

Attorney Robert Paine Dick (5 Oct. 1823- Sept. 1898)

Researched and written by Elon University School of Law student James Wrenn, Summer 2011

As an influential legal professional in the 19th century, Robert Dick held prominent roles as a practitioner, union leader, delegate, adviser, and justice. Dick was born on 5 Oct. 1823 to John McClintock, a superior court justice under whom Dick initially studied law. After studying at the Caldwell Institute and the University of North Carolina, Dick graduated in 1843 and began the practice of law in Rockingham County in 1845, the year he became licensed. In 1852, after having lived in Greensboro for four years, Dick became a delegate to the Democratic National Convention in Baltimore while working in opposition to the Whig party. (Founders, 189).

Dick served from 1853-1861 as U.S. District Attorney under the nomination of Franklin Pierce, and he became heavily involved in politics towards the end of his tenure as District Attorney. In 1860, Dick unsuccessfully campaigned for presidential candidate Stephen Douglas with a platform of Union preservation. Dick was the only delegate from North Carolina to not vote for John Breckinridge at the 1860 convention. However, in 1861, Dick cast his vote in favor of North Carolina's secession to the Union after the outbreak of the Civil War. It is believed that Dick, as well as his father, personally opposed secession. However, Dick appears to have rationalized his approval of secession as an effort to recognize the public's wishes to secede, placing the interest of his constituents over his personal views. Dick personally viewed propositions of the Confederate as encroachments on state's rights. Interestingly, Dick proposed an amendment to the Ordinance of Secession that would have required it to be ratified by the legal voters of North Carolina upon its enactment. This proposed amendment failed; however, it perhaps shows his hesitancy to approve secession by attempting to force the electorate to directly adopt it.

In 1864, Dick joined the "peace movement" led by W.W. Holden and was elected to the North Carolina state senate based on his recognition that further Confederate resistance to the Union would be futile. Upon the end of the Civil War, Dick was summoned in 1865 by President Johnson, who sought Dick's advice on how to restore the government of North Carolina to the Union. Dick advised President Johnson to restore the previous North Carolina Constitution and provide amnesty to those who supported/adhered to the Confederacy. This proposal was rejected by Johnson.

Despite the failures of his meeting with the president, Johnson appointed Dick to a position as U.S. District Judge. Dick declined this position because it required taking an oath saying that he had never aided or abetted the Confederacy. Dick did not believe he could honestly take such an oath; however, Washington officials disagreed because Dick never held a position directly under the Confederate government. Dick's slaves had been freed and he had incurred substantial property losses during the Civil War, but he declined the position as District Judge based on his principles. The oath that Dick refused to sign was soon abolished by President Grant.

Dick was a leader of the 1865-66 North Carolina Constitutional Convention, while also advocating in favor of the 14th Amendment to the United States Constitution. Dick helped form the Republican Party and campaigned for its victory in 1868, when he was elected to the North Carolina Supreme Court. While serving in the N.C. Supreme Court until 1872, Dick made significant contributions to an emerging method of civil procedure, answered new state constitutional issues, and made a noteworthy mark in the area of contract law. He authored over 250 known judicial opinions as a North Carolina Supreme Court justice.

In 1878, Dick co-founded the Greensboro Law School, also known as the Dick and Dillard Law School, in Greensboro, North Carolina. During its course, the Greensboro Law School produced around three hundred graduates who were admitted to the practice of law, thus contributing to a wide-ranging and lasting impact upon the legal community in North Carolina. Upon Grant's abolition of the "test oath," Dick was appointed to and accepted a position as Judge of the United States District Court for the Western District of North Carolina. He served in this capacity from 1878-1892 and produced about eighty known judicial opinions.

Impact through the N.C. Judiciary:

Robert Dick induced a substantial impact as Justice of the North Carolina Supreme Court from 1868 to 1872. Dick was primed for an exciting time in the judiciary as a justice working in the aftermath of the Civil War and the re-uniting of the country. Interestingly, many of the judicial opinions authored by Dick regard issues of slavery, contracts centered on slavery and Confederate money, and similar issues concerning matters that were most certainly viewed as particularly tense and sensitive amongst the general population.

Perhaps none of Dick's judicial opinions capture the chaos of the times as the following. Dick notes that the President rightfully established a provisional government in 1865 during the subjugation of North Carolina to circumvent anarchy. Governor Holden, a provisional official, appointed individuals to perform governmental duties. The plaintiff in this case had served as an appointed police officer, but his compensation was withheld by the City of Newbern. In acknowledging the legitimacy of the provisional government, Dick's opinion upheld a judgment for the plaintiff officer. *Boyle v. City of Newbern*, 64 N.C. 664 (1870).

In a series of cases, Dick showed both dismissal and approval of transactions occurring during the Confederacy. Dick stated, "Money lent for the purpose of equipping the Confederate Army cannot be recovered in the courts of the rightful [United] government." Dick declared the transaction at issue, which lent money for Confederate equipment, to be one that was illegal and asserted that the contract had become vitiated due to such illegality. *Critcher v. Holloway*, 64 N.C. 526 (1870). In 1871, Dick produced an opinion stating that a contract involving Confederate currency (agreed upon during the Confederacy) was presumed to "make a note solvable." Dick carved an exception of the "presumed solvable" standard by validating a contract based on Confederate money when it was made during a time in which the currency was depreciating rapidly. This rapid depreciation would serve

as evidence that the contract was made by an individual willing to accept the risk of depreciation, and such individuals were precluded from protection of a legislative act in 1866. *Hillard v. Moore*, 65 N.C. 540 (1870). The result of Dick's opinion in this case provided an unfavorable outcome for individuals who had contracted during the volatile period of a depreciating Confederacy with an agreement based on Confederate money.

