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. 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. 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. 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. 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 paling 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,
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.
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.”\textsuperscript{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.”\textsuperscript{13} Further, Potter recalled attending a large ball in Philadelphia where George Washington and John Adams were present.\textsuperscript{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].”\textsuperscript{15}

As a guest at one of Washington’s social events in Philadelphia, Potter chronicled being introduced to Washington as hailing from North Carolina.\textsuperscript{16} Potter recalled that Washington engaged him in a personable conversation on the subject of Potter’s home state.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{21} In 1799, Potter married Sylvia

\begin{thebibliography}{9}
\bibitem{12} Id.
\bibitem{13} Id.
\bibitem{14} Id.
\bibitem{15} Id.
\bibitem{16} Id.
\bibitem{17} Id.
\bibitem{18} Id.
\bibitem{19} Id.
\bibitem{20} Id.
\bibitem{21} BRIGGS, supra note 3, at 8.
\end{thebibliography}
Easton, the daughter of Raleigh merchant Major James Easton. Potter purchased two acres of land bordered by Harrett, Morgan, McDowell, and Salisbury streets and adjacent to Union Square. There, Potter built his home within the same block as the First Presbyterian Church, which is still active today. 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." Potter also owned two unimproved lots south of the city limits, near the original Governor's Palace, that now host parts of Shaw University.

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." 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.

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 "[f]ound 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.


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


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.

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. 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.

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. President Jefferson understood Potter might be hesitant to accept the nomination because the legislation authorizing the appointment was in danger of being repealed. 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." 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 ..."

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. The Act provided that the states be divided into districts, one consisting of the entire state of North Carolina. The districts were classed into six circuits, with the

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").
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.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{39} Three criminal trials were held concerning the passing of counterfeit bank notes.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{44} Judge Potter’s nomination as a district court judge was confirmed by Congress the next day.\textsuperscript{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.\textsuperscript{46} The Act required Supreme Court justices to

\textsuperscript{37} Id. at § 6. At the time, the federal circuit court functioned similarly to today’s federal court of appeals.

\textsuperscript{38} BRIGGS, supra note 3, at 6 (internal quotations omitted).

\textsuperscript{39} Raleigh, WKLY. RALEIGH REG., Nov. 10, 1801, at 5.

\textsuperscript{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).

\textsuperscript{41} See WKLY. RALEIGH REG., Nov. 10, 1801, at 2.

\textsuperscript{42} See Judiciary Act of 1802, ch. 31, 2 Stat. 156, 157–63 (1802).

\textsuperscript{43} Id. at § 5.

\textsuperscript{44} BRIGGS, supra note 3, at 7.

\textsuperscript{45} Id.

\textsuperscript{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. In the district of North Carolina, the circuit court would be held twice per year. 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. Pursuant to the Act, North Carolina was divided in three districts: Albermarle, Pamptico, and Cape Fear. Albermarle's court was held at Edenton, Pamptico at New Bern, and Cape Fear at Wilmington. The federal district courts held at these three eastern North Carolina towns were the only federal district court locations for the entire state. 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.

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. 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. 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.

47. Id.
48. Id.
49. Id. at § 7.
50. Id.
51. Id.
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.

https://scholarship.law.campbell.edu/clr/vol41/iss1/4
Each district held court in April, August, and December, meaning Judge Potter had to travel to all three towns three times per year. 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. 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. 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, James Iredell, Jr., United States Attorney Thomas Devereux, George Badger, Duncan McRae, Robert Dick, Governor William Graham, Bartholomew Fuller, and General Robert B. Taylor. 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. Moreover, Judge Potter shared the federal bench in Raleigh with Chief Justice John Marshall and Associate Supreme Court of the United States Attorney Thomas Devereux, George Badger, Duncan McRae, Robert Dick, Governor William Graham, Bartholomew Fuller, and General Robert B. Taylor.

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58. Id.
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.
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.

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.”

