

1-1979

The Tennessee County Courts Under the North Carolina and Territorial Governments: The Davidson County Court of Pleas and Quarter Sessions, 1783-1796, as a Case Study

Theodore Brown Jr.

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Courts Commons](#), and the [Legal History Commons](#)

Recommended Citation

Theodore Brown Jr., *The Tennessee County Courts Under the North Carolina and Territorial Governments: The Davidson County Court of Pleas and Quarter Sessions, 1783-1796, as a Case Study*, 32 *Vanderbilt Law Review* 349 (1979)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol32/iss1/14>

This Note is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in *Vanderbilt Law Review* by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

NOTES

The Tennessee County Courts Under the North Carolina and Territorial Governments: The Davidson County Court of Pleas and Quarter Sessions, 1783-1796, as a Case Study*

TABLE OF CONTENTS

I.	INTRODUCTION	349
II.	THE JURISDICTION AND THE REGULATORY AUTHORITY OF THE COUNTY COURTS OF PLEAS AND QUARTER SESSIONS UNDER THE NORTH CAROLINA AND TERRITORIAL GOVERNMENTS	352
	A. <i>The Jurisdiction of the County Courts</i>	352
	(1) The Jurisdiction of the Courts over Civil Disputes	353
	(2) The Jurisdiction of the Courts over Criminal and Quasi-Criminal Offenses	354
	(3) The Jurisdiction of the Courts over Domestic Servants	357
	(4) The Jurisdiction of the Courts over the Institution of Slavery	358
	B. <i>The Legislative and Regulatory Authority of the County Courts</i>	361
	(1) Taxation Powers	362
	(2) Regulatory and Administrative Powers ...	363
III.	THE ROLE OF PETIT JURIES IN THE COUNTY COURTS ..	367

* The following repository symbols are used to identify manuscript sources throughout this paper:

DLC: Library of Congress, Washington, D.C.

THLA: Ladies Hermitage Association, Hermitage.

TSLA: Tennessee State Library and Archives, Nashville, Tenn.

DaCo Deed Bk. A: Davidson County Deed Book A TSLA Reel 1.

DaCo Deed Bk. B: Davidson County Deed Book B TSLA Reel 1.

The following source symbols are used to identify source materials throughout this paper.

DaCo Min. Bk. A: Davidson County Court of Pleas and Quarter Sessions Minute Book A, TSLA Reel 1597.

DaCo Min. Bk. B: Davidson County Court of Pleas and Quarter Sessions Minute Book B, TSLA Reel 1597.

DaCo Wills & Inventories: Davidson County Wills and Inventories, TSLA Reel 427.

IV. THE DAVIDSON COUNTY COURT OF PLEAS AND QUARTER SESSIONS, 1783-1796	371
A. <i>Litigation Characteristics</i>	372
(1) Case Load	372
(2) Notice of Actions Tried	374
(3) Resolution of Jurisdictional Conflicts	376
B. <i>Attendance Characteristics</i>	376
C. <i>Sources of Law</i>	377
(1) Statutes	378
(2) Reports	378
(3) Secondary Works	379
D. <i>The Justices</i>	382
(1) Occupational and Educational Backgrounds	382
(2) Familial Interrelationships	385
(3) Landholdings	385
(4) Contemporaneous Political and Military Appointments	387
(5) Advocatory Appearances Before the Court ..	389
E. <i>The Attorneys</i>	390
(1) Educational Backgrounds	392
(2) Case Loads and Court Appearances	394
V. CONCLUSION	395
VI. APPENDIX	396

I. INTRODUCTION

American legal historians only recently have begun to devote attention to the contributions of local courts to the development of American law and legal institutions in the period between the colonies' declaration of independence from Great Britain and the nation's Civil War some eight decades later.¹ The resulting studies

1. The studies include M. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1780-1860* (1977); R. IRELAND, *THE COUNTY COURTS IN ANTE-BELLUM KENTUCKY* (1972); C. SYDNOR, *AMERICAN REVOLUTIONARIES IN THE MAKING* (1952); BROWN, *Frontier Justice: Wayne County, 1796-1836*, 16 AM. J. LEGAL HIST. 126 (1972); ELY, *Charleston's Court of Wardens, 1783-1800: A Post-Revolutionary Experiment in Municipal Justice*, 27 S.C. L. REV. 645 (1976); HINDUS, *Contours of Crime and Justice in Massachusetts and South Carolina, 1767-1878*, 21 AM. J. LEGAL HIST. 212 (1977); NASH, *Fairness and Formalism in the Trials of Blacks in the State Supreme Courts of the Old South*, 56 VA. L. REV. 64 (1970) [hereinafter cited as *Fairness and Formalism*]; NASH, *Texas Justice in the Age of Slavery: Appeals Concerning Blacks and the Antebellum State Supreme Court*, 8 HOUS. L. REV. 438 (1971). A forthcoming addition to the list is the selection of Andrew Jackson's legal papers that Professor James W. Ely, Jr., and the author are in the process of editing for publication in conjunction with the Andrew Jackson Papers Project.

have demonstrated that as instruments of law, economics, and politics, local courts in the post-revolutionary United States affected the lives and fortunes of Americans in profound and far-reaching respects.²

Primary among the post-revolutionary American local courts were the county courts, an English institution of county government that had been adopted widely throughout the American colonies and that had been influenced heavily by the English tradition.³ Those county courts functioning in North Carolina both before and after the American war for independence were no exception.

This Note will attempt to provide the framework for a more extended institutional examination of the post-revolutionary courts that functioned in the counties of western-most North Carolina and, beginning in 1790, the Territory South of the River Ohio before their organization into the new state of Tennessee in June 1796.⁴ The Note initially will set forth the jurisdiction and the regulatory authority of the county courts of pleas and quarter sessions under the North Carolina and territorial governments, will describe the juris-

Unfortunately, the only studies of the early Tennessee courts treat the county courts summarily and as a rule go no further than to describe their statutory jurisdiction. *See, e.g.*, Williams, *The Genesis of the Tennessee Supreme Court*, 6 TENN. L. REV. 75 (1928); Williams, *History of the Courts of Chancery of Tennessee*, 2 TENN. L. REV. 6 (1923); Williams, *Phases of Tennessee Supreme Court History*, 18 TENN. L. REV. 323 (1944); Williams, *A Remarkable Bench: Campbell, Jackson and White*, 16 TENN. L. REV. 907 (1941); P. Cason, *History of Tennessee's Court System from Its Beginning to 1834* (August 1930) (unpublished thesis in George Peabody College Library).

2. *See, e.g.*, M. HORWITZ, *supra* note 1, at xv-xvi, 70-108, 140-59, 253-54; R. IRELAND, *supra* note 1, at 171.

3. *See* R. IRELAND, *supra* note 1, at 1; C. SYDNOR, *supra* note 1, at 132.

4. Eleven counties had been established and organized before the new state was admitted into the union on June 1, 1796: Washington (1777); Sullivan (1779); Greene (1783); Davidson (1783); Hawkins (1787); Sumner (1787); Tennessee (1788); Knox (1792); Jefferson (1792); Sevier (1794); and Blount (1795). Ch. 6, 1795 Terr. S. of R. Ohio Acts, *reprinted in* 1 LAWS OF THE STATE OF TENNESSEE 517 (E. Scott comp. 1821) [hereinafter cited as SCOTT]; ch. 11, 1794 Terr. S. of R. Ohio Acts, *reprinted in* 1 SCOTT, *supra*, at 500; Ordinance of June 11, 1792, 1792 Terr. S. of R. Ohio Acts, *reprinted in* 1 SCOTT, *supra*, at 451; chs. 28, 29, 1788 LAWS OF N.C., *reprinted in* LAWS OF THE STATE OF NORTH CAROLINA 641, 642 (J. Iredell ed. 1791) [hereinafter cited as IREDELL], 1 SCOTT, *supra*, at 401, 402; chs. 32, 34, 1786 LAWS OF N.C., *reprinted in* IREDELL, *supra*, at 598, 599, 1 SCOTT, *supra*, at 377, 378; chs. 51, 52, 1783 LAWS OF N.C., *reprinted in* IREDELL, *supra*, at 473, 1 SCOTT, *supra*, at 282; ch. 29, 1779 LAWS OF N.C. (Oct. Sess.), *reprinted in* IREDELL, *supra*, at 395, 1 SCOTT, *supra*, at 248-49; ch. 31, 1777 LAWS OF N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra*, at 346-47, 1 SCOTT, *supra*, at 221-22. Two additional counties—Carter and Grainger—were established in April 1796 but were not organized until after admission of the new state into the union. Act of April 9, 1796, ch. 31, 1796 Tenn. Pub. Acts, *reprinted in* 1 SCOTT, *supra*, at 577; Act of April 22, 1796, ch. 28, 1796 Tenn. Pub. Acts, *reprinted in* 1 SCOTT, *supra*, at 572. Robertson and Montgomery counties, which also were established in April 1796, were created from what had been Tennessee County and likewise were not organized until after statehood. Ch. 30, 1796 Tenn. Pub. Acts, *reprinted in* 1 SCOTT, *supra*, at 575.

diction and authority of the courts' individual justices, and will examine the role of the petit jury in exercising a check upon the courts' power. With that background, data extracted from the records that survive for one of the county courts for the period will be presented and analyzed. In particular, the Note will focus upon that court's judicial business. Attention will be directed to the characteristics of the court's litigation, to the sources of law relied upon by the court, and to the characteristics of its own justices and of the attorneys who practiced at its bar.

This Note uses as a case study the court that functioned in Davidson County between its organization in October 1783⁵ and April 1796, when the court convened for its final term before statehood. The author's justification for using the Davidson county court as the subject of the case study is that, with the possible exception of those that survive for Knox and Sumner counties, more extensive and, for the most part, more complete records are available for that court than for any other of the western county courts that functioned before 1796.⁶ The author in no way claims that the Davidson county court is representative of those courts. The Davidson county court merely is the first to be examined.

II. THE JURISDICTION AND THE REGULATORY AUTHORITY OF THE COUNTY COURTS OF PLEAS AND QUARTER SESSIONS UNDER THE NORTH CAROLINA AND TERRITORIAL GOVERNMENTS

A. *The Jurisdiction of the County Courts*

Under both the North Carolina and territorial governments, the original and appellate jurisdiction of the county courts⁷ extended to

5. Before statutory creation of the county and its court, the residents of the Cumberland area had appointed from among themselves an uncommissioned twelve-man Committee of the Cumberland Association that met periodically between January and August of 1783 and exercised many of the judicial functions that the court later performed. See *THREE PIONEER TENNESSEE DOCUMENTS* 23-40 (1964).

6. None of the court records for Tennessee County have been located. The court records for Hawkins County are not available for the years before 1827. The court records for Sullivan County were destroyed by fire in 1863. *TENNESSEE COUNTY DATA FOR HISTORICAL AND GENEALOGICAL RESEARCH* 27, 45 (1966). Although minute books generally are available for the courts in Greene, Jefferson, Washington, and Blount counties, the failure of the clerks of those courts regularly to identify either the nature of the action or the attorneys for each trial entry renders even a remotely accurate examination of those courts impossible. Minute books and scattered appearance and trial dockets are available for the Sumner and Knox county courts, as are volumes of wills and inventories, but the valuable record books containing the texts of litigation documents that are available for the Davidson county court are not available for these two courts. Moreover, the Knox county court was not organized until 1792, nine years after the Davidson county court had begun to function, thus precluding an undistorted comparison of the two courts.

7. See ch. 1, §§ 45-48, 52, 1794 Terr. S. of R. Ohio Acts, reprinted in 1 *SCOTT*, *supra* note 4, at 473-75.

a variety of civil disputes⁸ and criminal and quasi-criminal offenses. In addition, the courts and their individual justices exercised jurisdiction over disputes between domestic servants and their masters. Over the numerous legal conflicts that arose from the institution of slavery, however, the statutes provided for the sharing of jurisdiction among the courts, their justices, and special tribunals composed of justices and slaveowners.

(1) The Jurisdiction of the Courts over Civil Disputes

The county courts' original civil jurisdiction extended to "all causes whatsoever at the common law, within their respective counties, where the debt, damages, or cause of action is above five pounds" and up to one hundred pounds,⁹ all trespass actions except those in which "the Title of Freehold may come in Question," to all detinue and trover actions,¹⁰ to actions in probate,¹¹ and to disputed claims to entries in land.¹² In 1785 the general assembly extended to the county courts jurisdiction to be exercised concurrently with the district superior courts over ejectment actions, actions upon the various writs of formedon, and actions for partition and dower.¹³ The county courts also shared jurisdiction with the superior courts over actions relating to legacies, filial portions, and intestate estates;¹⁴

8. The county courts did not exercise equity jurisdiction. The general assembly in 1777 established the county courts and the superior courts as courts of law. Ch. 2, 1777 Laws of N.C. (Nov. Sess.), reprinted in 1 SCOTT, *supra* note 4, at 165. The general assembly in 1782 granted equity jurisdiction to the superior courts but did not do likewise to the county courts. See ch. 11, §§ 1, 2, 1782 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 432-33, 1 SCOTT, *supra* note 4, at 261-62.

9. Ch. 2, § 61, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 310, 1 SCOTT, *supra* note 4, at 184; see ch. 2, § 10, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 299, 1 SCOTT, *supra* note 4, at 168-69.

10. Ch. 2, § 61, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 310, 1 SCOTT, *supra* note 4, at 184.

11. Ch. 23, § 1, 1789 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 676, 1 SCOTT, *supra* note 4, at 409.

12. Ch. 1, § 6, 1777 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 292, 1 SCOTT, *supra* note 4, at 159.

13. Ch. 2, § 1, 1785 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 547, 1 SCOTT, *supra* note 4, at 330. The statute also extended the courts' jurisdiction to actions in trespass *quare clausum fregit*. *Id.* For the superior courts' jurisdiction, see ch. 22, §§ 8, 9, 1784 Laws of N.C. (Apr. Sess.), reprinted in IREDELL, *supra* note 4, at 490-91, 1 SCOTT, *supra* note 4, at 295-96; ch. 2, §§ 2, 9, 1777 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 292, 299-300, 1 SCOTT, *supra* note 4, at 165-66, 168; ch. 34, 1770 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 251, 1 SCOTT, *supra* note 4, at 123.

14. See ch. 39, § 1, 1789 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 682, 1 SCOTT, *supra* note 4, at 415; ch. 17, 1787 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 618, 1 SCOTT, *supra* note 4, at 385; ch. 2, §§ 2, 61, 1784 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 292, 1 SCOTT, *supra* note 4, at 165-66; ch. 22, §§ 8, 9, 1784 Laws

attachment proceedings;¹⁵ actions arising under the usury statute;¹⁶ and all matters concerning orphans.¹⁷ All judgments by the county courts in civil actions were subject to appeal, upon the posting of appropriate bond, to the superior court for the district in which the county was located.¹⁸

Civil disputes for less than the five-pound statutory amount in controversy, which was increased to ten pounds in 1785¹⁹ and to twenty pounds the following year,²⁰ were cognizable before individual members of the courts, the justices of the peace.²¹ All judgments rendered in civil actions by individual members of the courts were subject to appeal to the full county court of which they were members.²²

(2) The Jurisdiction of the Courts over Criminal and Quasi-Criminal Offenses

Under both the North Carolina and territorial governments the jurisdiction of the county courts over criminal and quasi-criminal offenses was substantially more restricted than that exercised over civil actions. Indeed, the authority of the courts as institutions to regulate the conduct of persons within their jurisdictions was significantly less than that held by their individual members. The courts' only original criminal jurisdiction was restricted to a limited number of offenses and was shared with the district superior courts.²³

of N.C. (Apr. Sess.), *reprinted in* IREDELL, *supra* note 4, at 490-91, 1 SCOTT, *supra* note 4, at 295-96.

15. Ch. 2, §§ 25-33, 1777 Laws of N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra* note 4, at 301-04, 1 SCOTT, *supra* note 4, at 172-77.

16. Ch. 11, § 2, 1741 Laws of N.C., *reprinted in* IREDELL, *supra* note 4, at 75, 1 SCOTT, *supra* note 4, at 53.

17. Ch. 5, 1762 Laws of N.C., *reprinted in* IREDELL, *supra* note 4, at 202, 1 SCOTT, *supra* note 4, at 97.

18. See ch. 2, §§ 82-89, 1777 Laws of N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra* note 4, at 314-16, 1 SCOTT, *supra* note 4, at 190-93.

19. Ch. 2, § 4, 1785 Laws of N.C., *reprinted in* IREDELL, *supra* note 4, at 548, 1 SCOTT, *supra* note 4, at 311.

20. Ch. 14, § 7, 1786 Laws of N.C., *reprinted in* IREDELL, *supra* note 4, at 585, 1 SCOTT, *supra* note 4, at 369-70.

21. Ch. 2, § 4, 1785 Laws of N.C., *reprinted in* IREDELL, *supra* note 4, at 548, 1 SCOTT, *supra* note 4, at 331; ch. 2, § 64, 1777 Laws of N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra* note 4, at 311, 1 SCOTT, *supra* note 4, at 187.

22. Ch. 2, § 70, 1777 Laws of N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra* note 4, at 311, 1 SCOTT, *supra* note 4, at 187.

23. The superior courts' broad jurisdiction over criminal offenses extended to "all pleas of the state, and criminal matters, of what nature, degree, or denomination soever, whether brought before them by original or mesne process, or by certiorari, writ of error, appeal from any inferior court, or by any other ways or means whatsoever . . ." Ch. 2, § 2, 1777 Laws of N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra* note 4, at 296-97, 1 SCOTT, *supra* note 4, at 166.

These offenses included "petit Larcenies, Assaults, Batteries . . . Breaches of the Peace, and other Misdemeanors of what Kind soever, of an inferior Nature"²⁴ and such offenses as hunting deer without meeting the statutory property requirements,²⁵ theft and misbranding of stock,²⁶ and swearing in the presence of the court.²⁷ The county courts also shared jurisdiction with the superior courts to entertain petitions for the discharge of imprisoned insolvent debtors.²⁸ The county courts exercised exclusive original jurisdiction over persons procuring or giving perjured testimony before the court,²⁹ over violations of the statute establishing standard weights and measures,³⁰ over violations of a statute limiting the grazing rights of nonresidents,³¹ and over persons refusing to take an oath of loyalty to the United States.³² The courts also were authorized to issue writs for the determination of "Idiocy or Lunacy."³³ As with final civil judgments, the courts' final criminal judgments were subject to appeal to the district superior courts.³⁴

The individual members of the county courts, the justices of the peace, were granted by statute substantially greater original jurisdiction over criminal and quasi-criminal matters than was granted the courts of which they were members. Individual justices were authorized to fine any individual whom he heard swearing or cursing two shillings and six pence or, if a public official, five shillings.³⁵ Persons drunk on Sunday within the view of any justice were, upon

24. Ch. 2, § 61, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 310, 1 SCOTT, *supra* note 4, at 184.

25. Ch. 13, § 2, 1768 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 242, 1 SCOTT, *supra* note 4, at 120.

26. Ch. 8, § 2, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 72, 1 SCOTT, *supra* note 4, at 50.

27. Ch. 14, § 4, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 78, 1 SCOTT, *supra* note 4, at 56.

28. Ch. 4, § 1, 1773 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 262, 1 SCOTT, *supra* note 4, at 128.

29. Ch. 5, § 1, 1777 Laws of N.C. (Apr. Sess.), reprinted in IREDELL, *supra* note 4, at 287, 1 SCOTT, *supra* note 4, at 155.

30. Ch. 17, § 8, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 80, 1 SCOTT, *supra* note 4, at 59.

31. Ch. 14, § 2, 1766 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 227, 1 SCOTT, *supra* note 4, at 114.

32. Ch. 6, § 8, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 324, 1 SCOTT, *supra* note 4, at 200.

33. Ch. 1, § 46, 1794 Terr. S. of R. Ohio Acts, reprinted in 1 SCOTT, *supra* note 4, at 474; ch. 15, § 3, 1784 Laws of N.C. (Oct. Sess.), reprinted in IREDELL, *supra* note 4, at 536, 1 SCOTT, *supra* note 4, at 322.

