

BAYARD v. SINGLETON ^[1]

Bayard V. Singleton (court case)

By Michael Hill, Research Branch, NC Office of Archives and History, 2006<https://www.ncdcr.gov/about/history/division-historical-resources/nc-hig...> ^[2]

See also: [Bayard v. Singleton](#) ^[3] (from the *Encyclopedia of North Carolina*)

American precedent for judicial review of legislation set, 1787, by[Samuel Ashe](#) ^[4], [Samuel Spencer](#) ^[5], [John Williams](#) ^[6]

Bayard v. Singleton, a landmark North Carolina court case that set a precedent for the exercise of judicial review, was decided in New Bern in November 1787. In that year, [Elizabeth Cornell Bayard](#) ^[7] filed suit to reclaim lands and property of her father, [Samuel Cornell](#) ^[8], which had been confiscated at the close of the [American Revolution](#) ^[9] because of Cornell's loyalist sympathies. The property had been purchased in 1784 for £2,160 by New Bern merchant [Spyers Singleton](#) ^[10].

Cornell, a New Bern merchant and member of [William Tryon](#) ^[11]'s Royal council, and perhaps the wealthiest man in North Carolina on the eve of the Revolution, had fled the colonies in April 1775 for London. In December 1777 he attempted to return, but was refused the right to land at New Bern when he would not take a loyalty oath to the United States. He then transferred his property to his wife and daughter in order to avoid confiscation under the restrictions that had been placed upon [Loyalist](#) ^[12] properties. Nevertheless, his landholdings were confiscated, with the proceeds from the sale of Cornell's house reportedly paying for the expenses of the North Carolina delegates to the Constitutional Convention in Philadelphia.

Attorney and future governor [Samuel Johnston](#) ^[13] filed Mrs. Bayard's lawsuit for her, assisted by fellow future governor [William R. Davie](#) ^[14]. Singleton retained the services of former governor [Abner Nash](#) ^[15] and preeminent attorney and future United States Supreme Court Justice [Alfred Moore](#) ^[16]. Singleton apparently attempted to hire [James Iredell](#) ^[17]. However, Iredell was opposed to the confiscation acts in principal and refused to actively participate.

Bayard's attorneys argued that the 1785 confiscation acts passed by the state violated a provision set forth in the state's 1776 constitution that guaranteed anyone a trial by jury in a case involving the potential of loss of landholdings or property. The case was heard by the court of conference, the forerunner to the [North Carolina Supreme Court](#) ^[18], by judges Samuel Ashe, Samuel Spencer, and John Williams. The court was faced with a troubling situation. Although it appeared clear that the confiscation acts did indeed violate the state constitution, there was no real precedent in the 1780s for a court to refuse to enforce a legislative act. Abner Nash moved to have the case dismissed, but the court chose to delay their decision, awaiting a hopeful out-of-court settlement and providing time for the General Assembly to repeal the acts.

The Assembly chose not to repeal the [confiscation acts](#) ^[19] during the November 1787 session but concluded that the court had the right to hear the case. In response, Iredell published *To the Public*, proclaiming the right of judicial review. The court ultimately took the case, and reluctantly agreed that they could not enforce an act that violated the state constitution, thus sending the case into the trial phase. Nevertheless, the court decided quite controversially against Bayard after finding a loophole in the prosecution's case, stating that Cornell was actually an alien and therefore could not have owned land in the first place.

The court's acknowledgement that legislatures could not make laws that violated state constitutions, and the case's eventual decision, angered many on both sides of the argument. Richard Dobbs Spaight, a signer of the Constitution,

denied openly in the press that the courts had any right to deem a legislative action unconstitutional. Nevertheless, the Bayard v. Singleton opinion of the court was widely published and distributed to attorneys, setting a precedent for judicial review within the American legal system.

References:

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