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. 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. The Supreme Court, with Chief Justice Marshall on the bench, ultimately ruled against


74. Id.

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

Judge Potter’s interpretation of the North Carolina statute.\footnote{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.\footnote{78} This time, despite Marshall’s participation in the proceedings, the Court disagreed with Marshall’s position and agreed with Potter.\footnote{79} This was “always a feather in [Potter’s] cap.”\footnote{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 . . .”\footnote{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.\footnote{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.\footnote{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.\footnote{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.”\footnote{85}

\footnote{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.}
\footnote{78. Reminiscences of the Bench and Fayetteville Bar, FAYETTEVILLE OBSERVER, July 5, 1894, at 2.}
\footnote{79. Id.}
\footnote{80. Id.}
\footnote{81. New York Correspondence, OBSERVER (Raleigh), May 31, 1879, at 2.}
\footnote{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.}
\footnote{83. United States Circuit Court, WKLY. STANDARD (Raleigh), May 15, 1835, at 3.}
\footnote{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.}
\footnote{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.\textsuperscript{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.\textsuperscript{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 Daniel\textsuperscript{90} in May of 1841, Potter found himself unsettled by a jury conviction in an admiralty case before the circuit court.\textsuperscript{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.\textsuperscript{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.\textsuperscript{93}

The incident involving Justice Daniel was not the only time Potter clashed with a Supreme Court Justice. On one occasion, Potter and Justice Wayne\textsuperscript{94} clashed over the authority to appoint a clerk of the circuit court in North Carolina after the role became vacant in 1857.\textsuperscript{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.\textsuperscript{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

\textsuperscript{88} See In Cumberland County, N.C. Star (Raleigh), June 15, 1832, at 2.
\textsuperscript{89} Republican Whig Ticket, supra 70.
\textsuperscript{90} See Daniel, supra note 71.
\textsuperscript{92} Letter from Henry Potter, Judge, to John Heritage Bryan, Attorney, supra note 90.
\textsuperscript{93} Id.
\textsuperscript{94} See Wayne, supra note 72.
\textsuperscript{95} U.S. Circuit Court: The Clerkship, Semi-Wkly. Standard (Raleigh), Sept. 16, 1857, at 3.
\textsuperscript{96} Id.
mostly relating to admiralty, bankruptcy, patent, and property. 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.” 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. 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.

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. 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. The Chief Justice ultimately reversed Judge Potter's decision below.

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).
99. See generally Judiciary Act of 1802, 2 Stat. 31 (1802).
100. See id.
102. Id.
103. Id.
Marshall remained in Richmond to attend to his ill wife. 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. 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. 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.

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. 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. 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. 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 Barbour 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. The Court rejected crucial testimony offered by the arresting officer; therefore, both men were acquitted. After Loftis’ acquittal, the authorities re-opened 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. 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. The media humorously described the conviction as “a striking case of ‘hallooing before getting out of the woods.’”

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. 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. 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.

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. 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.

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 [land-holders], will excite a lively interest in its decision, and produce a crowded court.” 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.
118. Id. at 155–56.
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. 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. 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.” Judge Potter concluded his charge by instructing the jury that it was his opinion that the law was in favor of the defendants.

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.” 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].”

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. 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, 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.”
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. 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. Congress designated the federal district court in every district to hear all matters and proceedings in bankruptcy arising under the Act. Because the Act required that public notice of petitions must be given in the newspaper, 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.”

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. 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. 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. He felt this unique procedure was the only way to carry the bankruptcy law into effect.

To alleviate confusion surrounding the Bankruptcy Act, Judge Potter tailored and published bankruptcy rules and forms, which were sold in bookstores across the state. Further, Judge Potter frequently explained...
bankruptcy proceedings and laws in local newspapers.\textsuperscript{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.\textsuperscript{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.\textsuperscript{144} By September of 1842, six hundred and eighty-four petitions had been filed throughout the State of North Carolina.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{148} Congress relieved Potter’s sufferings when the Act was repealed in 1843.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\textsuperscript{142} Id.
\textsuperscript{143} U.S. District Court of N. Carolina, FAYETTEVILLE OBSERVER, Nov. 23, 1842, at 3.
\textsuperscript{144} Id.
\textsuperscript{145} Id.
\textsuperscript{146} In Bankruptcy, FAYETTEVILLE OBSERVER, Sept. 21, 1842, at 3.
\textsuperscript{148} Id.
\textsuperscript{149} Act of Mar. 3, 1843, ch. 82, 5 Stat. 614 (1843).
\textsuperscript{150} Act of Dec. 18, 1812, ch. 5, 2 Stat. 788 (1812); BRIGGS, supra note 3, at 12–13.
\textsuperscript{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.\textsuperscript{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.\textsuperscript{153} Potter assisted with no success as the superior court judge disagreed and sustained the judgment.\textsuperscript{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.”\textsuperscript{155} Potter then asked the Governor to completely pardon the defendants, however it is unknown if Governor Stone acted upon Potter’s recommendation.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{160}