34. See ch. 2, § 2, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 296, 1 SCOTT, *supra* note 4, at 165.

35. Ch. 14, § 3, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 77, 1 SCOTT, *supra* note 4, at 55.

confession or upon the oath of one or more witnesses, subject to a fine of five shillings.³⁶ In the event that persons convicted of such offenses failed to pay the requisite fines, individual justices were authorized to sell a sufficient amount of the offender's goods to satisfy the fine or, if the offender was without sufficient goods, to place the individual in the public stocks for up to three hours.³⁷ If a single woman became pregnant or gave birth, any two justices were authorized to examine the woman

concerning the father; and if she shall refuse to declare the father, she shall pay the fines in this Act before mentioned, and give sufficient security, to keep such child or children from being chargeable to the [county], or shall be committed to prison, until she shall declare the same, or pay the fine aforesaid, and give security as aforesaid³⁸

Upon a complaint by the county overseers of the poor that any poor person had entered the county and was likely to become a charge to the county, any justice was authorized to cause such person to be removed to the county where he or she had last resided.³⁹

Responsibility for controlling "idle and disorderly persons" also fell to the individual justices. Persons of no visible means of support were prohibited by statute in 1784 from maintaining themselves "by gaming or other undue Means."⁴⁰ Individual justices were authorized to issue warrants for the arrest of offenders and "on Conviction, to demand Security for his or their good Behaviour, and in Case of Refusal or Neglect to commit him or them to the Gaol" for ten days.⁴¹ The offender then was to be freed "if Nothing criminal appears against him," but if convicted again within twenty days, he was to be deemed a vagrant and jailed for an additional month "with all Costs accruing thereon."⁴² Only upon a failure to pay these costs was the offender brought before the full court. Upon a jury

36. Ch. 14, § 5, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 78, 1 SCOTT, *supra* note 4, at 56. The fine for the offense on a weekday was two shillings, six pence. *Id.*

37. Ch. 14, § 6, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 78, 1 SCOTT, *supra* note 4, at 56.

38. Ch. 14, § 10, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 78, 1 SCOTT, *supra* note 4, at 57. When the subjects were more cooperative and an accusation secured, such person so accused shall be adjudged the reputed father of such child or children, and stand charged with the maintenance of the same as the county court shall order, and give security . . . to perform the said order . . . and may be committed to prison until he find securities for the same, if such security is not by the woman before given.

Id.

39. Ch. 7, § 23, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 329, 1 SCOTT, *supra* note 4, at 208.

40. Ch. 34, § 2, 1784 Laws of N.C. (Apr. Sess.), reprinted in IREDELL, *supra* note 4, at 508, 1 SCOTT, *supra* note 4, at 301.

41. *Id.*

42. *Id.*

verdict, the offender could be hired out for up to six months to satisfy the costs of his imprisonment.⁴³ If the offender was a person

of ill Fame, so that he or they cannot be hired for the Cost, nor give sufficient Security for the same, and his or their future good Behavior, . . . it shall and may be lawful for said Court to cause the Offender or Offenders to receive Thirty-nine Lashes on his or their bare Back, after which he or they shall be set at Liberty, and the Cost arising thereon shall become a County Charge, which Punishment may be inflicted as often as the Person may be guilty, allowing twenty Days between the Punishment and the Offense.⁴⁴

The same statute forbade "Persons of ill Fame or suspicious Characters" from moving from one county to another without first securing from the sheriff or a justice a certificate setting forth the purpose of the journey.⁴⁵ Such travellers desiring to remain in any county for more than forty-eight hours were required to secure from a justice a permit for the stay, and "if such Person shall be found loitering in said County after the Expiration of his Permit, or fail to obtain the same," the offender could be apprehended by any person and brought before a justice, who was authorized either to fine the offender up to forty shillings or to jail him for up to ten days.⁴⁶

(3) The Jurisdiction of the Courts over Domestic Servants

Without question, the most extensive judicial authority of both the county courts and the individual justices was that exercised over servants and slaves. Domestic servants were entitled to submit to the courts petitions for the recovery of wages and complaints alleging maltreatment or mistreatment.⁴⁷ Upon a second justifiable complaint of the latter nature, the courts were authorized to order the complaining servant sold at a public sale.⁴⁸ Servants were discouraged from bringing disputes to the courts' attention, however, by

43. *Id.*

44. *Id.*

45. Ch. 34, § 3, 1784 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 509, 1 SCOTT, *supra* note 4, at 302.

46. *Id.*

47. Ch. 24, §§ 5, 8, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 85-86, 1 SCOTT, *supra* note 4, at 63-64.

48. Ch. 24, § 5, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 85, 1 SCOTT, *supra* note 4, at 63. Masters were required to provide their domestic servants with a "wholesome and competent diet, cloathing and lodging" and were prohibited on penalty of 40 shillings from whipping a servant naked. Ch. 24, § 4, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 65, 1 SCOTT, *supra* note 4, at 63. Although such provisions did not, of course, extend to slaves, actions of trespass against the masters of ill-clothed slaves who stole corn, cattle, or other goods were available in the county courts to victims of such thefts. Ch. 6, § 10, 1753 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 153, 1 SCOTT, *supra* note 4, at 87.

the possibility of having to serve double the time expended in the prosecution of "groundless" complaints to "unjustly vex and trouble" their masters.⁴⁹ Servants were punished by whippings of up to thirty-nine lashes for committing criminal offenses for which free persons were fined.⁵⁰ Free persons were prohibited from trading with both domestic servants and slaves, subject to a penalty of treble the value of the commodities traded plus six pounds. If the offender was unable to pay the penalty, the court could order that he be sold as a servant for the amount of the penalty.⁵¹ Women servants bearing children by free males or other servants were required to serve their masters for an additional year after the expiration of their indenture or, in the case of a black, mulatto, or Indian father, were to be sold for two years upon the expiration of their indenture, with the child being bound out by the court as a servant until the age of thirty-one years.⁵² Individual justices were authorized to inflict "such corporal Punishment as the said Justices shall think fit to adjudge, not exceeding twenty-one Lashes" upon disobedient servants and servants accused of assaulting their masters or overseers.⁵³

(4) The Jurisdiction of the Courts over the Institution of Slavery

Vested with significantly more authority over slaves than over servants, individual members of the court exercised essentially exclusive original jurisdiction over a wide variety of minor offenses alleged to have been committed by slaves. Punishment of up to forty lashes resulted from commission by a slave of a misdemeanor or noncapital offense

which in the opinion of the Justice or Justices before whom such offending slave may be carried for Examination, shall appear to be of so trivial a Nature as not to deserve a greater Punishment than a single Justice of the peace is . . . empowered to inflict, such Justice shall . . . issue *Subpoenas*, if necessary, to compel the Attendance of Witnesses, and proceed immediately upon the Trial of such Slave in a summary Way, and to pass Sentence and award Execution . . .⁵⁴

49. Ch. 24, § 11, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 87, 1 SCOTT, *supra* note 4, at 65.

50. Ch. 24, § 13, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 87, 1 SCOTT, *supra* note 4, at 65.

51. Ch. 24, § 14, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 87, 1 SCOTT, *supra* note 4, at 65.

52. Ch. 24, §§ 17, 18, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 88, 1 SCOTT, *supra* note 4, at 66.

53. Ch. 24, § 3, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 85, 1 SCOTT, *supra* note 4, at 62.

54. Ch. 14, 1783 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 460, 1 SCOTT, *supra* note 4, at 279.

Numerous offenses arising from the institution of slavery came within the scope of the individual justice's authority. Under one of the earliest North Carolina statutes regulating the conduct of slaves and the relationship between slaves and free persons, any

loose, disorderly, or suspected Person . . . found drinking, eating or keeping Company with Slaves in the Night Time . . . shall be apprehended and carried before a Justice of the Peace; and if he cannot give a good and satisfactory Account of his Behavior, such Person shall be whipped, at the Discretion of the Justice, not exceeding forty Lashes.⁵⁵

A single justice was authorized to jail runaway slaves and to order the infliction upon them of up to thirty-nine lashes;⁵⁶ to issue, with a second justice, orders to runaway slaves to surrender themselves and warrants for their apprehension;⁵⁷ to entertain complaints against persons alleged to have brought slaves into the county from a state providing for the emancipation of slaves;⁵⁸ to convict slaves for hunting with a gun in the woods at night;⁵⁹ to order the infliction of thirty lashes upon a slave for killing deer except on the order of his master;⁶⁰ to order "such Correction as he shall judge reasonable, not exceeding thirty Lashes" of slaves caught hunting with dogs without proper authorization;⁶¹ to issue warrants for the apprehen-

55. Ch. 5, § 7, 1729 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 52, 1 SCOTT, *supra* note 4, at 41-42. Slaves were prohibited from hunting on any land other than that owned by their masters and, subject to a penalty of forty lashes by the owner of the land where the slave was found, from travelling from their master's land without keeping on the main road. *Id.*

56. Ch. 24, §§ 29, 34, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 89, 90, 1 SCOTT, *supra* note 4, at 68, 70.

57. Ch. 24, § 45, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 93, 1 SCOTT, *supra* note 4, at 74. The orders issued to the slaves were posted on the doors of the county churches and upon failure of the runaways to "immediately return home, it shall be lawful for any person or persons whatsoever, to kill and destroy such slave or slaves, by such ways and means as he or she shall think fit, without accusation or impeachment of any crime for the same." *Id.*

58. Ch. 5, § 6, 1786 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 578, 1 SCOTT, *supra* note 4, at 364.

59. Ch. 33, § 3, 1784 Laws of N.C. (Apr. Sess.), reprinted in IREDELL, *supra* note 4, at 507, 1 SCOTT, *supra* note 4, at 301. In addition, any person finding a slave carrying a gun, sword, club, or other weapon was authorized to

seize and take, to his own use, such gun, sword, or other weapon, and to apprehend and deliver such slave to the next constable, who is enjoined and required, without further order or warrant, to give such slave twenty lashes, on his or her bare back, and to send him or her home

Ch. 24, § 40, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 93, 1 SCOTT, *supra* note 4, at 73.

60. Ch. 10, § 3, 1738 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 58, 1 SCOTT, *supra* note 4, at 44.

61. Ch. 6, § 8, 1753 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 153, 1 SCOTT, *supra* note 4, at 85.

sion and jailing of slaves alleged to have been freed contrary to law;⁶² and, subject to appeal to the full court, to commit and fine any free black or mulatto for entertaining slaves between sunset and sunrise.⁶³

The full county court exercised jurisdiction under the slavery statutes over prosecutions for the stealing of slaves and for the transporting for sale of free blacks out of the county into another county;⁶⁴ over complaints by persons brought into and kept in the county as slaves who claimed to have been free in another jurisdiction;⁶⁵ over prosecutions for inciting or aiding slaves to run away;⁶⁶ and, concurrently with the superior courts, over actions of debt by persons injured by slaves carrying guns on bond of their masters.⁶⁷ For the commission of offenses more serious than those that the individual justices were authorized to try, slaves were tried by special courts consisting of three or more justices of the county court and four slaveowners,⁶⁸ which were authorized

to take for Evidence, the Confession of the Offender, the Oath of one or more credible Witnesses, or such Testimony of Negroes, Mulattoes or *Indians*, bond or free, . . . as to them shall seem convincing, without the Solemnity of a Jury; and the Offender being then found guilty, to pass such Judgment upon such Offender, according to their Discretion, as the Nature of the Crime or Offense shall require; and on such Judgment, to award Execution.⁶⁹

62. Ch. 20, 1788 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 637, 1 SCOTT, *supra* note 4, at 399.

63. Ch. 6, § 2, 1787 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 610, 1 SCOTT, *supra* note 4, at 381.

64. Ch. 11, § 2, 1779 Laws of N.C. (Apr. Sess.), reprinted in IREDELL, *supra* note 4, at 370, 1 SCOTT, *supra* note 4, at 233.

65. Ch. 24, § 24, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 89, 1 SCOTT, *supra* note 4, at 68. Only one case that apparently was based upon the statute came before the Davidson county court for the period examined. The case, *Gilmore v. Williams*, arose procedurally in a manner different from that prescribed by the statute, however. The action was brought not by the person claiming to be free, but by a plaintiff who alleged that the defendant was a slave. Defendant's counsel, Andrew Jackson, called three witnesses, including Lardner Clark, a future member of the court, for his client. A twelve-man jury returned a verdict for the defendant, finding him to be "a free man." *Gilmore v. Williams*, DaCo CPQS Min. Bk. A:448 (1791).

66. Ch. 24, § 27, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 89, 1 SCOTT, *supra* note 4, at 68-69.

67. Ch. 6, § 2, 1753 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 152, 1 SCOTT, *supra* note 4, at 85.

68. Ch. 24, § 48, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 94, 1 SCOTT, *supra* note 4, at 74, as amended by ch. 14, 1783 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 460, 1 SCOTT, *supra* note 4, at 279.

69. *Id.* Although the statute prescribed death as the penalty only for slaves convicted of insurrection, ch. 24, § 47, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 94, 1 SCOTT, *supra* note 4, at 74, death for other offenses could be imposed upon conviction for the first offense only for murder and rape; for all other capital crimes, conviction for the first

There was no right of appeal from the decisions of the special slave courts.⁷⁰

Accounts of only two of these trials occur in the records for the Davidson county court for the period examined. On March 19, 1791, four justices and four slaveowners convicted a slave of breaking into a shop and of stealing a rifle, and sentenced him to receive thirty-nine lashes.⁷¹ On July 25, 1793, three justices and four slaveowners tried a slave for burning the barn of James Bosley three days earlier. Twelve witnesses, including three slaves, were heard. Apparently convinced by the failure of the slave to establish an alibi and by the testimony of several of the witnesses that the slave's foot "Exactly corresponded" with "a Very Remarkable tract" found near the scene of the fire and established to have been left after a rainstorm the night before the fire, the court found the slave guilty and sentenced him to receive fifty lashes and to have both his ears cut off.⁷²

Thus trials of slaves in which the accused might be sentenced to mutilation or execution were not conducted by the county courts in which the question of guilt would be determined by a jury of nonslaveowners. The procedure for trying slaves by members of the court, most of whom were slaveowners,⁷³ and by four other slaveowners, and the procedure by which the courts assessed the value of slaves who failed to survive the ordeal,⁷⁴ represented an effective technique for affording an exceptional form of due process to slaveowners who were to be deprived in whole or in part of the property possessions about which they were most sensitive.

B. *The Legislative and Regulatory Authority of the County Courts*

In addition to their purely judicial duties, the county courts exercised significant executive, legislative, and administrative functions. Although the courts by statute held significant appointment powers,⁷⁵ they were granted even broader taxation, regulatory, and administrative authority.

offense was punishable by castration. Ch. 8, § 1, 1764 Laws of N.C., *reprinted in* 23 THE STATE RECORDS OF NORTH CAROLINA 656 (W. Clark ed. 1905) [hereinafter cited as STATE RECORDS].

70. The legal right to such appeals was not secured in North Carolina until 1812. See *Fairness and Formalism*, *supra* note 1, at 73.

71. *State v. Cato*, DaCo CPQS Min. Bk. A:411 (1791).

72. *State v. Dick*, DaCo CPQS Min. Bk. B:119-20 (1793).

73. See, e.g., 2 DaCo Wills & Inventories 3, 16, 19, 20, 21, 26, 27, 29, 31, 32, 45, 56.

74. Ch. 24, § 54, 1741 Laws of N.C., *reprinted in* IREDELL, *supra* note 4, at 95, 1 SCOTT, *supra* note 4, at 75. See note 88 *infra* and accompanying text.

75. The county court appointed all county law enforcement and administrative officers. For examples of the variety of officers appointed by the court, see ch. 8, § 1, 1777 Laws of N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra* note 4, at 330, 1 SCOTT, *supra* note 4, at 209 (sheriff); ch. 5, § 1, 1741 Laws of N.C., *reprinted in* IREDELL, *supra* note 4, at 69, 1 SCOTT,

(1) Taxation Powers

Each county court was authorized to levy an annual tax “not exceeding five shillings on every hundred pounds value of taxable property” to defray “the contingencies” of the county.⁷⁶ In addition, the courts were authorized to levy an annual tax not exceeding three shillings on every poll and one shilling on every one hundred acres of land for the building and maintenance of county courthouses and jails.⁷⁷ The contingency and courthouse taxes were consolidated under the territorial government and were levied at annual rates of 12.5 cents on each one hundred acres of land, 25 cents on each slave, and 12.5 cents on each white poll.⁷⁸ Although individual justices were to receive lists of taxable property for designated districts within each county,⁷⁹ justices were forbidden from serving as tax collectors.⁸⁰

Additional taxes could be levied by the courts for specific purposes. For example, a 1784 statute required each court to levy a tax at the same rate as the contingency tax to provide relief for wounded

supra note 4, at 48 (constables); ch. 6, § 4, 1753 Laws of N.C., *reprinted in* IREDELL, *supra* note 4, at 153, 1 SCOTT, *supra* note 4, at 6 (searchers for firearms in slave quarters); ch. 7, § 10, 1782 Laws of N.C., *reprinted in* IREDELL, *supra* note 4, at 431 (tax collectors); ch. 8, § 13, 1777 Laws of N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra* note 4, at 333, 1 SCOTT, *supra* note 4, at 214 (county register); ch. 1, § 2, 1777 Laws of N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra* note 4, at 292, 1 SCOTT, *supra* note 4, at 159; ch. 52, § 4, 1783 Laws of N.C. (Apr. Sess.), *reprinted in* IREDELL, *supra* note 4, at 473, 1 SCOTT, *supra* note 4, at 283 (entry takers and surveyors); ch. 2, § 68, 1777 Laws of N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra* note 4, at 311, 1 SCOTT, *supra* note 4, at 187 (an attorney to prosecute criminal actions for the state in the county court); ch. 8, § 14, 1777 Laws of N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra* note 4, at 334, 1 SCOTT, *supra* note 4, at 214 (coroner); ch. 12, § 2, 1780 Laws of N.C. (Apr. Sess.), *reprinted in* IREDELL, *supra* note 4, at 400 (inspectors for the detection of counterfeit currency); ch. 14, § 8, 1784 Laws of N.C., *reprinted in* 24 STATE RECORDS, *supra* note 69, at 674 (overseers for the building of roads within the county).

76. Ch. 3, § 21, 1779 Laws of N.C. (May Sess.), *reprinted in* 24 STATE RECORDS, *supra* note 69, at 257.

77. Ch. 19, 1786 Laws of N.C., *reprinted in* 24 STATE RECORDS, *supra* note 69, at 810. The courts also were empowered to exempt “all such aged or infirm persons within their counties, as they may think proper objects, from the payment of a poll tax.” Ch. 7, § 8, 1782 Laws of N.C., *reprinted in* 24 STATE RECORDS, *supra* note 69, at 429. As had been the practice during the colonial period, the clerk of each court receiving a petition for exemption issued an order for the exemption that was submitted to the general assembly for approval. J. Boyd, *The County Court in Colonial North Carolina* 69 (1926) (unpublished thesis in Duke University Library). The procedure was employed on at least one occasion in the Davidson county court, when at its July term of 1787, the court recommended that the general assembly approve an exemption for one Christopher Guise “on Account of his Advanced Age.” DaCo CPQS Min. Bk. A:177 (1787).

