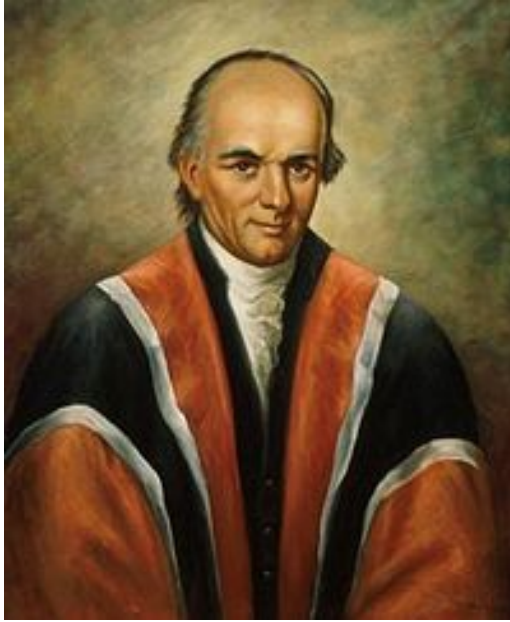


Bayard v. Singleton: North Carolina as the Pioneer of Judicial Review



Alfred Moore

At the outset of the American Revolution Samuel Cornell, likely the richest man in North Carolina remained loyal to the King. He fled to England and returned with the King's troops to his family's home in New York. The North Carolina General Assembly confiscated his thousands of acres as well as his house. Spyers Singleton, a New Bern merchant who supplied the revolutionary troops, bought Cornell's house. When Cornell's daughter, Ms. Elizabeth Bayard returned to North Carolina to reclaim her property she filed suit against Singleton claiming that the 1776 North Carolina Constitution gives her an absolute right to a jury trial of her claim. The General Assembly subsequently enacted a law ordering the state's judges to dismiss all such "vexatious" lawsuits over confiscated property without a trial. Alfred Moore, a future United States Supreme Court Justice, argued for Singleton and the State before the court.

The court held that the actions of the General Assembly were unconstitutional, as they did not uphold the principles of democracy under the North Carolina Constitution that all persons retain the right to a decision of his property through trial by jury. This 1787 decision (16 years before the U.S. Supreme Court's controversial decision in *Marbury v. Madison*) established the North Carolina Supreme Court's power to declare acts of the General Assembly unconstitutional. This was the first American court decision to declare a legislative act unconstitutional and provided the only precedent for the United State Supreme Court decision in *Marbury v. Madison*. Judge Samuel Ashe likens Americans after the Revolution to a "set of people shipwrecked and cast on a maroon'd island—without laws, without magistrates, without government, or any legal authority" very much demonstrating the context of this decision and it's consequences for the

framework of separation of powers with checks and balances in the State. In this fragile post-revolutionary period, the courts in North Carolina took a bold step in defining the balance between the democratically elected legislature as the voice of the majority, and the courts as the protector of minority rights and liberties.