Potter’s lengthy speech was reportedly delivered after midnight and continued until day-break.\textsuperscript{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.\textsuperscript{162} The jury, having been occupied throughout the night and early morning, ultimately found Owen guilty after

\textsuperscript{152} Id.; N.C. STAR (Raleigh), Oct. 5, 1809, at 3.
\textsuperscript{153} Letter from Henry Potter, supra note 150.
\textsuperscript{154} Id.
\textsuperscript{155} Id.
\textsuperscript{156} Id.
\textsuperscript{157} Trial of John Owen, Charged with the Murder of Patrick Conway, N.C. STAR (Raleigh), Apr. 12, 1810, at 1.
\textsuperscript{158} Id. at 3.
\textsuperscript{159} Id.
\textsuperscript{160} Id.
\textsuperscript{161} Id.
\textsuperscript{162} Id.

https://scholarship.law.campbell.edu/clr/vol41/iss1/4
two hours of deliberation. 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.

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. During his administration of Stone's estate, Potter moved in the Wake County Court for allowance of commissions as administrator. This dispute ultimately made it to the Supreme Court of North Carolina in 1822 where the Court granted Potter $809.19. Chief Justice John Louis Taylor wrote the opinion, which prescribed the rules for executor compensation in North Carolina.

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. 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. Potter embarked on what he referred to as his "mission" in New Bern,
diligently collecting pertinent documents there and in Hillsborough. Potter then travelled to the nation's capital, Philadelphia, in May of 1793 to deliver the collected documents to the North Carolina agents. 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. 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. 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. 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." Abisha Thomas praised Potter's efforts and petitioned the Governor to give Potter a large reward. However, Potter only asked Governor Spaight to reimburse his expenses and grant a moderate allowance.

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. The purpose of this was to make state laws more easily accessible to North Carolinians. 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. The General Assembly appointed Judge Potter, Supreme Court of North Carolina Chief Justice John L. Taylor, and Bartlett

180. Id.
Yancey to carry out the task. Three years later, the trio reported their findings to the General Assembly, which then authorized Judge Potter to manage publication. 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. 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. The legislature requested that Judge Potter propose a system of bankruptcy laws aimed to prevent imprisonment of the honest debtor.

2. The Governor's Residence

In 1813, the North Carolina General Assembly passed legislation to provide better accommodation for the Governors of North Carolina. 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. 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. 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. The resulting Governor's "Palace" was built at the foot of Fayetteville Street where Memorial Auditorium is located today.

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.
189. Id.
190. Id.
191. Id.; Interesting Sale, WKLY. RALEIGH REG., Mar. 18, 1814, at 3.
192. 1 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{198} The Board appointed Potter as a Commissioner to oversee two fundraising lotteries in June and December of 1802.\textsuperscript{199} The funds generated from the lotteries assisted in the completion of the "main building of the University."\textsuperscript{200} Potter also personally contributed money in 1809 for the erection of a main building.\textsuperscript{201} In addition, he served as a member of the University's Dialectic Society in 1813.\textsuperscript{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.\textsuperscript{203} Governor Manly referred to Potter as

\begin{itemize}
  \item \textsuperscript{193} Act of Nov. 20, 1819, ch. 4, 1819 N.C. Sess. Laws 10–11; \textit{History of Wake}, \textit{Raleigh News}, July 7, 1876, at 5.
  \item \textsuperscript{194} \textit{Briggs}, \textit{supra} note 3, at 15.
  \item \textsuperscript{195} \textit{University, N.C. Minerva & Fayetteville Advertiser}, Nov. 12, 1796, at 3.
  \item \textsuperscript{196} \textit{Briggs}, \textit{supra} note 3, at 16. Potter began his involvement with the University of North Carolina around 1799. \textit{See id}.
  \item \textsuperscript{197} \textit{Id.; University, Raleigh Minerva}, June 11, 1807, at 3 (Visitation); \textit{University, Wkly. Raleigh Reg.}, May 18, 1802, at 3 (Examination).
  \item \textsuperscript{198} Act of Nov. 16, 1801, ch. 8, § 1, 1801 N.C. Sess. Laws 174.
  \item \textsuperscript{199} \textit{Scheme of a Lottery, Wkly. Raleigh Reg.}, May 4, 1802, at 2; \textit{Scheme of Lottery No. II, Raleigh Minerva}, July 20, 1802, at 4.
  \item \textsuperscript{200} 1 Kemp P. Battle, \textit{History of the University of North Carolina} 126–27 (1907); \textit{Scheme of a Lottery, Raleigh Minerva}, Feb. 16, 1802, at 4.
  \item \textsuperscript{201} \textit{Briggs}, \textit{supra} note 3, at 16.
  \item \textsuperscript{202} \textit{Catalogue of the Members of the Dialectic Society, Instituted in the University of North Carolina} 45 (June 3, 1795) \texttt{https://perma.cc/S2C2-KKVA}.
  \item \textsuperscript{203} \textit{A Merited Compliment, Raleigh Reg.}, May 16, 1849, at 2.
\end{itemize}
"[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." 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." 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.