78. Ch. 10, 1794 Terr. S. of R. Ohio Acts, *reprinted in* 1 SCOTT, *supra* note 4, at 499.

79. Ch. 1, § 3, 1784 Laws of N.C. (Apr. Sess.), *reprinted in* IREDELL, *supra* note 4, at 475.

80. Ch. 1, § 13, 1784 Laws of N.C. (Apr. Sess.), *reprinted in* IREDELL, *supra* note 4, at 478, 1 SCOTT, *supra* note 4, at 284.

veterans of the Revolutionary War or their widows and orphans.⁸¹ The Davidson county court was authorized by the general assembly in 1786 to impose a tax "leviable in corn, pork, beef or other species of provision" for the support of troops raised to defend the Cumberland settlements.⁸² The next year the Davidson and Sumner county courts were authorized to levy "a tax on the poll and all taxable property within the said counties sufficient to pay the labourers employed in cutting and clearing [a] road from the lower end of Clinch Mountain to the Cumberland settlements"⁸³

Property was assessed for tax purposes by assessors who were freeholders appointed by the court.⁸⁴ Taxes levied by the county court as well as those levied by the state were collected by court-appointed collectors and were deposited with the treasurer for the county.⁸⁵ Interestingly, at least twice in Davidson County during the period between 1783 and 1790, members of the court served in each of these positions. John Sappington was appointed county treasurer by the court at its April term 1787,⁸⁶ and Robert Edmondson was appointed a tax collector for a portion of the county at the court's April term 1790.⁸⁷

(2) Regulatory and Administrative Powers

The county courts exercised numerous regulatory and administrative powers that covered areas ranging from the institution of slavery to landholding and from standard weights and measures to the price of liquor. The courts' regulatory authority over slaves and their masters, when considered in conjunction with their judicial authority under the slavery statutes, vested in the courts substantial control over the institution of slavery. When slaves were sentenced to death, or when

in apprehending Runaways, or in Correction by Order of the County Court, any Slave shall happen to be killed or destroyed, the Court of the County where such Slave shall be killed, upon Application of the Owner of such Slave, and due Proof thereof made, shall put a Valuation, in Proclamation Money, upon such Slave so killed, and certify such Valuation to the next Session of Assem-

81. Ch. 18, § 3, 1784 Laws of N.C. (Oct. Sess.), reprinted in IREDELL, *supra* note 4, at 539, 1 SCOTT, *supra* note 4, at 323.

82. Ch. 1, § 6, 1786 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 570, 1 SCOTT, *supra* note 4, at 353.

83. Ch. 25, § 3, 1787 Laws of N.C., reprinted in 24 STATE RECORDS, *supra* note 69, at 913.

84. Ch. 7, § 2, 1782 Laws of N.C., reprinted in 24 STATE RECORDS, *supra* note 69, at 429.

85. Ch. 7, § 10, 1782 Laws of N.C., reprinted in 24 STATE RECORDS, *supra* note 69, at 429.

86. DaCo CPQS Min. Bk. A:167 (1787).

87. DaCo CPQS Min. Bk. A:358 (1790).

bly; that the said Assembly may make suitable Allowance thereupon, to the Master or Owner of such Slave.⁸⁸

The courts also set the standards for emancipating slaves⁸⁹ and were authorized to order sale to the highest bidder of slaves unlawfully set free.⁹⁰ Masters desiring to emancipate their slaves could do so only after securing a license from the court.⁹¹

The courts also regulated the ownership of land and other property. They were required by statute to "appoint two able and intelligent Freeholders within every . . . District" to procession, or to resurvey the boundaries of "every particular Person's Land" within each county every three years and to collect a fee of twelve pence from every person for all his or her land processioned and recorded in the county.⁹² The courts were authorized to order the processioning when the owner refused.⁹³ Furthermore, the courts were authorized to acknowledge deeds of land, and all stock marks and brands were required to be acknowledged and recorded by the courts.⁹⁴ The courts also exercised the power of eminent domain for the purpose of building public roads and grist mills.⁹⁵

88. Ch. 24, § 54, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 95. The maximum assessment was 700 pounds. Ch. 7, § 2, 1779 Laws of N.C., reprinted in 24 STATE RECORDS, *supra* note 69, at 282. The court also was authorized to assess, apparently without limitation, the value of slaves willfully and maliciously killed. Ch. 31, § 3, 1774 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 274, 1 SCOTT, *supra* note 4, at 135.

89. See ch. 6, § 2, 1777 Laws of N.C. (Apr. Sess.), reprinted in IREDELL, *supra* note 4, at 288, 1 SCOTT, *supra* note 4, at 157; ch. 12, 1779 Laws of N.C. (Aug. Sess.), reprinted in IREDELL, *supra* note 4, at 371, 1 SCOTT, *supra* note 4, at 234.

90. *Id.*

91. *Id.*

92. Ch. 4, § 1, 1723 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 41-42, 1 SCOTT, *supra* note 4, at 34. Mandatory processioning was not excised from the statutes until 1806, when the Tennessee General Assembly forbade the public surveyor from processioning land without the owner's consent. *Whiteside v. Singleton*, 19 Tenn. (Meigs) 207, 222 (1838); Act of Sept. 12, 1806, ch. 1, § 21, 1806 Tenn. Pub. Acts, reprinted in 1 SCOTT, *supra* note 4, at 899. The extent to which mandatory processioning actually had occurred before 1806 is difficult to determine. Statutes enacted subsequently to the 1723 act required for taxation purposes only that each county resident file with the county court an inventory of all real property owned. Ch. 1, §§ 4, 11, 1784 Laws of N.C. (Apr. Sess.), reprinted in IREDELL, *supra* note 4, at 475. Julian Boyd, in his study of the colonial North Carolina county courts, describes the statutory provisions for mandatory processioning, but does not indicate whether the courts actually complied with the statute. Boyd, *supra* note 77, at 100-01. The records for the Davidson county court for the period under examination here do not indicate that the Davidson court ever complied with the statute.

93. Ch. 4, § 5, 1723 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 42-43, 1 SCOTT, *supra* note 4, at 35-36.

94. Ch. 8, § 6, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 73, 1 SCOTT, *supra* note 4, at 51.

95. Ch. 23, §§ 2, 4, 6, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 343, 1 SCOTT, *supra* note 4, at 219. The statute provided that any person willing to build a mill but owning land on only one side of a run could petition the court to appoint a jury of

The courts were empowered to exercise certain regulatory powers for the protection of the health of the counties' inhabitants. For example, each court was authorized to appoint an inspector to examine certain goods to prevent "the Exportation of Unmerchanta-ble Commodities."⁹⁶ Also, to prevent the spread of distemper among cattle, any two justices and one freeholder were authorized to issue such orders "as may best tend to prevent the Infection [from] spreading."⁹⁷

four freeholders to assess the value of one acre of land on the opposite side of the run. Ch. 23, § 2, 1777 Laws of N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra* note 4, at 343, 1 SCOTT, *supra* note 4, at 219. If erection of the mill did not require the destruction of improvements and would neither overflow another mill nor create a nuisance in the neighborhood, the court was authorized to grant the petitioner's request, appropriate the acre of land opposite the petitioner's side of the run, and convey it to the petitioner upon his payment of the value assessed by the jury. Ch. 23, §§ 2, 3, 1777 Laws of N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra* note 4, at 343, 1 SCOTT, *supra* note 4, at 219. The granting of such petitions by the court was appealable to the district superior court, which could vacate the lower court's order and "give such Judgment therein as the County Court ought to have rendered." Ch. 23, § 8, 1777 Laws of N.C. (Nov. Sess.), *reprinted in* IREDELL, *supra* note 4, at 344, 1 SCOTT, *supra* note 4, at 220.

The Davidson county court occasionally granted such petitions without appointing juries according to the statute. *See, e.g.*, DaCo CPQS Min. Bk. A:3, 107, 413. Apparently the factual circumstances in those instances had rendered the statute inapplicable, because on at least four occasions the court fully complied with the statute. At its October term 1791 the court appointed a jury to assess the damages that "[a]ny Other person Should Sustain by John Buchanans Building of a Mill at the Upper End of the back Water on Mill creek Above his Old Mill." DaCo CPQS Min. Bk. A:404. The jury concluded that "a Dam of Eleven feet high Will *not* Damage Any Man If his Land goes as far up the creek as the said Buchanan Says it does." *Id.* At its July term 1793 the court appointed four jurors to assess an acre of James McGavock's land in response to a petition by James Hamilton to build a mill. DaCo CPQS Min. Bk. B:104. The jury returned at the court's January term 1794 with an assessment of forty shillings. DaCo CPQS Min. Bk. B:165. At its next term the court conveyed the acre to Hamilton and transferred the forty shillings to McGavock. DaCo CPQS Min. Bk. B:182. At its January term 1794 the court appointed three jurors to assess an acre of land in response to a petition by John Boyd. DaCo CPQS Min. Bk. B:141. The jury returned at the court's next term with an award of twelve and one-half dollars. DaCo CPQS Min. Bk. B:170. Finally, the court at its July term 1795 appointed a four-man jury to assess an acre of land owned by William Overall's widow in response to a similar petition. DaCo CPQS Min. Bk. B:267. At the January term 1796 the jury returned with an assessment of three dollars, which the court in turn awarded to the widow. DaCo CPQS Min. Bk. B:305.

Compensation of individuals whose land was taken in the building of public roads was provided for by statute in 1786. The statute required both that the routes of all future public roads be laid out by a jury of freeholders and that "such damage as private persons may sustain, shall be . . . ascertained by the same jury . . ." Ch. 14, § 3, 1784 Laws of N.C. (Oct. Sess.), *reprinted in* 1 SCOTT, *supra* note 4, at 317. All damages thus assessed were deemed a county charge to be defrayed from the tax collected for county contingent expenses. *Id.* The records indicate that the Davidson county court consistently complied with the statute. *See, e.g.*, DaCo CPQS Min. Bk. A:45, 74, 75, 84, 85, 113, 116, 123, 139, 143, 145, 154, 156, 163, 233, 247, 328, 402; DaCo CPQS Min. Bk. B:31, 62, 264, 269.

96. Ch. 26, 1784 Laws of N.C. (Apr. Sess.) 40.

97. Ch. 14, § 6, 1766 Laws of N.C., *reprinted in* IREDELL, *supra* note 4, at 228, 1 SCOTT, *supra* note 4, at 116.

The courts also exercised substantial licensing authority. For example, court-issued licenses were required for the operation of ferries⁹⁸ and for the erection of mills.⁹⁹ In addition, the courts were authorized to issue licenses for keeping ordinaries, or taverns, and selling liquor “unless it shall appear to the said Court that the Person so applying is a Person of gross Immorality, or of such poor Circumstances, and slender Credit, that they think him or her not able to comply with the Intention of this Act”¹⁰⁰ Moreover, at least annually the courts were required to “rate the Prices of Liquor, Diet, Lodging, Fodder, Corn, Provender and Pasturage, to be taken by Ordinary-Keepers; also . . . the Prices of such Ferries as shall be kept within their respective Counties”¹⁰¹ Finally the county courts exercised a number of miscellaneous regulatory and administrative functions, including the setting of standard weights and measures¹⁰² and contracting for building bridges in their counties.¹⁰³

98. See ch. 14, § 15, 1784 Laws of N.C., reprinted in 24 STATE RECORDS, *supra* note 69, at 674.

99. Ch. 23, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 343, 1 SCOTT, *supra* note 4, at 219.

100. Ch. 10, § 4, 1779 Laws of N.C. (Oct. Sess.), reprinted in IREDELL, *supra* note 4, at 391, 1 SCOTT, *supra* note 4, at 245. At the October term 1793 of the Davidson county court, a license issued by the court was challenged:

When the Case of William Terrel Lewis's having Licence to keep an Ordinary in the Town of Nashville in this county Was brought on for a hearing; When counsel Learned in the Law Was heard, Bennett Searcy Esqr. in behalf the sd. Lewis, And Andrew Jackson and John Overton Esqrs. professing themselves to Appear only for the good of Society in Opposing the said Lewis, After Which the court having fully & Deliberately considered On the premises; Rescinded the Order made on Monday of the present Term Relative to the said Lewis's keeping of an Ordinary in Nashll. And Annull the Licence granted to him for that purpose.

DaCo CPQS Min. Bk. B:131 (1793).

101. Ch. 10, § 8, 1779 Laws of N.C. (Oct. Sess.), reprinted in IREDELL, *supra* note 4, at 392, 1 SCOTT, *supra* note 4, at 246. In January 1791, the Davidson county court set the following tavern rates:

for Breakfasts One Shilling, for Dinners Two Shillings, and for Suppers One Shilling; And for Liquors Viz for Whiskey pr. half pint Six pence; And So in proportion by Retail; Taffey pr. half pint one Shilling And So in proportion and the Same for Rum or Good Brandy. And for Provender for horses Indian corn or Oats, Two pence pr. Quart, And So in proportion, And for Stabling for a horse With Hay or Fodder for Twenty four Hours one Shilling: And for a good Bed for one Night pr. Man four pence.

DaCo CPQS Min. Bk. A:403 (1791). The court's ferry rates were, for “[t]ransporting a cross the River man and Horse Six pence; for One horse, or man, Singly Three pence, for Black cattle Two pence pr. head; Sheep and Hogs pr. head One penny And for a Waggon and four horses three Shillings.” *Id.*

102. Ch. 17, §§ 3, 4, 1741 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 80.

103. Ch. 14, § 5, 1784 Laws of N.C. (Oct. Sess.), reprinted in IREDELL, *supra* note 4, at 533, 1 SCOTT, *supra* note 4, at 318.

III. THE ROLE OF PETIT JURIES IN THE COUNTY COURTS

Although the county courts and their individual members exercised substantial jurisdictional and regulatory authority, the courts' petit juries¹⁰⁴ provided a countervailing source of authority for the settlement of disputes through the legal system. The notion that petit juries should serve as an effective check upon the justices did not, of course, originate on the frontier. John Adams had referred to the underlying theory in 1771 when he argued in Massachusetts that

[a]s the Constitution requires, that, the popular Branch of the Legislature, should have an absolute Check so as to put a peremptory Negative upon every Act of the Government, it requires that the common People should have as compleat a Controul, as decisive a Negative, in every Judgment of a Court of Judicature.¹⁰⁵

Adams' argument, derived perhaps in part from his distaste for the system of government under which the English counties since the Reformation had been ruled by a social and economic elite of justices of the peace,¹⁰⁶ was made in support of his strong conviction that jurors, somehow as representatives of the community, should be the ultimate judge of both law and fact.¹⁰⁷

The general verdict, by which lay jurors determined questions of both law and fact, was a common, albeit declining, feature of the eastern courts in the final two decades of the eighteenth century.¹⁰⁸ The procedure, however, was the primary method in the frontier courts by which petit juries exercised control over the disposition of

104. Because the courts' original criminal jurisdiction was minimal, the role of the grand jury as a check upon the courts was minimal. Moreover, the records of the Davidson county court fail to reflect grand jury indictments and presentments beyond the first few terms of the court. Hence, the discussion here will be confined to the more significant petit jury as an institution of control and as a source of authority for dispute resolution through the legal system.

105. 1 *LEGAL PAPERS OF JOHN ADAMS* 229 (L. Wroth & H. Zobel eds. 1965) [hereinafter cited as *WROTH & ZOBEL*].

106. See J. GLEASON, *THE JUSTICES OF THE PEACE IN ENGLAND 1558 TO 1640*, at 46-67 (1969).

107. 1 *WROTH & ZOBEL*, *supra* note 105. Jefferson, writing a decade later about the Virginia county court system, also advocated the use of juries to decide both questions of fact and questions of law, at least "if the question relate to any point of public liberty":

If they be mistaken, a decision against right, which is casual only, is less dangerous to the state, and less afflicting to the loser, than one which makes part of a regular and uniform system. In truth, it is better to toss up cross and pile in a cause, then to refer it to a judge whose mind is warped by any motive whatever, in that particular case. But the common sense of twelve honest men gives still a better chance of just decision, than the hazard cross and pile.

T. JEFFERSON, *NOTES ON THE STATE OF VIRGINIA* 130 (W. Peden ed. 1955).

108. See M. HORWITZ, *supra* note 1, at 28.

civil disputes and criminal prosecutions.¹⁰⁹ In the Davidson county court for the period examined, the general verdict that Adams had thought so essential to the authority of juries was second in frequency only to default judgments in the disposition of the court's judicial business (see Tables 1-13). Special verdicts were returned in only three instances.¹¹⁰ Moreover, the court apparently did not provide its juries with statements of what law was to be applied to the particular cases before them. As had been the practice in the eastern courts,¹¹¹ attorneys appearing before the court on occasion instructed the juries about the state of the applicable law.¹¹²

The Davidson county court complemented the authority of its juries to decide both questions of law and questions of fact by nullifying general jury verdicts on only three occasions for the period examined.¹¹³ In *Hamilton v. Lefever*,¹¹⁴ a slander action that came to trial at the July term 1784, the jury heard testimony from one witness for plaintiff, the father of a woman who had been the source of an earlier bastardy prosecution, that "he heard the Defendt. Say to Sarah Dunam the Daughter of John Hamilton, That She Was not like her Sisters that has Bastards and Murdered them." Another of

109. Although the North Carolina Constitution of 1776 contained no general provision for the right to jury trials, section 9 of the state's Declaration of Rights provided that no free man should be convicted of any crime "but by the unanimous Verdict of a Jury of good and lawful Men." N.C. DECL. OF RIGHTS § 9 (1776), reprinted in IREDELL, *supra* note 4, at 275. Three years later, the general assembly extended the right to "all Causes civil and criminal." Ch. 6, 1779 Laws of N.C. (Oct. Sess.), reprinted in IREDELL, *supra* note 4, at 386, 1 SCOTT, *supra* note 4, at 241.

110. Maxell v. Wilcox, DaCo CPQS Min. Bk. B:276 (1795); Hawkins v. Armstrong, DaCo CPQS Min. Bk. B:233 (1795), Territory v. Abel, DaCo CPQS Min. Bk. B:115 (1793).

111. See, e.g., Derumple v. Clark, Quincy 38 (Mass. 1763), and Adams' explanation of the law of homicide to the jury in his defense of Captain Preston arising out of the so-called Boston Massacre in 3 WROTH & ZOBEL, *supra* note 105, at 242-53.

112. See Philips v. Crutcher, DaCo CPQS Min. Bk. A:329 (1789); Rice v. Hay, DaCo CPQS Min. Bk. A:299 (1789). In the *Rice* case, defendant Bosley had pleaded the general issue at the October term 1788. Defendant Hay subsequently appeared at the July term 1789 and entered a confession of judgment "[t]o Which Mr. Jackson the other Defdts. Attny. Objected & Alleged that Confession of Judgment as Affsd. Ought not to bind his client or operate against him." The jury then was sent out to "try the Issue Joined" and returned a verdict for the plaintiff. DaCo CPQS Min. Bk. A:299.

113. Burton v. Meness, DaCo CPQS Min. Bk. A:155 (1787); Loggins v. McGown, DaCo CPQS Min. Bk. A:140 (1786); Hamilton v. Lefever, DaCo CPQS Min. Bk. A:29 (1784). The court granted an arrest of judgment on only one occasion and for unspecified reasons. In *Sugg v. Barrow*, Justice Joel Rice had rendered a verdict for plaintiff on a charge against the defendant of "Trading and Dealing With his Negro." Defendant appealed the decision to the full court, and a jury returned a special verdict for plaintiff. John Overton, defendant's attorney, moved for an arrest of judgment. After "the plaints. & Defendants Attorneys being heard in Solemn Argument thereon," the court granted defendant's motion, awarded plaintiff nothing, and awarded defendant costs. DaCo CPQS Min. Bk. A:421 (1791).

114. DaCo CPQS Min. Bk. A:29 (1784).

plaintiff's witnesses testified that she had heard defendant "Say to Sarah Dunham Afforesaid that if She had A Bastard She was not like her Sister that Murdered them" Sarah Dunam, when called to the stand, testified that defendant had said to her, "If I Whore . . . I never murdered: you Should [have] kept that at home Since your Sisters Murdered So many Bastards" The jury then retired and returned a verdict for defendant. The court set aside the verdict, explaining that "the court After Deliberately Considering thereon Are Unanimously of the Oppinion that the Verdict Afforesaid is contrary to Evidence," and granted plaintiff a new trial.¹¹⁵ A new jury was called in the next day. After hearing the evidence, they returned a verdict for plaintiff and assessed his damages as 200 pounds.¹¹⁶ In a less dramatic case, the court in 1787 voided a jury verdict in an action on a caveat on the ground that the verdict settling the disputed land claim lacked certainty.¹¹⁷ In the third instance, the court, after the jury had returned a verdict for plaintiff, dismissed the cause "as not coming under the cognizance of the court."¹¹⁸

Another source of jury authority was derived from the de novo jury trials of causes appealed from the decisions of individual justices.¹¹⁹ The disposition of such appeals by de novo jury trials was expressly contrary to the language of the pertinent statute, which provided that the cause appealed was to be reheard and determined by the justices of the full court "in a summary Way without a Jury."¹²⁰ Nevertheless, in the sixty-one appeals from individual judgments that occurred in the Davidson county court for the period examined, de novo jury trials were awarded in thirty-nine (see Tables 1-13). In nine recorded instances juries affirmed the individual justices' decisions, as compared to two recorded instances in which juries reversed the individual justices' judgments, one of the latter of which was voided by the court.¹²¹

Two statutory sources of petit jury authority were of some significance. First, default judgments by statute were conditional in all actions except actions in debt, and the latter were conditional if the

115. *Id.*

116. *Id.* at 31. On the next day, defendant Lefever appeared before the court, acknowledged that what she had said about plaintiff's daughter had been groundless, and apologized. Plaintiff then graciously released defendant from the judgment that had been entered against her the previous day. *Id.* at 36.