Unlike in *Hillard*, the contract in *Sowers* contemplated the depreciation of Confederate currency. When evidence of the agreement showed that Confederate money for the goods of a contract was to be paid in "good money after the war," Dick affirmed an award of full payment in post-Confederate money. *Sowers v. Earnhart*, 64 N.C. 96 (1870). His justification for the distinction between the two cases was that the agreement in *Sowers* contemplated the kind of money to be paid, whereas *Hillard* focused merely on the frame of time in which the money would be paid – not the quality of money to be paid.

Oddly enough, Dick upheld a contract made during the insurrection between private citizens. Dick asserted that the contract was not a violation of 12 U.S. Stat. at Large 257 because the contract was not between a citizen of an insurrectionary state and a citizen of another non-insurrectionary state. *Garrett v. Smith*, 64 N.C. 93 (1870). This was further exemplified in *Blackwell*, in which Dick declared that a New York attorney no longer had an attorney-client relationship with a North Carolina client due to the onset of war. *Blackwell v. Willard*, 65 N.C. 555 (1871).

Perhaps in display of the times, Dick states, "when a contract is fully understood by parties at its inception and not vitiated by illegality or fraud, a Court of Equity will not rescind it." *Addington v. McDonnell*, 63 N.C. 389 (1869). There are many doctrines in contract law that allow individuals who understand their contract terms to not be bound by them. It is unclear if Dick merely leaves out these other doctrines for purposes of brevity and relevance to the case – or if these doctrines were not in practice at the time. In *Skinner*, Dick notes that a contract with a minor may be ratified when they reach the age of majority (adulthood, usually eighteen-years-old), giving the minor the choice to continue the contractual obligation or to break from the agreement without it considered to be a breach (a breach would perhaps make the minor susceptible to damages for breaking the agreement). The simple fact of an individual being underage was sufficient to disaffirm the contract. *Skinner v. Maxwell*, 66 N.C. 45 (1872).

Due to the Act of April 2nd 1792 Sec. 20, judgments must be entered in dollars and cents, which were payable through coin or Treasury notes. When a contract contemplates payment by coin, depreciation of Treasury notes must be considered and added to the nominal (quantified) amount of coin upon which the agreement was determined. *Mitchell v. Henderson*, 63 N.C. 643 (1869). Dick declared this decision to be for purposes of uniformity, convenience, and commerce more than for a decision on the efficacy of currency itself.

Despite the overwhelming number of contracts and Confederate-based cases, Dick also wrote memorable opinions on unrelated matters. In *Matthews*, Dick dealt with the prisoner confession, which are popular issues under the 5th Amendment of the U.S. Constitution. Dick asserted that a prisoner's confession was presumed to be true – that individuals would not lie to further their likelihood of suffering from

punishment for a crime. However, Dick acknowledged that confessions must be provided freely, voluntarily, without fear or threats, while also acknowledging that the law should be construed liberally in favor of prisoners. As such, when an individual confessed to a coroner, Dick's opinion held that the confession was not admissible because the alleged criminal had not been given prior warning regarding his rights to silence, counsel, etc. *State v. Matthews*, 66 N.C. 106 (1872). These rights were statutorily based at the time, however, they are generally enforced today based on U.S. Supreme Court interpretations of the Constitution.

Regarding the necessity of a jury, Dick's opinion in *Redman* concluded that a jury was only needed when evidence was equally balanced for opposing parties. *Redman v. Redman*, 65 NC 546 (1871). Dick determined that a Master in Chancery could not decide issues of fact himself; he could only assist/enlighten the Chancellor in a Court of Equity. According to Dick, a jury was not needed when the question of fact depended entirely on conflicting documents or when testimony was so strong that the Chancellor did not need "enlightening."

The prior case may have become less relevant based on Dick's opinion in *Matthews*. Dick's opinion held that the distinction between actions in law and equity were abolished, although the distinction between legal and equitable rights remained. *Matthews v. McIntosh*, 64 N.C. 607 (1870).

Impact on Federal Court:

Upon Grant's appointment, Dick served as Judge of the United States District Court for the Western District of North Carolina from 1872 until shortly before his death in 1898. Dick made a noteworthy mark in areas involving finance, which is intriguing considering all of his judicial opinions on contracts and the Confederacy, inherently financial-related cases.

In *Jordan*, Dick recognized the notion of federalism by acknowledging the different laws between different states. However, Dick also acknowledged that all federal laws must be uniformly applied amongst the several states. As such, a federal act of 1873, which adopted principles from certain states and applied them to others, was not actually applying state laws to other states; rather, the federal law was adopting state principles into its "federal scheme." It would be unconstitutional to force another state to adhere to another state's law; however, the U.S. Congress was merely applying federal law that was derived from state principles – not applying state law to another state. As such, Dick declared that the general policy of bankruptcy was to distribute assets equally among creditors, holding that Congress had the authority to avoid *all* loans – even if such loans were prescribed by statute, usage, express contract, or common law. *In re Jordan*, 13 F.Cas. 1079 (1873).

Further making his mark in federal bankruptcy law, Dick declared that an individual who was subject to bankruptcy was entitled to retain household furniture and other necessities. Dick stated that a bankrupt, "should have the means of reasonable, immediate, and temporary support for one's self and family." *In re Martin*, 16 F.Cas. 880 (1877). When a debt was owed by a citizen to the federal government, Dick declared that a state could not use its own exemption laws to

preclude the federal government from receiving the debt owed by a citizen. *U.S. v. Howell*, 9 F. 674 (1881). Significant issues of federal supremacy arise from this case, which clearly evidences growth away from popular sentiments of state autonomy towards a stronger federal government.

Further flexing his authority over contract law, Dick declared that the damages owed to an employee who was terminated before the agreed upon term would be equal to the amount as if the contract had been fulfilled.