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. The petitioners noticed there was no academy in the capital city and lamented at having to send their children to distant institutions. Agreeing with their request, the General Assembly designated Burke Square to the Trustees of the Raleigh Academy to build the academy. Potter was heavily involved in many aspects of the Raleigh Academy as trustee. In 1815, Potter was appointed by the Raleigh Academy to receive applications for free education from the State's poor.

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. Further, Potter was a trustee of Pomona Academy near Raleigh, a trustee of The Donaldson Academy and Manual Labor School in Fayetteville; on the council of advice at the Fayetteville Literary, Scientific and Military Academy; on the school

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204. Id.
205. Id.
206. Id.
208. Id.
209. Id. at 27.
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.
215. Fayetteville Literary, Scientific and Military Academy, FAYETTEVILLE OBSERVER, May 13, 1830, at 3.
committee for the Fayetteville Female Seminary; and assisted Governor Morehead with the establishment of Edgeworth Female Seminary. Potter also offered school children in Fayetteville a place to live, on reasonable terms, at his private boarding home. 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 . . . .”

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. Potter was appointed by the County Court to serve as a Commissioner with the responsibility to oversee the erection of the market-house. 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. Eighteen years later, Judge Potter was also considered for a seat on the infant Supreme Court of North Carolina.

Potter served several terms as a Raleigh City Commissioner. As an elected Commissioner, Potter was responsible for, among other things, the spending of tax revenue. In April of 1811, volunteer citizens of Raleigh were apportioned into classes to participate in the General Watch for the City. 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.
221. Id.
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. 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.

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. This annual reading of the Declaration continued after Potter’s move to Fayetteville.

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. Judge Potter was appointed to a Committee of Arrangements tasked with the preparation for honoring and entertaining Lafayette. That same year, Vice President John C. Calhoun visited Raleigh for three days where he was honored with a dinner at the Eagle Hotel. The dinner was hosted by Governor Hutchins Burton along with Judge Potter, who offered a patriotic toast.

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. 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. The long-planned State Bank of North Carolina officially opened its headquarters in Raleigh in 1810. By June of 1811, Judge Potter was one

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.
233. 1 MURRAY, supra note 53, at 221.
234. RALEIGH REG., Nov. 15, 1825, at 3.
235. 1 MURRAY, supra note 53, at 128.
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. 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. 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. The headquarters, located on New Bern Avenue, was completed in 1814 and is now the oldest brick building in Wake County.

Judge Potter served as a Director of the bank until he resigned in 1825.

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. As a result, the Neuse River Company was incorporated by a private act of the General Assembly. Potter assisted in an effort to raise funds and oversee the business. When the company changed ownership in 1812, it was managed by a group known as The Neuse River Navigation Company. Judge Potter was elected to be a Director of the company and named President in 1818. Under Potter's presidency, the Company launched an experimental vessel from Wake County, which made it to New Bern in fifteen days. 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.

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 Minerwa, June 21, 1811, at 3.
239. Id.
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).
243. 1 Murray, supra note 53, at 132.
244. Act of 1801, ch. 187 (on file with author).
246. 1 Murray, supra note 53, at 132.
249. Id.
stagecoaches called the Raleigh & Plymouth Stages that offered convenient access to northern states through Raleigh. In Fayetteville, Potter participated in efforts to establish and expand railroads connecting major cities in North Carolina and other states.

Along with Potter's involvement with many serious ventures, Potter used his prominence to promote commercial products. Interestingly, Judge Potter was apparently inflicted 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. In an 1835 advertisement, Potter wrote that he considered the pills so valuable that he made sure his supply was never depleted. Furthermore, newspapers advertised Potter's recommendation of a shoe polish and his endorsement of a Fayetteville dentist. Another idiosyncratic role that Potter performed was willingly safeguarding the lost and found property of Fayetteville citizens. Further, Potter often brazenly advertised in local newspapers asking individuals to return borrowed books to him that he deemed overdue.