117. *Bruton v. Meness*, DaCo CPQS Min. Bk. A:155 (1787).

118. *Loggins v. McGown*, DaCo CPQS Min. Bk. A:140 (1786).

119. *See, e.g., Sugg v. Barrow*, DaCo CPQS Min. Bk. A:421 (1791).

120. Ch. 2, § 70, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 312, 1 SCOTT, *supra* note 4, at 187.

121. *Sugg v. Barrow*, DaCo CPQS Min. Bk. A:421 (1791).

plaintiff failed to plead specific damages.¹²² Upon entry of a conditional default judgment, the court was required to issue a writ of inquiry to the defendant, returnable at the next term of court, notifying him of the judgment and affording him an opportunity to appear and defend himself before a jury called at the next term to assess the plaintiff's damages. Because at most terms of the Davidson county court for the period examined the majority of cases disposed of consisted of jury assessments of damages under conditional default judgments entered at the preceding term, the assessment procedure provided a systemic method by which an equitable resolution of civil disputes might be had, not by the court, but by its juries. Without the benefit of surviving case files, which would allow a comparison of damages pleaded with damages awarded, the actual extent to which the juries exercised this function cannot be determined with accuracy. The records do reveal, however, that in at least twenty-one instances during the period examined, juries in the Davidson county court rendered assessments of only nominal damages—one penny plus costs.¹²³ In one additional instance, a jury went still further and returned a verdict for the defendant.¹²⁴

Second, petit juries by statute were primarily responsible for the settlement of disputed claims to entries of land.¹²⁵ Procedurally, such disputes reached the court after the complaining party had filed a caveat, a formal written notice directed to the secretary of state requesting him to refuse issuance of a grant to a particular tract of land to the person named until the party filing the caveat had been given an opportunity to establish his claim of priority to the land. After the secretary of state had stayed the granting of a

122. Ch. 2, § 80, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 213-14, 1 SCOTT, *supra* note 4, at 170.

123. Hickman v. Rice, DaCo CPQS Min. Bk. B:215 (1794); Mays v. Rounsevall, DaCo CPQS Min. Bk. B:195 (1794); Good v. Moore, DaCo CPQS Min. Bk. B:160 (1794); Thornberry v. Stump, DaCo CPQS Min. Bk. B:107 (1793); Wilcocks v. Lacy, DaCo CPQS Min. Bk. B:106 (1793); Hickman v. Thomas, DaCo CPQS Min. Bk. B:103 (1793); Shelby v. Riston, DaCo CPQS Min. Bk. B:101 (1793); Sugg v. Lane, DaCo CPQS Min. Bk. B:87 (1793); Loggins v. Cripps, DaCo CPQS Min. Bk. B:68 (1793); Cartwright v. Baker, DaCo CPQS Min. Bk. B:20 (1792); McEwen v. Jameson, DaCo CPQS Min. Bk. B:16 (1792); Demumbre v. Tait, DaCo CPQS Min. Bk. B:7 (1791); Crow v. Fago, DaCo CPQS Min. Bk. A:443 (1791); Bosley v. Thomas, DaCo CPQS Min. Bk. A:441 (1791); Atkinson v. Macbee, DaCo CPQS Min. Bk. A:432 (1791); Riston v. Pollock, DaCo CPQS Min. Bk. A:430 (1791); Armstrong v. Crow, DaCo CPQS Min. Bk. A:430 (1791); Riston v. Gower, DaCo CPQS Min. Bk. A:429 (1791); Clark v. Lindsey, DaCo CPQS Min. Bk. A:418 (1791); Strong v. Hays, DaCo CPQS Min. Bk. A:279 (1789); Donelson v. Boyles, DaCo CPQS Min. Bk. A:264 (1789).

124. Ford v. Sanders, DaCo CPQS Min. Bk. A:245 (1788).

125. See ch. 1, § 6, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 293, 1 SCOTT, *supra* note 4, at 161.

patent to the particular land in question and had referred the dispute to the court,¹²⁶

the said Court shall order the sheriff to summon a jury of good and lawful Men, unconnected by Affinity or Consanguinity, with the contending Parties . . . and having given the parties ten Days previous Notice, shall go with the said Jury on the Premises, and the Jury being sworn to do equal Right between the Parties, to cause the Witnesses on both Sides to be examined, and the allegations of the Parties to be made before such Jury, and to receive the Verdict of the said Jury, and return the same, together with the Pannel, to the next County Court; and at the said Court, if it shall appear that the Jury have found generally for any of the Parties, then the Court shall order an authentic Copy of the Verdict to be delivered to the Party for whom the same shall be found . . . and in all Cases where the Jury shall find a special Verdict, the County Court shall decide thereon according to the Right of the Case, and shall order such Determination to be delivered to the Party, who may thereupon proceed as in Case of a general Verdict. Provided, that where it shall be made appear to the County Court that the Jury were partial, or not all good and lawful men as required by the Constitution, or have been influenced by any unfair practices of the Party for whom they shall find, the said Court shall order a new Trial, and the Proceeding shall be as before directed.¹²⁷

Juries settled five such disputes in the Davidson county court for the period examined,¹²⁸ one of which required a second jury determination after the verdict of the first panel had been voided by the court for lack of certainty.¹²⁹

If the English justices of the peace after the Reformation had become "the unchallenged rulers of their counties,"¹³⁰ their counterparts in the American counties and particularly in the American frontier counties, as the data from the Davidson county court indicate, might have ruled their counties but not without at least some degree of challenge from the institution of the petit jury.

IV. THE DAVIDSON COUNTY COURT OF PLEAS AND QUARTER SESSIONS, 1783-1796

One of the justifications provided by the North Carolina General Assembly for establishing Davidson County in 1783 out of its western-most frontier was that "a considerable Number of Inhabitants have settled on the Lands on *Cumberland River* . . . at a very great Distance from any Place where County Courts are held

126. See, e.g., *Hardee v. Murfree*, DaCo CPQS Min. Bk. A:169 (1787).

127. Ch. 1, § 6, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 293-94, 1 SCOTT, *supra* note 4, at 161.

128. *Freeland v. Robertson*, DaCo CPQS Min. Bk. A:278 (1789); *Burton v. Hardiman*, DaCo CPQS Min. Bk. A:277 (1789); *Murfree v. Leeper*, DaCo CPQS Min. Bk. A:169 (1787); *Burton v. Meness*, DaCo CPQS Min. Bk. A:134 (1786); *Still v. McGavock*, DaCo CPQS Min. Bk. A:118 (1786).

129. See *Burton v. Meness*, DaCo CPQS Min. Bk. A:155 (1787).

130. J. GLEASON, *supra* note 106, at 1.

. . . and [that] appointing Courts to be held among them, would be very beneficial and advantageous."¹³¹ The eight residents of the new county who were commissioned by the governor¹³² as justices of the peace for the county lost little time in organizing their court. Anthony Bledsoe, Daniel Smith, James Robertson, Isaac Bledsoe, Samuel Barton, Thomas Molloy, Francis Prince, and Isaac Lindsey convened the court on October 6, 1783, for a two-day organizational session and, after electing law enforcement officials for the county but without undertaking any of its judicial functions, adjourned until after the first of the year. When the court reconvened on January 5, 1784, it began to transact the judicial business that is the subject of this study.

Several sources of information about the Davidson county court survive, including fragmentary record books and appearance and trial dockets, a very complete set of volumes containing transcripts of the wills and estate inventories that were filed with the court, and scattered case files. The most useful, but ultimately the most disappointing, source of information about the judicial business that came before the court is the surviving series of the court's minute books. These contain a summary record of all of the court's business, including for cases litigated before the court, the style of each case; an indication of the nature of the action; a brief recital of its procedural history; the names of the parties' attorneys, if any; the roster of jurors and almost routinely, the names of witnesses called in on the case; and the disposition of the action. The minute books are disappointingly deficient, however, in providing the arguments presented by the attorneys and the sources of law on which both the attorneys and justices relied. The data presented in the tables appended to this Note were derived from an examination of the first two volumes in this series, which contain the minutes for each of the fifty-one quarterly terms in which the court sat under the North Carolina and territorial governments.

A. *Litigation Characteristics*

(1) Case Load

For the period beginning with its organizational session in October 1783 and concluding with the April term 1796, the court with one exception met and transacted business regularly in January,

131. Ch. 52, § 1, 1783 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 473, 1 SCOTT, *supra* note 4, at 282.

132. The North Carolina Constitution provided that the governor commission as justices of the county courts those persons recommended to him by the general assembly. N.C. CONST. § 33 (1776), reprinted in IREDELL, *supra* note 4, at 280, 1 SCOTT, *supra* note 4, at 147.

April, July, and October of each year. The exception occurred at the October term 1792, when, as the recorder put it, "[t]he court did nothing of consequence . . . but Just meet & Adjoin the Same day to court in course, by Reason of the incursion of the Indians in the country at this time."¹³³ For this period of just over twelve years, the court disposed of 1382 civil and criminal actions by trial, a rather impressive accomplishment given the statutory maximum of six days that the court could sit during each term.¹³⁴ The court usually devoted from one to as many as four days of each term to its legislative and administrative functions. On the more than two hundred days for the period examined that the court tried one or more cases, the total average number of cases tried per day was 6.9 (see Table 15). The court frequently tried only one case a day but on at least fourteen days between 1783 and 1796, the court tried more than fifteen cases. On single days at the October term 1787, the July term 1789, and the July term 1791, the court tried twenty-five, twenty-four, and twenty-seven cases respectively. Remarkably, virtually every case for the period examined was tried to a different jury. An additional seventy-seven cases during the period were recorded as having been disposed of without going to trial, either by private settlement, arbitration, dismissal, or nolle prosequi (see Table 14). The figures doubtless are a conservative reflection, however, of the full range of the court's activities, given the time-consuming procedural requirement that the parties make an initial appearance for the filing of pleadings at the term preceding trial,¹³⁵ the time consumed by parties moving for imparlances and continuances, and the time devoted to the court's regulatory and administrative duties.

Except when entertaining debtors' declarations of insolvency,¹³⁶ individual justices were not required to maintain records of their disposition of the civil and criminal actions that they were authorized to hear. The figures that appear in the category so designated in Tables 1-13 were derived from appeals to the full court from judgments by individual justices and from other references in the records of the full court.

133. DaCo CPQS Min. Bk. B:58 (1792). The court had done little better at its preceding term, when it only summarily ordered five default judgments, "[t]he court having Neglected, at the preceding court, to Appoint a Jury for the present Court." DaCo CPQS Min. Bk. B:56 (1792).

134. Ch. 2, § 58, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 309, 1 SCOTT, *supra* note 4, at 184.

135. See ch. 2, § 80, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 313-14, 1 SCOTT, *supra* note 4, at 189-90.

136. See ch. 4, § 2, 1773 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 263, 1 SCOTT, *supra* note 4, at 129.

The number of cases disposed of varied from term to term without revealing any discernible pattern in the case load as a whole. Indeed, the tendency of the court's case load to fluctuate widely from term to term is the most notable characteristic that emerges from case load data. The fewest number of cases disposed of by trial at any term at which the court entertained litigation were the single cases for which the court rendered judgments at January term 1794 and July term 1787. The largest number of cases disposed of at any single term were the sixty-four cases that were tried during the court's five-day April term 1793. Even the threat of Indians fails fully to explain this erratic performance or the fluctuation, for example, between the single case disposed of at the July term 1787, the fifty-seven disposed of at its October term the same year, and the five disposed of at the very next term in January 1788.

Certainly one factor that contributed to the fluctuation in the disposition of cases was the absence of such time-conserving procedural devices as the joinder of claims.¹³⁷ This factor, complemented by the court's liberal granting of imparlances and continuances, led frequently to the necessity of submitting to separate juries as many as three and four apparently related actions between the same parties at the same term.¹³⁸

(2) Nature of Actions Tried

The great majority of the actions tried by the Davidson county court for the period examined were civil in nature. Most of the civil actions fell into the rather nebulous and uninformative form of action designated "trespass on the case" (see Tables 1-13). Attachment actions were next in frequency. Various contract actions, primarily actions in covenant, ranked third. Most of the civil actions were disposed of by jury trials, either on the merits or in the form of jury assessments of damages on prior default judgments (see Tables 1-13).

137. The related procedure of interpleader, which had as its primary purpose the preservation of a single object or fund that more than one party claimed rather than the saving of the court's time, was well established by the late eighteenth century. *See* An Act to enable Courts of Law to give Relief against adverse Claims made upon Persons having no Interest in the Subject of such Claims, 1 & 2 Will. IV c. 58 (1831). Indeed, the Davidson county court frequently granted motions for interpleader. *See, e.g.,* McGavock v. Robards, DaCo CPQS Min. Bk. A:374 (1790); Roberts v. Evan, DaCo CPQS Min. Bk. A:331 (1789); Singletary v. Ford, DaCo CPQS Min. Bk. A:331 (1789).

138. *See, e.g.,* Coonrod v. Crow, DaCo CPQS Min. Bk. A:337 (1790); Coonrod v. Crow, DaCo CPQS Min. Bk. A:337 (1790); Coonrod v. Crow, DaCo CPQS Min. Bk. A:340 (1790); Coonrod v. Crow, DaCo CPQS Min. Bk. A:353 (1790); Bosley v. Routh, DaCo CPQS Min. Bk. A:376 (1790); Bosley v. Routh, DaCo CPQS Min. Bk. A:376 (1790).

The criminal actions disposed of by the court were interesting but infrequent. The slightly more than 150 criminal cases disposed of by the court constituted approximately ten percent of the court's total case load (see Tables 1-13). Although most offenses prosecuted were of minor importance, ranging from swearing in the presence of the court to taking and keeping a woman in a disorderly manner, prosecutions for the sale of liquor without a license and at prices above the court-imposed rates do reveal an attempt on the part of the justices to enforce the economic regulations that they enacted in their legislative capacity. Apart from the two trials of slaves by special courts to which reference already has been made,¹³⁹ the full court for the period disposed of one case in which the status of an alleged slave was at issue,¹⁴⁰ two cases in which the defendants were charged with selling or purchasing slaves on the sabbath,¹⁴¹ and one case in which the plaintiff accused the defendant of trading with one of his slaves.¹⁴²

Table 14 indicates the regular use of arbitration by the court as a method of dispute settlement. Seventeen cases were referred to arbitration for the period examined. Normally, the court instructed the arbitrators that their decision was to be binding upon the court; even in the absence of such instructions, however, their disposition of the disputes submitted to them typically was accepted by the court. In only one instance was the award set aside by the court,¹⁴³ although the award in another was appealed to the superior court.¹⁴⁴

Although appeals of the court's judgments were relatively infrequent throughout the period examined,¹⁴⁵ appeals of judgments by individual justices to the full county court followed an irregular path of frequency. Single such appeals occurred once during each of the following terms: April term 1785, January term 1786, January term 1787, April term 1787, and October term 1787. The six appeals of this type that occurred at the April term 1788 were followed by similar appeals with some degree of regularity through the October term 1790, at which ten appeals were entertained by the court. Thereafter, such appeals leveled off to the extent that at the last term examined, April term 1796, only three appeals were disposed of by the court (see Tables 1-13).

139. See text accompanying notes 71-72 *supra*.

140. *Gilmore v. Williams*, DaCo CPQS Min. Bk. A:448 (1791).

141. *State v. Molloy*, DaCo CPQS Min. Bk. A:53 (1785); *State v. Boyd*, DaCo CPQS Min. Bk. A:53 (1785).

142. *Sugg v. Barrow*, DaCo CPQS Min. Bk. A:421 (1791).

143. See DaCo CPQS Min. Bk. A:300 (1789).

144. *Marney v. Alston*, DaCo CPQS Min. Bk. A:109 (1786).

145. For the period examined, only 80 cases were appealed to the superior court (see Tables 1-13).

(3) Resolution of Jurisdictional Conflicts

Although the minutes provide some indication that the court made some attempt to adhere to its jurisdictional limitations, its record is a mixed one. The court in at least one instance dismissed an action for lack of jurisdiction even after a verdict had been returned.¹⁴⁶ In two other instances, a prosecution for forgery¹⁴⁷ and a prosecution for counterfeiting,¹⁴⁸ the court referred the cases to the superior court, which properly had jurisdiction over such offenses. The court nonetheless allowed two felony prosecutions, both for theft offenses, to go to juries.¹⁴⁹

B. Attendance Characteristics

The records for the period examined reveal that regularity of attendance was not regarded as essential by the justices. Attendance at the daily sessions of each term varied greatly (see Table 16). Of the eight to nineteen justices who held commissions at any one term during the period examined, daily attendance by three or four justices constituted the norm. The attendance of as many as ten or twelve justices typically occurred only when the court met to elect the county sheriff. Occasionally, as few as one or two justices were recorded at the convening of the court. The average attendance of each justice is difficult, if not impossible, to determine because of the decision of the court at its January term 1791 to institute a short-lived system of attendance by rotation, under which six justices were designated to attend each court.¹⁵⁰ The justices failed to adhere to the designations and, as new justices were commissioned, the records fail to reflect into which group they were assigned. The practice lasted until the April term 1794, when it was abandoned because of

the Negligence of Some [of the justices] in not Attending to hold court When it Was their turn in Rotation, Whilst Others Thought it not incumbent on them When it Was not their Turn, So that it is With the Greatest Difficulty that court can be holden During the time Requistd for the Doing Justice to Suitors.¹⁵¹

No less revealing than the maximum and minimum daily attendance at each session of the court are the statistics of frequency

146. *Loggins v. McGown*, DaCo CPQS Min. Bk. A:140 (1786).

147. *State v. Parker*, DaCo CPQS Min. Bk. A:338 (1790).

148. *State v. Lenear*, DaCo CPQS Min. Bk. A:204 (1788).

149. *Territory v. O'Neal*, DaCo CPQS Min. Bk. B:151 (1794); *Territory v. McMorn*, DaCo CPQS Min. Bk. B:114 (1793).

150. DaCo CPQS Min. Bk. A:414 (1791).

151. DaCo CPQS Min. Bk. B:186 (1794).

of individual justices in attendance. For the fifty-one terms of court that occurred during the period examined, thirty-seven different justices attended at least one term. Although changes in membership are accounted for in part by such occurrences as deaths, permanent departures from the county, or, in the case of Anthony Bledsoe and Daniel Smith, the separation of districts from the county, persistent absences also appear to have been a contributing factor. After presenting their commissions to the court at the July term 1788 and at the October term 1795, Jacob Pennington and James Byrns, respectively, failed to attend any subsequent term. William Simpson made only one appearance at a term subsequent to presentation of his commission at the April term 1788. Moreover, even the justices who were the most regular in attendance occasionally were absent for entire terms of court (see Table 16).

C. Sources of Law

The records for the Davidson county court are not helpful in revealing the sources of law to which the justices and the attorneys who appeared before them turned for the administration of justice. The few pleadings that have survived contain no references to statutory law, to judicial precedent, or even to secondary legal works. Moreover, only rarely do the minutes contain the substance of the arguments presented by the attorneys who practiced in the court.

Absent the evidence that these resources might have provided, the kinds of law books available at the time to the justices and attorneys in the county do provide some indication of the sources of law in the frontier court. The inventories of the estates of deceased justices and attorneys, the correspondence of members of the court and of the county's lawyers, account books, contemporary newspapers, and an invoice for books purchased by Andrew Jackson in Philadelphia several months after the close of the period under examination are the primary sources of information about the legal authorities available in printed form to the court.

