statute. This led to a zealous response for the plaintiffs argued by William Richardson Davie. In his argument, Davie urged the judges to deny the motion. He argued that the act of the legislature violated the constitution, was void, not the law, and should not be obeyed by the people. He urged the judges to declare the act denying a jury trial as both an *ex post facto* law and a law denying a fundamental right vested by the constitution that the general assembly lacked the power to override. The judges were loath to declare an act of the legislature void. After attempts on the record to get the parties to settle proved futile, they decided to take the matter under consideration and declined to rule. The case was continued to the next session in November. While the hearing on the motion ended on that morning of Saturday, May 27, 1786, several important events occurred in the days following during the session.

Repercussions for judges and lawyers who stand up to do the right thing

Judge Samuel Ashe, who was 61 years old, was ill and departed immediately after our case was heard on Saturday, ; but Judges Spencer and Williams remained and continued hearing other matters. Two things happened. First, Bayards' attorney William R. Davie went back before the court and sought an order allowing the taking of the deposition of his New York clients, which was allowed.

The second thing that happened should get the attention of every lawyer. Abner Nash and his client Spyers Singleton, with several other witnesses, including future governor Richard Dobbs Spaight, appeared before the grand jury. The grand jury had just been empaneled by the court as the session began. Those witnesses gave testimony about what Davie had said in his argument. The grand jury returned a presentment to the court signed under seal by every grand juror charging Davie with sedition in his argument that the act of the general assembly was not valid law and should be disobeyed and disregarded by the people. There is nothing about the procedure other than the presentment itself in the record. The handwritten original of it can be read in our state archives collections. The only court reference about the incident is a notation in the minutes that the court, with Judges Spencer and Williams present, "quashed" the presentment upon its return to court by the grand jury. Alfred Moore is listed as an attorney for the defendant Spyers Singleton, but it is more likely that he was appearing in his position as attorney general, charged with defending acts of the legislature. He had joined in Nash's motion to dismiss. His signature would have been required to convert the presentment into an indictment. Instead, the presentment was quashed. That could have been upon the motion of Davie, or of Moore, or of the court itself *ex mero motu*. The record is silent about the incident, but Francois Xavier Martin, who a decade after our case was decided assembled the record that we read today,

published a newspaper article at the time that reported the incident in the New Bern and Pennsylvania newspapers:

> Col. Davie, particularly, sustained those arguments, with so much warmth and energy, that the grand jury, considering his free investigation of the Assembly's conduct as a criminal step, … presented him on the 27th ult. But the judges, either more indulgent, or better acquainted with the rights of a lawyer defending his client, or unprejudiced citizen of the liberty of his country, discharged him.

The court did not take up our case at the following November 1786 term because Davie was in the process of being elected by our general assembly as one of our representatives to the Constitutional Convention in Philadelphia. That state legislative session began November 20, 1786, in Fayetteville and Davie was at that session representing the town of Halifax. Abner Nash who was representing Singleton had already been elected to the Confederation Congress that was meeting in New York. That session of congress began in New York in November and Nash was present and participated. He died there on December 2, 1786. That left Singleton with only the attorney general, Alfred Moore, representing his interests in our case. No other attorney is named of record for Singleton in the subsequent proceedings.

The general assembly was busy considering what to do about the judges not dismissing the 28 cases as their statute contemplated. Both sides were unhappy with the three judges. Many of the representatives were also lawyers who practiced throughout the eight sites of courts across the state. They were surely aware of many conflicts the bar had with the judges. Davie, Nash, Maclaine, and Hay all joined in bringing the matter before the general assembly. Singleton, along with a number of others similarly situated, filed a petition with the legislature complaining that the judges were not following the law. His petition says both the judges and the state's attorney (Alfred Moore) had remained silent in the face of seditious arguments that the acts of the legislature should not be obeyed. The legislature appointed a joint committee chaired by Richard Dobbs Spaight of Craven County to investigate the judges' conduct. Spaight had been one of the witnesses before the grand jury when the presentment against Davie was returned. A list of charges was prepared and notice with copies of the charges were sent to the judges together with an "invitation" for them to appear to defend themselves. Spencer and Williams traveled to the hearing with Alfred Moore. Moore, who was attorney general, wrote to James Iredell, who was Samuel Johnston's protégé and brother-in-law and said: "*The Assembly have resolved that I shall attend them, but do not say for what purpose*." Samuel Ashe refused to appear and wrote a lengthy letter refuting the charges and alleging that an unnamed but well-known lawyer, John Hay of Fayetteville, was pursuing a private vendetta and had political aspirations of his

own that motivated his effort to have them removed. Judge Spencer had disciplined Hay and Hay had personal disputes with Judge Ashe. The failure to rule in *Bayard* was only one of the charges.

In the end, the committee and the assembly exonerated the judges. However, the struggle between the two political wings continued. Legislators who wanted to hold the judges accountable filed a protest and a lengthy litany of what they contended were wrongs committed by the judges. They filed legislation that mandated that all judges follow the law as passed by the legislature. That failed. When the other side filed an amendment that required the judges to follow the constitution and declare any act that conflicted with it void, that amendment failed as well. The majority then voted to adopt a resolution thanking the judges for their good and faithful service. That passed on a divided vote.

The Motion and the Case Decided

The next session of court was in May of 1787, exactly a year after the matter had first been argued and the case taken under advisement. Attempts to indict Davie and remove the judges had failed, and the judges returned to New Bern with the resolution from the general assembly thanking them for their service. After arguments from the bar, the judges denied the motion to dismiss. They declared that the Act that deprived Elizabeth Bayard and her husband a jury trial was indeed unconstitutional. We can assume Moore was making the argument on behalf of Singleton, since Singleton's principal attorney Abner Nash had died the previous December. After denying the motion to dismiss, the judges set the matter for trial before a jury at the next term, which was November of 1787, over two years after the case had been filed by Samuel Johnston.