6. An Author and a Scholar

Judge Potter authored a book in 1816 popularly known as "Potter's Justice of the Peace." 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." 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-Dyspeptic 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.


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.


literature and science, had greatly increased the demand for citizens to be informed of "the civil polity, the municipal regulations, and the administration of the laws, under which they live, and by which they consent to be governed." 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. Joseph Gales published the book and declared that Potter's work was more complete than any former publication of the kind. 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.

7. Community Involvement

On June 11, 1816, a devastating fire quickly destroyed fifty-one buildings on Fayetteville Street in downtown Raleigh. To mitigate the losses of the fire's greatest victims, Judge Potter was appointed as part of a fundraising committee. The fire relief committee solicited the citizens of Raleigh and neighboring towns to contribute to a relief fund. 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.

Judge Potter was heavily involved in the American Colonization Society. 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. Colonization Society founders wished to eradicate the slave-based agrarian economy but felt that freed slaves would be unable to assimilate in America. Potter was chosen as manager of the Raleigh-based chapter of

260. Id. at [iii].
261. Id.
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.
the society and continued his involvement in Fayetteville. In 1819, Potter was chosen to draft a letter expressing the North Carolina Colonization Society’s loyalty to their parent society. 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. 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. While we cannot know Potter’s motivations, we do know that Potter owned slaves and continued his ownership while involved in the Society.

Further, Potter was an active freemason and, by March of 1800, was the Grand Treasurer of the Grand Lodge of North Carolina. At the time, the Grand Lodge in Raleigh included many other leading North Carolinians. After moving to Fayetteville, Potter joined the Phoenix Lodge No. 8.

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

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.*
274. *Id.*
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. The Potters were founding members of the First Presbyterian Church established in Raleigh in early 1816. 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. 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. The church was completed in February of 1818 and was the first brick church built in Raleigh. The Potters paid over five hundred dollars to reserve a pew, which was sold upon their move to Fayetteville for $60.00.

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.” The First Presbyterian Church in Raleigh is still active at the same location today; however, the original brick building was replaced in 1899.

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. 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. Judge Potter also served as the President of the Presbyterian Sabbath School Society in Fayetteville and was heavily involved in the Temperance Society. 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.

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.


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).


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
buoyant flow of spirits that were greater than many young men.\textsuperscript{300} Potter continued to travel on his circuit until he became dangerously ill while holding district court at Edenton in October of 1857.\textsuperscript{301} Potter’s illness was reported as life-threatening.\textsuperscript{302} However, the tenacious Judge Potter returned to his residence in Fayetteville shortly thereafter while suffering “somewhat from influenza,” but was not incapacitated.\textsuperscript{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.\textsuperscript{304} Of course, after his return home, the resilient Judge Potter maintained his intention to leave that same week to hold court at Wilmington.\textsuperscript{305} Unfortunately, Judge Potter never made it to Wilmington because his sickness confined him to his bed in Fayetteville for at least four weeks.\textsuperscript{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.\textsuperscript{307} The November 1857 session—Judge Potter’s last session—lasted only one day and consisted of considerable business involving marine cases.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{310} “Truly, ‘his end was peace.’”\textsuperscript{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.\textsuperscript{312} Major publications across the nation lamented his death and published descriptions of Judge Potter’s life and accomplishments.\textsuperscript{313}

\textsuperscript{300} Olden Times, supra note 6. \\
\textsuperscript{301} Illness of Judge Potter, SEMI-WKLY. STANDARD (Raleigh), Oct. 24, 1857, at 3. \\
\textsuperscript{302} Id. \\
\textsuperscript{303} Judge Potter, RALEIGH CHRISTIAN ADVOC., Oct. 29, 1857, at 2. \\
\textsuperscript{304} Judge Potter, WILMINGTON J., Oct. 30, 1857, at 2. \\
\textsuperscript{305} Id. \\
\textsuperscript{306} Death of Judge Potter, FAYETTEVILLE OBSERVER, SEMI-WKLY., Dec. 21, 1857, at 3. \\
\textsuperscript{307} U.S. District Court, WKLY. STANDARD (Raleigh), Dec. 2, 1857, at 1. \\
\textsuperscript{308} Id. \\
\textsuperscript{309} Id.; BRIGGS, supra note 3, at 19. \\
\textsuperscript{310} Death of Judge Potter, supra note 305. \\
\textsuperscript{311} Id. \\
\textsuperscript{312} Id.; BRIGGS, supra note 3, at 20. \\
\textsuperscript{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." 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."