As a rule, the references to legal authorities in these records provide sufficient information to establish the titles and the names of authors or compilers. Titles that went through only one edition have been given the date of original publication. No attempt has been made to establish the particular edition referred to in the records for titles that went through more than one edition; for uniformity and convenience, the original publication dates have been used.

(1) Statutes

Although each county court by statute was authorized to purchase "according to their Discretion," among other legal volumes, an abridgement of English statutes,¹⁵² the records of the Davidson county court do not indicate that the court ever actually purchased this or any other of the titles recommended by the assembly. Printed compilations of the statutes enacted by the North Carolina General Assembly, however, along with the journals for each session of the assembly, were forwarded to the county on a regular basis.¹⁵³ In addition, compilations of the statutes enacted by the territorial assembly and of the ordinances adopted by the territorial governor and judges became available in Knoxville in 1793, 1794, and 1795.¹⁵⁴ Compilations of the federal statutes, at least beginning with the territorial period, were available in the county.¹⁵⁵

(2) Reports

The records provide little direct evidence that reports of cases were present or used in the county during the period examined. For example, although the inventory of Justice Lardner Clark's estate, which was filed with the court in 1802, lists a copy of Sir Thomas Jones' *The Reports of Several Special Cases Adjudged in the Courts of King's Bench and Common Pleas at Westminster, in the Reign of King Charles II (1729)*,¹⁵⁶ the records do not reveal whether Clark had obtained the volume before 1796. Also, although the third volume of *The Miscellaneous Essays and Occasional Writings of Francis Hopkinson (1792)* that Jackson purchased in August 1795¹⁵⁷ contains a sizeable collection of the judgments of the Pennsylvania admiralty court,¹⁵⁸ neither Jackson nor his colleagues is likely to have found those cases of much precedential value, given the types of litigation that they were called upon to argue before the court. Finally, the scattered numbers that survive of the *Knoxville Gazette*, the only newspaper published in the vicinity between 1791

152. Ch. 4, § 1, 1749 Laws of N.C. (Mar. Sess.), reprinted in IREDELL, *supra* note 4, at 138, 1 SCOTT, *supra* note 4, at 81.

153. See, e.g., Letter from Richard Caswell to Anthony Bledsoe and James Robertson, Feb. 27, 1787, reprinted in 20 STATE RECORDS, *supra* note 69, at 622.

154. See Bentley, *Printers and Printing in the Southwest Territory, 1790-1796*, 8 TENN. HIST. Q. 332, 341-42 (1949).

155. See Sharp v. Mountflorencia, DaCo CPQS Min. Bk. B:171 (1794); Inventory of the Estate of Lardner Clark, 2 DaCo Wills & Inventories 264.

156. 2 DaCo Wills & Inventories 264.

157. Jackson-Donelson Account Book, TLHA.

158. For the contents of the three-volume *Miscellaneous Essays*, see the Wright microfilm series "American Fiction 1774-1850," film 1213, v. 1, reel H11, no. 1229.

and 1796, occasionally contain accounts of moderate length of decisions rendered by the court of King's Bench.¹⁵⁹ Unfortunately, Clark and Jackson were, at least in 1793, the only subscribers to the *Gazette* in the county.¹⁶⁰

The first direct evidence that copies of English reports were present in the county does not occur until January 1797 in Jackson's invoice of legal volumes purchased that month in Philadelphia from Robert Campbell & Company. The invoice lists six sets of reports of Chancery Court decisions¹⁶¹ and two sets of reported decisions by the court of King's Bench.¹⁶²

(3) Secondary Works

The records do provide some evidence that secondary legal authorities were present in the county. Jackson, for example, brought to Davidson County in the autumn of 1788 a copy of an appendix to William Blackstone's *Commentaries on the Laws of England*,¹⁶³ which suggests that Jackson was at least acquainted with the *Commentaries*. An even stronger suggestion of familiarity with secondary legal works occurs in a letter from attorney Samuel Donelson to Jackson in June 1795, in which Donelson, writing from Louisville where he had gone to pick up merchandise for a store that he and Jackson were in the process of opening in Nashville, asked Jackson

159. See, e.g., Knoxville Gazette, Mar. 27, 1794, Feb. 23, 1793, Feb. 25, 1792.

160. *Id.*, Dec. 29, 1792.

161. Jackson purchased Francis Vesey's two-volume *Cases Argued and Determined in the High Court of Chancery, in the Time of Lord Chancellor Hardwicke, from the Year 1746-7, to 1755* (1771); William Brown's *Reports of Cases Argued and Determined in the High Court of Chancery, During the Time of Lord Chancellor Thurlow, and of the Several Lords Commissioner of the Great Seal, and Lord Chancellor Loughborough, from 1778 to 1794* (n.d.); Thomas Vernon's two-volume *Cases Argued and Adjudged in the High Court of Chancery [1680-1719], Originally Published by Order of the Court, from the Manuscripts of Thomas Vernon* (1726-1728); William Peere Williams' three-volume *Reports of Cases Argued and Determined in the High Court of Chancery 1680-1719* (1740-1749); *A General Abridgement of Cases in Equity, Argued and Adjudged in the High Court of Chancery, etc., [1667-1744] with a Large Collection of Cases Never Before Published* (1792-1793); John Tracy Atkins' three-volume *Reports of Cases Argued and Determined in the High Court of Chancery, in the Time of Lord Chancellor Hardwicke [1736-1754]* (1765-1768). Invoice, from Robert Campbell & Co. to Andrew Jackson, Jan. 7, 1797, Andrew Jackson Papers, DLC Reel 1 [hereinafter cited as Invoice].

162. Jackson's purchases were of George Wilson's three-volume *Reports of Cases Argued and Adjudged in the King's Courts at Westminster [1742-1774]* (n.d.); and Robert Raymond's three-volume *Reports of Cases Argued and Adjudged in the Courts of the King's Bench and Common Pleas, in the Reigns of the Late King William, Queen Anne, King George the First, and King George the Second [1694-1732] Taken and Collected by the Right Honourable Robert Lord Raymond* (1792). Invoice, *supra* note 161.

163. Jackson's copy of *An Interesting Appendix to Sir William Blackstone's Commentaries on the Laws of England* (1773), which bears his signature and the date Aug. 25, 1788, is preserved at the Tennessee State Library and Archives.

to take care of the cases pending in his absence at the Tennessee county court. Regarding one of the cases in which he represented the defendant, Donelson assured Jackson that the plaintiff's deposition would be "sufficient to base the suit upon it being illegally done and if not in first Espinass you will find law enough to supporte the Defence"¹⁶⁴ The reference clearly indicates that both Donelson and Jackson were well-acquainted with Isaac Espinasse's *A Digest of the Law of Actions at Nisi Prius* (1789). In August of the same year, Jackson purchased the three-volume compilation of the writings of Francis Hopkinson,¹⁶⁵ who had been an admiralty judge in Pennsylvania for a decade before his appointment in 1789 as judge for the United States District Court for the Eastern District of Pennsylvania.¹⁶⁶ The first two volumes in *The Miscellaneous Essays* contained several essays on such legal subjects as the doctrine of common law crimes, grand juries, and jury trials.¹⁶⁷ Finally, attorney James Cole Mountfloreance in 1793 owned Charles Viner's twenty-three volume *A General Abridgement of Law and Equity* (1791-1794).¹⁶⁸

The only other evidence that secondary legal works were available in the county between 1783 and 1796 is indirect at best. The 1803 inventory of Justice Thomas Molloy's estate and the 1804 inventory of attorney Samuel Donelson's estate both list copies of Blackstone's *Commentaries*,¹⁶⁹ and the 1802 inventory of Justice Lardner Clark's estate lists a copy of a commentary on Blackstone and a manual for justices of the peace.¹⁷⁰ Again, the records do not

164. Letter from Samuel Donelson to Andrew Jackson, June 29, 1795, Andrew Jackson Papers, DLC Reel 71 (orthography uncorrected).

165. See note 157 *supra* and accompanying text.

166. G. HASTINGS, *THE LIFE AND WORKS OF FRANCIS HOPKINSON* 459 (1926).

167. The essays include "On the Office and Rights of a Grand Jury;" "Observations on a Bill Entitled 'An Act for Amending the Penal Laws of This State;'" "Observations of a Foreigner on the Jury Trials of England;" and "A Specimen of a Modern Law-Suit, or the Conduct of a Court of Justice Displayed; Intended as a Model for a New Book of Modern Reports: in the Style of the Year 1786." 1 *THE MISCELLANEOUS ESSAYS AND OCCASIONAL WRITINGS OF FRANCIS HOPKINSON* 194 (1792); 2 *THE MISCELLANEOUS ESSAYS AND OCCASIONAL WRITINGS OF FRANCIS HOPKINSON* 93, 194, 247 (1792).

168. See *Talbot v. Mountfloreance*, DaCo CPQS Min. Bk. B:84 (1793); *Deadrick v. Mountfloreance*, DaCo CPQS Min. Bk. B:84 (1793).

169. 2 DaCo Wills & Inventories 320; Inventory of the Estate of Samuel Donelson, Apr. 1, 1804, Sumner County Records, TSLA (unprocessed).

170. The volumes listed in Clark's estate are Philip Furneaux's *Letters to . . . Mr. Justice Blackstone, Concerning his Exposition of the Act of Toleration; and Some Positions Relative to Religious Liberty, in his Commentaries* (1770) and *The Conductor Generalis: or, The Office, Duty and Authority of Justices of the Peace, High-Sheriffs, Under-Sheriffs, Coroners, Constables, Gaolers, Jury-Men, and Overseers of the Poor. As also, The Office of Clerks of Assize, And of the Peace, &c. Compiled chiefly from Burn's Justice, and the Several other Books, on those Subjects, by James Parker, late one of the Justices of the Peace for*

show whether these volumes had been purchased by their owners before 1796.

The first direct evidence of legal treatises and digests in the county does not surface until Jackson's 1797 invoice. The document lists purchases of a set of Coke's *Institutes*; Bacon's *Abridgment*, and a number of other digests; treatises on contracts, procedure, and evidence; and a legal dictionary.¹⁷¹

The paucity of information about the reports and statutory and secondary legal authorities available in the county for the period examined is especially disappointing in light of contemporary controversies about the laws in effect when the western North Carolina counties were ceded to the federal government and organized into the Territory South of the River Ohio and when the Territory was organized into the new state of Tennessee.¹⁷² The high incidence of English reports and treatises on English law in the records that do survive for and just beyond the period examined, however, suggests at least a lack of hostility to English law on the Tennessee frontier

Middlesex county, in New-Jersey; and now revised and adapted to the United States of America (1792). See 2 DaCo Wills & Inventories 264.

171. Jackson's purchases included Emmerich de Vattel's *The Law of Nations; or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns* (1787); John Joseph Powell's *Essay Upon the Law of Contracts and Agreements* (1790); Isaac Espinasse's *A Digest of the Law of Actions at Nisi Prius* (1789); Sir Geoffrey Gilbert's *The Law of Evidence* (1760); Sir Francis Buller's *An Introduction to the Law Relative to Trials at Nisi Prius* (1781); Sir John Comyns' five-volume *A Digest of the Laws of England, by the Right Honourable Sir John Comyns . . . Continued Down to the Present Time, by a Gentleman of the Inner Temple* (1785); William Hawkins' two-volume *A Treatise of the Pleas of the Crown; or, A System of the Principal Matters Relating to that Subject, Digested Under Proper Heads* (1788); John Impey's *The New Instructor Clericalis, Stating the Authority, Jurisdiction and Modern Practice of the Court of Common Pleas . . . to which Are Added the Rules of the Court, Modern Precedents* (1785); Robert Hinde's *The Modern Practice of the High Court of Chancery . . . with . . . Forms of Practical Precedents . . . from the Original Bill to the Decree* (1786); Sir Edward Coke's three-volume *The First Part of the Institutes of the Laws of England; or, A Commentary upon Littleton; Not the Name of the Author Only, but of the Law Itself* (1628); Matthew Bacon's *A New Abridgment of the Law, Alphabetically Digested under Proper Titles* (1736-1759); Henry Barnes' *Notes of Cases in Points of Practice, Taken in the Court of Common Pleas at Westminster . . . 1732 to . . . 1756 . . . To Which Is Added a Continuation of Cases to the End of the Reign of King George the Second* (1790); and Richard Burn's *A New Law Dictionary* (1792). Invoice, *supra* note 161.

172. David Campbell, for example, one of the Territory's three commissioned judges, disagreed with the territorial governor, William Blount, about whether the laws of North Carolina continued to remain in effect in the Territory, despite the language in the Cession Act of 1789 that "the laws in force and use in the State of North Carolina at the time of passing this Act, shall be and continue in full force within the territory hereby ceded until the same shall be repealed, or otherwise altered by the Legislative authority of the said territory." Act of Dec. 22, 1789, reprinted in 4 THE TERRITORIAL PAPERS OF THE UNITED STATES: THE TERRITORY SOUTH OF THE RIVER OHIO, 1790-1796, at 3, 7 (C. Carter ed. 1936) [hereinafter cited as TERRITORIAL PAPERS]; see Letter from David Campbell to Thomas Jefferson, Feb. 25, 1792, reprinted in TERRITORIAL PAPERS, *supra*, at 121.

and the absence of any interest in undercutting the authority of English precedents.¹⁷³

D. *The Justices*

In the post-revolutionary exercise of their extensive judicial, legislative, and executive authority, the members of the Davidson county court were not altogether unlike their earlier English counterparts who individually and collectively had governed the English counties as a social, political, military, and economic elite.¹⁷⁴ In terms of educational backgrounds, however, the class of Davidson County justices for the period examined was anything but exclusive.

(1) Occupational and Educational Backgrounds

The surviving records reveal little about the occupational and educational backgrounds of most of the Davidson County justices for the period examined. For those justices for whom records of their backgrounds do survive, however, the data disclose at least three characteristics. First, only two of the Davidson County justices were practitioners of professions. Seth Lewis, who was commissioned a justice in June 1794,¹⁷⁵ had read law with Josiah Love, one of the county's practicing lawyers, before his appointment¹⁷⁶ and was the only member of the Davidson county court for the period examined who had been trained in the law. John Sappington, who came onto the court at its April term 1787, was a physician who had arrived in the county only the year before.¹⁷⁷ Among the remaining justices, at least five pursued occupations as surveyors both before and after their appointment to the court.¹⁷⁸ Six of the justices followed active

173. See J. Ely, "You will Discover how Loosely Business is Transacted in the Courts of this State": The Legal Practice of Andrew Jackson (Oct. 20, 1978) (unpublished paper presented at Conference of American Society for Legal History, Chicago). The extent to which English statutory and common law survived into the law of Tennessee was discussed by John Overton when he succeeded Jackson as a member of the state's superior court. See *Glasgow's Lessee v. Smith*, 1 Tenn. (1 Overt.) 144, 153-54 (1805). For additional discussion of the status of English law in Tennessee, see E. BROWN, *BRITISH STATUTES IN AMERICAN LAW 1776-1836*, at 176-80 (1964).

174. For discussion of the English justices as an elite class, see J. GLEASON, *supra* note 106, at 47-67.

175. JOURNAL OF THE PROCEEDINGS OF GOVERNOR BLOUNT IN THE TERRITORY SOUTH OF THE RIVER OHIO 1790-1796, reprinted in 4 TERRITORIAL PAPERS, *supra* note 172, at 429, 460 [hereinafter cited as JOURNAL].

176. See Autobiographical Memoir of Seth Lewis, 1848, at 20, McRaven Collection, TSLA.

177. Arnow, *Education and The Professions in the Cumberland Region*, 20 TENN. HIST. Q. 120, 147 (1961).

178. The five were Anthony Bledsoe, Daniel Smith, James Mulherin, Edwin Hickman, and Robert Weakley. H. ARNOW, *FLOWERING OF THE CUMBERLAND* 311 (1963); 1 BIOGRAPHICAL

military careers either before or after receiving commissions to serve on the court. Military careers in the American war for independence had enhanced the reputations of Justices James Robertson and Daniel Smith before their arrival in Davidson County.¹⁷⁹ Robertson and his colleagues Isaac and Anthony Bledsoe, Elijah Robertson, and John Donelson, Jr., built reputations for themselves as Indian fighters after their arrival in the county.¹⁸⁰ Justices Lardner Clark, Anthony Bledsoe, and John Gordon were merchants or traders in the county,¹⁸¹ while an additional three members of the court—Sampson Williams, Robert Weakley, and Robert Edmondson—were farmers or planters.¹⁸² Justice James Ford kept a ferry.¹⁸³ At least three of the justices alternated their duties as members of the court with more than one occupation or business enterprise. Coincidentally with his career on the Davidson county court, James Robertson served as territorial Governor William Blount's land agent and speculating partner for at least a decade after 1783.¹⁸⁴ In 1795 he expanded his activities to include establishing one of the first iron works in the vicinity.¹⁸⁵ In addition to his work as a surveyor, Justice Mulherin apparently made himself available to several of the county's families as a part-time teacher.¹⁸⁶ Finally, in addition to farming, Justice Sampson Williams kept a ferry on the Cumberland River.¹⁸⁷

Second, several of the Davidson County justices had complemented their varied occupational backgrounds with active political

DIRECTORY OF THE TENNESSEE GENERAL ASSEMBLY, 1796-1861, at 53, 768-69 (R. McBride ed. 1975) [hereinafter cited as BIOGRAPHICAL DIRECTORY]; W. Durham, Daniel Smith: Frontier Statesman 23-25, 93-95, 126 (1976); Mulherin Sketch, Provine Papers, TSLA. Bledsoe was also one of three surveyors who had received legislative appointments to survey the land claimed within the western military district under entries issued by the state as remuneration for its soldiers who had served in the American war for independence. T. ABERNETHY, FROM FRONTIER TO PLANTATION IN TENNESSEE: A STUDY IN FRONTIER DEMOCRACY 43 (1932).

179. W. DURHAM, *supra* note 178, at 79-80; A. PUTNAM, HISTORY OF MIDDLE TENNESSEE OR, LIFE AND TIMES OF GEN. JAMES ROBERTSON 52 (reprinted 1971).

180. J. CISCO, HISTORIC SUMNER COUNTY, TENNESSEE 64-66, 93 (reprinted 1971); W. CLAYTON, HISTORY OF DAVIDSON COUNTY, TENNESSEE 25 (reprinted 1971); A. PUTNAM, *supra* note 179, at 54-55; J. RAMSEY, THE ANNALS OF TENNESSEE 599 (reprinted 1967).

181. BIOGRAPHICAL DIRECTORY, *supra* note 178, at 53; Leach, *John Gordon of Gordon's Ferry*, 18 TENN. HIST. Q. 322, 323 (1959); Provine, *Lardner Clark, Nashville's First Merchant And Foremost Citizen*, 3 TENN. HIST. MAG. 28, 35-36 (1917); Gordon Sketch, McRaven Collection, TSLA.

182. 1 BIOGRAPHICAL DIRECTORY, *supra* note 178, at 229, 769, 797.

183. *Id.* at 255.

