

Spencer, Samuel ^[1]

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Spencer, Samuel

by J. Isaac Copeland and Jerry C. Cashion, 1994

21 Jan. 1734–20 Mar. 1793

Samuel Spencer, member of the colonial Assembly, trustee of [The University of North Carolina](#) ^[2], and justice of the superior court, was born in East Haddam, Conn. He was the oldest of nine children born to Samuel and Jerusha Brainerd Spencer, both of whom were descendants of highly respected New England families. Young Spencer was graduated from the College of New Jersey (Princeton) in 1759. The exact date of his arrival in North Carolina would be difficult to establish, but undoubtedly it was only a few years after his graduation, for by 1765 he was a resident of [Anson County](#) ^[3], and on 16 Oct. 1765 he was appointed clerk of court.

From the time of his arrival Spencer was active in governmental affairs. He represented Anson County in the colonial Assembly from 1766 to 1768 and was a member of the Provincial Council from 1774 to 1776. When the [Provincial congresses](#) ^[4] met at New Bern, Hillsborough, and Halifax in 1774, 1775, and 1776 he again represented Anson, and at the conventions of 1788 and 1789—meeting in Hillsborough and Fayetteville to ratify the U.S. Constitution—he was a delegate. In 1777 he was one of the three members elected as the first justices of the superior court and served in this capacity from 1778 until his death.

Spencer held the rank of colonel in the militia. At the time of the Regulator uprising in 1768 he was fortunate in that open conflict in Anson County was avoided when the protesters dispersed. However, at the [Battle of Alamance](#) ^[5] in 1771 Spencer was in the field as a supporter of the royal government, but his loyalty dissolved as relations with the mother country became more strained. When the Provincial Congress met in Halifax (4 Apr.–14 May 1776), he was appointed to the committee charged with writing "a temporary Civil Constitution," but the writing, completion, and acceptance of the document was not accomplished until months later at the fifth session of the congress (12 Nov.–23 Dec. 1776), also at Halifax. Because Spencer was not a representative at this congress, the contribution he made can be only a matter of conjecture.

As a delegate to the [Hillsborough convention](#) ^[6] (21 July–2 Aug. 1788), Spencer was a major participant. With him as anti-federalists were [Willie Jones](#) ^[7], [Timothy Bloodworth](#) ^[8], [David Caldwell](#) ^[9], Thomas Person, and [Griffith Rutherford](#) ^[10], but he was the leader and ablest debater. Spencer's name appears frequently in the records of the debates, where his comments are both candid and temperate. Though favoring a stronger union, he looked with distrust upon a powerful central government. Above all, his concern was with the absence of a Bill of Rights, and his vote was one of the 184 cast against adoption. More than a year later, at the [convention in Fayetteville](#) ^[11] (7–23 Nov. 1789), he was one of the minority of seventy-seven who cast their vote against North Carolina's adoption of the federal Constitution. Surely, though, he received satisfaction from his appointment to a committee charged with drafting proposals for a Bill of Rights for the new Constitution.

A conscientious and able judge, Spencer was a participant in one of the superior court's significant decisions. [Mrs. Elizabeth Cornell Bayard](#) ^[12] brought proceedings for recovery of property willed to her by her father, a Tory merchant, that had been confiscated and sold to [Spyers Singleton](#) ^[13]. The confiscation acts of 1777 and 1779 had made it impossible for Tories to recover lost property, and an act of 1785 had prohibited the courts from hearing cases involving such losses. Despite these laws, and the fact that she was no longer a resident of North Carolina, Mrs. Bayard decided to enter suit. Both she and the defendant were represented by well-known lawyers; those employed by Singleton argued that since Mrs. Bayard and her father were British subjects, the case should be dismissed. But the superior court justices—Spencer, [Samuel Ashe](#) ^[14], and [John Williams](#) ^[15]—rejected this argument, and cited Article 14 of the Bill of Rights in the [North Carolina Constitution](#) ^[16] by which a trial by jury was guaranteed. When the case went to the jury in 1787, the verdict was for the defendant, but of substantially more significance than the verdict was the action of the justices in declaring unconstitutional the act of the Assembly. This was the first reported case under a written constitution in which a justice, or justices, took such action; John Marshall's decision, [Marbury v. Madison](#) ^[17], now regarded as very much a part of American law, was not rendered until 1803.

Criticism of the justices was vocal, not only for their ruling in [Bayard v. Singleton](#) ^[18], but for other decisions and acts as well. There was talk of impeachment, some lawyers were determined to "write the judges off the bench," and the [General Assembly](#) ^[19] authorized "an enquiry into the present state of the administration of Justice in the Superior Courts." But,

exercising better judgment, members of the legislature silenced the criticism and voted to express appreciation to the justices "for their long and faithful service."

Among the federalists there remained those who had little regard for Spencer, and even a generation later Griffith McRee wrote, "He certainly was not below mediocrity, even in his profession, but [he] was not qualified by learning or dignity of manners for the office conferred upon him." But Spencer's alma mater held him in sufficient regard to confer an honorary doctorate of laws upon him in 1784, and in 1789 he became a trustee of the newly established University of North Carolina.

Justice Spencer was a man of substantial means. His home was located on Smith's Creek, where it flows into the Pee Dee River, only a few miles from Wadesboro, and his landholdings in Anson, Bladen, Tryon, Mecklenburg, and Rutherford counties were in excess of 5,000 acres. The census of 1790 reports him to have been the holder of eighteen slaves.

In 1776 Spencer married Phillipa Pegues, usually referred to by her pet name, Sybil, a South Carolinian of Huguenot ^[20] descent; her family home was near the boundary line of the two Carolinas. The Spencers were the parents of at least four children—Mary Pegues, who married Isaac Jackson; Claudius, who died while quite young; a son, William Samuel; and a second daughter who is said to have been named Anne.

Spencer has in so many respects been forgotten. It remained for Albert Coates, in his Three North Carolinians Who Have Stood Up to Be Counted for the Bill of Rights ^[21], to remind North Carolinians of the greatness of this man and of their indebtedness to him.

Spencer's death came as the result of an unusual accident. It is reported that he had not been well and between court sessions was resting at his home. While sitting on the porch, with a red cap on his head, he became sleepy and began to nod; a large turkey gobbler apparently regarded the moving cap as a challenge and attacked. The justice was thrown from his chair and suffered numerous scratches from which erysipelas developed.

The accounts of Samuel Spencer's life are at times conflicting. The date of his birth was 1734, not 1738 as in some cases reported; the Genealogy of the Brainerd-Brainard Family ^[22] . . . establishes beyond doubt the earlier date. And the Calvin Spencer, mentioned as the brother moving with him from Connecticut, was evidently a half brother who would have been at least fifteen years younger and who settled in Chesterfield County, S.C. The reports of Spencer's landholdings and the number of slaves he held have also varied, but the figures used in this sketch have been taken from the records of the Land Grant Office in the North Carolina Department of the Secretary of State, deed records located in the North Carolina State Archives, and the U.S. Census of 1790. The date reported for Spencer's death has also varied, but the minutes of the board of trustees of The University of North Carolina and the Charleston State Gazette of South Carolina of 22 May 1793 support the date used. The disagreement as to the year of his death can be attributed only to an error in copying; the variance as to the month is due to the fact that ultimo, or "ult." as abbreviated, was overlooked by some writers.

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