At the November 1787 term, a jury was empaneled. Originally, a similar case filed by Elizabeth's sister Hannah had been ordered to be set as the first matter for trial, but that was stricken. A notation says that Alfred Moore "withdrew his plea" as to that case, and we can only surmise what his role was when our case was substituted and called for trial. The court gave instructions which, if followed, required a verdict for Singleton and against Bayard. At that time, there was no "chief justice," and each gave their opinions directly to the jury serially. The case says: "The Court, ASHE, J., SPENCER, J, and WILLIAMS, J., gave their opinion *seriatim,* but unanimously." The case as reported proceeds to lay out both the facts and law to the jurors. The jury found for the defendant Singleton. A contemporary newspaper article makes clear that the jury ruled "consistent with the instructions from the judges," by finding the defendant "not guilty." That was an appropriate civil verdict at the time indicating Singleton was not guilty of any civil trespass, because he was the legal owner. It was a jury that spoke the final word. And upon that verdict, the contemporary

newspaper article reports: "the remaining twenty-seven causes upon similar or less substantial grounds, were all swept off the docket."

And thus ended the saga. It all began with one of the most respected men in the province attempting to shield his property from confiscation because he decided to remain a loyalist. The defendant Singleton first tried to have the conveyance to the loyalist's daughter validated, but the sentiments at the time were so against loyalists that the jury affirmed the power of the state to confiscate the land of the loyalist, even though it passed through his daughter who was never so branded. Singleton, a patriot, then sought to have the claim of the daughter when she sought to recover the property declared void. Public sentiment remained against the family of the loyalist, and the conveyance was again declared void by the jury so that the purchaser's title remained secure. However, to get to this same result that the legislature intended (to secure the title of purchasers of confiscated property) the court declared unconstitutional the very act that sought to accomplish that result because it denied the claimant the right to a jury trial. It was that constitutionally protected right to a trial by a jury of her peers that the legislature could not override. But, be careful what you ask for. The jury that the plaintiff fought so hard to get, ruled against her. The case stands not so much as a vindication of the rights of the innocent daughter of a loyalist to redress a wrong, but rather as a vindication of the rights of every citizen to those fundamental rights that even the legislature cannot nullify.

Conclusion and Summary

There are so many other fascinating facts surrounding this litigation that it took your author over one hundred pages of narration to get through them. For example, there is no original transcript from the case. The case was covered by New Bern printer and publisher Francois Xavier Martin who studied law under Singleton's lawyer Abner Nash before compiling the records of cases "from documents as they came into my hands, disregarding chronological order." The opinion was not published until a decade after the trial.

Francois Xavier Martin's 1797 publication became known as *Martin's Reports* and became the first part of volume one of the *North Carolina Reports*. He was appointed by President James Madison to the federal bench in the Mississippi territory. From there he went to the supreme court of the Louisiana territory. He became the longest serving supreme court justice in Louisiana, becoming the "Father of Louisiana Law." He was blind for the last ten years of his service as its chief justice. The story of putting together the five pages of the opinion from records, newspaper articles, and recollections is fascinating.

We would like to know more about the very ambiguous roles of James Iredell and Alfred Moore, the only two North Carolinians to serve on the United States Supreme Court.

Iredell, who had been appointed by George Washington died in 1799. President John Adams appointed Alfred Moore in his place. Moore was serving on that court when on February 24, 1803, John Marshall read the decision in *Marbury v. Madison* that says the same thing for the federal courts that our court said sixteen years before. Much of that decision resonates with an earlier memorandum Iredell had written and Francois Xavier Martin probably published between the May 1786 and May 1787 hearings in our case. Our colleague Willis Whichard says Moore "sat silently as the decision was announced." There is no record of any argument by Iredell in our case, and there is clear evidence he had previously represented Singleton. Had he argued the case, it is likely the event would have been noted somewhere. So, it is somewhat of a mystery that he is listed as counsel for Elizabeth. That entry would have been added by Francois Xavier Martin when he published the report a decade after the events, and after Iredell was on the U.S. Supreme Court.

People like Penelope Barker and Susanna Vail who instigated the Edenton Tea Party are part of the context for our story as Samuel Cornell made his decision in New Bern to support the crown, Samuel Ashe made his decision in Wilmington to rebel against it, and Samuel Johnston in Edenton dramatically changed sides to support the American Revolution . The daughter of a loyalist gave her name to one of the most pivotal court decisions in our state's history. America's first civil war separated families, tested friendships, and created political turmoil that look and feel like birth pangs. Standing behind the five pages the decision occupies in our state Supreme Court Reports are political forces and legal maneuvering reflective of one of the most turbulent times in our history.

This case resolved an issue that had been left open in our state constitution of 1776. Lawyers involved in this case represented us at the Constitutional Convention in Philadelphia the same year our decision was handed down. Richard Dobbs Spaight and William Richardson Davie knowingly left the same issue unresolved in our Federal Constitution.

In May of 1787, three judges – Samuel Ashe, Samuel Spencer, and John Williams – after whom towns and counties have been named, withstood threats of impeachment for following their duty to resolve a dispute the parties could or would not settle. They applied the law as they understood the law. The price of doing the right thing put them in jeopardy of impeachment. Judge Samuel Ashe's succinct response to the legal, legislative, and political attacks on the three judges for performing their duty in our case forms a firm foundation for those of us who stand on their shoulders and follow this precedent:

> *If my opinion of our Constitution is an error I fear it is an incurable one, for I had the honor to assist in the forming it and confess I so designed it*.