184. T. ABERNETHY, *supra* note 178, at 53, 129.

185. Dalton, *Montgomery Bell and the Narrows of Harpeth*, 35 TENN. HIST. Q. 3, 5 (1976).

186. H. ARNOW, *supra* note 178, at 172-73.

187. 1 BIOGRAPHICAL DIRECTORY, *supra* note 178, at 797.

careers before their appointment to the court. Four of the future justices had served as justices of county courts in other counties before moving to Davidson County,¹⁸⁸ and six had served as members of the short-lived precursor of the Davidson county court, the Committee of the Cumberland Association, between January and August of 1783.¹⁸⁹ One of the justices, Daniel Smith, had held the office of sheriff before moving to Davidson County,¹⁹⁰ and two others had held the office in Davidson County before receiving appointments to the court.¹⁹¹ Finally, two of Davidson County's future justices had served in state general assemblies before moving to the county. Anthony Bledsoe had represented Washington County in the Virginia assembly,¹⁹² and Ephraim McLean had been a member of both houses of the North Carolina General Assembly from Burke County between 1777 and 1780.¹⁹³

Third, the justices' occupational backgrounds reflected, at least for those justices for whom records survive, almost a uniform lack of formal education. Apparently only Justice Lardner Clark received any formal education.¹⁹⁴ Justice Seth Lewis' legal training consisted of reading law under Josiah Love.¹⁹⁵ Records for the educational background of the court's only practicing physician, John Sappington, have not survived. Although Daniel Smith traditionally has been credited with having attended the College of William and Mary, his education more likely was confined to the practical surveying experience he gained while under the tutelage of Thomas Walker, an Albemarle County, Virginia, physician.¹⁹⁶

188. James Robertson had been one of the first members of the frontier Washington county court in 1778. Washington County Court of Pleas and Quarter Sessions Minute Book, February term 1778, TSLA Reel 129. Justice Anthony Bledsoe had served as a member of county courts in Botetourt, Fincastle, and Washington counties, Virginia, before moving to Davidson County. 1 BIOGRAPHICAL DIRECTORY, *supra* note 178, at 53. Justice Daniel Smith had served as a member of the county court in Washington County, Virginia, in 1776. W. DURHAM, *supra* note 178, at 51. Justice Ephraim McLean had served as a justice of the Rowan County, North Carolina, court in 1776. McLean Sketch, Provine Papers, TSLA.

189. The six were James Robertson, Samuel Barton, Thomas Molloy, Isaac Lindsey, James Mauldin, and Isaac Bledsoe. THREE PIONEER TENNESSEE DOCUMENTS, *supra* note 5, at 23, 25, 39.

190. Smith served as sheriff of Washington County, Virginia, from 1781 to 1782. W. DURHAM, *supra* note 178, at 80-81.

191. David Hay was elected by the court as sheriff of Davidson County in 1786 and 1787. DaCo CPQS Min. Bk. A:120, 176. Sampson Williams served as sheriff of the county from July 1789 until his resignation in January 1794. *See* DaCo CPQS Min. Bk. A:293, 364, 402; DaCo CPQS Min. Bk. B:149.

192. 1 BIOGRAPHICAL DIRECTORY, *supra* note 178, at 53.

193. NORTH CAROLINA GOVERNMENT 1585-1974, at 201, 203, 204, 205 (J. Cheney ed. 1975).

194. Clark had attended the College of New Jersey. *See* Extract, New York Gazette and Weekly Mercury, Oct. 24, 1774, *reprinted in* 29 ARCHIVES OF THE STATE OF NEW JERSEY (ser. 1) 496 (1917).

195. Autobiographical Memoir of Seth Lewis, *supra* note 176, at 20.

196. *See* W. DURHAM, *supra* note 178, at 4-10.

(2) Familial Interrelationships

If in their familial relationships to one another and to neighboring landholders and slaveowners the Davidson County justices differed from their earlier English counterparts, whose familial interrelationships had been considerable,¹⁹⁷ the difference was more in degree than in kind. Apparently only nine of the Davidson County justices were related by blood or marriage. Justices James and Elijah Robertson were brothers,¹⁹⁸ as were justices Anthony and Isaac Bledsoe.¹⁹⁹ Justice Robert Ewing was the son-in-law of Justice Ephraim McLean,²⁰⁰ Justice Joel Rice was Justice Edwin Hickman's son-in-law,²⁰¹ and Justices Robert Hays and John Donelson, Jr., were brothers-in-law.²⁰²

Several of the Davidson County justices were related to other substantial landholders and slaveowners in their own and neighboring counties. Justice James Mulherin was the brother-in-law of John Buchanan, the owner of some six mills in the county and a major landholder by the turn of the century.²⁰³ Justice Joel Rice was the brother of wealthy land speculator John Rice.²⁰⁴ Justice Robert Weakley was a cousin of Griffith Rutherford, a former member of the North Carolina General Assembly from Washington County, a speculator, and chairman of the territorial assembly in 1794 and 1795.²⁰⁵ Finally, both Justices Robert Hays and John Donelson, Jr., were brothers-in-law of Andrew Jackson, who speculated in land as earnestly, albeit less successfully, as he practiced law.²⁰⁶

(3) Landholdings

As landowners, the justices were a curious mix, ranging from substantial property owners to apparently modest town dwellers. In the preterritorial period, most of the current and future justices owned real property in excess of one thousand acres. Between September 1787 and June 1791, for instance, Elijah Robertson was

197. See, e.g., J. GLEASON, *supra* note 106, at 129, 137, 149, 192.

198. 1 BIOGRAPHICAL DIRECTORY, *supra* note 178, at 628.

199. W. DURHAM, *THE GREAT LEAP WESTWARD: A HISTORY OF SUMNER COUNTY, TENNESSEE FROM ITS BEGINNING TO 1805*, at 48 (1969).

200. 1 BIOGRAPHICAL DIRECTORY, *supra* note 178, at 239.

201. Goodstein, *Leadership on the Nashville Frontier, 1780-1800*, 35 TENN. HIST. Q. 174, 184 (1976).

202. H. ARNOW, *supra* note 178, at 14.

203. Goodstein, *supra* note 201, at 182-83.

204. *Id.* at 184.

205. *Id.* at 184-85.

206. See Donelson Family Genealogical Chart, in R. REMINI, *ANDREW JACKSON AND THE COURSE OF AMERICAN EMPIRE, 1767-1821*, at xx-xxi (1977).

granted or deeded more than 32,000 acres of land in Davidson County and in the middle and western districts of the Military Reserve.²⁰⁷ Robertson in 1789 also owned 19,460 acres in neighboring Sumner County.²⁰⁸ Between 1784 and 1790, Lardner Clark became owner or partial owner of some 24,331 acres in Davidson County and in the middle and western districts. During that six-year period, the state of North Carolina granted to Clark and his mercantile associate William Wycoff²⁰⁹ 8340 acres,²¹⁰ and to Clark alone some 9488 acres.²¹¹ Clark deeded into an additional 6503 acres, including eight one-acre lots in the town of Nashville.²¹² For the same period, Robert Weakley received land grants from the state of North Carolina and from the territorial government of some 10,280 acres²¹³ and deeded into an additional 4250 acres.²¹⁴ For the same period, James Robertson received grants from North Carolina in excess of 9540 acres.²¹⁵ For the same period, Ephraim McLean received grants for or deeded into 9414 acres;²¹⁶ David Hay, 8542 acres;²¹⁷ Robert Hays, 7640 acres;²¹⁸ Edwin Hickman, 7141 acres;²¹⁹ Thomas Molloy, 6585 acres;²²⁰ James White, 3840 acres;²²¹ John Donelson, 3840 acres;²²² James Hoggatt, 3329 acres;²²³ Samuel Barton, 2791 acres;²²⁴ James

207. DaCo Deed Bk. A:127, DaCo Deed Book B:92-221 *passim* (full compilation on file with the *Vanderbilt Law Review*).

208. Sumner County Tax List, 1789, at 59, WPA Records, TSLA.

209. For a discussion of the firm of Clark & Wycoff, see Provine, *supra* note 181, at 35-50.

210. DaCo Deed Bk. A:6-326 *passim*; DaCo Deed Bk. B:37-180 *passim* (full compilation on file with the *Vanderbilt Law Review*).

211. DaCo Deed Bk. A:5-171 *passim*; DaCo Deed Bk. B:54-180 *passim* (full compilation on file with the *Vanderbilt Law Review*).

212. DaCo Deed Bk. A:9-266 *passim*; DaCo Deed Bk. B:18-126 *passim* (full compilation on file with the *Vanderbilt Law Review*).

213. DaCo Deed Bk. A:104-327 *passim*; DaCo Deed Bk. B:39-194 *passim* (full compilation on file with the *Vanderbilt Law Review*).

214. DaCo Deed Bk. A:180, 340; DaCo Deed Bk. B:11, 109, 110, 211.

215. DaCo Deed Bk. A:51-306 *passim*; DaCo Deed Bk. B:235, 236 (full compilation on file with the *Vanderbilt Law Review*).

216. DaCo Deed Bk. A:173, 174; DaCo Deed Bk. B:52, 53, 177.

217. DaCo Deed Bk. A:280; *see* DaCo Deed Bk. A:8.

218. DaCo Deed Bk. A:31-309 *passim* (full compilation on file with the *Vanderbilt Law Review*).

219. DaCo Deed Bk. A:47, 247, 314, 349; DaCo Deed Bk. B:13, 141.

220. DaCo Deed Bk. A:34-296 *passim*; DaCo Deed Bk. B:44, 88 (full compilation on file with the *Vanderbilt Law Review*).

221. DaCo Deed Bk. B:186.

222. DaCo Deed Bk. A:103-306 *passim*; DaCo Deed Bk. B:130, 227 (full compilation on file with the *Vanderbilt Law Review*).

223. DaCo Deed Bk. A:14-327 *passim*; DaCo Deed Bk. B:44-328 *passim* (full compilation on file with the *Vanderbilt Law Review*).

224. DaCo Deed Bk. A:22, 117-18, 301; DaCo Deed Bk. B:218.

Ross, 2652 acres;²²⁵ Sampson Williams, 1708 acres;²²⁶ John Nichols, 1640 acres;²²⁷ John Sappington, 1160 acres;²²⁸ and James Mulherin, 1040 acres.²²⁹

Only four members of the court received grants for, or deeded into, less than one thousand acres for the period 1784-1790. John Kirkpatrick deeded into 614 acres.²³⁰ James Mears owned 538 acres;²³¹ Robert Edmondson, 200 acres;²³² Adam Lynn, 140 acres;²³³ Robert Ewing, 65 acres;²³⁴ and James Mauldin, one half-acre lot in Nashville.²³⁵

(4) Contemporaneous Political and Military Appointments

The justices were not reluctant to serve in other political positions while serving as members of the court. Several incumbent members of the court also represented Davidson County in the North Carolina General Assembly. James Robertson represented the county in the state senate at its November Session 1787²³⁶ and at its November Session 1788.²³⁷ He also had represented the county in the state's house of commons at its November Session 1786.²³⁸ Anthony Bledsoe represented the county in the state senate at its November Session 1785.²³⁹ Elijah Robertson served in the state's house of commons from Davidson County at the November Session 1788.²⁴⁰ Robert Ewing represented the county in the house of commons at its November Session 1789.²⁴¹

Frequent legislative assignments to the Davidson County justices of duties that were not inherent in their commissions further enhanced the authority of the justices in the county. For example, when the North Carolina General Assembly decided to establish the town of Nashville in 1784, it designated five incumbent justices—Samuel Barton, Thomas Molloy, Daniel Smith, James Shaw,

225. DaCo Deed Bk. A:182, DaCo Deed Bk. B:123.

226. DaCo Deed Bk. A:41, 197.

227. DaCo Deed Bk. B:204.

228. DaCo Deed Bk. A:64, 65, 176.

229. DaCo Deed Bk. A:270; DaCo Deed Bk. B:27.

230. DaCo Deed Bk. A:282; DaCo Deed Bk. B:16, 138.

231. DaCo Deed Bk. A:123; DaCo Deed Bk. B:213.

232. DaCo Deed Bk. B:143.

233. DaCo Deed Bk. A:217; DaCo Deed Bk. B:115.

234. DaCo Deed Bk. B:74.

235. DaCo Deed Bk. A:22.

236. 20 STATE RECORDS, *supra* note 69, at 301.

237. *Id.* at 475.

238. 18 STATE RECORDS, *supra* note 69, at 226.

239. 20 STATE RECORDS, *supra* note 69, at 1.

240. 21 STATE RECORDS, *supra* note 69, at 1.

241. *Id.* at 193.

and Isaac Lindsey—as trustees to divide the town into lots and to deed out the lots to purchasers and subscribers.²⁴² Barton was appointed treasurer for the new town.²⁴³ The trustees named by the legislature a year later to lay out and sell lots for the new town of Clarksville included another justice, Anthony Bledsoe, and a future justice, Lardner Clark.²⁴⁴ When the legislature late in 1785 incorporated the Davidson Academy for “the Promotion of Learning” in the county, incumbent justices Smith, Bledsoe, James Robertson, and Ephraim McLean were among the institution’s first trustees.²⁴⁵ In 1787 the general assembly granted to McLean and four future justices authority to lease out several of the county’s salt springs for the production of salt.²⁴⁶

Incumbent justices also served in various court-appointed positions in the county. Justice Francis Prince, for instance, was appointed by the court to the position of register for the county at its organizational session in October 1783.²⁴⁷ Justice Thomas Molloy succeeded Prince in the position in July 1790.²⁴⁸ Justice John Sappington was appointed treasurer for the county by the court at its April term 1787,²⁴⁹ and Justice Robert Edmondson was appointed tax collector for a portion of the county by the court at its April term 1790.²⁵⁰ Justice Daniel Smith was appointed surveyor for the county in January 1784.²⁵¹ Lesser court-appointed positions such as stray master (James Mears)²⁵² and ranger (Isaac Lindsey)²⁵³ also were filled by incumbent justices.

Several incumbent justices also served in military positions in the county. Both James Robertson and Elijah Robertson held the rank of lieutenant colonel commandant in the county militia, the latter succeeding to the position upon James Robertson’s promotion

242. Ch. 47, § 2, 1784 Laws of N.C. (Apr. Sess.), reprinted in 24 STATE RECORDS, *supra* note 69, at 616.

243. Ch. 47, § 2, 1784 Laws of N.C. (Apr. Sess.), reprinted in 24 STATE RECORDS, *supra* note 69, at 617.

244. Ch. 65, § 2, 1785 Laws of N.C., reprinted in 24 STATE RECORDS, *supra* note 69, at 780.

245. Ch. 29, § 1, 1785 Laws of N.C., reprinted in 24 STATE RECORDS, *supra* note 69, at 751. Future justices Lardner Clark and Robert Hays also were trustees. *Id.*

246. Ch. 26, § 1, 1787 Laws of N.C., reprinted in 24 STATE RECORDS, *supra* note 69, at 915.

247. DaCo CPQS Min. Bk. A:2.

248. DaCo CPQS Min. Bk. A:367.

249. DaCo CPQS Min. Bk. A:167.

250. DaCo CPQS Min. Bk. A:358.

251. DaCo CPQS Min. Bk. A:6.

252. DaCo CPQS Min. Bk. A:402.

253. DaCo CPQS Min. Bk. A:6.

to the rank of brigadier general in 1791.²⁵⁴ Justice David Hay held the rank of major in the county militia,²⁵⁵ and Justice Robert Weakley held both the rank of lieutenant colonel and the position of brigade inspector for the Mero District under the territorial government.²⁵⁶ Justice Robert Hays served as a colonel in the Mero District cavalry,²⁵⁷ and Justices Isaac Bledsoe and Samuel Barton held the rank of major in the county militia.²⁵⁸ Justice Anthony Bledsoe held the rank of first colonel in the militia.²⁵⁹

(5) Advocatory Appearances Before the Court

The justices did not hesitate to take full advantage of their positions on the court to advocate or defend legal interests of their own and others. In addition to frequent appearances as litigants themselves, incumbent justices often represented litigants appearing before the court and even more frequently testified as witnesses in actions before the court on which they sat. Justice Joel Rice, for example, represented the defendant as an unlicensed attorney in fact in *Demumbre v. Rice*²⁶⁰ at the court's July term 1790. At the court's January term 1792, Justice James Robertson represented the plaintiff as an attorney in fact in *Turnbull v. Robertson*²⁶¹ and in *Turnbull v. Clark*.²⁶² Incumbent justices represented litigants appearing before them in at least three other instances,²⁶³ although representation by unlicensed attorneys had been prohibited by the court since 1789.²⁶⁴ In addition, one or more incumbent justices testified as witnesses in both civil and criminal actions before the court in forty-nine instances during the period examined.²⁶⁵

254. DaCo CPQS Min. Bk. A:38; JOURNAL, *supra* note 175, reprinted in 4 TERRITORIAL PAPERS, *supra* note 172, at 444; see letter from William Blount to James Robertson, Sept. 21, 1791, reprinted in 4 TERRITORIAL PAPERS, *supra* note 172, at 82.

255. JOURNAL, *supra* note 175, reprinted in 4 TERRITORIAL PAPERS, *supra* note 172, at 445.

256. *Id.*

257. DaCo CPQS Min. Bk. A:377.

258. DaCo CPQS Min. Bk. A:6.

259. DaCo CPQS Min. Bk. A:6.

260. DaCo CPQS Min. Bk. A:376.

261. DaCo CPQS Min. Bk. B:30.

262. DaCo CPQS Min. Bk. B:31.

263. *Erwin v. Nash*, DaCo CPQS Min. Bk. B:272 (1795); *Jackson v. Nash*, DaCo CPQS Min. Bk. B:265, (1795); *Bosley v. Allison*, DaCo CPQS Min. Bk. B:262 (1795).

264. See DaCo CPQS Min. Bk. A:292.

265. See, e.g., *Territory v. Collins*, DaCo CPQS Min. Bk. B:261 (1795); *Cummins v. Betts*, DaCo CPQS Min. Bk. B:148 (1794); *Territory v. Lewis*, DaCo CPQS Min. Bk. B:113 (1793); *Mayfield v. Roberts*, DaCo CPQS Min. Bk. B:49 (1792); *Demumbre v. Clark*, DaCo CPQS Min. Bk. A:444 (1791); *Territory v. Campbell*, DaCo CPQS Min. Bk. A:420 (1791). In one appeal to the full court from a judgment rendered for the plaintiff by Justice Sampson Williams, Williams appeared as a witness before the court along with Justice Elijah Robert-

E. The Attorneys

Between October 1783 and April 1796, sixteen licensed attorneys at law practiced before the Davidson county court. At the January and April terms 1796, when the Territory was being organized into the new state of Tennessee, an additional three persons were admitted to practice before the court "by consent of the court & Barr"²⁶⁶ "untill some mode be pointed out by the Legislature of this State to Obtain Licence as an attorney."²⁶⁷ The first attorney licensed to practice before the court appears to have been John Brown, who "produced his Licence And Took the Oath of an Attorney" on July 5, 1785.²⁶⁸ Brown's name, however, does not occur again in the records in connection with litigation before the court. Josiah Love, who produced his license to the court on October 6, 1788,²⁶⁹ appears in the records as the first licensed attorney who actively practiced before the court.

Before Love began his practice in Davidson County in late 1788, litigants either had gone unrepresented by counsel or had been represented by unlicensed attorneys in fact. Daniel Williams is recorded as having made an appearance before the court as an attorney in fact at the January term 1784.²⁷⁰ At the April term 1785, William Gubbins was "Admitted to Appear and plead as an Attorney in fact for Such as may Chuse to Employ him And Impower him by a Special power of Attorney for that purpose But Shall not Appear for any person as an Attorney at Law."²⁷¹ That the court intended the arrangement to be a temporary one is indicated by the justices' added stipulation that "the sd. Gubbins Shall as Soon as possible Endeavour to Obtain Licence as an Attorney at Law."²⁷²

The court-sanctioned practice of untrained legal representation was not a temporary phenomenon, however. Even after Love had qualified, and after Bennett Searcy and Andrew Jackson had qualified in January 1789, untrained attorneys in fact continued to represent litigants. Indeed, two of the most active unlicensed attorneys in fact, John Overton and James Cole Mountflorencia, obtained their licenses only after the court had resolved at its July term 1789 that "no Attorney After the Present Term Shall be Admitted to

son; the court affirmed Williams' decision. *Derratt v. Rains*, DaCo CPQS Min. Bk. B:307 (1796).

266. DaCo CPQS Min. Bk. B:301.

267. DaCo CPQS Min. Bk. B:317.

268. DaCo CPQS Min. Bk. A:84.

269. DaCo CPQS Min. Bk. A:242.

270. DaCo DPQS Min. Bk. A:11.

271. DaCo CPQS Min. Bk. A:62.

272. DaCo CPQS Min. Bk. A:62.

Practise with out Licence: Neither Shall they Engage in any Suits After this day Saving to them the Liberty of finishing What Bussiness they have Already Engaged in."²⁷³ Reference already has been made to the violation of this resolution, often by the justices themselves.²⁷⁴

The North Carolina General Assembly did impose some regulations upon the practice of law in its county courts. The regulations were directed at the negligent and fraudulent performance of professional responsibilities and at the charging of excessive fees. The basic malpractice statute enacted by the general assembly in 1743 provided that

if any practising Attorney in any Court of Record in this [state], shall neglect to perform his Duty in any Action in which he shall be retained, or commit any fraudulent Practice, such Attorney shall be liable to an Action on the Case, at common Law, in the General or County Court of this [state], to the Party injured; and on the Verdict passing against him, Judgment shall be given, by the said Court, for the Plaintiff, to recover double Damages, with Costs of Suit.²⁷⁵

In 1786 the general assembly provided that the failure of an attorney to file a declaration in an action within the first three days of the term to which the appropriate writ was returnable would result in the dismissal of the suit and in liability on the part of the attorney to the plaintiff for damages "as he or they may have sustained in consequence" of the negligence.²⁷⁶

Until the assembly in 1786 prescribed the fees that attorneys were to receive for actions in law and equity, attorneys were prohibited by statute from charging fees in excess of those in effect in 1773.²⁷⁷ The penalty for the first offense was 25 pounds, and if the attorney persisted "in taking extortionate Fees," the court was authorized "to silence such Attorney."²⁷⁸ Violations of the maximum fees prescribed by the assembly in 1786 constituted criminal offenses, for which convictions resulted in expulsion from the bar for one year:

if any Attorney or Attornies shall presume to ask, take or receive, directly or indirectly, any other or greater Fees than are by this Act directed in all civil Cases, it shall be deemed in such Attorney or Attornies a Misdemeanor in his

273. DaCo CPQS Min. Bk. A:292.

274. See notes 260-64 *supra*.

275. Ch. 4, § 5, 1743 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 99, 1 SCOTT, *supra* note 4, at 77.

276. Ch. 14, § 6, 1786 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 585, 1 SCOTT, *supra* note 4, at 369.

277. Ch. 21, § 7, 1783 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 470, 1 SCOTT, *supra* note 4, at 281-82.

278. *Id.*

Office or Profession of an Attorney, and such Mal-Practices being made known to any of the Courts within this State, such Court is hereby required to direct the Attorney-General or the Solicitor, on Behalf of the State, to carry on a Prosecution by Indictment for such Mal-Practice aforesaid; and if any such Attorney or Attornies shall be thereupon convicted by the Verdict of a Jury, of taking any other or greater Fees than by this Act are allowed, he or they shall in the same Court in which such Conviction shall be had, be thenceforth dismissed from his Practice as an Attorney, for one Year, in every Court of Law and Equity within this State.²⁷⁹

No such prosecutions appear to have been undertaken in the Davidson county court during the period examined.

(1) Educational Backgrounds

Attorneys were licensed to practice in the North Carolina and the territorial courts by submitting themselves to examination by two or more superior court judges and by demonstrating that they possessed both "a competent Share of Law Knowledge" and an "upright Character."²⁸⁰ Although data about the education and legal training of the lawyers licensed to practice before the Davidson county court²⁸¹ are scarce, they do allow the drawing of at least two conclusions.

First, the lawyers who practiced before the Davidson county court shared with its justices an almost uniform lack of formal education. The only exception, James Cole Mountfloreance, had spent ten years in study at the University of Paris before his arrival in the American colonies. His studies there, however, apparently were not in the law but rather consisted of two years of philosophy and eight of mathematics.²⁸²

Second, most of the Davidson County lawyers secured sufficient knowledge in the law to satisfy the licensing examiners by reading law in the offices of established practitioners. The legal

279. Ch. 14, § 5, 1786 Laws of N.C., reprinted in IREDELL, *supra* note 4, at 585, 1 SCOTT, *supra* note 4, at 368-69.

280. Ch. 2, § 7, 1777 Laws of N.C. (Nov. Sess.), reprinted in IREDELL, *supra* note 4, at 298, 1 SCOTT, *supra* note 4, at 168.

281. Information has been found for at least one unlicensed attorney. William Gubbins, who was admitted to appear before the court as an unlicensed attorney in fact at the January term 1784, had studied law at the King's Inns in Dublin. Certificate of Admission, Society of the King's Inns, May 3, 1779, Associations and Institutions Collection, TSLA. Gubbins made no further appearances at court before his death in early 1786. A compilation of Gubbins' court appearances is on file with the *Vanderbilt Law Review*. See enclosure in letter from Anthony Bledsoe to Richard Caswell, May 12, 1786, reprinted in 18 STATE RECORDS, *supra* note 69, at 609.

282. Letter from James Cole Mountfloreance to Richard Caswell, Dec. 23, 1778, reprinted in 13 STATE RECORDS, *supra* note 69, at 335-36. Before moving to Davidson County, Mountfloreance kept a school at New Bern, North Carolina in which he taught Greek, Latin, French, mathematics, geography, and bookkeeping. *Id.*

training of Andrew Jackson, for example, was limited to his having read law under two prominent western North Carolina lawyers before moving to the county in the autumn of 1788. Jackson began to read law in late 1784 or early 1785 in the Salisbury office of Spruce Macay.²⁸³ Macay at the time was a member of the North Carolina House of Commons²⁸⁴ and a recently appointed trustee of the newly established Salisbury Academy.²⁸⁵ A graduate of the College of New Jersey less than a decade earlier,²⁸⁶ he quickly had built a sizeable practice for himself in the western Carolina counties. He had also had some judicial experience, having received a legislative appointment in 1782 as judge of a court of oyer and terminer for Washington and Sullivan counties on the state's western frontier.²⁸⁷ After a year of study with Macay, Jackson moved from Salisbury and began reading in the Montgomery County law office of John Stokes, the county's representative in the state senate.²⁸⁸ The extent of Stokes' educational background and of his legal practice when Jackson began reading under his tutelage has not been determined. The nature of the training that Jackson received under Stokes thus has remained a matter of speculation.²⁸⁹

283. M. JAMES, *THE LIFE OF ANDREW JACKSON* 34 (1933).

284. 19 *STATE RECORDS*, *supra* note 69, at 760.

285. Ch. 29, § 2, 1784 Laws of N.C. (Oct. Sess.), *reprinted in* 24 *STATE RECORDS*, *supra* note 69, at 690.

286. *GENERAL CATALOGUE OF PRINCETON UNIVERSITY 1746-1906*, at 98 (1908).

287. 16 *STATE RECORDS*, *supra* note 69, at 175; 19 *STATE RECORDS*, *supra* note 69, at 123. In 1790 Macay was elected to the North Carolina Superior Court of Law and Equity. *NORTH CAROLINA GOVERNMENT 1585-1974*, *supra* note 193, at 360.

288. *NORTH CAROLINA GOVERNMENT 1585-1974*, *supra* note 193, at 217.

289. One of Jackson's biographers claims that Stokes' law library "far exceeded any other in that region in reports of English decisions and in colonial statutes," but does not provide his source for the assertion. 1 A. BUELL, *HISTORY OF ANDREW JACKSON* 65 (1904). If his later career is any indication, Stokes probably taught Jackson more about the art of politics than about the law. Elected to the Continental Congress in December 1787, less than three months after Jackson had received his law license, Stokes never took his seat. *See* Letter from Hugh Williamson to Samuel Johnson, Sept. 1, 1788, *reprinted in* 21 *STATE RECORDS*, *supra* note 69, at 494-95; Letter from Samuel Johnson to Hugh Williamson, Sept. 22, 1788, *reprinted in* 21 *STATE RECORDS*, *supra* note 69, at 500. Instead, he was positioning for election by the general assembly to the Morgan District Superior Court, an effort that proved to be successful in December 1788. 20 *STATE RECORDS*, *supra* note 69, at 597; 21 *STATE RECORDS*, *supra* note 69, at 184. He had resigned from the bench before the assembly convened the next November and successfully had sought election to the house of commons. He took his seat on November 3 and before the end of the year, after unsuccessful attempts to secure appointments to the United States Senate and to the Council of State, succeeded in winning election to his former position on the bench, now as an assistant judge of the Morgan District Superior Court, despite charges of "political jobbing" leveled at him by one of his colleagues in the house. 21 *STATE RECORDS* 200, 253, 266, 314, 412, 611, 653, 717. Within a year, in August 1790, Stokes secured an appointment by President Washington as judge of the United States District Court for the District of North Carolina, a position that he held until his death only two months later. *NORTH CAROLINA GOVERNMENT 1585-1974*, *supra* note 193, at 751.

Seth Lewis began reading law under Josiah Love shortly after an unsuccessful trading trip from the Natchez area had left him stranded in the county in 1790. He apparently had no intention of making the law a full-time profession. Recalling this turn of events some sixty years later, Lewis said that Love,

seeing me out of business, proposed to me to engage with him in the study of the law, proffering me the use of his excellent library, together with all the instruction he could give me. To this I agreed, not with any view at the time of ever practicing law, but merely for the purpose of improving my mind. This study I pursued for about three years, not continuously, but during all the time I could spare from other business necessary to my support.²⁹⁰

(2) Case Loads

Although sixteen attorneys at law and numerous attorneys in fact practiced regularly before the Davidson county court, the bulk of the court's litigation for the period examined was conducted by only five licensed attorneys. At the time of his death in late 1793,²⁹¹ Love had the largest practice in the county. Between his qualification at the court's October term 1788 and his death five years later, he had represented litigants in 181 cases. Second to Love at the latter's death, Jackson eventually represented clients in 256 cases when the court closed its April term 1796. Howell Tatum, who qualified at the July term 1789, had represented clients in 153 cases when the April term 1796 ended. After having represented clients as an unlicensed attorney in fact in six cases before qualifying as a licensed attorney in April 1790, John Overton represented litigants in 127 cases over the next six years. Bennett Searcy qualified at the same term as Jackson and, through the April term 1796, represented private litigants in ninety-nine cases and the Territory in eight additional criminal prosecutions as state's attorney in the county. Frequently during the period examined, these and other licensed attorneys jointly represented a single client.²⁹² Case load statistics for the other licensed attorneys practicing before the court for the period examined are presented in Table 17.²⁹³

290. Autobiographical Memoir of Seth Lewis, *supra* note 193, at 20.

291. See Knoxville Gazette, Jan. 2, 1794.

292. See, e.g., Mitchell v. Maclin, DaCo CPQS Min. Bk. B:327 (1796); Hay v. Rains, DaCo CPQS Min. Bk. B:22 (1792); Sugg v. Barrow, DaCo CPQS Min. Bk. A:421 (1791); Murfree v. Hardy, DaCo CPQS Min. Bk. A:361 (1790); Bosley v. Lenear, DaCo CPQS Min. Bk. A:295 (1789); Clark v. Chacere, DaCo CPQS Min. Bk. A:133 (1786).

293. An even more accurate assessment of the extent of the litigation activity of each practicing lawyer can be derived from the number of appearances the attorneys made at each term of court. These statistics are on file with the *Vanderbilt Law Review*.

V. CONCLUSION

The Davidson county court under the North Carolina and territorial governments exercised broad judicial, legislative, and administrative authority. The justices were among the wealthiest men in the county and, like their counterparts in England, were members of the community's political-military elite. Although largely untrained in the law, the justices, as the court's case load and the variety of actions disposed of indicate, nevertheless valued the law as an instrument of social regulation and orderly change.

Despite its substantial powers, the Davidson county court was not without at least two major countervailing institutions, the petit jury and the small, undereducated, but not unskilled bar whose members helped to make the law an effective instrument of conflict resolution. Regrettably, more extensive conclusions about the education and training of the justices of the Tennessee county courts under the North Carolina and territorial governments and of the attorneys who practiced before them and conclusions about the sources of law upon which they relied must await further study.

THEODORE BROWN, JR.

VI. APPENDIX

TABLE 1: TRIAL DISPOSITION OF ACTIONS, 1784

Nature of Actions	Jan. Term	Apr. Term	Jul. Term	Oct. Term	Total
	Disp by crt Jury trial Default jgmt Confession jgmt Jury asamt damages	Disp by crt Jury trial Default jgmt Confession jgmt Jury asamt damages	Disp by crt Jury trial Default jgmt Confession jgmt Jury asamt damages	Disp by crt Jury trial Default jgmt Confession jgmt Jury asamt damages	
Civil Actions (24)					
Debt		1	1 1	1	4
Attachment	1	1 4	2	3	11
Trespass on case			4	4	8
Real property			1		1
Detinue					
Slander					
Trespass vi et armis					
Assault and battery					
Trover					
Trespass q.c.f.					
Contract actions					
Other					
Criminal actions* (22)					
Drunkenness		1	1		2
Swearing in court		1		3	5
Adultery			1	1	2
Fornication			1 1		2
Bastardy			1 2		3
Slander			2		2
Petty theft			1		1
Striking and abuse			2		2
Jury duty nonperformance				2	2
Assault and battery				1	1
Sabbath purchase of Negro					
Liquor sale w/out license					
Taking, keeping woman					
Trading with Indians					
Cohabitation					
Refusing state's currency					
Disorderly conduct					
Liquor sale exceeding court-imposed prices					
Swearing on sabbath					
Breach of sabbath					
Killing livestock					
Profane swearing					
Blasphemy					
Violent entering of another's house					
Threatening to kill					
Breach of peace					
Theft of livestock					
Counterfeiting					
Forgery					
Beating, wounding					
Theft (felony)					
Affray					
Other					
Slavery actions (None)					
Unidentified actions appealed from judgment of single justice (None)					
Judgments by single justices (None)					
Total	1	2 2 4	9 9 2 2	5 7 3	46
Appeals taken to Superior Crt	None	None	None	None	None

*Categories assigned by the court

TABLE 2: TRIAL DISPOSITION OF ACTIONS, 1785

Nature of Actions	Jan. Term		Apr. Term		Jul. Term			Oct. Term			Total
	Disp by crt Jury trial Default jgmt Confession jgmt Jury asamt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury asamt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury asamt damages			Disp by crt Jury trial Default jgmt Confession jgmt Jury asamt damages			
Civil Actions (60)											
Debt		1							1	2	
Attachment		1		11		3		2	1 1	19	
Trespass on case	1		5		1 2 1 3			1 4	4	22	
Real property											
Detinue											
Slander											
Trespass vi et armis											
Assault and battery											
Trover											
Trespass q.c.f.											
Contract actions			1							1	
Other				2 1		2 1				6	
Criminal actions* (17)											
Drunkenness											
Swearing in court			1							1	
Adultery											
Fornication											
Bastardy											
Slander											
Petty theft											
Striking and abuse											
Jury duty nonperformance	1									1	
Assault and battery			1		1				1	3	
Sabbath purchase of Negro	1 1									2	
Liquor sale w/out license			2		1					3	
Taking, keeping woman	1									1	
Trading with Indians			1							1	
Cohabitation					1 1					2	
Refusing state's currency					1					1	
Disorderly conduct					1					1	
Liquor sale exceeding court-imposed prices					1					1	
Swearing on sabbath											
Breach of sabbath											
Killing livestock											
Profane swearing											
Blasphemy											
Violent entering of another's house											
Threatening to kill											
Breach of peace											
Theft of livestock											
Counterfeiting											
Forgery											
Basting, wounding											
Theft (felony)											
Affray											
Other											
Slavery actions (None)											
Unidentified actions appealed from judgment of single justice (1)			1							1	
Judgments by single justices (1)			1							1	
Total	2 3 1 3		4 7 1 3 1		2 6 7 2 3		2 1 6 1 5			69	
Appeals taken to Superior Crt	None		3		1		None			4	

*Categories assigned by the court

TABLE 3: TRIAL DISPOSITION OF ACTIONS, 1786

Nature of Actions	Jan. Term				Apr. Term				Jul. Term				Oct. Term				Total					
	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	Disp by crt		Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	
Civil Actions (55)																						
Debt																						
Attachment			1	1	1	6	2			1	6	1						1	3	23		
Trespass on case	1		1			7			1									8	3	4	25	
Real property					1													2			3	
Detinue																						
Slander																						
Trespass vi et armis																						
Assault and battery																						
Trover																						
Trespass q.c.f.																						
Contract actions																						
Other					1	1			1	1										4		
Criminal actions* (5)																						
Drunkenness																						
Swearing in court																						
Adultery																						
Fornication																						
Bastardy																						
Slander																						
Petty theft																						
Striking and abuse																						
Jury duty nonperformance																						
Assault and battery																						
Sabbath purchase of Negro																						
Liquor sale w/out license																						
Taking, keeping woman																						
Trading with Indians																						
Cohabitation																						
Refusing state's currency																						
Disorderly conduct																						
Liquor sale exceeding court-imposed prices																						
Swearing on sabbath			1																1	2		
Breach of sabbath																			1	1		
Killing livestock																		2			2	
Profane swearing																						
Blasphemy																						
Violent entering of another's house																						
Threatening to kill																						
Breach of peace																						
Theft of livestock																						
Counterfeiting																						
Forgery																						
Beating, wounding																						
Theft (felony)																						
Affray																						
Other																						
Slavery actions (1)			1																		1	
Unidentified actions appealed from judgment of single justice (1)			1																		1	
Judgments by single justices (1)			1																		1	
Total	4	1	1	2	1	7	9	2	1	1	1	7	1					12	1	5	7	63
Appeals taken to Superior Crt			1				3				None							None			4	

*Categories assigned by the court

TABLE 4: TRIAL DISPOSITION OF ACTIONS, 1787

Nature of Actions	Jan. Term		Apr. Term		Jul. Term		Oct. Term		Total
	Disp by crt Jury trial Default jgmt Confession jgmt Jury asmt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury asmt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury asmt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury asmt damages		
Civil Actions (98)									
Debt									
Attachment		4		1					
Trespass on case	12	4 8	7	2 5	1		18	1 4	10
Real property	1		1					2 22	81
Detinue	1								2
Slander									1
Trespass vi et armis									
Assault and battery									
Trover									
Trespass q.c.f.									
Contract actions									
Other	1		2				1		4
Criminal actions* (22)									
Drunkenness			1						1
Swearing in court									
Adultery									
Fornication									
Bestardy				3					3
Slander									
Petty theft			2						2
Striking and abuse									
Jury duty nonperformance	1						3		4
Assault and battery									
Sabbath purchase of Negro									
Liquor sale w/out license				3					3
Taking, keeping woman									
Trading with Indians									
Cohabitation									
Refusing state's currency									
Disorderly conduct									
Liquor sale exceeding court-imposed prices									
Swearing on sabbath									
Breach of sabbath			1						1
Killing livestock									
Profane swearing				1			2		3
Blasphemy			1						1
Violent entering of another's house			1						1
Threatening to kill			1						1
Breach of peace							1		1
Theft of livestock							1		1
Counterfeiting									
Forgery									
Beating, wounding									
Theft (felony)									
Affray									
Other									
Slavery actions (None)									
Unidentified actions appealed from judgment of single justice (3)									
Judgments by single justices (3)	1		1				1		3
	1		1				1		3
Total	4 14	4 12	7 12	8 7	1	9 19	3 26	12 6	
Appeals taken to Superior Crt	2		1		None		None		3

*Categories assigned by the Court
 a Motion for arrest of judgment granted

TABLE 5: TRIAL DISPOSITION OF ACTIONS, 1788

Nature of Actions	Jan. Term		Apr. Term		Jul. Term		Oct. Term		Total
	Disp by crt Jury trial Default jgmt Confession jgmt Jury assmt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury assmt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury assmt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury assmt damages		
Civil Actions (113)									
Debt						1			1
Attachment			1		1	3	1	6	18
Trespass on case	4		2	5	5	2			74
Real property			1			1			2
Definue							1		1
Slander									
Trespass vi et armis									
Assault and battery									
Trover									
Trespass q.c.f.									
Contract actions									
Other	1		6	1		1	2	1	17
Criminal actions* (11)									
Drunkenness									
Swearing in court									
Adultery									
Fornication									
Bastardy									
Slander							1		1
Petty theft			1						1
Striking and abuse									
Jury duty nonperformance					1		3		4
Assault and battery									
Sabbath purchase of Negro									
Liquor sale w/out license									
Taking, keeping woman									
Trading with Indians									
Cohabitation									
Refusing state's currency									
Disorderly conduct									
Liquor sale exceeding court-imposed prices									
Swearing on sabbath									
Breach of sabbath			2						2
Killing livestock									
Profane swearing									
Blasphemy									
Violent entering of another's house									
Threatening to kill									
Breach of peace									
Theft of livestock				1					1
Counterfeiting			1						1
Forgery									
Beating, wounding									
Theft (felony)									
Affray									
Other							1		1
Slavery actions (None)									
Unidentified actions appealed from judgment of single justice (9)			1	5		1		2	9
Judgments by single justices (9)			6			1		2	9
Total	1	4	16	10	7	5	2	4	14
Appeals taken to Superior Crt	None		None			8		2	10

*Categories assigned by the court
 a Referred to Superior Court

TABLE 6: TRIAL DISPOSITION OF ACTIONS, 1789

Nature of Actions	Jan. Term		Apr. Term		Jul. Term		Oct. Term		Total
	Disp by crt Jury trial Default jgmt Confession jgmt Jury asamt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury asamt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury asamt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury asamt damages		
Civil Actions (123)									
Debt					1		2	2	5
Attachment		4		3 1 1		3 9	1 1	1 1	24
Trespass on case	1 4 4 1 2		3 1 6 4		9 2 13 12		1 1	3 1	67
Real property	2		3 2				1		8
Detinue									
Slander									
Trespass vi et armis							1		1
Assault and battery									
Trover									
Trespass q.c.f.					1		2	1	4
Contract actions					1 1		1 1		14
Other	3		3 2 2		1 1		1 1		14
Criminal actions* (11)									
Drunkenness			1						1
Swearing in court									
Adultery									
Fornication									
Bastardy									
Slander									
Petty theft									
Striking and abuse									
Jury duty nonperformance			2		2		2		6
Assault and battery	1								1
Sabbath purchase of Negro									
Liquor sale w/out license									
Talking, keeping woman									
Trading with Indians									
Cohabitation									
Refusing state's currency									
Disorderly conduct									
Liquor sale exceeding court-imposed prices									
Swearing on sabbath									
Breach of sabbath									
Killing livestock									
Profane swearing									
Blasphemy									
Violent entering of another's house									
Threatening to kill									
Breach of peace									
Theft of livestock	3								3
Counterfeiting									
Forgery									
Beating, wounding									
Theft (felony)									
Affray									
Other									
Slavery actions (None)									
Unidentified actions appealed from judgment of single justice (12)	5		1 2		1 2		1		12
Judgments by single justices (18)	5		7		4		2		18
Total	6 18 8 1 2		16 6 6 11 5		7 13 7 13 21		6 8 2 5 3		164
Appeals taken to Superior Crt	4		None		3		2		9

*Categories assigned by the court
a Mistrial

TABLE 7: TRIAL DISPOSITION OF ACTIONS, 1790

Nature of Actions	Jan. Term				Apr. Term				Jul. Term				Oct. Term				Total				
	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	Disp by crt		Jury trial	Default jgmt	Confession jgmt	Jury assmt damages
Civil Actions (81)																					
Debt									1 1				2				4				
Attachment	4				1 2				2 4				4				17				
Trespass on case	1 1				2 1 1 1				1 1 0 1 5				5 3 1				33				
Real property					1												1				
Detinue																					
Slander																					
Trespass vi et armis					1												1				
Assault and battery	1																1				
Trover																					
Trespass q.c.f.									2				1 1				4				
Contract actions	3 1 2				2				1 2				4 2 2 1				20				
Other																					
Criminal actions* (12)																					
Drunkenness																					
Swearing in court																					
Adultery																					
Fornication																					
Bastardy																					
Slander	3																3				
Petty theft																					
Striking and abuse																					
Jury duty nonperformance	1												2				3				
Assault and battery					3												3				
Sabbath purchase of Negro																					
Liquor sale w/out license																					
Taking, keeping woman																					
Trading with Indians																					
Cohabitation																					
Refusing state's currency																					
Disorderly conduct																					
Liquor sale exceeding court-imposed prices																					
Swearing on sabbath																					
Breach of sabbath																					
Killing livestock																					
Profane swearing																					
Blasphemy																					
Violent entering of another's house																					
Threatening to kill																					
Breach of peace																					
Theft of livestock																					
Counterfeiting																					
Forgery	1																1				
Beating, wounding																					
Theft (felony)																					
Affray																					
Other					2												2				
Slavery actions (None)																					
Unidentified actions appealed from judgment of single justice	3				2				3				1 8				1				18
Judgments by single justices (21)	11												10								21
Total	19 5 8, 2				2 9 2 1 3				2 17 5 5 4				2 1 18 6 1 2				182				
Appeals taken to Superior Crt	1				1				4				2				8				

*Categories assigned by the court
 a Referred to Superior Court

TABLE 8: TRIAL DISPOSITION OF ACTIONS, 1791

Nature of Actions	Jan. Term				Apr. Term				Jul. Term				Oct. Term				Total						
	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	Disp by crt		Jury trial	Default jgmt	Confession jgmt	Jury assmt damages		
Civil Actions (97)																							
Debt					2	1					5	3					11						
Attachment					1					1					7								
Trespass on case	1					1	3	1	3					12	2	4	8	5					40
Real property																							
Detinue																	1					1	
Slander																							
Trespass vi et armis																	2					2	
Assault and battery																	1					1	
Trover																	1					1	
Trespass q.c.f.																							
Contract actions	1					1					6	1	3					14					
Other	1	1	1	2	1	2	1	2	1	2	4	1	2	4	1	3	1	20					
Criminal actions* (6)																							
Drunkenness																							
Swearing in court																							
Adultery																							
Fornication																							
Bastardy																							
Slander																							
Petty theft																	1					1	
Striking and abuse																							
Jury duty nonperformance					1					1					2								
Assault and battery																							
Sabbath purchase of Negro																							
Liquor sale w/out license																							
Taking, keeping woman																							
Trading with Indians																							
Cohabitation																							
Refusing state's currency																							
Disorderly conduct																							
Liquor sale exceeding court-imposed prices																							
Swearing on sabbath																							
Breach of sabbath																							
Killing livestock																	1					1	
Profane swearing																							
Blasphemy																							
Violent entering of another's house																							
Threatening to kill																							
Breach of peace																							
Theft of livestock																							
Counterfeiting																							
Forgery																							
Beating, wounding					2									2									
Theft (felony)																							
Asfray																							
Other																							
Slavery actions (2)					1					1					2								
Unidentified actions appealed from judgment of single justice (6)					1	1					2	2					6						
Judgments by single justices (6)	2					4									6								
Total	2	1	1	3	8	11	5	6	2	228	6	10	12	4	8	1	5	2	117				
Appeals taken to Superior Crt	1					None					6					1	8						

*Categories assigned by the court
 a In one of which, motion for arrest of judgment granted

TABLE 9: TRIAL DISPOSITION OF ACTIONS, 1792

Nature of Actions	Jan. Term		Apr. Term		Jul. Term		Oct. Term		Total	
	Disp by crt Jury trial Default jgmt Confession jgmt Jury asmt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury asmt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury asmt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury asmt damages			
Civil Actions (60)										
Debt	2	2	1						5	
Attachment		1	1			2			4	
Trespass on case	4	3	9			2			18	
Real property					1				1	
Detinue			1						1	
Slender										
Trespass vi et armis										
Assault and battery										
Trover	1								1	
Trespass q.c.f.										
Contract actions	2	2	4						8	
Other	6	2	1	5	4	3	1		22	
Criminal actions* (2)										
Drunkenness										
Swearing in court										
Adultery										
Fornication										
Bastardy										
Slender										
Petty theft										
Striking and abuse										
Jury duty nonperformance										
Assault and battery			1	1					2	
Sabbath purchase of Negro										
Liquor sale w/out license										
Taking, keeping woman										
Trading with Indians										
Cohabitation										
Refusing state's currency										
Disorderly conduct										
Liquor sale exceeding court-imposed prices										
Swearing on sabbath										
Breach of sabbath										
Killing livestock										
Profane swearing										
Blasphemy										
Violent entering of another's house										
Threatening to kill										
Breach of peace										
Theft of livestock										
Counterfeiting										
Forgery										
Beating, wounding										
Theft (felony)										
Affray										
Other										
Slavery actions (None)										
Unidentified actions appealed from judgment of single justice (2)				2					2	
Judgments by single justices (4)			4						4	
Total	6	11	1	7	6	8	2	1	2	4
Appeals taken to Superior Ct	2	2	None	None	None	None	None	None	4	4

*Categories assigned by the court

TABLE 10: TRIAL DISPOSITION OF ACTIONS, 1793

Nature of Actions	Jan. Term			Apr. Term			Jul. Term			Oct. Term			Total						
	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury asamt damages	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury asamt damages	Disp by crt	Jury trial		Default jgmt	Confession jgmt	Jury asamt damages			
Civil Actions (141)																			
Debt	5	1				12	1	2			1	6			5	33			
Attachment	4					3	1	3			6	4			2	23			
Trespass on case	9					18	1	4	8		4	1	2	4	3	2	51		
Real property																			
Delinue																			
Slander																			
Trespass vi et armis																			
Assault and battery																			
Trover																			
Trespass q.c.f.																			
Contract actions	1					6	1	1	1		3		1	2	4	1	21		
Other						2	2	2		1	3			1	1	1	18		
Criminal actions* (9)																			
Drunkenness																			
Swearing in court																			
Adultery																			
Fornication																			
Bastardy																			
Slander																			
Petty theft																			
Striking and abuse																			
Jury duty nonperformance																			
Assault and battery																			
Sabbath purchase of Negro																			
Liquor sale w/out license																			
Taking, keeping woman																			
Trading with Indians																			
Cohabitation																			
Refusing state's currency																			
Disorderly conduct																			
Liquor sale exceeding court-imposed prices																			
Swearing on sabbath																			
Breach of sabbath																			
Killing livestock																			
Profane swearing																			
Blasphemy																			
Violent entering of another's house																			
Threatening to kill																			
Breach of peace																			
Theft of livestock																			
Counterfeiting																			
Forgery																			
Beating, wounding																			
Theft (felony)																			
Affray																			
Other																			
Slavery actions (None)																			
Unidentified actions appealed from judgment of single justice (1)																			
Judgments by single justices (1)																			
Total	19	1				237	4	9	12		216	7	6	7	215	10	1	2	152
Appeals taken to Superior Crt	None			6			2			2			10						

*Categories assigned by the court
a In one of which, a special verdict

TABLE 11: TRIAL DISPOSITION OF ACTIONS, 1794

Nature of Actions	Jan. Term		Apr. Term		Jul. Term		Oct. Term		Total					
	Disp by crt Jury trial Default jgmt Confession jgmt Jury assmt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury assmt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury assmt damages		Disp by crt Jury trial Default jgmt Confession jgmt Jury assmt damages							
Civil Actions (145)														
Debt	2	1	1				3	1	8					
Attachment	4	8	1	1	2	5	1	1	30					
Trespass on case	212	2	4	3	1		6	1	38					
Real property				2										
Detinue														
Slander														
Trespass vi et armis														
Assault and battery														
Trover														
Trespass q.c.f.														
Contract actions	8	1	2	4	1	2	2	3	30					
Other	3	1	2		2	9	3	2	37					
Criminal actions* (9)														
Drunkenness														
Swearing in court														
Adultery														
Fornication														
Barbary														
Slander														
Petty theft														
Striking and abuse														
Jury duty nonperformance	1								1					
Assault and battery			2		1		1	1	6					
Sabbath purchase of Negro														
Liquor sale w/out license														
Taking, keeping woman														
Trading with Indians														
Cohabitation														
Refusing state's currency														
Disorderly conduct														
Liquor sale exceeding court-imposed prices														
Swearing on sabbath														
Breach of sabbath														
Killing livestock														
Profane swearing														
Blasphemy														
Violent entering of another's house														
Threatening to kill														
Breach of peace														
Theft of livestock														
Counterfeiting														
Forgery														
Beating, wounding														
Theft (felony)	1								1					
Affray	1								1					
Other														
Slavery actions (None)														
Unidentified actions appealed from judgment of single justice (1)					1				1					
Judgments by single justice (None)														
Total	625	7	516	210	13	1	1414	3	3	314	10	3	6	155
Appeals taken to Superior Crt	2			1			2			2				7

*Categories assigned by the court

TABLE 12: TRIAL DISPOSITION OF ACTIONS, 1795

Nature of Actions	Jan. Term			Apr. Term			Jul. Term			Oct. Term			Total							
	Disp by crt Jury trial Default/jgmt Confession/jgmt Jury assmt damages			Disp by crt Jury trial Default/jgmt Confession/jgmt Jury assmt damages			Disp by crt Jury trial Default/jgmt Confession/jgmt Jury assmt damages			Disp by crt Jury trial Default/jgmt Confession/jgmt Jury assmt damages										
Civil Actions (83)																				
Debt		1			1	1	1				1	1	6							
Attachment		1	1	1	4	2	1	1	2	1	2	1	21							
Trespass on case		5	1		3	1		3	2	1		3	21							
Real property																				
Delinque					1								1							
Slander																				
Trespass vi et armis																				
Assault and battery																				
Trover																				
Trespass q.c.f.		1											1							
Contract actions		2	2	1	2	1	1	1	1	1	3	1	15							
Other		10			1	4		2	1				18							
Criminal actions* (8)																				
Drunkennes																				
Swearing in court																				
Adultery																				
Fornication																				
Bastardy																				
Slander																				
Petty theft								1					1							
Striking and abuse																				
Jury duty nonperformance										1			1							
Assault and battery					2			2	1				5							
Sabbath purchase of Negro																				
Liquor sale w/out license																				
Taking, keeping woman																				
Trading with Indians																				
Cohabitation																				
Refusing state's currency																				
Disorderly conduct																				
Liquor sale exceeding court-imposed prices																				
Swearing on sabbath																				
Breach of sabbath																				
Killing livestock																				
Profane swearing																				
Blasphemy																				
Violent entering of another's house																				
Threatening to kill																				
Breach of peace																				
Theft of livestock																				
Counterfeiting																				
Forgery																				
Beating, wounding																				
Theft (felony)										1			1							
Affray																				
Other																				
Slavery actions (None)																				
Unidentified actions appealed from judgment of single justice (8)								2		1			3							
Judgments by single justices (4)				1			2			1			4							
Total		9	14	1	2	11	10	1	4	3	12	7	1	4	3	9	2	1	4	98
Appeals taken to Superior Crt		2				4				3										9

*Categories assigned by the court
 a Special verdict
 b In one of which, a special verdict

TABLE 13: TRIAL DISPOSITION OF ACTIONS, 1786

Nature of Actions	Jan. Term				Apr. Term				Jul. Term				Oct. Term				Total					
	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	Disp by crt	Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	Disp by crt		Jury trial	Default jgmt	Confession jgmt	Jury assmt damages	
Civil Actions (34)																						
Debt		1	1	2																	4	
Attachment			3		4																8	
Trespass on case		3		1		4		1	1		1										7	
Real property																						
Definne																						
Slander																						
Trespass vi et armis																						
Assault and battery										1											1	
Trover																						
Trespass q.c.f.																						
Contract actions			2	1		2		1	2												8	
Other	1		1			2		2													6	
Criminal actions* (9)																						
Drunkenness																						
Swearing in court																						
Adultery																						
Fornication																						
Bastardy																						
Slander																						
Petty theft										1											1	
Striking and abuse																						
Jury duty nonperformance																						
Assault and battery				1		2		1													4	
Sabbath purchase of Negro																						
Liquor sale w/out license																						
Taking, keeping woman																						
Trading with Indians																						
Cobabitation																						
Refusing state's currency																						
Disorderly conduct																						
Liquor sale exceeding court-imposed prices																						
Swearing on sabbath																						
Breach of sabbath																						
Killing livestock																						
Profane swearing																						
Blasphemy																						
Violent entering of another's house																						
Threatening to kill																						
Breach of peace																						
Theft of livestock																						
Counterfeiting																						
Forgery																						
Beating, wounding																						
Theft (felony)																						
Affray				1																	1	
Other				2	1																3	
Slavery actions (None)																						
Unidentified actions appealed from judgment of single justice (4)				1				1	2												4	
Judgments by single justices (3)				2				1													3	
Total		5	8	7	4	4	4	5	10	3	2	2	2								50	
Appeals taken to Superior Crt				None				2														2

*Categories assigned by the court

TABLE 14: NONTRIAL DISPOSITION OF ACTIONS, 1784-1796

	1784	1785	1786	1787	1788	1789	1790	1791	1792	1793	1794	1795	1796	Total
Settlement by parties	1	1												2
Arbitration		3	1	1	2	1	1	3	1	1	3	1	1	17
Dismissal or abatement	2	5	4	1	1	1	1	1	1					40
Non prosequitur	1	1	1	1	1	1	1	1	1					18
Total	3	6	8	3	2	4	1	7	1	1	1	1	1	77

TABLE 15: AVERAGE TRIALS PER DAY
WHEN ONE OR MORE CASES TRIED

Total Average, Oct. 1783-Apr. 1796: 6.9 trials per day	
Year/Term (No. days when 1+ cases tried)	Average Trials per Day
1783	
Oct. (None)	
1784	
Jan. (1)	1.0
Apr. (2)	5.5
Jul. (4)	5.0
Oct. (4)	4.7
1785	
Jan. (3)	3.7
Apr. (6)	5.2
Jul. (6)	4.8
Oct. (6)	4.3
1786	
Jan. (3)	4.0
Apr. (6)	3.8
Jul. (4)	3.0
Oct. (5)	5.6
1787	
Jan. (4)	8.8
Apr. (4)	9.8
Jul. (1)	1.0
Oct. (3)	17.3
1788	
Jan. (2)	1.0
Apr. (4)	7.5
Jul. (4)	12.0
Oct. (4)	5.3
1789	
Jan. (5)	5.2
Apr. (4)	6.3
Jul. (5)	12.0
Oct. (5)	4.6
1790	
Jan. (5)	3.4
Apr. (6)	2.5
Jul. (6)	6.2
Oct. (3)	10.0
1791	
Jan. (2)	3.0
Apr. (5)	4.8
Jul. (4)	12.0
Oct. (5)	3.8
1792	
Jan. (2)	15.0
Apr. (5)	5.2
Jul. (None)	
Oct. (None)	
1793	
Jan. (1)	7.0
Apr. (5)	12.0
Jul. (6)	4.7
Oct. (5)	4.4
1794	
Jan. (6)	7.3
Apr. (3)	5.3
Jul. (5)	5.8
Oct. (4)	8.0
1795	
Jan. (4)	5.5
Apr. (5)	3.8
Jul. (5)	4.0
Oct. (4)	3.5
1796	
Jan. (5)	5.5
Apr. (5)	5.5

TABLE 17: CASE LOADS FOR LICENSED ATTORNEYS,
DAVIDSON COUNTY COURT, OCTOBER TERM 1783-APRIL TERM 1796

Attorney	Cases as Attorney in Fact	Cases as Licensed Attorney at Law	
		Private	State's Attorney
Josiah Love ¹ (qualified Oct. Term 1788)		181	
Andrew Jackson (qualified Jan. Term 1789)		256	
Howell Tatum (qualified Jul. Term 1789)		153	
John Overton (qualified Apr. Term 1790)	6	127	
Bennett Searcy (qualified Jan. Term 1789)		99	8
James Cole Mountfloreance (qualified Apr. Term 1790)	10	46	
James Dougherty (qualified Jul. Term 1793)		33	
Samuel Donelson (qualified Jan. Term 1795)		7	8
Seth Lewis (qualified Jul. Term 1795)		7	3
Joseph Arnold Sitgreaves (qualified Jan. Term 1790)		6	
William Rowan (qualified Jan. Term 1790)		4	
Isaac McNutt (qualified Jan. Term 1796)		2	
Thomas Stuart (qualified Apr. Term 1796)		—0—	
Robert Knox (qualified Jan. Term 1796)		—0—	
Randal McGavock (qualified Jan. Term 1796)		—0—	
Isham Allen Parker (qualified Jan. Term 1796)		—0—	
James White (qualified Jan. Term 1791)		—0—	
Hopkins Lacy (qualified Jul. Term 1790)		—0—	

¹Deceased 1793